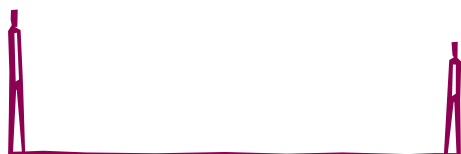


# MEDVEDEV'S AMENDMENTS TO THE LAW ON DEFENCE

THE CONSEQUENCES FOR EUROPE

Yury E. Fedorov

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# MEDVEDEV'S AMENDMENTS TO THE LAW ON DEFENCE

## THE CONSEQUENCES FOR EUROPE



Yury E. Fedorov  
Associate Fellow  
Chatham House

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- In November 2009, the ‘Law on Amendments to the “Law on Defence”’ proposed by President Medvedev entered into force. It allows the Kremlin to dispatch troops outside Russia for four purposes: to counter armed attacks against Russian armed forces, other troops and bodies deployed beyond its borders; to counter or prevent an armed attack against another country if this country has requested Russia to do so; to protect Russian citizens abroad from an armed attack; and to combat piracy and guarantee the safety of shipping.
- The law is an attempt to close the gap between Moscow’s strategic goals, primarily the establishment of its geopolitical dominance over the former Soviet republics, and Russia’s legislation, which restricted its ability to deploy armed forces beyond national borders. In effect, the amended legislation enables the Kremlin to deploy its armed forces abroad in a wide range of situations, precisely because of a lack of clear criteria.
- The wording of ‘Medvedev’s amendments’ sheds light on some plans and scenarios that may be taking shape in Moscow. It is not beyond the realms of possibility that Russia may plan to ignite large-scale disturbances and ethnic clashes in Sevastopol or in Latvia and Estonia, which may be used as a pretext for Russian military intervention.
- A Russo-Ukrainian conflict in Crimea would pose not so much a military as a political challenge for Europe and the West. Even though Ukraine does not belong to these organizations, if NATO and the EU failed to respond to Russian intervention in Crimea with strong political and economic measures, their strategic relevance would be seriously undermined. If NATO did not defend its member states in the Baltic, the strategic role of the Alliance would be reduced to zero.
- The aforementioned scenarios fall into the worst-case category, yet there are numerous precedents in Russia’s history which demonstrate that worst-case scenarios can become reality. European dependence on Russian energy supplies and interest in Russia’s support in resolving the Iranian nuclear problem and the conflict in Afghanistan, as well as the Obama administration’s interest in Russia’s partnership in nuclear issues, constrain Western ability to respond. However, the West could and should make it quite clear that new Russia’s military interventions will result in the country’s political ostracization.
- Furthermore, the West could propose and develop an internationally recognised mechanism regulating the most important aspects of humanitarian intervention. In particular, it should minimise the ability of individual states to make unilateral decisions to intervene militarily if the UN Security Council were unable to make firm decisions. Such mechanisms could be discussed and developed in the frameworks of the UN, the OSCE, the so-called Corfu process and similar international forums.

Russia in the Regional and Global Context research programme  
The Finnish Institute of International Affairs



Medvedev meeting with officers from the Russian Armed Forces.  
Photo: [www.kremlin.ru](http://www.kremlin.ru)

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The legislation is bound to cause considerable concern in countries neighbouring Russia, particularly Ukraine and the Baltic states, and poses some important questions. Is this law merely further confirmation of the Kremlin’s gearing up for new offensives in the former USSR? Or is it an instance of rivalry between Medvedev and Putin to win the sympathies of the diehard Russian generals? How does it correlate with international law, the OSCE efforts at conflict prevention, and Medvedev’s own proposals for “a new European security architecture”? What might be the consequences of ‘Medvedev’s amendments’ for Europe?

#### **Russian legislation on using military force abroad prior to ‘Medvedev’s amendments’**

Before Medvedev’s amendments entered into force, the Kremlin was allowed to deploy troops outside Russia under a narrow set of circumstances. Article 81 of the Russian Constitution states that war can be declared only in the event of aggression against

Russia or the immediate threat of aggression. Until the Law on Defence was amended, it identified two missions of the Russian armed forces: ‘to repel aggression’ against Russia and ‘to defend by force of arms the integrity and inviolability’ of its territory, as well as ‘to perform missions in accordance with the international treaties’ of Russia. ‘Repelling aggression’ basically implies a defensive *modus operandi* after an enemy attack materialises, although in theory counter-offensive operations may lead to Russian troops invading an enemy’s territory.

