

An Exceptional Way of Aligning Human Rights with Sovereignty: Russia and Georgia War

Nilay Gençer¹

Middle East Technical University, Northern Cyprus Campus

Abstract

Russian interventions in former Soviet republics have been interpreted through different causal lines. This paper analyses Russian intervention in Georgia in 2008 within the political and normative context it was built. During this time period there were ambitious efforts to transform humanitarian intervention, most notably the doctrine of Responsibility to Protect (R2P). Russia saw no reason to hesitate to invoke R2P, although it would later be described as an act of abuse on the academic and policy-making level. The study's central question is: to what extent did this intervention overcome the incompatibility between state sovereignty and human rights?

Keywords: Responsibility to Protect, Russia-Georgia war, intervention, sovereignty, human rights.

Introduction

Russian interventions in former Soviet republics have long been a hot within different research questions. After the annexation of Crimea in 2014, Russia was accused of threatening European security, acting aggressively, and becoming a norm-violator in international politics. The interventions in Georgia and Ukraine, for instance, were compared within the framework of Russian foreign policy in the near abroad, or Russian sphere of influences.² Both interventions were Russian reactions to the geopolitical reorientation of these two countries and carried similar legitimisation mechanisms. Besides, the interventions contained a strong security dimension: preventing the North Atlantic Treaty Organization (NATO) enlargement in the former Soviet space. The annexation of Crimea and the war in Ukraine made the Black Sea Region 'a theatre of heightening tension and risk between NATO and Russia'.³

This paper investigates the instruments of legitimation in the August war between Russia and Georgia in 2008. Russian intervention occurred three years after the Responsibility to Protect (R2P) doctrine became formally accepted by the United Nations (UN). The doctrine aimed to solve the existing problems around humanitarian intervention, such as the tension between state sovereignty and human rights. This tension arises because while the UN Charter bans violation of state sovereignty, the Universal Declaration of Human Rights (UDHR) guarantees individuals' rights against oppressive states.⁴ R2P, therefore, was set to solve this tension by changing the traditional understanding of sovereignty which had been associated

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² Emmanuel Karagiannis. "The Russian Interventions in South Ossetia and Crimea Compared: Military Performance, Legitimacy and Goals", *Contemporary Security Policy* 35 (2014): 416.

³ Sharyl Cross. "NATO–Russia Security Challenges In The Aftermath Of Ukraine Conflict: Managing Black Sea Security And Beyond", *Southeast European And Black Sea Studies* 15 (2015): 164..

⁴ Noam Chomsky. *The New Military Humanism: Lessons from Kosovo* (Monroe, ME: Common Courage Press, 1999), 73.

with unlimited use of force within a territory. Instead, R2P uses ‘sovereignty as responsibility’ discourse which underlines that sovereignty is not unconditional; rather, it implies specific responsibilities. However, the universality of this definitional change has not necessarily been interpreted as such by some states. Russia and China, for example, perceive sovereignty and non-interference in the domestic affairs as the absolute principles of international relations.⁵ Since NATO’s action in Kosovo in 1999, Russia has been a vocal critic of Western humanitarian interventions, and in this context, the evolving doctrine of R2P. And yet, against this background, Russia claimed its right to invoke the doctrine in 2008 under their own interpretations of it, which caused many discussions on the abuse of R2P. Therefore, this article provides an excellent opportunity to advance the understanding of the link between sovereignty and human rights in the context of the Russia and Georgia war. The paper’s central question is: to what extent did the Russian position manage to overcome the incompatibility between state sovereignty and human rights in the Georgian case? This paper is a case study research design which investigates the justification of the intervention through political discourses.

The article consists of four main sections. The first part focuses briefly on the historical background and the escalation of the conflict in South Ossetia. The next section presents the aim and scope of Responsibility to Protect and Russian position towards R2P, which then will be followed by the construction of the legitimation by Russia during the war in Georgia. The last part is devoted to the discussion where the depoliticised nature of R2P and the creation of exceptions by Russia will be investigated.

