

Correlation of the Draft Model Law «On Participation (of a CIS member-state) in Peace Support Operations» to the International Law

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The Model Law on participation of CIS member states in peace support operations is clearly consistent with current state practice and international law. It is largely a non-binding treaty containing declarations of principle and recommendations, but also includes mechanisms and provisions for member state participation that are apparently mandatory.

The Model Law recognises the sovereignty of member state decision making. It maintains principles and norms of international law and treaties. It upholds the primacy of the United Nations. It respects the right of self-defence.

Politically, the model law also reflects a trend towards the regionalisation of peace support operations (especially in the area of enforcement), and their conduct by regional organisation, regional arrangements and other international collectivities such as the CIS and the British Commonwealth.

The United Nations has been quite flexible in its subcontracting and burden-sharing. For example, it has recognised NATO as a partner, though NATO is not a regional organization under the rubric of Article VIII of the UN Charter. It has also given a post-hoc mandate to operations which did not receive prior authorisation by the Security Council (such as the ECOWAS operation in Liberia).

Comments to Section 1 «General Provisions»

Article 1. The sovereignty of participation in peace support operations is maintained, and subsequently this is extended to

member-states determining to withdraw unilaterally from participation before an agreed conclusion to an operation [*Article 8 (4); Article 9 (4)*].

Article 3. Under Peace Enforcement operations, it might be noted that the only deployment of a UN force to prevent an aggression or spillover of conflict was UNPREDEP in Macedonia and it was deployed under Chapter VI of the UN Charter. In effect, preventive deployments are not necessarily enforcement. Also under this heading it may be an important principle to uphold that UN authorisation is required before a deployment, especially in the light of the US–UK invasion of Iraq, but there have been occasions noted above when the UN has given post-facto authorisation.

It is noteworthy that in the last three definitions where the operations by regional organisations, CIS, or sub-CIS operations are restricted to peace-keeping under Chapter VI alone, while international state practice in general accords legitimacy to enforcement by regional organisation under a UN mandate. In fact Article 5(1) of this Model Law allows for assigned forces to engage in enforcement. It also allows for participation in Collective Security Operations under Article 42 of the UN Charter.

Comments to Section 2 «Arrangements and Conduct of PSOs»

This section is a declaration of principles, in conformity with current practice and largely uncontroversial in their sentiments.

Article 5. Although widely regarded as a new «division of labour» between the UN and regional organisations, this model law specifically excludes participation beyond the territory of a CIS member-state in enforcement unless conducted by the United Nations — which it is decreasingly likely to do — or unless using forces assigned to the UN. A definition of ‘assigned’ might be important here, to clarify CIS member-state participation in SFOR and KFOR, for example.

Article 7. May include, though without explicitly mentioning, the provision of civilian police (an increasingly important component of peace-building operations).

Article 8. Democratic control of deployment is upheld, and seems to be mandatory, in paragraphs 1 and 2. It is clearly practical for individual servicemen to be sent by Presidential order, later notified to Parliament. However, whether there is an issue regarding the number of individuals so ordered without Parliamentary authority. Could a President send 50 individuals, 100? Is it relevant to set a ceiling?

Articles 9, 10 and 11 are worded in mandatory fashion, and aim to ensure that democratic procedures, satisfactory preparation and budgeting are undertaken by member-states, and that command, jurisdictional and legal points are taken care of.

Article 13 is more specific about the rights to use weapons. There is a need here to include in Article 13 an explicit reference to how the Rules of Engagement will be determined. Will these be determined by the CIS member-state, or the PSO Command as suggested in paragraph 6? If the latter, will the member-state be free to interpret them (as states currently do)?

Article 14. Specifies observance of the Geneva Conventions. It would be an additional value to include recognition of the status of the ICRC?

Finally, three points about the political signals conveyed by the Model Law.

It signals the importance the CIS attaches to internationally mandated peace support operations, though it recommends rather than mandates participation;

This Model law is an important document in its mandatory underpinning of democratic processes, including parliamentary decision-making and monitoring;

This CIS Model law reinforces respect for legitimacy in terms of both international law and international institutions, especially the United Nations.