Missions ‘in accordance with international treaties’ imply that Russian forces can be stationed abroad and employed according to a corresponding treaty. Article 102 of the Constitution stipulates that ‘deciding on the possibility of using the Armed Forces of the Russian Federation outside the territory of the Russian Federation’ is ‘within the jurisdiction of the Federation Council’. What is more, the Law on Participation of Russian military and civil personnel in peacekeeping operations permits the dispatch of Russian military personnel abroad to perform non-combat operations in international peacekeeping missions, as well as to participate in actual combat operations in peace-enforcement missions. The latter, according to Article 11 of this law, can be implemented only after a decision by the UN Security Council.

Thus, Russian law limited Moscow’s ability to use force in order to achieve political goals abroad. Yet, in some cases, Russian military activities violate not only international, but also Russian law. The 1,500-strong Operative Group of Russian Troops is stationed in



Presentation of state decorations to Russian servicemen for distinction in battle in the Georgian–South Ossetian conflict zone.

Photo: [www.kremlin.ru](http://www.kremlin.ru)

Moldova's breakaway region, Transdniestria, in the absence of any agreement between Russia and Moldova and regardless of Moldavian demands for withdrawal.<sup>1</sup> Furthermore, the aggression against Georgia was a deplorable violation of Russian legislation. The Federation Council approved Medvedev's decision to deploy troops to Georgia two weeks after the combat operations ended. Yet the law demands that such decisions have to be approved before troops cross the Russian border or, in the event of an emergency, at the earliest possible date after such a decision has been made. Moscow's claim that it was a 'peace-enforcement operation' contradicts the clause in the Russian law which states that Russia's troops may participate in such operations by a decision of the UN Security Council only. The assertion that Russian troops invaded Georgia to protect Russian citizens was also illegal according to the terms of Russian law. The latter did not include mistreatment of Russian citizens abroad in its definition of aggression against Russia.

### **Medvedev's amendments: legal aspects**

The adopted amendments to Article 10 of the Russian Law on Defence stipulate that the Russian Armed

Forces can be employed in combat operations beyond Russia's borders for four purposes. In certain cases, the compliance of the amendments with the norms of international law can be called into question.

a) At first glance the amendment that allows *sending troops to counter armed attacks against Russian forces or bodies deployed beyond its borders* is in line with the UN 'Definition of aggression' adopted by the General Assembly's resolution 3314 on December 14, 1974. The latter qualifies 'an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State' as an act of aggression. Yet an attack on the armed forces stationed in a foreign territory by non-state actors like terrorist groups, rebels, violent mobs, criminal gangs and so on is not an act of aggression in the terms of the UN definition. In such circumstances, it cannot justify an armed intervention to protect attacked troops without the express permission of the government of the host country. For its part, Russian law purposefully mentions just 'armed attacks', which include hostile actions both by the armed forces of a state as well as by non-state armed actors. In addition, it mentions attacks not only against armed forces, but also against 'bodies', which is an ambiguous term that includes military as well as non-military organisations and institutions.

b) The amendment permitting the Russian president to dispatch troops abroad '*to counter or prevent an armed attack against another country*' at the request of that country does not fully accord with Article 51 of the UN Charter, which stipulates the inherent right of individual or collective

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<sup>1</sup> There are about 430 Russian servicemen in the Joint Peacekeeping Force in the Transdniestrian region of Moldova, stationed there in accordance with the Russian-Moldovan agreement of July 1992. Yet the other part of the Russian military presence in Moldova, the Operative Group of Russian Troops, which is a remnant of the former Soviet 14th Army, is positioned in Transdniestria without any legal basis.

Medvedev visiting a Russian military base in South Ossetia in July 2009 with Commander of the North Caucasus Military District Sergei Makarov (left) and Defence Minister Anatoly Serdyukov.

Photo: www.kremlin.ru



self-defence. The UN Charter implies self-defence against aggression as defined by the UN, while the Russian law uses the less specific term—‘an armed attack’. Furthermore, legal problems arise if Russia provides military support at the instigation of an entity unrecognised by the international community as an independent state. In particular, the deployment of Russian troops in Abkhazia and South Ossetia is illegal according to the terms of international law.

c) *Operations of the Russian Navy aimed at combating piracy* are legitimate of course. However, ‘guaranteeing the safety of shipping’ in cases other than combating piracy authorises the Russian Navy to intervene arbitrarily in any conflict or dispute between commercial ships under the Russian or any other flag, and warships or authorities of other states. This is not in accordance with the UN Law of the Sea Convention.

