

Preface

One may wonder with literally scores of excellent books and articles analyzing recent Russian efforts to maintain control over the Northern Caucasus (and Chechnya, in particular), as well as a constant stream of current commentaries and reports on military and political developments in the region found on the Internet and in newspapers, what more can be contributed to this literature.

Generally, the aforementioned works do not focus on the rule of law in the conflict between Russia and Chechnya, with the notable exception of the issue “whether Moscow or the Chechen separatists have the stronger legal argument as to the latter’s right to independence.” From this perspective, it appears that law primarily functions to provide rationales to justify the relevant parties’ positions. Secondarily, law provides standards by which to judge the behavior of the competing parties from an international human rights or humanitarian law perspective.

The overwhelming share of this literature leaves one with the impression that law has not had a major impact on the conduct of the conflict by law enforcement personnel. This is a view we do not entirely share. The poor performance of the Russian police, military, and political leadership represents evidence that it may be on the way to becoming a “failed state.” Its economy is overly dependent on the price of energy exports. It needs to modernize its economy and the management of its government functions—both of which require the genuine strengthening of the rule of law. In the 1990s, law in the criminal and national security spheres was underdeveloped. Furthermore, where it existed, it was often ignored or did not reflect actual practices. Law shapes expectations and formalizes procedures/processes. It has an impact on domestic and international public opinion as well as on morale within the ranks of the combatants. Ultimately, it will have genuine operational and political consequences.

Indeed, a state must have an established legal framework to develop and implement effectively national security and law enforcement policies. There is an old adage that “it is much easier to conquer a country from a horse than to rule it.” The Russian leadership has found itself trying to develop policies that would lead to the achievement of both objectives, but only with limited success, primarily in the former area.

According to its Constitution, the Russian Federation is a country based on the rule of law. In almost every aspect of life, there are corresponding provisions of law that purport to regulate activities within the country. In practice, there are frequent divergences between the written law and daily reality, which has a corrosive effect on human behavior and organizational effectiveness.

The Constitution provides the legal basis for the Russian Federation's efforts to preserve the state's territorial integrity against both internal and external threats. In many areas, the language describing the means by which this is to be achieved is ambiguous. This requires individuals and organizations to operate as "gap fillers,"—sometimes formally in published documents, but often informally. This can lead to a high level of improvisation, unpredictability, and dysfunctional behavior in policy formation and execution.

Russian law is dynamic. With respect to its law enforcement and military forces being used in the Northern Caucasus against the insurgents (bandits, guerillas, militants, separatists, or terrorists), it is both proactive and reactive. It operates in parallel with the fighting on the ground as well as the secret negotiations conducted in the hope of finding political compromises or resolving particular circumstances. Russian law is a product of a domestic political process—involving the interplay of politicians, government officials, senior military officers, and academic specialists. If it were entirely superfluous, why would the body of Russian law be maintained and updated at great cost and involving a large number of individuals and organizations?

The ongoing process of refining the law in the national security and law enforcement areas by Russian civil and military leadership about the most appropriate manner to quell the insurgency in the Northern Caucasus is not part of a societal debate, yet to a great extent it is a proxy for determining the very nature of the Russian polity. It is important not to lose sight of the fact that it is frequently the case that law along with truth is among the first casualties in combat.

As initially drafted, the Russian Federation's Criminal Code and Code of Criminal Procedure did not adequately address fighting that is in essence a domestic insurgency or civil war. It is common knowledge that a large percentage of Russian law enforcement and military personnel do not operate at a high skill level and corruption is an endemic problem. Under such conditions, is it realistic to expect the observance of standards mandated by the law of conflict (i.e. largely arising from international law) and criminal law? What are the implications for the Russian state of its law enforcement and military personnel's failure to observe the relevant norms?

For example, as a member of the Council of Europe (COE), Russia recently abolished the death penalty. Some within the country, including then—President Medvedev felt that the death penalty was appropriate in certain cases for acts of terrorism. In a situation where Russian law enforcement or military personnel encounter insurgents, it is understandable that there will be instances where they would prefer to kill their adversaries, rather than risk being killed in this or some future engagement, particularly if there is unlikely to be negative consequences for being "trigger happy."

It is politically convenient for the Russian authorities to label all the insurgents as “terrorists.” Throughout the world, many countries are grappling with terrorist threats, some entirely domestic and others supported from abroad. Some terrorists have a political agenda while others can properly be described criminals. The insurgents in the Northern Caucasus defy generalization. Their composition, leaderships, motives, and methods are diverse and have varied with the passage of time, which has made it more difficult for the Russian government to develop and implement an effective policy for dealing with them.

This book is principally concerned with two topics. First, how has Russian legislation changed in the course of carrying out counterinsurgency operations in the Northern Caucasus? Second, has the Russian national security community become a ‘victim’ of its battlefield successes during the Second Russian-Chechen War (including in their use of counterinsurgency tactics) since it cannot now eliminate the insurgency’s smaller, sustainable units that utilize terrorist tactics (e.g. the use of suicide bombers) rather than engage in traditional military operations?

With the reduction in the size of the insurgency’s forces, they increasingly resemble terrorist cells rather than formal military units or guerilla formations. Russian intelligence seems to have greater difficulty in monitoring their activity. The fact that the vast majority of the insurgents hold Russian citizenship presents particular problems, legal problems, since in principle Russian citizens enjoy at least on paper significant legal rights. At present, it is highly unlikely that the Russians can achieve either a military victory or a satisfactory political solution in the Northern Caucasus. Unfortunately, the failure to do so presents the risk that at some point could prove catastrophic.

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