



IMAGE - Nino Oshobiasvili/FLOKAR

# Humanitarian aid in the Russo-Georgian conflict

**NATIONS INVOLVED:** Georgia, Russian Federation

**TIME PERIOD:** 1990 – August 2008

**THEMATIC AREA:** Lawfare

# EXECUTIVE SUMMARY

In 2008, the Russian Federation used ‘humanitarian’ assets in support of the separatist populations of Abkhazia and South Ossetia, two regions of Georgia, which both declared independence in the early 1990s. In this case study, the Russian government used what it termed ‘humanitarian assistance’ as an instrument to pursue broader policy goals that were not humanitarian in nature. Moscow relied on relief efforts and the language of humanitarianism to present itself as a neutral and impartial actor and to justify its continued support for the residents and de facto authorities of Abkhazia and South Ossetia, despite Georgian protests against its continued involvement. These humanitarian activities were utilised to strengthen the political and social ties between Russia and the Abkhaz and South Ossetian populations and to weaken their allegiance to the Georgian state. Russia’s ‘humanitarian’ activities demonstrated Georgia’s incapability to prevent Russian intervention in its domestic affairs and physical territory, as well as its inability to assert its authority over Abkhazia and South Ossetia.

## KEY POINTS

■ **The instrumental use of law is not limited to armed conflict but also occurs in peacetime.**

The term ‘lawfare’ may be too narrow, if applied to describe the (mis)use of law as a substitute for conventional military means, to capture the instrumental use of legal arguments outside of armed conflict and the military context.

■ **Russia used the law in an instrumental manner as part of a broader narrative.** Legal arguments can serve both as a source of legitimacy, and as a tool to delegitimise an adversary. In the Georgian scenario, Russia’s arguments were designed to promote a narrative of legality and legitimacy, rather than to actually make a compelling legal case.

■ **Western nations and institutions should conceptualise law as a domain** in order to counter it more effectively when used in a hostile manner. This would also foster a more dynamic approach to the use of law and legal argument to counter hybrid threats.

# SUMMARY

This case study examines the use of humanitarian assets by the Russian Federation in support of the population of Abkhazia and South Ossetia, two secessionist regions of Georgia. Although the focus of this case study is on the provision of humanitarian aid during the armed conflict between Russia and Georgia in August 2008, Russian relief activities relating to the conflict are best seen against the background of a long history of Russian humanitarian assistance to Abkhazia and South Ossetia that stretches back to the early 1990s.

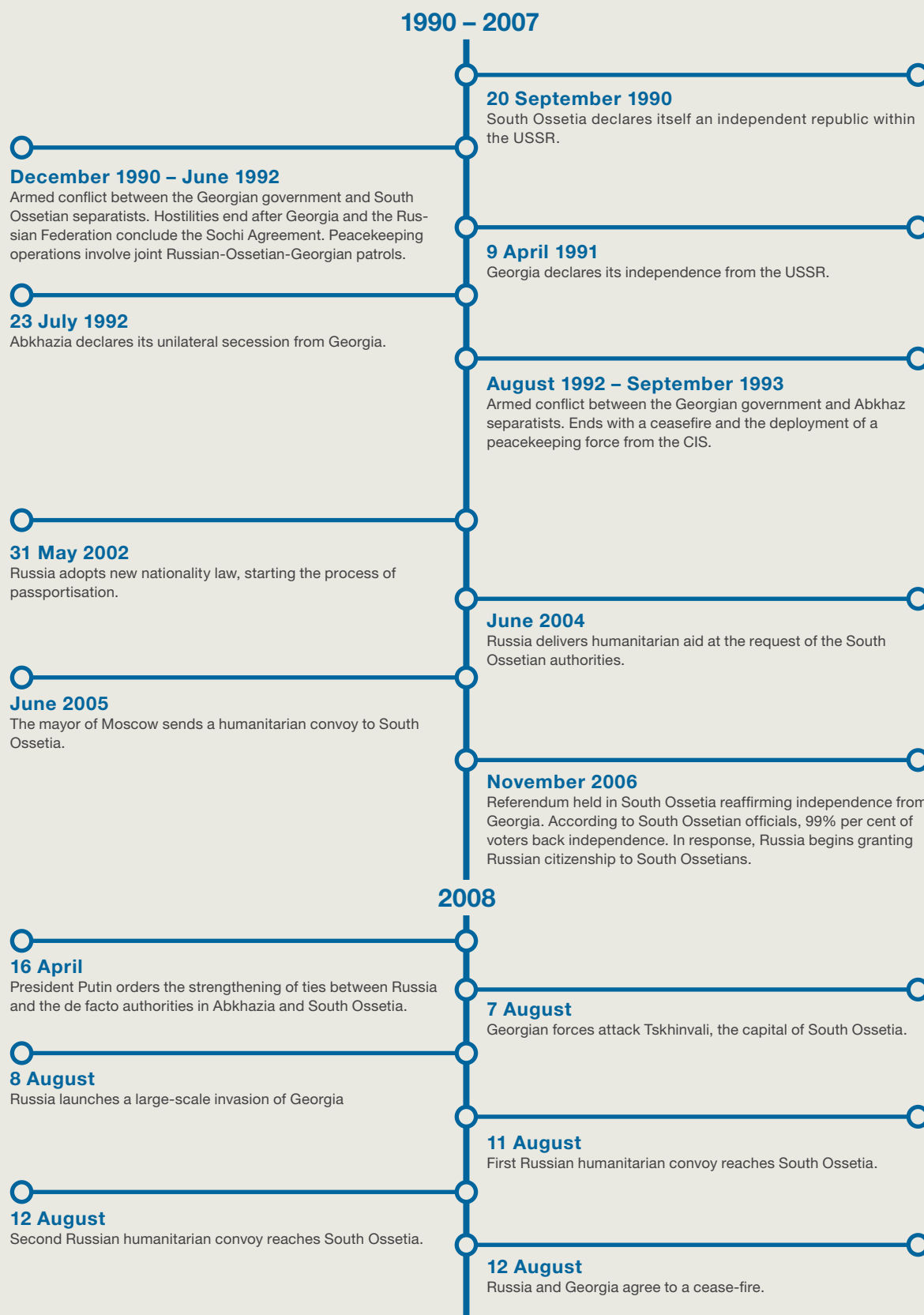
In this case, Russia used ‘humanitarian’ aid and assistance as an instrument to pursue broader policy goals that could not be defined as humanitarian in nature. The conflict brought up two competing imperatives in the legal regulation of humanitarian assistance outside of armed conflict: respect for the sovereignty of the affected state and the need to provide effective relief to the civilian population. Moscow relied on ‘humanitarian aid’ and the language of humanitarianism to strengthen its credentials as a neutral and impartial actor in the Georgian context and to justify its continued support for the residents and de facto authorities of Abkhazia and South Ossetia, notwithstanding Georgian protests against its continued involvement. Moscow’s humanitarian activities demonstrated Georgia’s impotence to prevent Russian intervention into its internal affairs and territory, as well as its continued inability to assert its authority over Abkhazia and South Ossetia. These humanitarian activities also threatened to strengthen the political and social ties between Russia and the Abkhaz and South Ossetian populations at the expense of weakening their allegiance to the Georgian state.

