

RUSSIA, GEORGIA AND THE RESPONSIBILITY TO PROTECT

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The Russian government argued at the time of its military intervention in Georgia in August 2008 that it was justified by the principle of “the responsibility to protect” (further: R2P), as embraced by the UN General Assembly in the 2005 World Summit.¹ The claim was that the perpetration or imminent threat of atrocity crimes against South Ossetians compelled it to step in militarily, the most extreme reaction contemplated by the new norm. President Dmitry Medvedev, Prime Minister Vladimir Putin and UN Ambassador Vitaly Churkin all described Georgia’s actions against the population of South Ossetia as “genocide”,² while Foreign Minister Sergey Lavrov explicitly argued that Russia’s use of force was an exercise of its responsibility to protect:

[U]nder the Constitution [the President] is obliged to protect the life and dignity of Russian citizens, especially when they find themselves in the armed conflict. And today he reiterated that the peace enforcement operation enforcing peace on one of the parties which violated its own obligations would continue until we achieve the results. According to our Constitution there is also responsibility to protect – the term which is very widely used in the UN when people see some trouble in Africa or in any remote part of other regions. But this is not Africa to us, this is next door. This is the area, where Russian citizens live. So the Constitution of the Russian Federation, the laws of the Russian Federation make it absolutely unavoidable to us to exercise responsibility to protect.³

There are a number of reasons, however, why the responsibility to protect norm, as it is currently understood, did not provide a legitimate basis for Russia’s military actions in Georgia.

In the first place, the primary reason stated for intervention – “to protect Russian citizens” – was not in fact a responsibility to protect rationale at all.

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¹ See UN General Assembly, “World Summit Outcome 2005”, Resolution A/RES/60/1 (October 24, 2005), paras 138-9; available at www.un.org/summit2005/documents.html. For a full account of the concept’s evolution, scope and application see G. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington DC: Brookings Institution Press 2008.

² For a convenient compilation of official Russian statements on the intervention see http://www.sras.org/statements_on_russia_georgia_conflict_2

³ “Interview by Minister of Foreign Affairs of the Russian Federation Sergey Lavrov to BBC”, Moscow, 9 August 2008, available at www.un.int/russia/new/MainRoot/docs/off_news/090808/newen2.htm.

The statement by Foreign Minister Lavrov blurred the distinction between the responsibilities of a state to protect its populations inside its borders, and the responsibilities that a state maintains for populations *outside* its borders. The responsibility to protect is about the responsibility of a sovereign state to protect populations within its *own* borders, and of other states to assist it to do so, but also to take appropriate action if it is manifestly failing to do so. It does not address the question of an individual country taking direct action to protect its nationals located outside its own borders. When such action has been taken in the past – as it often has – the justification has been almost invariably advanced in terms of “self-defence” (since 1945, under Article 51 of the UN Charter). How credible such a justification is will depend on a number of factors: when a country first confers its citizenship on a large number of people outside its borders and then claims that it is entitled to intervene coercively to protect them, there has usually been some skepticism.

Secondly, even if the R2P norm were applicable here, no compelling case has been made by Russia that the threat to the South Ossetian population was of a nature and scale as to make necessary or legitimate the use by it of military force. A number of criteria are relevant here, as articulated in the major reports advocating the acceptance of the responsibility to protect norm in the lead up to the World Summit,⁴ although not formally embraced in the Outcome Document. None of them appear to have been satisfied:

Seriousness of threat. It is not at all clear whether “genocide, war crimes, ethnic cleansing or crimes against humanity” – the four specific classes of atrocity crime referred to in the 2005 UN resolution – were being committed, or imminently about to be, by Georgia against South Ossetians. Claims and counter-claims abound, and – while Georgia’s actions in attacking Tshkinvali might well be thought to be an unjustified over-reaction to the provocations it cites – the available evidence is not of the weight or clarity that is needed to justify a conclusion that it was “manifestly failing” to protect its population from these atrocity crimes, in a way that would *prima facie* justify the use of coercive military action by others in response. Early evidence in these situations is often fragmentary, and there will not always be the time or opportunity to mount any kind of proper impartial investigation, but there has to be something more than the bald assertions made here by Russia.

Primary purpose. While one purpose of the Russian military intervention may have been to protect South Ossetian civilians under attack, it is highly questionable whether that was the primary motive: others appear to have been to establish full Russian control over both South Ossetia and Abkhazia (in the latter of which there was not even claimed to be a threat of mass atrocity crimes); to dismantle Georgia’s entire military capability; to scuttle its

⁴ See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* 2001, pp.xii, 35-37; High-Level Panel on Threats, Challenges and Change, *A More Secure World* 2004, pp.66-67, 106-07; Secretary-General Kofi Annan, *In Larger Freedom*, pp. 43,83; summarized in Evans, *The Responsibility to Protect*, op cit, p.141.

NATO ambitions; and to send a clear signal to other former parts of the Soviet Union as to what would and would not be tolerated by Moscow.

Last Resort. While there is not always time in fast-moving situations to fully work through alternative strategies – as distinct from making a reasonable judgment as to whether they would or would not likely be effective – an immediate Security Council call for Georgia to cease its military action does not seem to have been out of reach and would have placed Tbilisi under great pressure to comply. Russia did urge the Security Council on the evening of 7 August to call for a ceasefire, but disagreement over whether the statement should refer to Georgia's territorial integrity led to Council inaction: with a little more flexibility on all sides, this issue could probably have been finessed, given the concern with which Georgia's military action was regarded by U.S. and other Council members. Russia's position on the “last resort”

issue is weakened by its later attack on Georgian territory outside South Ossetia and Abkhazia, after Georgia had already signed a ceasefire agreement presented to it by the OSCE mediators.

Proportionality. The introduction of some 20,000 troops and 100 tanks not only into South Ossetia but also into Abkhazia and Georgia proper appears to have been manifestly excessive. The Russian naval blockade in the Black Sea as well as aerial bombings of Gori, Poti, the Zugdidi region and an aviation plant in Tbilisi went well beyond the necessary minimum.

Balance of Consequences. That more good than harm was done, on balance, by the Russian intervention is very difficult to argue on the present state of the evidence about refugee outflows and unrestrained reprisal actions by South Ossetian separatists against Georgians, quite apart from concerns about wider implications for regional and global stability.

Thirdly, in the absence of UN Security Council approval, there is no legal authority for an R2P-based military intervention. The 2005 General Assembly Outcome Document makes it clear beyond argument that any country or group of countries seeking to apply forceful means to address an R2P situation – where another country is manifestly failing to protect its people and peaceful means are inadequate – must take that action through the Security Council. Very difficult situations can arise in practice where action widely thought appropriate or necessary in the face of actual or threatened mass atrocity crimes is blocked by one or more vetoes in the Council. But this was not the case here: no effort was made by Russia to seek Security Council approval.

The Russia-Georgia case highlights the dangers and risks of states, whether individually or in a coalition, interpreting global norms unilaterally and launching military action without UN Security Council authorisation. The sense of moral outrage at reports of civilians being killed and ethnically cleansed can have the unintended effect of clouding judgment as to what is the best response, which is another reason to channel action collectively through the United Nations. The Russian references to similar action by

other permanent members of the Security Council in other theatres may reinforce doubts about those other instances, but does not justify the Russian actions in Georgia. Indeed they reinforce the dangers of vigilante justice across borders.