Historical Background and Context

The conflict between Georgia and Russia in 2008 started in South Ossetia. Historically, it was an autonomous oblast of the Georgian Soviet Socialist Republic (SSR) between 1936 and 1991. Georgian SSR had two other subunits as autonomous Soviet socialist republics: Abkhazia and Adjara.⁶ Starting from the 1990s, both South Ossetia and Abkhazia had tensions with Georgia because those regions demanded more autonomy and attempted to declare their independence. The demand in both areas was not born spontaneously but was affected by lack of civic nationalism because of Georgian language and education policies that discriminated against both Abkhazians and Ossetians and the preference for Russian presence in the region.⁷ In response to Tbilisi’s policies promoting the Georgian language in 1980s, The South Ossetian People’s Assembly, a nationalist organisation, began their campaigns favouring unification with the North Caucasian autonomous republic of North Ossetia, which was a part of Russia.⁸ On 20 September 1990, the communist authorities in South Ossetia wanted to form the South Ossetian Soviet Democratic Republic and become a part of the USSR – although this did not come to pass.⁹ South Ossetia also boycotted the Georgian parliamentary elections of October 1990, and it held elections to its own parliament in December.¹⁰ The Georgian Supreme Soviet responded by annulling the independence declaration of South Ossetia, removing South Ossetia’s status as an Autonomous Region and making it part of another Georgian region.¹¹ As

⁵ Tracey German. “A Legacy of Conflict: Kosovo, Russia, and the West”, *Comparative Strategy* 38 (2019): 432.

⁶ Stylianos A. Sotiriou. “The Irreversibility of History”, *Problems of Post-Communism* 66 (2019): 173.

⁷ *Ibid.*, 174.

⁸ Emmanuel Karagiannis. “The 2008 Russian–Georgian War via the Lens of Offensive Realism”, *European Security* 22 (2013), 77.

⁹ German, 157.

¹⁰ Marietta König. “The Georgian–South Ossetian Conflict”, in *OSCE Yearbook 2004* (IFHS/Institute for Peace Research and Security Policy at the University of Hamburg, 2005), 241. <https://ifsh.de/en/publications/osce-yearbook/yearbook-2004>.

¹¹ Jonathan Wheatley. “Managing Ethnic Diversity in Georgia: One Step Forward, Two Steps Back”, *Central Asian Survey* 28 (2009): 123.

a result of the rising tensions and actions, the civil war within South Ossetia lasted 18 months which caused hundreds of deaths and the expulsion of thousands of Georgians and Ossetians from their homes.¹² In June 1992, the Sochi Agreement was signed and settled the conflict. The agreement provided the creation of Joint Peacekeeping Forces that consisted of Georgian, Russian and South Ossetian units.¹³ As a result, Russia had *de facto* command and acquired the role of chief mediator in the resulting conflict-resolution process.¹⁴ Eduard Shevardnadze, Georgia's second president, took the South Ossetian conflict over from the first president, Zviad Gamsakhurdia.¹⁵ During his time in office, the Georgian-Ossetian conflict remained a frozen conflict as he refused to take military action in the region.

A critical moment in the post-Soviet Georgian space was the Rose Revolution. It occurred between November 2003 and January 2004 in response to the fraudulent parliamentary election held on 2 November 2003 by the governing party, The Citizens' Union of Georgia, led by President Shevardnadze.¹⁶ In the extraordinary presidential election in January 2004, Mikheil Saakashvili rose to power and became the president who promised to solve the issue of separatist movements within Georgia, unify the country, and seek membership in the European Union (EU) and NATO.¹⁷ Overall, the Saakashvili administration aimed to weaken Russian influence by integrating the country into the Euro-Atlantic alliance and positioning it more toward Western interests.¹⁸ He was an ambitious politician, indeed, when we consider his attempts to improve the establishment of oil and gas pipelines from the Caspian Sea and Central Asia and in seeking out aid to prepare itself for NATO accession. Also, Saakashvili backed the US war in Iraq by becoming the third state contributing troops after the British and Americans.¹⁹ Those events worsened the relationship between Georgia and Russia, which had several ups and downs, including: Russian interference in Abkhazian presidential elections; the building of Russian military bases in South Ossetia; and a Russian export ban on Georgian wines.

In the spring of 2008, the tension increased in the region as a result of violent attacks by Georgian and South Ossetian forces, which included fire and artillery shelling, a bomb explosion in the capital of South Ossetia, Tskhinvali, as well as the increasing Russian peacekeeping forces in the area.²⁰ The storyline narrating the origins of the escalation of the crisis is quite complex and still remains disputed. To understand the conflict, it is best to start on 1 August 2008, when a Georgian police vehicle was destroyed by a land mine which was supposedly planted by South Ossetian forces.²¹ Georgian forces struck back with sniper attacks against South Ossetians. On 7 August, Saakashvili claimed that Russian tanks invaded Georgia through the Roki Tunnel, which Russians denied since, for them, it was a routine support line for their peacekeepers.²² According to the Georgian Government storyline, the Russian tanks moving through Roki Tunnel are claimed to be the major triggering event for the five-day war

¹² Wheatley, 123.