d) The clause allowing military intervention ‘to protect Russian citizens abroad from an armed attack’ definitely contradicts international law and the internationally accepted practice of humanitarian interventions. An armed attack against the citizens of one state residing in another state is not regarded as an aggression under the UN definition of the term. The international community presumes that states have a right to protect their citizens abroad by diplomatic and consular means only, while the responsibility for the physical protection of foreign citizens against terrorism, criminal encroachments and so forth lies with the state of residence. If a state is unable to prevent mass murder, large-scale

ethnic cleansing and similar atrocities threatening the life and dignity of its own as well as foreign citizens, protection of both the local population and foreign residents becomes the responsibility of the international community. In any event, the latter is the only source of legitimisation of a humanitarian intervention, including those performed by military means. This is an element of the “responsibility to protect” concept approved by the UN 2005 World Summit. On October 24, 2005 the UN General Assembly adopted resolution A/RES/60/1, which concluded:

*“we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”*

#### **Medvedev’s amendments: political aspects**

Due to its vague and ambiguous wording, the new Russian legislation has radically expanded the range of circumstances under which Moscow considers it legitimate to deploy troops abroad, as well as the list of states in which Russia may station armed forces in accordance with the law.

The clause concerning the protection of Russian citizens in foreign states grants Moscow the right of unilateral military intrusion into any country in which Russian citizens reside on a permanent or temporary basis under a wide set of arbitrarily construed circumstances. It does not specify precisely what ‘an armed attack’ constitutes, how many Russian citizens need to be under attack to justify Russian intervention, whether such an attack would be carried out by armed forces or law-enforcement agencies of a foreign state or by non-state armed groups, and whether the Russian government has to obtain an official sanction to act in a foreign territory from the UN Security Council or from the authorities of the particular state where Russian citizens are under attack.

Russia’s self-proclaimed right to defend its troops against armed attacks affects Moscow’s relations with Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, all of which are parties to the Collective Security Treaty Organisation (CSTO) and, with the exception of Belarus, the Shanghai Cooperation Organisation (SCO), and which also have bilateral arrangements on military assistance with Russia. Russian troops and military facilities are deployed in all of these states, with the exception of Uzbekistan.<sup>2</sup> Neither the Collective Security Treaty, nor any bilateral arrangements imply Russia’s right to make unilateral decisions about the form, scope and very fact of employing its forces in the aforementioned states. All of these issues were to be decided either by all parties to the CSTO collectively, or by parties to the corresponding bilateral treaty. Decisions on counter-terrorist activities in the framework of the SCO are made by consensus. The new Russian legislation did not cancel out the multilateral or bilateral decision-making procedures

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2 Russian forces and military facilities are stationed in Azerbaijan (Gabala early warning radar), Armenia (102nd military base), Belarus (early warning radar in Baranovichi and naval communication centre), Kazakhstan (a number of test ranges), Kirgizia (the air base, test range and communication centre), Syria (naval base), Tajikistan (201st military base), and Ukraine (the Black Sea Fleet). Additionally, in the breakaway regions of Georgia and Moldova, Russia deployed forces of about 7,000 and 2,000 men respectively, in defiance of protestations from the governments of these two countries. The Russia-Uzbekistan Treaty of 2005 stipulated the possibility of stationing Russian troops in Uzbekistan, but no Russian force has been deployed there as yet.

established by the aforementioned arrangements, yet it devalued those procedures in a sense. If Russian troops deployed in some of these countries are involved in international or internal conflicts, which is quite possible, Moscow will have a pretext for using them and duly deploying additional units in a unilateral manner.

The right to defend Russian troops on foreign soil is of particular importance for Russia’s relations with Ukraine and Moldova. The Ukrainian government has demanded the withdrawal of the Russian naval base after 2017, while Moldova insists on the immediate departure of Russian troops from Transdnistria. In turn, Moscow has set its sights on stationing its troops there indefinitely. In such a context, skirmishes of any degree of gravity involving Russian servicemen in these countries may furnish Moscow with a pretext for military intervention.

In addition, the new Russian law on deploying armed forces abroad casts considerable doubt on the seriousness of Russian proposals for ‘a new security architecture in Europe’ and the reform of the OSCE. The basic philosophy underlying Medvedev’s proposals regarding the Pan-European security treaty, Helsinki-2 and the Corfu process imply the establishment of powerful multilateral institutions able to ensure security in Europe. However, the adoption of the amendments to the Law on Defence confirms that Moscow favours a unilateral approach towards security issues and wants a free hand if and when conflict situations arise.