While Russia relied on law and legal arguments to justify its humanitarian activities, it instrumentally used the law to support its broader humanitarian narrative. First and foremost, this illustrates the potential for legal arguments to serve as a source of legitimacy and as a tool to delegitimise an adversary.

Map of Georgia showing the autonomous republics of Abkhazia and South Ossetia, both de facto independent. IMAGE – WIKIMEDIA / United Nations Cartographic Section



# Timeline of Key Events



# CONTEXT

The use of humanitarian assets by the Russian Federation in Georgian territory during the 2008 conflict must be placed within the broader context of the relationship between the two countries. Between 1801 and 1918, Georgia was part of the Russian Empire. Following the October Revolution, the country enjoyed a short period of independence but was incorporated into the Soviet Union in 1922. On 9 April 1991, shortly before the dissolution of the USSR, Georgia re-declared independence. However, in addition to a coup d'état and clashes between opposing political factions, Georgia faced armed secessionist movements in South Ossetia and Abkhazia. Russia actively supported these movements, particularly after the so-called Rose Revolution in November 2003 led to a pro-Western political environment in Georgia. While Russia's strategic logic in supporting South Ossetia and Abkhazia is not entirely clear, its policy is widely understood to be motivated by geopolitical considerations aimed at preserving its sphere of influence and countering what it perceives to be Western influence.<sup>1</sup>

## South Ossetia

South Ossetia is a territorial entity with a distinct ethnic and political identity.<sup>2</sup> Historically, the territory maintained close ties to Russia. During the Soviet period, South Ossetia enjoyed the status of an autonomous oblast within the Georgian Soviet Socialist Republic. From 1988 onwards, support for secession gathered pace and South Ossetia declared its sovereignty as an independent republic within the Soviet Union in September 1990. The Georgian authorities responded by abolishing South Ossetia's autonomous status. This led to heavy fighting between Georgian and South Ossetian forces that lasted from December 1990 to June 1992, and resulted in approximately 1,000 deaths.<sup>3</sup>



Flag of the separatist region of South Ossetia

Open hostilities were formally brought to an end by a ceasefire agreement on 24 June 1992 between Georgia and the Russian Federation, known as the Sochi Agreement.<sup>4</sup> Under the Sochi Agreement, the opposing parties committed themselves to the termination of hostilities and the creation of a demilitarised zone. Additionally, parties agreed to create a Joint Control Commission tasked with controlling the implementation of the ceasefire agreement and with maintaining security in the region, resulting in a Joint Peacekeeping Force (JPKF) composed of Russian, Georgian, and South Ossetian units. Both the Joint Control Commission and the Joint Peacekeeping Force were undermined by a lack of trust among the participants.<sup>5</sup> The depth of misgivings is evident from the Georgian parliament's mid-2006 non-binding resolution calling for the withdrawal of Russian forces from South Ossetia.<sup>6</sup>

<sup>1</sup> E.g. Kavus Abushov, "Policing the Near Abroad: Russian Foreign Policy in the South Caucasus," *Australian Journal of International Affairs* 63, no.2 (2009): 187.

<sup>2</sup> For a detailed overview, see Angelika Nußberger, "South Ossetia," *Max Planck Encyclopedia of Public International Law*, January 2013, <http://opil.ouplaw.com/home/EPIL>.

<sup>3</sup> See International Crisis Group, *Georgia: Avoiding War in South Ossetia* (Tbilisi/Brussels: ICG Europe Report N° 159, 2004), 4.

<sup>4</sup> Agreement on the Principles of Settlement of the Georgian-Ossetian Conflict, 24 June 1992, <http://peacemaker.un.org/georgia-sochi-agreement92>

<sup>5</sup> Center on International Cooperation, *Annual Review of Global Peace Operations* (London: Lynne Rienner, 2006), 115.

<sup>6</sup> Center on International Cooperation, *Annual Review of Global Peace Operations* (London: Lynne Rienner, 2007), 136-7.

While the provisions under the Sochi Agreement were successful in preventing major hostilities, it did not prevent small-scale clashes or resolve the underlying political stalemate. The political situation continued to deteriorate, with the South Ossetians eventually establishing their own de facto governance structures with the political, diplomatic, and materiel support of the Russian Federation,<sup>7</sup> prompting Georgian authorities to adopt increasingly vigorous measures in efforts to re-establish control over the region.

## Abkhazia

Like South Ossetia, Abkhazia is an ethnically and politically distinct territorial entity.<sup>8</sup> During the Soviet Union, Abkhazia's constitutional position was downgraded from its initially independent status to that of an Autonomous Soviet Republic. As an Autonomous Soviet Republic, Abkhazia was not entitled to the right to secede from the Soviet Union. Tensions surrounding Abkhazia's status persisted and intensified in the lead-up to the collapse of the Soviet Union. On 23 July 1992, Abkhazia declared its secession from Georgia, leading to an outbreak of hostilities between Abkhaz separatist forces and Georgian troops. The conflict lasted from 1992 to 1993 seeing some 10,000 to 15,000 fatalities, despite intensive international efforts to terminate the hostilities.<sup>9</sup>



Flag of the separatist region of Abkhazia.