¹³ König, 241.

¹⁴ *Ibid.*

¹⁵ Karagiannis. "The 2008 Russian–Georgian War via the Lens of Offensive Realism", 78.

¹⁶ Lincoln A. Mitchell. "Introduction", in *The Color Revolutions* (Philadelphia: University of Pennsylvania Press, 2012), 1–16.

¹⁷ Gearóid Ó Tuathail (Gerard Toal). "Russia's Kosovo: A Critical Geopolitics of the August 2008 War over South Ossetia", *Eurasian Geography and Economics* 49 (2008): 681.

¹⁸ Vicken Cheterian. "The August 2008 War in Georgia: From Ethnic Conflict to Border Wars", *Central Asian Survey* 28 (2009): 159.

¹⁹ Tuathail (Gerard Toal), 682.

²⁰ Bertil Nygren. "The 2008 Russia-Georgia War", in: *Routledge Handbook Of Russian Security*, ed. Roger E. Kanet (London: Routledge, 2020), 378-379.

²¹ Tuathail (Gerard Toal), 685.

²² *Ibid.*

between Russia and Georgia.²³ On the contrary, the Russian Government denies this and views the Georgian attack on Tskhinvali as a provocation.²⁴ Although the discussions around who started the war between Georgia and Russia continue, the common point in which divergent opinions seem to agree is that the Georgian attack triggered the escalation of violence. Still, Russia's military invasion of Georgia went beyond an act of self-defence or humanitarian intervention because the legitimisation it used was not in line with either two of these justifications. Additionally, Russian forces used aerial, artillery and tank fire strikes that resulted in civilian deaths, which meant that it violated international humanitarian law.²⁵ The historical account of intervention or its legality in international law is beyond the scope of the article. Instead, the paper investigates how the intervention is constructed through Russia's political discourses and what instruments serve the legitimisation mechanisms of the intervention. The importance of investigating through this lens, Martha Finnemore argues, is because justification draws on shared values, and the examination of justifications allows us to not only understand internationally held standards, but also how they change over time.²⁶ She further holds that justifications unveil the characteristics of normative context and shared social context. In this respect, the Russian justification for intervening in Georgia can be seen as an attempt to connect its actions with the changing conceptualisation of intervention during the post-Cold War era. Reconsidering the internationally held standards for humanitarian intervention, which eventually transformed and gave birth to the doctrine of R2P, is crucial to situate this case study in a broader political context.

From Humanitarian Intervention to Responsibility to Protect

Humanitarian intervention is a crucial concept to understand the evolution of the R2P doctrine. Humanitarian intervention is defined by the use of force by one state or a group of states with the aim of 'addressing massive human rights violations or preventing widespread human suffering.'²⁷ In the post-Cold War era, the concept of intervention significantly changed and gained a new dimension with the end of the bipolar international system. Instead of two superpowers relying on intervention to extend their sphere of influence, intervention became a matter of international peace and security which had been threatened by internally destabilising wars predominantly occurring in illiberal states.²⁸ This causal logic was accompanied by changing notions of security, the evolution of human rights norms and the proliferation of armed conflicts within states over time.²⁹ It is within this context that the concept of intervention started to alter. Additionally, the expectations for collective action from UN member states was particularly high with the end of the Cold War.

²³ *Ibid.*, 691.

²⁴ *Ibid.*

²⁵ Human Rights Watch. *Up In Flames Humanitarian Law Violations And Civilian Victims In The Conflict Over South Ossetia* (Human Rights Watch, 2009). <https://www.hrw.org/report/2009/01/23/flames/humanitarian-law-violations-and-civilian-victims-conflict-over-south> (Accessed 15/10/2020); Michael Toomey. "The August 2008 Battle of South Ossetia: Does Russia Have a Legal Argument for Intervention?", *Temple International and Comparative Law Journal* 23 (2009): 476.

