



## **The Georgia-Russia Crisis and the Responsibility to Protect: Background Note**

The Russian government has argued that its military operations in Georgia in August 2008 were conducted for humanitarian purposes. Russia's President Dmitry Medvedev, Prime Minister Vladimir Putin, and UN Ambassador Vitaly Churkin have described Georgia's actions against populations in South Ossetia as "genocide." Foreign Minister Sergei Lavrov argued that Russia's use of force was an exercise of its responsibility to protect. In an interview with the BBC, Lavrov noted that Medvedev had been clear:

[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.

This invocation of R2P by a senior Russian official – not only as a principle enshrined in the Russian Constitution but also the term as it is understood in the context of the United Nations – reflects the moral force of the responsibility to protect as a new normative framework to address global concerns. But there is a risk that the norm will be misapplied by governments to justify their unilateral actions unrelated to the protection of lives from mass atrocities, or in situations where the security of the civilian population has been threatened, but not to a degree where a large-scale military intervention would be justified. And in this instance, R2P – the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity as agreed to by all UN member states in the General Assembly 2005 *World Summit Outcome Document* – is, in fact, misapplied.

R2P, as codified in 2005 by the General Assembly, is not a legitimate basis for Russia's military actions in Georgia for the following reasons:

### **1. The primary ground stated for intervention – the protection of Russian citizens abroad – is beyond the scope of the R2P norm**

The statement by Foreign Minister Lavrov blurs 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 R2P norm is about the responsibility of a state to protect populations within its **own** borders, the measures that the international community must take to

assist that state in protecting its populations, and the international community's responsibility to take action – through the United Nations – when the state in whose borders the populations are found manifestly fails to protect them. The 2005 *Outcome Document* does not confer authority on an individual country to take direct action to protect its nationals located outside its own borders.

The exercise of military force by a country to protect its nationals has traditionally been justified as a measure of self-defense (since 1945, under Article 51 of the UN Charter). Russia's actions should be judged according to this standard – whether Russia was legitimately acting in self-defense – and not whether Russia was acting under the principles of responsibility to protect as set out in 2005 by the General Assembly in the *Outcome Document*.

## **2. The scale and intensity of the military operation went beyond the direct protection of the South Ossetian populations allegedly under threat**

If a military action were to be conducted to protect populations from mass atrocity crimes, the Global Centre for the Responsibility to Protect (GCR2P) believes that such an intervention would only be legitimate if it is tailored to ensure the physical protection of that population. Russia's intervention was tactically and geographically well beyond the scope of what would be needed to protect the physical security of the South Ossetian populations from mass atrocity crimes. The requirement that an operation be proportional to achieve the human protection goal was not explicitly set forth in the 2005 *Outcome Document*, but it is consistent with international humanitarian law and is one of the precautionary principles that the GCR2P believes should be applied to analyze any claim that an intervention is necessary and legitimate to protect populations from mass atrocity crimes.

It is precisely to assess the necessity and legitimacy of any military action purportedly undertaken to protect populations from mass atrocities that the International Commission on Intervention and State Sovereignty, the UN High-level Panel on Threats, Challenges and Change, and Secretary-General Kofi Annan in his *In Larger Freedom* report to the 2005 World Summit all recommended that the Security Council adopt precautionary principles. Although UN member states failed to agree on their inclusion in the 2005 *Outcome Document*, some are implied within the R2P agreement, and the invocation of R2P in the context of the Georgia-Russia crisis proves their continued relevance. The Global Centre believes that each must be explicitly satisfied before any incursion could be accepted as legitimate under the responsibility to protect. The questions that should be asked are:

- Is there an imminent or actual threat of genocide or other mass atrocity crime?
- Is the purpose of the intervention to prevent or other halt such mass atrocities?
- Would peaceful measures be inadequate to ensure protection of the population at risk?
- Is the action proportional, that is, specifically tailored to achieve the result of halting or averting mass atrocity crimes?
- On balance, would the intervention do more good than harm?

### **3. In the absence of UN Security Council approval, there is no legal authority for an R2P-based military intervention**

The 2005 *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.

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 Security Council authorization. The sense of moral outrage at reports of civilians being killed and ethnically cleansed can have the unintended effect of clouding judgment on the best response, which is another reason to channel action collectively through the United Nations.

#### **Conclusion**

The Russian military operations in Georgia were not carried out consistently with the agreement of the responsibility to protect taken by the heads of state and government sitting in September 2005 as the United Nations General Assembly. To comply with the terms of the *World Summit Outcome Document*, if it had evidence that populations were threatened by mass atrocity crimes, Russia should have worked through the United Nations, using appropriate peaceful diplomatic and humanitarian means to help protect those people thought to be at risk, with force only being considered as a last resort, and with the approval of the Security Council.

The protection of civilian populations in South Ossetia and elsewhere in the region remains an urgent concern. All parties to any armed conflict have an obligation to protect civilian populations under international humanitarian law including the Geneva Conventions and Additional Protocols. Georgia and Russia should also uphold their obligations as parties to relevant international human rights treaties, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. If the doctrine of the responsibility to protect is to mean anything in this context, it is not as a basis to justify unilateral force but as a reminder that the longstanding principles of international human rights and humanitarian law should be upheld.

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