The first ceasefire agreement from 3 September 1992 stipulated that the “territorial integrity of the Republic of Georgia shall be ensured.”<sup>10</sup> It also mandated that Russian forces temporarily deployed in Abkhazia were to remain neutral and not participate in internal disputes. The agreement was not observed, however, and fighting resumed. A second ceasefire agreement on 27 July 1993 established an international peacekeeping mission and temporary deployment of a Russian military contingent to support efforts to uphold the ceasefire and maintain law and order.<sup>11</sup> This agreement also required Russian forces temporarily located in the territory of Abkhazia to observe “strict neutrality.” In August 1993, the UN Security Council established the United Nations Observer Mission in Georgia (UNOMIG) to monitor the observation of the ceasefire agreement.<sup>12</sup> On 14 May 1994, the parties agreed to the deployment of a peacekeeping force, under Russian command, from the Commonwealth of Independent States.<sup>13</sup>

As in the case of South Ossetia, the deployment of a peacekeeping force did not prevent outbreaks of violence, nor did it bring an overall political settlement closer to reality. On the contrary, the presence of Russian forces in Abkhazia contributed to further tensions. The Georgian authorities thus complained that the presence of Russian forces hampered their own efforts to re-establish control over Abkhazia and accused Russia of supporting the separatist forces.<sup>14</sup>

<sup>7</sup> On Russian support and leverage, see Nicu Popescu, “‘Outsourcing’ de facto Statehood: Russia and the Secessionist Entities in Georgia and Moldova,” Center For European Policy Studies, Brief No. 109, July 2006. More generally, see also Jakob Hedenskog and Robert L. Larsson, *Russian Leverage on the CIS and the Baltic States* (Stockholm: Swedish Defence Research Agency, 2007).

<sup>8</sup> For a detailed overview, see Angelika Nußberger, “Abkhazia,” *Max Planck Encyclopedia of Public International Law*, January 2013, <http://opil.ouplaw.com/home/EPIL>.

<sup>9</sup> See International Committee of the Red Cross, *Country Report Georgia/Abkhazia: ICRC Worldwide Consultation on the Rules of War* (Geneva: ICRC, 1999), 1.

<sup>10</sup> Moscow Agreement, 3 September 1992, <http://peacemaker.un.org/georgia-moscow-agreement92>

<sup>11</sup> Agreement on a Ceasefire in Abkhazia and Arrangements to Monitor its Observance, 27 July 1993, <http://peacemaker.un.org/georgia-ceasefireobservance93>

<sup>12</sup> S/RES/858, 24 August 1993.

<sup>13</sup> Agreement on a Ceasefire and Separation of Forces, 14 May 1994, <http://peacemaker.un.org/georgia-ceasefire94>. See also S/RES/937, 21 July 1994 (welcoming the contribution made by the Russian Federation, and indications of further contributions from other members of the CIS, of a peace-keeping force, in response to the request of the parties, pursuant to the 14 May Agreement).

<sup>14</sup> Center on International Cooperation, *Annual Review of Global Peace Operations* (London: Lynne Rienner, 2006), 112-3.

## The 2008 Conflict

From 2004 to 2008, relations between the Georgia and separatists in South Ossetia and Abkhazia deteriorated sharply, as did the political relationship between Georgia and Russia.<sup>15</sup> Violence intensified in the first part of 2008, followed by mutual accusations of military build-ups and preparations for war.<sup>16</sup> One prominent incident occurred when Russia reinforced its contingent of peacekeepers deployed in Abkhazia with an airborne battalion in April 2008,<sup>17</sup> prompting Georgian Prime Minister Lado Gurgenidze to brand Russia as an “aggressor,”<sup>18</sup> and the Georgian government to demand the withdrawal of the new troops.<sup>19</sup> Additionally, Russia accused the Georgians of provocations against its peacekeepers,<sup>20</sup> while the Abkhaz side claimed that Russian reinforcements were in response to Georgian plans to carry out military action.<sup>21</sup> Amidst mutual accusations and a deteriorating security situation, large-scale hostilities broke out between the Georgian and South Ossetian sides on 7 August, leading to Russian intervention on 8 August and to active hostilities in the Abkhaz zone from 9 August. The active phase of the armed conflict between Georgia and Russia lasted until 12 August 2008. Approximately 850 persons were killed and 2,300–3,000 wounded.<sup>22</sup> In addition, approximately 138,000 persons were internally displaced by the fighting.

The Independent International Fact-Finding Mission found that an offensive action by Georgian forces on Tskhinvali, South Ossetia’s capital city, shortly before midnight on 7 August, initiated the armed confrontation between Georgia and Russia.<sup>23</sup> It is also widely recognised that Russia’s use of force during the conflict did not comply with the legal requirements of necessity and proportionality.<sup>24</sup> However, responsibility for the first use of force and the escalation of the conflict is of secondary importance for assessing the use of humanitarian assets by Russia.

## Humanitarian Assets

The provision of humanitarian aid and assistance by the Russian Federation has a long history in regards to Georgia. For example, during the 1992–1993 Abkhaz-Georgian conflict, Russia “consistently saw itself as having a humanitarian role to play” in line with its broader policy of adopting the position of a neutral mediator between the conflicting parties.<sup>25</sup> Accordingly, in August 1992, Russia brokered an agreement for the distribution of Russian humanitarian aid among the two sides.<sup>[i]</sup> Russian humanitarian assistance was also critical in allowing the evacuation of the Georgian population from territories taken by Abkhaz separatist forces.<sup>26</sup>

Humanitarian concerns were prominent in international agreements and instruments aimed at settling the Georgian-Abkhaz conflict. The 3 September 1992 ceasefire agreement expressly committed the parties, including the Russian Federation, to supply humanitarian assistance to the population affected by the conflict in the Abkhaz region.<sup>[ii]</sup> In October 1993, the United Nations Security Council welcomed the humanitarian assistance already

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<sup>15</sup> *Independent International Fact-Finding Mission on the Conflict in Georgia*, Report: Volume II, September 2009, 7-33.