²⁶ Martha Finnemore. *The Purpose Of Intervention, Changing Beliefs About The Use Of Force*. (Ithaca, NY: Cornell Univ. Press, 2004), 15-16.

²⁷ Jennifer M. Welsh, ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford Univ. Press, 2006), 3.

²⁸ Michael N. Barnett. "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow", in *The International Humanitarian Order, Security and Governance Series* (New York: Routledge, 2010), 80–108.

²⁹ Jennifer M. Welsh. "Taking Consequences Seriously: Objections to Humanitarian Intervention", in *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2006), 52–70.

However, starting with the withdrawal of UN peace operations in Somalia in 1992-93, several interventions failed to live up to expectations and necessitated an evolution in approach. Further problematic interventions throughout the immediate post-Cold War period included the Security Council's refusal to act in the Rwandan Genocide in 1994 and the failure by the UN and others to prevent the 1995 Srebrenica Genocide in a UN so-called 'safe area'.³⁰ Further, in 1999, NATO bombed Kosovo with the justification of protecting Albanian populations from Serbian offensives without the Security Council's authorisation, an action called illegal but legitimate by the Independent International Commission on Kosovo.³¹ These interventions raised serious questions about the consequences of international humanitarian action, given their complexities inherent in either their failure to prevent harm, or their prevention of harm without Security Council authorisation. Overall, the Security Council's failures to respond to mass atrocities in Rwanda and Srebrenica, as well as illegal intervention carried out by NATO in Kosovo, prepared the ground for a new framework that would seek to protect civilians from violations of human rights. At such a time, when new questions started to emerge because of disproportionate action and deaf inaction of the UN in protecting civilians, high-level discussions came to the fore. Secretary-General Kofi Annan raised the specific question: 'if humanitarian intervention, is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?'³² The reply originated in a report entitled 'The Responsibility to Protect' which was authored by the International Commission on Intervention and State Sovereignty (ICISS), and set by the guidance of Canadian Foreign Minister, Lloyd Axworthy.³³ The ICISS report attempted to make a clear distinction between humanitarian intervention and what would come to be known as R2P. The report particularly highlighted the 'deliberate decision not to adopt [the humanitarian intervention] terminology'.³⁴ Whereas humanitarian intervention evokes the intervener's perspective as a right to intervene, R2P has a victim-centred perspective, according to its advocates.³⁵ The main idea behind R2P is that states have a responsibility to protect their citizens from serious harm, and in the case of not fulfilling this duty, the international community assumes this responsibility. In addition, R2P does not only include reaction (military intervention) but also the responsibility to prevent and the responsibility to rebuild. This threefold responsibility implies that R2P builds normative and operational links between assistance, prevention and reconstruction.³⁶

Although conceived in 2001, R2P was not officially recognised in the UN until the World Summit in 2005 because of the post-9/11 interventions in Afghanistan and Iraq. In other words, the age of development of the norm was interrupted through terrorist events which shifted the focus of states on counterterrorism and the so-called Global War on Terror. In the 2005 World Summit Outcome document, R2P was accepted in the 138th and 139th paragraphs which underlined that 'each individual state has the responsibility to protect its

³⁰ ICISS. "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty" (Ottawa: International Development Research Centre, December 2001).

³¹ Independent International Commission on Kosovo, ed., *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: New York: Oxford University Press, 2000).

³² Kofi Annan. *We the Peoples: The Role of the United Nations in the 21st Century* (New York: United Nations, Department of Public Information, 2000), 48.

³³ ICISS, 9.

³⁴ *Ibid.*

³⁵ Ramesh Thakur. "Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS", *Security Dialogue* 33 (2002): 328.

³⁶ ICISS, 17.

populations from genocide, war crimes, ethnic cleansing and crimes against humanity.³⁷ In the failure to do so, the international community – through the UN – can use the appropriate means through which to help protect those populations. Before the Summit, at the 87th plenary meeting of UN General Assembly, the Russian position towards R2P was vague as it questioned what the emerging norm means considering the lack of support from the international community for such a norm.³⁸ But, in general, it neither opposed nor challenged the establishment of the norm. Furthermore, Russia accepted the first two pillars of the doctrine which consist of states' responsibility to protect their own citizens and the international community's responsibility to assist states. However, it rejected the third pillar, which requires collective action by international community when states fail to exercise their responsibilities.³⁹ Nevertheless, it should be noted that Russia, together with China, did not approve the use of force by NATO in Kosovo in 1999. After the NATO bombing, Russia tried to make the Security Council adopt a resolution condemning the NATO military action.⁴⁰ Therefore, considering the reservations of Russia about international intervention, and the meaning of R2P, its position towards a new-born norm was not entirely positive. And yet, Russia invoked the R2P doctrine within the context of Georgian intervention in 2008 – in what ways did Russia justify its legitimacy to intervene, despite its reluctance to accept the new R2P doctrine?