### **‘Best’- and ‘worst’-case scenarios**

One might be inclined to believe that Medvedev’s amendments resulted from Russian domestic political developments and were also aimed at the *post factum* legitimisation of the Georgia war. It is possible, of course, that Medvedev hopes to win sympathy in Russian military circles, in order to strengthen his position vis-à-vis Putin by portraying himself as a political leader resolute in defending Russia’s interests by means of force. However, the ‘best’-case scenario implies that in practice Medvedev is, and will be, rather cautious and not prone to wage new wars in the post-Soviet space and its vicinity.

Medvedev at Plesetsk Cosmodrome in front of the intercontinental ballistic missile Topol.

Photo: www.kremlin.ru



However, it is also possible that in reality Medvedev's amendments were aimed at closing the gap between Moscow's strategic goals and Russia's legislation, which limited its ability to deploy armed forces beyond national borders. The content of the new Russian legislation may shed light on scenarios that are likely to be taking shape in Moscow. In particular, the Russian intelligence services may plan to ignite disturbances and ethnic clashes in Sevastopol, resulting in attacks against the Black Sea Fleet servicemen or facilities by criminal groups or an unruly mob. This would give Russia the legal grounds to intervene militarily in the Crimean peninsula, occupy Sevastopol or the whole peninsula and retain its naval base for an indefinite period of time. Another scenario presupposes the engineering of ethnic clashes in Estonia and/or Latvia, which may be exploited by Moscow as a pretext for military intervention, or at least for the threat of such intervention. Widespread rioting and looting in Tallinn in April 2007, provoked by the decision to relocate the Soviet Army monument, yet fuelled and orchestrated by Russian agents, confirmed that Moscow has enough instruments at its disposal to destabilise the situation in large cities in Latvia and Estonia with a substantial proportion of ethnic Russians.

### Consequences for the West

By all accounts, scenarios envisaging Russian interventions in the Crimean peninsula or the Baltic states are of the worst-case variety. Yet there are numerous precedents in Russia's history which

demonstrate that worst-case scenarios can become reality. Bearing this in mind, it would be prudent to assess some consequences for the West resulting from such scenarios.

Russo-Ukrainian armed clashes over Sevastopol would pose not so much a military as a political challenge for Europe and the West as a whole. Ukraine is not a member of NATO, and in all probability will remain outside the Alliance for the foreseeable future. Any Russian occupation of Crimea or the Sevastopol area would not bring about significant changes in the balance of power in the Black Sea Basin as the only Russian gain would be the continued basing of its fleet in Sevastopol, while Ukraine would become Russia's perpetual and implacable geopolitical adversary. This would complicate the Russian strategic posture in the post-Soviet space and enfeeble its position vis-à-vis Europe. At the same time, if the EU and NATO did not respond to Russian intervention in Crimea with strong political and economic measures, the strategic relevance of these institutions would be seriously undermined.

Russian military intervention in the Baltic states would have much more dangerous repercussions. It may result in an armed conflict between Russia and NATO, which could easily evolve into a regional war. But if NATO did not defend its member states in the Baltic, the strategic role of the Alliance would be reduced to zero. In light of this, NATO should make it quite clear that it would defend the Baltic states. Moscow would hardly intervene in the Baltic states if a strong response from NATO were likely to be forthcoming.



Inspection of the new Russian Armed Forces uniforms at the Ministry of Defence in Moscow.

Photo: [www.kremlin.ru](http://www.kremlin.ru)

Naturally, American and NATO involvement in the seemingly insoluble war in Afghanistan, European dependence on Russian energy supplies and interest in Russia's support in resolving the Iranian nuclear problem, coupled with the Obama administration's interest in Russia's partnership in resolving nuclear issues, constrain Western ability to respond adequately to Russia's actual and potential military activism in the post-Soviet space. Nevertheless, Moscow should be convinced that any Russian military interventions in the South Caucasus, the Black Sea region or against Ukraine would result in Russia's political ostracisation and debilitating economic sanctions. Otherwise, Russia, which tends to pursue so-called 'salami tactics', would

sooner or later challenge key Western interests, not only in the post-Soviet space, but in Central-Eastern Europe and other parts of Europe that are of strategic importance for the West.

In addition, European states could focus their efforts on developing an internationally recognised mechanism (or mechanisms), regulating in detail the key legal aspects of humanitarian interventions. Of particular concern should be the minimisation of the ability of individual states to intervene militarily in a unilateral manner should the UN Security Council be unable to reach a decision about a particular conflict due to disagreements between its permanent members.

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Yury E. Fedorov  
Associate Fellow  
Chatham House

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