<sup>16</sup> *Ibid.*, 200-2.

<sup>17</sup> For details, see “Russia Gives Some Details on Troop Increase in Abkhazia,” 8 May 2008, <http://www.civil.ge/eng/article.php?id=17786&search>

<sup>18</sup> “Georgian PM: Additional Russian Troops ‘Aggressors’,” 29 April 2008, <http://www.civil.ge/eng/article.php?id=17718&search>. See also “Georgian MFA Warns of Russia’s ‘Military Aggression’,” 26 April 2008, <http://www.civil.ge/eng/article.php?id=17695&search>; “‘Biggest Aggressor Occupied Part of Georgia’ – Saakashvili,” 4 May 2008, <http://www.civil.ge/eng/article.php?id=17756&search>

<sup>19</sup> “Georgia Demands Withdrawal of Additional Russian Troops,” 21 May 2008, <http://www.civil.ge/eng/article.php?id=18340&search>

<sup>20</sup> “U.S. Calls on Russia to Reconsider Abkhaz Moves,” 1 May 2008, <http://www.civil.ge/eng/article.php?id=17732&search>

<sup>21</sup> *Independent International Fact-Finding Mission on the Conflict in Georgia*, Report: Volume II, September 2009, 202.

<sup>22</sup> *Ibid.*, 223-4.

<sup>23</sup> *E.g. ibid.*, 231.

<sup>24</sup> *E.g.* Otto Luchterhandt, “Völkerrechtliche Aspekte des Georgien-Krieges,” *Archiv des Völkerrechts* 46, no.4 (2008): 476; Hannes Hofmeister, “Don’t Mess with Moscow – Legal Aspects of the 2008 Caucasus Conflict,” *San Diego International Law Journal* 12, no.1 (2010): 165.

<sup>25</sup> Human Rights Watch, *Georgia/Abkhazia: Violations of the Laws of War and Russia’s Role in the Conflict*, 1 March 1995.

<sup>26</sup> *Ibid.* (fn. 25).



Refugees in Gori, South Ossetia, on 8 September 2008. IMAGE – kojoku/SHUTTERSTOCK

provided and urged “Member States to contribute towards the relief efforts.”<sup>27</sup> The Security Council also called upon all States to prevent the provision of all assistance, other than humanitarian assistance, from their territories or by persons under their jurisdiction to the Abkhaz side.<sup>28</sup> The Security Council repeated its call for humanitarian assistance in December 1993.<sup>29</sup> The mandate of the peacekeeping force deployed to Abkhazia under the auspices of the Commonwealth of Independent States pursuant to the Agreement on a Ceasefire and Separation of Forces of 14 May 1994 also made provision for humanitarian assistance.<sup>[iiii]</sup>

Russia continued to supply humanitarian assistance in South Ossetia and Abkhazia throughout the period under consideration in this analysis. For example, in June 2004, it delivered humanitarian aid, consisting of supplies of food and fuel, at the request of the South Ossetian authorities.<sup>30</sup> During the August 2008 conflict, Russia increased its humanitarian activities. On 8 August, the same day that hostilities between Russian and Georgian forces broke out, then Russian President Dmitry Medvedev instructed the Russian government “to organize humanitarian aid for those affected by the escalation of the Georgian-South Ossetian conflict and make the necessary financial and technical provisions.”<sup>31</sup> The importance that Russia attached to providing humanitarian aid is underlined by a meeting chaired by Medvedev with representatives of the key Russian agencies engaged in the relief effort to review the measures taken.<sup>32</sup> The details of the meeting were covered in depth in a press release issued by the Kremlin.<sup>33</sup> In its submissions to the Independent International

<sup>27</sup> S/RES/876, 19 October 1993.

<sup>28</sup> Ibid.

<sup>29</sup> S/RES/892, 22 December 1993.

<sup>30</sup> Transcript of Remarks by Minister of Foreign Affairs of the Russian Federation Sergey Lavrov following talks with Pakistani Minister of Foreign Affairs Khurshid Mahmud Kasuri, Moscow, July 9, 2004, No. 1588-09-07-2004, 9 July 2004, [http://www.mid.ru/en\\_GB/press\\_service/minister\\_speeches/-/asset\\_publisher/7OvQR5KJWVmR/content/id/464762](http://www.mid.ru/en_GB/press_service/minister_speeches/-/asset_publisher/7OvQR5KJWVmR/content/id/464762)

<sup>31</sup> Dmitry Medvedev instructed the Government to organise humanitarian aid for those affected by the escalation of the Georgian-South Ossetian conflict, 8 August 2008, <http://en.kremlin.ru/events/president/news/1044>

<sup>32</sup> The head of state held a meeting on providing humanitarian assistance to the population of South Ossetia, 9 August 2008, <http://en.kremlin.ru/events/president/news/1049>

<sup>33</sup> Beginning of the Meeting on Providing Humanitarian Assistance to the Population of South Ossetia, 9 August 2008, <http://en.kremlin.ru/events/president/transcripts/1048>



Fact-Finding Mission on the Conflict in Georgia (IIFMCG), Russia described its humanitarian activities during the conflict in the following terms:<sup>34</sup>

*Between 8 and 10 August 2008 significant quantities of food, water, medications, water purification facilities, diesel power plants, tents and other material resources were provided. More than 25 thousand people were evacuated from the conflict area including more than 7 thousand children. Four stationary temporary camps were deployed in the Southern Federal district of the Russian Federation to accommodate the refugees and provide them with psychological and medical assistance, food and free telephone calls to their families.*

*On 11 August 2008 a column of 86 trucks transported two mobile field hospitals provided by the EMERCOM [Russia's Ministry for Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters] of Russia to Tskhinvali as well as 58 tons of food supplies, 31 power generating stations, potable water and more than 200 rescue workers to conduct search and rescue operations in destroyed buildings.*

*On 12 August 2008 the second humanitarian column delivered food supplies and water purification units to Tskhinvali. On the same day an additional group of psychologists and doctors (36 in total) was dispatched from the centre as well as 2 ambulance vehicles and 30 demining specialists.*

*As the humanitarian situation continued to stabilise and destroyed infrastructure was being rebuilt refugees started to return to their homes (by late September more than 25 thousand people returned from the territory of Russia to South Ossetia) EMERCOM specialists repaired a gas pipeline. Other efforts were taken to clear the debris and restore power supply to a number of administrative buildings and more than 30 residential buildings.*



Abandoned residential house in Gali, Abkhazia. IMAGE – SHUTTERSTOCK.