Construction of Legitimacy

Russian presentation of its humanitarian intervention in South Ossetia in 2008 included four main instruments for justifying its actions. The first was the defence of Russian peacekeepers.⁴¹ With the 1992 Sochi Agreement on the Settlement of the Georgian-Ossetian Conflict, the Joint Control Commission (JCC) was established in South Ossetia to monitor the conflict zone. Later, JCC was replaced by the Joint Peacekeeping Force that consisted of forces from Russia, Georgia and South Ossetia. Amongst them, Russian forces were much stronger and more well-equipped.⁴² And in the 2000 Military Doctrine of the Russian Federation, it was stated that the country's peacekeeping forces could be involved in the withdrawal of conflicting parties and the delivery of humanitarian aid.⁴³ However, peacekeeping forces in South Ossetia were politicised and far from neutral in the first instance as Russia appointed the commander of these forces.⁴⁴ According to the Russian storyline on the war in South Ossetia, Georgia was the aggressor, and its act of aggression was against Russian peacekeepers.⁴⁵ As a result, Russia claimed that Georgia attacked its peacekeepers⁴⁶, and it had a right to intervene.

³⁷ United Nations General Assembly. *2005 World Summit Outcome Document*, 2005, A/RES/60/1, p.30, paras. 138&139.

³⁸ United Nations General Assembly. *General Assembly Official Records, 59th Session : 87th Plenary Meeting, Thursday, 7 April 2005, New York, 2005*, <https://digitallibrary.un.org/record/545465>.

³⁹ Charles E Ziegler. "Russia on the Rebound: Using and Misusing the Responsibility to Protect", *International Relations* 30 (2016): 348.

⁴⁰ Dan Sarooshi "The Security Council's Authorization Of Regional Arrangements To Use Force: The Case Of NATO", in *The United Nations Security Council And War*, (Oxford University Press, 2008), 243.

⁴¹ Roy Allison. "The Russian Case for Military Intervention in Georgia: International Law, Norms and Political Calculation", *European Security* 18 (2009): 176–78.

⁴² Karagiannis, "The Russian Interventions in South Ossetia and Crimea Compared", 405.

⁴³ *Ibid.*

⁴⁴ Allison, 181.

⁴⁵ Tuathail (Gerard Toal), 694.

⁴⁶ Allison, 178.

Accompanying peacekeepers, Russia also put forward the defence of Russian citizens as a secondary justification.⁴⁷ After the collapse of the Soviet Union, most of the Abkhazians and South Ossetians refused Georgian citizenship and those stateless separatists ended up having no legal existence nor the ability to travel abroad.⁴⁸ Since Soviet passports expired too, Russia started to issue passports to Abkhazia and South Ossetia's inhabitants in the early 2000s.⁴⁹ Over time, Russian passport holders in South Ossetia increased dramatically: by August 2008, about 90% of South Ossetians held a Russian passport.⁵⁰ Although distribution of Russian passports in breakaway territories was a practical solution for stateless people, it meant an interference in the internal affairs in Georgia and constituted an assault against Georgian sovereignty.⁵¹ It also led to destabilisation in the regions of Abkhazia and South Ossetia where Russia was supposed to act as a peacekeeper. Most importantly, Russia justified its military intervention in South Ossetia in 2008 by claiming that it had a duty to protect its citizens there.⁵² In the words of Russian President Dmitry Medvedev:

*'Civilians, women, children and old people, are dying today in South Ossetia, and the majority of them are citizens of the Russian Federation... In accordance with the Constitution and the federal laws, as President of the Russian Federation, it is my duty to protect the lives and dignity of Russian citizens wherever they may be.'*⁵³

Therefore, Russia used its right to self-defence enshrined in Article 51 of the UN Charter through the claim of protection of peacekeepers and citizens against Georgian forces as a justification for their intervention.⁵⁴

This logic is also the basis of another legitimisation mechanism. In addition to the defence of peacekeepers and civilians, Russia appealed to R2P in its political discourse. For example, Russian Foreign Minister Sergey Lavrov stated in an interview to BBC on 9 August 2008:

'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... the

⁴⁷ *Ibid*, 178–80.

