

Russian Abuses of International Law: The Kosovo Precedent and R2P

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At the meeting of the Valdai Discussion Club in Moscow in October 2022 Putin declared that "Unlike the West, we [Russia] do not climb into someone else's yard."¹ This comment is emblematic of the Russia Foreign policy stances, where it accuses the collective West of interfering in the internal affairs of other states and general hypocrisy in the application of international law. By doing so, Russian officials delegitimize the system of international law by claiming that they simply follow the precedent and thus function strictly within the framework.

During Vladimir Putin's reign, the Kosovo precedent has become the foundation for these accusations. When NATO intervened, ignoring the norms of the UN Charter and avoiding the Security Council approval, Russia cried foul. Ever since, Russia has repeatedly claimed that the West arbitrarily applies international law and as such has no ground to criticize Russia's actions.

¹ Ilyushina, Mary. "Putin Demands U.S. Respect 'Multipolar' World and Tell Ukraine to Seek Peace." The Washington Post. WP Company, October 28, 2022.

This selective misuse or abuse of international law principles is most evident in Russia's treatment of the Responsibility to Protect (R2P).

Responsibility to Protect (R2P)

Following the mass atrocities in Rwanda and former Yugoslavia, including the war in Kosovo, the R2P was officially adopted at the United Nations World Summit in 2005 (resolution 60/1) as a tool to deal with genocide, war crimes, ethnic cleansing, and crimes against humanity². Yet the Kosovo precedent created conditions that subsequently allowed Russia to misinterpret and obstruct the use of R2P and undermine the credibility of international law by violating the United Nations' fundamental principles of sovereignty and self-determination.

R2P is a unique tool of international law. The central R2P purpose is to assist states to succeed, not to react when they fail. Thus, unlike humanitarian interventions, it is a long-lasting process rather than a short-term instrument. R2P shifts the focus toward endangered people and states' responsibility to ensure their safety. Therefore, when states fail to fulfill their responsibilities, the international community is called upon to step in and ensure that duties stemming from sovereignty are provided. Moreover, the principle of responsibility to protect is codified in international law (Art. 38 para. 1 of the ICJ), managed through UN bodies, and the use of force is intended as a last resort, unlike humanitarian intervention³.

R2P and sovereignty

Over 80 UNSC resolutions, 50 resolutions of the UN Human Rights Council, and 13 resolutions of the UN GA invoke R2P in connection with various humanitarian crises⁴. The Russian Federation has opposed any attempt to apply R2P in a concrete and meaningful ways that might challenge the principle of sovereignty. However, Russia has avoided criticizing the R2P openly in the UN and has used the language of R2P to justify its encroachments into neighboring countries, such as Georgia (2008), Kazakhstan (2021), and repeatedly Ukraine.

In 2005 Russia, along with China and Algeria, opposed the notion of collective responsibility. Some have criticized R2P as a "western" or "colonial" instrument. Russia's and China's rhetoric are often similar. Moreover, their position within the UNSC empowers them to manipulate the term, resulting in ambiguous actions concerning R2P⁵ thus undermining this tool of international law.

Since the introduction of R2P in 2005, Russia opposed the application of the R2P on several occasions. Besides minor warnings, condemnations, or humanitarian aid resolutions, Russia has

² Zenko, Micah. "R2P And International Responsibility." Council on Foreign Relations, October 19, 2011.

³ Ruth, Carl. "The United Nations' Responsibility to Protect (R2P): Policy, Preference, or Politics." Dissertation, Walden Dissertations and Doctoral Studies Collection, 2021.

⁴ Genser, Jared. "The United Nations Security Council's Implementation of The." Chicago Journal of International Law. Accessed January 3, 2023.

⁵ Welsh, Jennifer M. "Norm Robustness and the Responsibility to Protect." Journal of Global Security Studies, February 20, 2019.

vetoed almost every critical proposal since Libya in 2011, no matter how alarming the situation was. Most notably, resolutions concerning Syria and other needed resolutions on Zimbabwe, Myanmar, Venezuela, and Yemen⁶. From 2011 to 2015, Russia vetoed four resolutions condemning violence against civilians in Syria⁷.

Russian Responsibility to Protect in the Near Abroad

Although Russia has been avoiding explicitly using the term or invoking R2P, use of its language has been a critical strategy in every near-abroad conflict. Most visibly with conflicts in Georgia (2008), Ukraine (2014 and 2022) and even Kazakhstan (2021), where prominent Russian figures would speak of protecting Russian-speaking minorities and diasporas from possible genocide or ethnic cleansing, as the primary justification for its actions.

In 2008, President Medvedev accused Georgia of the genocide of thousands of people and aggression against South Ossetia, asserting that Russian military actions protected Russian citizens living in South Ossetia and Abkhazia according to Article 51 of the UN Charter concerning self-defense. Moreover, he said: “*Russia will not allow anyone to compromise the lives and dignity of its citizens*” and that “*Russia was obliged to save lives.*” Prime Minister Putin and Russia’s Permanent Representative to the UN Vitaly Churkin likewise accused Georgia of genocide, while Foreign Minister Sergei Lavrov explicitly asserted that Russia had become the first state to defend human security and to protect vulnerable populations, though in accordance with international law, unlike the United States⁸.

Russia expressed similar rhetoric in 2014 when it blamed Ukraine for anti-Russian and discriminatory policies, saying: “*the authorities in Kyiv were preparing to commit mass atrocities against the Russian-speaking population in South-eastern regions,*” referring to the annexing of Crimea and secession tensions in the Donbas region⁹. However, Russia fully manifested the R2P language only with the launch of the so-called “Special Military Operation” in Ukraine on February 24th, 2022, aiming to protect the local Russian-speaking population from the “Nazis” in Kyiv. Since then, Russia has killed tens of thousands of innocent people, bombed civil infrastructure, forced millions of Ukrainians to flee the country, and annexed four of Ukraine’s regions.

To this day, Russia still claims the threat to the Russian-speaking minorities in Ukraine to be the main reason for the invasion¹⁰. Russian aggression in Ukraine has been condemned by many in the international community, including via the resolution in the UNGA. However, as a member of the Security Council, Russia continues to block any moves in that body. One of the many victims

⁶ “UN Security Council Resolutions and Presidential Statements Referencing R2P.” Global Centre for the Responsibility to Protect, December 8, 2022.

⁷ Ziegler, Charles E. “Contesting the Responsibility to Protect.” *International Studies Perspectives* vol. 17, no. 1, February 2016.

⁸ Pupcenoks, Juris, and Graig R. Klein. “First Georgia, Then Ukraine: How Russian Propaganda Justifies Invasions.” *Ethics & International Affairs*, March 17, 2022. <https://www.ethicsandinternationalaffairs.org/2022/first-georgia-then-ukraine-how-russian-propaganda-justifies-invasions/>.

⁹ Pupcenoks, Juris, and Eric James Seltzer. “Russian Strategic Narratives on R2P in the ‘Near Abroad.’” *Nationalities Papers*, 2020, 1–19.

¹⁰ Heather, Ashby. “How the Kremlin Distorts the ‘Responsibility to Protect’ Principle.” *United States Institute of Peace*, April 7, 2022.

of the Russian war in Ukraine is also the international law. But perhaps, this was an intention all along.