<sup>34</sup> Independent International Fact-Finding Mission on the Conflict in Georgia, Report: Volume III, September 2009, 436–7.

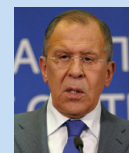
# Russian Government Narratives

Russia relied on 'humanitarian aid' and the language of humanitarianism more generally to justify its political and military support for the de facto authorities in Abkhazia and South Ossetia, against the protest of the Georgian government. It exploited the tensions between the laws surrounding territorial sovereignty and the imperative to provide effective relief to civilians. The appeal to humanitarian sentiments complemented Russia's attempts to portray itself as a neutral party and its intervention in Georgia as being self-defensive in nature and aimed at protecting the civilian population – some of whom are Russian civilians. In summary, Russia's main narratives were:

- **Russia is acting for humanitarian reasons as an impartial and neutral actor.**
- **Georgia is an aggressor in this conflict and Russia is acting in self defence.**
- **Russia is acting in conformity with international law, Georgia is not.**

## Sergey Lavrov, Foreign Minister

20 May 2008: "Russia is a facilitating party; it responsibly treats this role, both in the case of the South Ossetian and in the case of the Abkhaz conflicts. We intend to continue treating this role responsibly unlike those who attempt to explain the lingering problems around Abkhazia and South Ossetia solely by alleging that Russia cannot fulfil the role of a peacekeeper. The problem, as I have repeatedly said, consists above all in that the Georgian side cannot honestly implement the existing agreements."<sup>35</sup>



## Vyacheslav Kovalenko, Ambassador to Georgia

2 June 2008 : Speaking on the deployment of Russian railway troops to Abkhazia: "Frankly speaking, I do not understand why so many concerns are being expressed over this matter. Repair of railway bridges and roads is a humanitarian act aimed at improving the lives of people in the region. The more people live a better life, the less militarism there will be and it will be much easier to restore lost mutual confidence, which is now at zero."<sup>36</sup>



## Vitaly Churkin, Permanent Representative to the United Nations

8 August 2008: "During the night of 8 August 2008 local time, literally just a few hours after reaching an agreement on holding negotiations to resolve the escalation in the South Ossetian conflict, Georgian military divisions began a treacherous and massive attack against Tskhinvali. The military option was used by the Georgian authorities despite all the diplomatic efforts that had been undertaken in contacts between Moscow, Tbilisi, Tskhinvali, Washington and other interested capitals."<sup>37</sup>



"Tbilisi is using scorched earth tactics: a number of towns in South Ossetia have been totally destroyed. [...] The situation is so catastrophic that the International Committee of the Red Cross has requested a humanitarian corridor for emergency evacuation of the wounded. According to reports from the South Ossetian side, more than 1,400 people have died as a result of the fighting in Tskhinvali alone.

<sup>35</sup> Russian Ministry of Foreign Affairs, "Transcript of Response to a Media Question by Russian Minister of Foreign Affairs Sergey Lavrov Following Meeting with Members of the State Duma Committee on the Commonwealth of Independent States and Relations with Compatriots," 20 May 2008, [http://www.mid.ru/en/integracionnye-struktury-prostranstva-sng/-/asset\\_publisher/r17Fzr0mbE6x/content/id/337508](http://www.mid.ru/en/integracionnye-struktury-prostranstva-sng/-/asset_publisher/r17Fzr0mbE6x/content/id/337508)

<sup>36</sup> "Russian Envoy: Repair of Abkhaz Railway a 'Humanitarian Act'," 2 June 2008, <http://www.civil.ge/eng/article.php?id=18453>

<sup>37</sup> S/PV.5951, 8 August 2008, 2.

This cannot be described as anything other than a gross violation of international law, in particular the obligation to protect civilians from dangers related to military operations. We must not forget that, in cases not covered by international agreements carrying international humanitarian law, civilians and combatants remain under the protection and the force of the principles of international law arising from customary practices, humanitarian principles and the requirements of public awareness.

In this situation, the most vulnerable groups are children, women, the elderly and the disabled, whose lives, health and well-being are gravely threatened. Not only are Georgia's attacks against innocent civilians and its destruction of schools and hospitals gross violations of the norms of international humanitarian law; they also violate fundamental human rights.

Over the past week, the Russian Federation has continued to receive refugees from South Ossetia. However, tens of thousands of innocent civilians remain in the conflict zone. Those circumstances dictate the logic of the steps to be taken by us now. We will not allow the deaths of our compatriots to go unpunished. As Council members are aware, many of the people living in South Ossetia are citizens of the Russian Federation, and those who are guilty will be duly punished. I should also like to report that today, the President of Russia instructed the Government to take urgent measures to provide humanitarian assistance to refugees and other innocent civilians in desperate situations.”<sup>38</sup>

#### **Dmitry Medvedev, President (2005-2008)**

9 August 2008: “In connection with the act of aggression committed by Georgia against the civilian population of South Ossetia and Russian peacekeepers, there are many complex humanitarian problems that we must deal with, in accordance with our mandate and simply in light of our duty as a nation. Today we must consider how to provide assistance to the civilian populations and to the wounded, including, of course, medical assistance, immigration issues, and think about how we can accommodate refugees. [...] those responsible for the humanitarian catastrophe in South Ossetia should be brought to justice, including before international law.”<sup>39</sup>



<sup>38</sup> S/PV.5952, 8 August 2008, 4.