⁴⁸ Scott Littlefield. "Citizenship, Identity and Foreign Policy: The Contradictions and Consequences of Russia's Passport Distribution in the Separatist Regions of Georgia", *Europe-Asia Studies* 61 (2009): 1471–72.

⁴⁹ Andre W. M. Gerrits and Max Bader. "Russian Patronage over Abkhazia and South Ossetia: Implications for Conflict Resolution", *East European Politics* 32 (2016): 303.

⁵⁰ James A. Green. "Passportisation, Peacekeepers and Proportionality: The Russian Claim of the Protection of Nationals Abroad in Self-Defence", in *Conflict in the Caucasus: Implications for International Legal Order* (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2010), 66.

⁵¹ *Independent International Fact-Finding Mission in Georgia Report: Volume I*, September 2009, 18. http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/30_09_09_iiffmgc_report.pdf.

⁵² For an overview of Russian passportisation, see Chapter 3. James A. Green. "Passportisation, Peacekeepers, And Proportionality: The Russian Claim Of The Protection Of Nationals Abroad In Self-Defence", in: *Conflict In The Caucasus Implications For International Legal Order*. (London: Palgrave Macmillan, 2010), 66.

⁵³ Office of the President of Russia. "Dmitry Medvedev Made A Statement On The Situation In South Ossetia", 2008. <http://en.kremlin.ru/events/president/news/1043>.

⁵⁴ Vitaly Churkin. 'Letter Dated 11 August 2008 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the President of the Security Council', 2008. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20S%202008%20545.pdf>.

laws of the Russian Federation make it absolutely unavoidable to us to exercise responsibility to protect.⁵⁵

However, the 2005 World Summit Outcome document underlined that the Security Council's approval is crucial in order to apply forceful means to deal with an R2P situation – a convention which Russia bypassed. In addition, R2P focuses on the responsibility of a sovereign state to protect its populations within its borders and others to support it to do so. It is not a doctrine which addresses responsibilities of a state for populations located *outside* its borders.⁵⁶ In this context, Russia also accused Georgia of genocide for the violence perpetrated towards Russian citizens. While Lavrov used a legal justification in which he portrayed Russia as a key norm defender, Medvedev and Prime Minister Vladimir Putin publicly used the loaded term of 'genocide' in relation to Georgian attacks in South Ossetia.⁵⁷ Similarly, Ambassador Vitaly Churkin, Russia's Permanent Representative to the UN, condemned Georgia with accusations of ethnic cleansing.⁵⁸ While there is contention surrounding the validity of those claims, it is important to view them within the R2P context: if the host state (Georgia) is unable to prevent the abuses, the responsibility to protect falls to the international community instead of a single state.⁵⁹ As a result of the invocation of R2P which went far beyond its original purpose and scope by Russia, some commentators argue that its invocation was 'specific to Russians, and Russian compatriots, rather than universal in protecting vulnerable populations'.⁶⁰

The final instrument used as justification for intervention in Georgia was the Kosovo precedent. To recall, NATO bombed Kosovo in 1999 which had no Security Council authorisation and was based on humanitarian grounds. Once Kosovo gained its independence and was recognised by most Western states in early 2008, European Commissioner Olli Rehn stressed that 'Kosovo does not set a precedent for frozen conflicts elsewhere; it is *sui generis*'.⁶¹ Despite statements about the uniqueness of the Kosovo context, on 1 February 2006, Putin declared that: 'if people believe that Kosovo can be granted full independence, why then should we deny it to Abkhazia and South Ossetia?'⁶² Similarly, when asked if the act of recognition of the Georgian breakaway territories was a direct challenge against the West, Medvedev responded that if Kosovo is a *sui generis* case, then the two regions were as well.⁶³ He also commented upon the recognition of the independence of those two regions after the war was over. He stated that: 'in international relations, you cannot have one rule for some and another rule for others'⁶⁴ From the perspective of Russia, the recognition of Kosovo's independence

⁵⁵ Embassy of the Russian Federation in the Argentine Republic. "09.08.2008 Interview By Minister Of Foreign Affairs Of The Russian Federation Sergey Lavrov To BBC, Moscow, August 9, 2008", 2008.

https://argentina.mid.ru/news/2008/-/asset_publisher/xN4dO17LPB79/content/09-08-2008-interview-by-minister-of-foreign-affaires-of-the-russian-federation-sergey-lavrov-to-bbc-moscow-august-9-2008.