<sup>39</sup> “Beginning of the Meeting on Providing Humanitarian Assistance to the Population of South Ossetia,” 9 August 2008, <http://en.kremlin.ru/events/president/transcripts/1048>

# Georgian Government Narratives

In the years preceding the 2008 conflict, Georgia consistently denied that Russia is a neutral party and questioned the motives behind Moscow's humanitarian actions and language. Georgia considers Russia's core justification for intervention – a commitment to protect Russian citizens living in Georgia – as cover for other strategic aims.

- **Russia is an aggressor in this conflict and a violator of international law.**
- **Georgia challenges Russia's humanitarian motives and claim to be an impartial actor.**
- **Russia is striving for de facto absorption of South Ossetia and Abkhazia into the Russian Federation.**

## **Mikheil Saakashvili, President<sup>40</sup>**

22 September 2006: "Further, the painful, but factual truth is that these regions are being annexed by our neighbour to the north – the Russian Federation – which has actively supported their incorporation through a concerted policy of mass distribution of Russian passports – in direct violation of international law, which is itself unprecedented."<sup>41</sup>



## **Irakli Alasania, Ambassador to the United Nations**

8 August 2008: "I want to state very clearly that the illegal separatist authorities and armed formations are under the control and direction of the security and defence agencies of the Russian Federation. Numerous high-ranking Russian officers from among the ranks of the peacekeepers, as well as other officials from the Russian military, intelligence, and law-enforcement services, are serving in senior roles in Tskhinvali. That is a clear violation of Russia's obligation to remain neutral: instead, it has thus become a party to the conflict."<sup>42</sup>



10 August 2008: "Russia has claimed that these military operations were intended to protect its peacekeepers and the civilian population in South Ossetia. Yet its reaction goes far beyond any reasonable measure required to do so. Indeed, its escalation of the conflict has been the immediate cause of increased loss of innocent life and humanitarian suffering. Since Russia is impeding Georgian forces from withdrawing, rejecting a ceasefire and continuing to carry out military attacks against civilian centres, its claims of a humanitarian purpose are clearly not credible. Similarly, its expansion of the conflict to another separatist area in Georgia and attacks on the areas around Georgia's capital, Tbilisi, suggest other motives and objectives."<sup>43</sup>

IMAGES – SHUTTERSTOCK; WIKIMEDIA

<sup>40</sup> Became Georgia's President in 2004 after leading the so-called "Rose Revolution" that ousted his predecessor, President Eduard Shevardnadze. Following a strongly pro-Western foreign policy, Saakashvili resigned in 2007 to stand for early re-election. He was elected President for a second term between 2008 and 2012.

<sup>41</sup> "Saakashvili's Address at UN General Assembly – 2006," 22 September 2008, <http://www.civil.ge/eng/article.php?id=13622>

<sup>42</sup> S/PV.5951, 8 August 2008, 4.

<sup>43</sup> S/PV.5953, 10 August 2008, 5-6.

# Western States and Organisations Narratives

Both before and during the August 2008 conflict, Western nations and International Organisations challenged Russian narratives. Their position was largely aligned with Georgia.

- **Support for the territorial integrity and sovereignty of Georgia.**
- **Russia is failing to respect Georgia's political independence and territorial integrity, and is acting in violation of international law.**
- **Rejection of Russia's claim that it was acting in and against Georgia for humanitarian reasons or in the capacity as an impartial facilitator.**

## **Matthew Bryza, US Deputy Assistant Secretary of State for European and Eurasian Affairs**

9 May 2008: "We find Russian statements talking about the possible threat of Russia launching military operations against Georgia as deeply troubling. [...] We find those actions, as well as lifting of CIS military sanctions and of course the unilateral decision to increase Russia's CIS peacekeepers as working against cause of peaceful settlement of Abkhazia conflict. [...] such actions operate contrary to Russia's desired status as a facilitator of the United National Friends process."<sup>44</sup>



## **Jaap de Hoop Scheffer, NATO Secretary General**

3 June 2008: "I am concerned by the current deployment of several hundred Russian military personnel into the Georgian region of Abkhazia, which is contributing to instability in what is already a volatile area.

This deployment of Russian Railroad Forces does not appear to have any legal basis; it is not taking place in the context of the CIS peacekeeping mission, and it is against the express wishes of the Georgian Government.

As such, this deployment is clearly in contravention of Georgia's sovereignty and territorial integrity, which NATO strongly supports. These forces should be withdrawn, and both Russia and Georgia should engage quickly in a high-level and open dialogue to de-escalate tensions."<sup>45</sup>



## **Karen Pierce, UK Deputy Permanent Representative to the United Nations**

10 August 2008: "Humanitarian assistance cannot be used as a pretext for the presence of non-Georgian troops, and a return to the status quo ante, which is obviously desirable, must be such that it too is effective on non-Georgian as well as Georgian forces. We also call for international engagement in a South Ossetian peace process."<sup>46</sup>



<sup>44</sup> "U.S. Official: Russia's 'Provocative' Steps Deter Peace Process," 5 May 2008, <http://www.civil.ge/eng/article.php?id=17800&search>

<sup>45</sup> "NATO Secretary General's Statement on the Deployment of Russian Railway Troops into Georgia," 3 June 2008, [https://www.nato.int/cps/su/natohq/news\\_7760.htm?selectedLocale=en](https://www.nato.int/cps/su/natohq/news_7760.htm?selectedLocale=en)

<sup>46</sup> S/PV.5952, 8 August 2008.

# MEASURES

## Strategic Logic

It is an open question if Russian military intervention in Georgia in August 2008 pursued a deliberate grand strategy or was a reaction to unfolding events.<sup>47</sup> Whatever Moscow's overall strategic calculation was, the logic of deploying humanitarian assets can be deduced with a high degree of confidence. Russian humanitarian assistance to Abkhazia and South Ossetia reinforced its image as a neutral arbiter both domestically and internationally, as well as reinforced its standing among the Abkhaz and South Ossetian populations. The scale of Russian aid indicates it was not simply a token gesture. In an evaluation of humanitarian responses to the crisis, the United Nations Children's Fund (UNICEF) reported that the most severe need for emergency relief was adequately covered by the Russian Ministry for Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters (EMERCOM) in the initial stages of the conflict.<sup>48</sup> Other aid agencies reported similarly, crediting EMERCOM with responding to the urgent needs of the South Ossetian population quickly and in a reasonably effective manner.<sup>49</sup> However, several indicators suggest that Russia's humanitarian efforts were not motivated exclusively by humanitarian concerns. Rather, Russia's humanitarian activities fed into its diplomatic and legal justification for military intervention. Humanitarian assistance thus enabled Russia to create and sustain a narrative of impartiality and preoccupation with civilian protection, reinforcing its claim to be acting in self-defence and in accordance with an international mandate. In short, humanitarianism was a source of legitimacy for Russia and thus a diplomatic and information domain enabler.