⁵⁶ Gareth Evans. "Russia, Georgia and the Responsibility to Protect", *Amsterdam Law Forum* 1 (2009): 26.

⁵⁷ Ziegler, 352.

⁵⁸ *Ibid.*

⁵⁹ Stephen P. Marks and Nicholas Cooper. "The Responsibility to Protect: Watershed or Old Wine in a New Bottle?", *Jindal Global Law Review* 2 (2010): 125–26.

⁶⁰ Ziegler, 157.

⁶¹ Olli Rehn, "Olli Rehn European Commissioner for Enlargement Introductory Remarks on Western Balkans European Parliament, Foreign Affairs Committee" (Brussels, 21 March 2007).

https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_07_170.

⁶² Radio Free Europe / Radio Liberty. "Russia: Putin Calls For 'Universal Principles' To Settle Frozen Conflicts". *Radio Free Europe*, 01/02/2006. <https://www.rferl.org/a/1065315.html>.

⁶³ President of Russia. "Interview With BBC Television". 26/08/2008, <http://en.kremlin.ru/events/president/transcripts/1228>.

⁶⁴ Dmitry Medvedev. "Why I Had To Recognise Georgia's Breakaway Regions". *Financial Times*. <https://www.ft.com/content/9c7ad792-7395-11dd-8a66-0000779fd18c>.

was flawed both morally and legally and reflected the double-standard approach of the West.⁶⁵ On this double-standard, Putin demanded a reflection of the international community: ‘an independent Republic of Northern Cyprus has existed for 40 years. Why don’t you recognise it? Aren’t you, Europeans, ashamed of taking a double-standard approach towards resolving similar problems in various parts of the world?’.⁶⁶ Many reports, articles and commentaries exist on the dissimilarity between the historical background of Kosovo and South Ossetia, but Russia manipulated it as a reference point and thereby mimicking the language of the West. It is no surprise, therefore, that South Ossetia is called Russia’s Kosovo.⁶⁷ As such, the legitimisation tools used by Russia in the context of the August war are quite similar to that of references to Kosovo.

In sum, the protection of peacekeepers, as well as Russian citizens, were two crucial justifications for Russian intervention in Georgia which laid the groundwork for the invocation of R2P by Russia. However, the responsibility was associated with the Russian constitutional obligation to protect Russian citizens abroad instead of deriving from the R2P principle endorsed by the UN.⁶⁸ In addition, Russia used Kosovo as a precedent and recognised the independence of Abkhazia and South Ossetia in the aftermath of the conflict. Further to those legitimisation mechanisms, there were some important factors in terms of Russian domestic context leading to intervention in South Ossetia such as the dominant set of ideas within Russia and the level of state capacity.⁶⁹ Regarding the ideas, a key theme in Russia’s national identity narrative is that threats to national security traditionally come from the West. It is particularly relevant to Russian sensitivity to NATO’s eastward expansion and the EU’s increased action in the post-Soviet space.⁷⁰ There was also a growth in state capacity in the early 2000s which provided the Russian state an to regain authority over internal and external issues and endorse a more proactive stance in the post-Soviet region.⁷¹ The stronger state in the early 2000s was necessarily related to the authoritarian turn under Putin which can be seen as a ‘facilitating factor of Russia’s near abroad assertion.’⁷²

Discussion

Overall, Russia widened the existing gap between the two extreme poles – state sovereignty and human rights – through turning de facto states into spaces of exception and manufacturing the people it ‘protects’. The transformation of the poles did not take place in a vacuum, but rather in a normative context where Russia was undoubtedly well aware of the political nature of R2P.⁷³ Previously, the failures of the international community in the Rwandan Genocide, and the illegal but legitimate NATO bombing in former Yugoslavia shed light upon the puzzle of humanitarian intervention. In other words, the tension between state sovereignty and human rights was presented as the ultimate problem in humanitarian interventions. R2P was supposed to overcome those problems by assigning responsibility to

⁶⁵ "Putin: Kosovo Will Set a Precedent", *Civil Georgia*, 14 February 2008, <https://old.civil.ge/eng/article.php?id=17104>.

⁶⁶ *Ibid.*

⁶⁷ Tuathail (Gerard Toal), 670.

⁶⁸ Ruth Deyermond. “The Uses of Sovereignty in Twenty-First Century Russian Foreign Policy”, *Europe-Asia Studies* 68 (2016): 970.

⁶⁹ Elias Götz. “Putin, the State, and War: The Causes of Russia’s Near Abroad Assertion Revisited”, *International Studies Review* 19 (2017): 244–46.

⁷⁰ *Ibid.*, 244.

⁷¹ *Ibid.*

⁷² *Ibid.*, 246.

⁷³ Ziegler, 351.

the states. It is in this political and normative context that Russia was able to perform its intervention in Georgia. Recalling the aim of R2P, it strived to change the language of the right to intervene to a responsibility to protect the civilians from the crimes against humanity, genocide, war crimes and ethnic cleansing. In other words, the depoliticised language of R2P was supposed to be a remedy for previous failures of humanitarian interventions as well as ‘the toxic politics of previous approaches to inter-state intervention’.⁷⁴

Despite the reservations it had towards R2P, Russia invoked the doctrine in its intervention in Georgia in 2008. How do we interpret Russian intervention in Georgia – is it just another story of Russian near-abroad ambitions? When we consider the timing of the event when the efforts to transform humanitarian intervention to a more responsible act through R2P were on the rise, it does not seem plausible to take it as *a fait accompli*. Protection of Russian citizens and peacekeeping forces, intervention in Kosovo, and R2P played crucial roles in the intervention. The duration of the war, five days, should not mislead us. Intervention in 2008 may even be interpreted as an intervention within an intervention because the ‘starting point’ might even date back to 2002, when the distribution of Russian passports began and constituted the first attack against Georgian sovereignty. Further, Russian invocation of R2P during the war was a sign of the Russian dual approach to sovereignty. Ruth Deyermond summarises two such models which were at play in Russian government discourse as well as practice.⁷⁵ One is the Westphalian model of sovereignty which Russia defended strongly in relation to states outside the area of the former Soviet Union and in speaking about the basis of international order. Another is a ‘post-Soviet approach’ to sovereignty in which Russian state sovereignty was expressed as inviolable but interventions in the domestic issues of post-Soviet states considered as threats to Russian security was acceptable. Attempting to resolve the tension between sovereignty and human rights, R2P became a justification for Russian intervention in Georgia thanks to the Russian dual approach to sovereignty which differs inside and outside of the post-Soviet space. Russia also produced exceptional spaces through distributing passports within the Georgian territory where ‘the norms of international law and the modern state system were effectively suspended’.⁷⁶ Therefore, Russia was able to justify its actions in the war through various legitimisation mechanisms thanks to its unique approach to sovereignty and human rights which was relatively specific in scope, consisting of Russian citizens and compatriots living in post-Soviet space.

A doctrine once seen as transformative and almost revolutionary for the protection of human rights when it was first accepted in 2005, the invocation of R2P in the Russian-Georgian context showed how it could become just another tool of justification for so-called humanitarian intervention by a major state power. One could argue that the Russian manipulation of the R2P doctrine within the Georgian context demonstrates that the international community cannot easily break away from the problems surrounding humanitarian intervention, which historically has been invoked for the advancement of material and national interests of hegemonic powers. Ultimately, the combination of humanitarian motive and the use of force will remain a paradox in itself whilst there is no mechanism in international politics that can prevent states from abusing or manipulating accepted internationally held standards of justice. R2P was a huge step, mainly, in terms of change in the terminology from ‘right to intervene’ to ‘sovereignty as responsibility’; and yet, the real-world application of it, like Russian intervention in 2008, does not necessarily reflect the behaviour of ‘responsible sovereigns’ as such. While R2P is loaded with universal moral and

⁷⁴ Chris Brown. “The Antipolitical Theory of Responsibility to Protect”, *Global Responsibility to Protect* 5 (2013): 425.

⁷⁵ Deyermond, 982–83.

⁷⁶ Vincent M. Artman. “Documenting Territory: Passportisation, Territory, and Exception in Abkhazia and South Ossetia”, *Geopolitics* 18 (2013): 682.

humanitarian concerns, the Russian case showed that the coercive dimension of the doctrine will not fade away and can further be used to justify unilateral military interventions in the future by other states.