**Diplomatic.** Russia utilised humanitarian aid to position itself as a neutral party to be able to mediate between opposing sides and to facilitate a peaceful resolution to the conflict. During the Abkhaz conflict of 1992–1993, Russia emphasised the impartial character of its humanitarian assistance<sup>[iv]</sup> and use that position to seek the consent and cooperation of Georgian authorities in its humanitarian activities.<sup>[v]</sup> This undoubtedly helped Russia assume a role as a neutral “facilitator” in the conflict in the early 1990s,<sup>[vi]</sup> notwithstanding the fact that over the course of 1993, Russian aid increasingly appeared to flow towards the Abkhaz side.<sup>50</sup> Russia relied on its humanitarian activities during the August 2008 conflict to sustain a similar narrative of impartiality and humanitarian concern in the international arena. Representative of this are the remarks made by Russia's Permanent Representative to the United Nations, Vitaly Churkin, when speaking at the UN Security Council on 8 August 2008, Churkin claimed that Russia's actions against Georgia were necessitated both by the dangers faced by Russian citizens as well as by the need to “take urgent measures to provide humanitarian assistance to refugees and other innocent civilians in desperate situations.”<sup>51</sup>

<sup>47</sup> E.g. Brian J. Ellison, “Russian Grand Strategy in the South Ossetia War” *Demokratizatsiya* 19, no.4 (2011).

<sup>48</sup> Abhijit Bhattacharjee and Mathew Varghese, *UNICEF's Response to Georgia Crisis: Real Time Evaluation*, March 2009, 22.

<sup>49</sup> Greg Hansen, *Humanitarian Agenda 2015: Politics and Humanitarian Action in the Georgia Conflicts* (Medford, MA: Feinstein International Center, 2009), 17.

<sup>50</sup> Human Rights Watch, *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict*, 1 March 1995 (fn. 25).

<sup>51</sup> S/PV.5952, 8 August 2008, at 4.

**Information.** Despite its increasingly open support for the de facto authorities in Abkhazia and South Ossetia over the course of the 1990s and beyond, Russia consistently denied that it was a party to the conflict. It continued to describe itself, as stated by the Russian Ambassador to Georgia, Vyacheslav Kovalenko, as a “mediator.” Humanitarian assistance and the language of humanitarianism furnished Russia with the tools to portray itself as a neutral party and to justify its support for the separatist authorities. Russia thus used humanitarian aid largely for political, rather than humanitarian, reasons. It could be argued that Moscow had no serious humanitarian concerns in South Ossetia during the post-Soviet period at all, considering the lack of efforts taken by Russian forces to impede the displacement of the Georgian population during its military campaign and their lax commitment to the protection of non-combatants more generally.<sup>52</sup>

A clear example of this instrumental approach is the dispatch of approximately 400 unarmed forces under the Railway Forces of the Russian Ministry of Defence to repair the railway line between Sokhumi and Ochamchire in Abkhazia at the end of May 2008.<sup>53</sup> Russia justified the deployment of the railway troops as part of its humanitarian assistance to the Abkhaz authorities,<sup>54</sup> a justification that is difficult to accept. Reconstruction of a railway falls beyond the scope of the relief efforts typically associated with humanitarian aid. More importantly, deployment of Russian troops occurred against Georgia’s protest, undermining Moscow’s claims of impartiality and neutrality. To the Georgian government, railway troops, together with the reinforcement of Russia’s peacekeeping contingent in Abkhazia, “confirmed that the Russian Federation was a party to the conflict and could no longer serve in either a mediating or a peacekeeping capacity.”<sup>55</sup>

The politically instrumental nature of Russian humanitarian assistance and its broader narrative around civilian protection and self-defence is further reflected by Russia’s citizen and passport policy for Abkhazia and South Ossetia. In 2002, Russia significantly relaxed the rules regulating conferral of Russian citizenship,<sup>56</sup> enabling the majority of Abkhaz and South Ossetian residents to become Russian nationals through a simplified procedure en masse.<sup>57</sup> This overly generous conferral of Russian citizenship is not compatible with the applicable principles of international law and must be considered an abuse of the right to confer nationality by way of naturalisation.<sup>58</sup> This aggressive policy subsequently strengthened Russian narratives justifying intervention in Georgian domestic affairs on the basis that it was protecting Russian nationals.<sup>59</sup> In April 2008, President Putin ordered the strengthening of ties between Russia and the de facto authorities in Abkhazia and South Ossetia in the trade, economic, social, and cultural fields.<sup>60</sup> According to the Russian Ministry of Foreign Affairs, these measures were taken “for the interests of the populations of Abkhazia and South Ossetia, including the Russian citizens living there,” who the Ministry claimed were “deprived of the opportunity to realize universal rights to a decent life and sustainable development.”<sup>61</sup> Speaking in July 2008, Commander of Russia’s North Caucasian Military District Colonel General Sergey Makarov declared that one of the major tasks of his command in the event of an escalation or the launch of combat was “the provision of humanitarian assistance to the population residing in the conflict zones.”<sup>62</sup> The

<sup>52</sup> Roy Allison, “Russia Resurgent? Moscow’s Campaign to ‘Coerce Georgia to Peace,’” *International Affairs* 84, no.6 (2008): 1153.

<sup>53</sup> “Russia Troops Repair Railway between Sokhumi, Ochamchire,” 2 June 2008, <http://www.civil.ge/eng/article.php?id=18451>

<sup>54</sup> *Ibid.*; “Russian Envoy: Repair of Abkhaz Railway a ‘Humanitarian Act,’” 2 June 2008, <http://www.civil.ge/eng/article.php?id=18453>

<sup>55</sup> Report of the Secretary-General on the Situation in Abkhazia, Georgia, UN Doc. S /2008/480, 23 July 2008, para. 11.

<sup>56</sup> Federal Law No. 62-FZ on Russian Federation Citizenship, 31 May 2002, [www.refworld.org/pdfid/50768e422.pdf](http://www.refworld.org/pdfid/50768e422.pdf). For an overview of the evolution of Russian citizenship, see Alexander Salenko, Country Report: Russia, EUDO Citizenship Observatory, July 2012.

<sup>57</sup> *Independent International Fact-Finding Mission, Report: Volume II* (fn. 15), at 147.

<sup>58</sup> See Luchterhandt, *Völkerrechtliche Aspekte* (fn. 24), at 465-8; Anne Peters, “Extraterritorial Naturalizations: Between the Human Right to Nationality, State Sovereignty, and Fair Principles of Jurisdiction,” *German Yearbook of International Law* 53 (2010); Kristopher Natoli, “Weaponizing Nationality: An Analysis of Russia’s Passport Policy in Georgia,” *Boston University International Law Journal* 28, no.2 (2010).

<sup>59</sup> Cf. Vincent M. Artman, “Documenting Territory: Passportisation, Territory, and Exception in Abkhazia and South Ossetia,” *Geopolitics* 18, no.3 (2013).

<sup>60</sup> Russian Ministry of Foreign Affairs, “The Russian President’s Instructions to the Russian Federation Government with Regard to Abkhazia and South Ossetia,” 16 April 2008, [http://www.mid.ru/en/web/guest/foreign\\_policy/international\\_safety/conflicts/-/asset\\_publisher/xIEMTQ3OvzcA/content/id/342137](http://www.mid.ru/en/web/guest/foreign_policy/international_safety/conflicts/-/asset_publisher/xIEMTQ3OvzcA/content/id/342137)

<sup>61</sup> *Ibid.*

<sup>62</sup> “Military Commander Warns of Russian Intervention if Conflict Erupts,” 10 July 2008, <http://www.civil.ge/eng/article.php?id=18745>

protection of nationals and the provision of humanitarian assistance thus formed mutually reinforcing strands of a broader narrative of humanitarianism and civilian protection<sup>63</sup> designed to portray Russia as an impartial arbiter protecting its citizens from the aggressive intentions of the Georgian authorities.<sup>[vii]</sup>

**Military.** Whilst Russia uses an exceedingly broad definition of humanitarian aid that includes deployment of military forces, there is no evidence in the public domain to suggest that it has abused genuine humanitarian aid to obtain a direct military advantage such as using humanitarian convoys to smuggle weapons or other illicit material into Georgia. It is difficult to ascertain why Russia would do so, given the fact that Moscow is widely recognised to have supplied military equipment to Abkhaz and South Ossetian separatists. Following the outbreak of hostilities in August 2008, Russia publicly deployed several thousands of its regular forces into Georgia. Using humanitarian aid to conceal the presence of military forces and equipment was entirely unnecessary.

**Economic.** Long term, provision of humanitarian aid can potentially render the recipient economically dependent on the party supplying assistance. Given the long history of Russian humanitarian assistance to Abkhazia and South Ossetia, it is reasonable to assume that Moscow actively sought to create such a relationship since the early 1990s. This is borne out by the fact that even before the 2008 conflict, Russia came to play a vital role in the economic sustainability of the breakaway regions, acting as their largest trading partner and source of investment.<sup>64</sup> However, nothing indicates that the relief efforts undertaken by Russia during the Georgia-Russia conflict pursued this aim or had such an effect.

**Legal.** Russia repeatedly employed legal arguments to support its actions in Georgia,<sup>65</sup> including to justify humanitarian assistance in Abkhazia and South Ossetia. To understand how Russia has employed the law in support of its narratives, it is necessary to provide an overview of the international legal framework of humanitarian assistance, both in peace time and during armed conflict.

The international community has not developed a single overarching legal regime to regulate the provision of humanitarian aid and assistance in a comprehensive manner. Different legal rules and considerations apply in times of peace and under the law of armed conflict. In addition to the general rules of international law, Georgia and Russia have a number of bilateral commitments that must be taken into account.

a. Peace. The legal regulation of humanitarian assistance outside of armed conflict is fragmented and caught between two competing imperatives: respect for the sovereignty of the affected state and the need to provide effective relief to the civilian population. Numerous non-binding instruments have been adopted in this area which address, but ultimately do not resolve the tension between, these two competing considerations.

The sovereignty of states affected by humanitarian crises is protected by the principle of non-intervention, which provides that “[n]o State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.”<sup>66</sup> In the *Nicaragua case*, the International Court of Justice explained that intervention is prohibited if it bears on “matters in which each State is permitted, by the principle of State sovereignty, to decide freely.”<sup>67</sup> Importantly, the Court also made the following observations:

<sup>63</sup> See Roy Allison, *Russia, the West, and Military Intervention* (Oxford: Oxford UP, 2013), 156-60; Gregory Hafkin, “The Russo-Georgian War of 2008: Developing the Law of Unauthorized Humanitarian Intervention after Kosovo,” *Boston University International Law Journal* 28, no.1 (2010): 237.

<sup>64</sup> Pospescu (fn. 7), 6-7.

<sup>65</sup> E.g. “U.S. Calls on Russia to Reconsider Abkhaz Moves,” 1 May 2008, <http://www.civil.ge/eng/article.php?id=17732>; Russian Ministry of Foreign Affairs, “Statement by the Ministry of Foreign Affairs of the Russian Federation on the Situation Around the Russian Peacekeepers in the Zones of the Georgian-Abkhaz and Georgian-Ossetian Conflicts,” 14 September 2006, [http://www.mid.ru/en/press\\_service/spokesman/official\\_statement/-/asset\\_publisher/t2GCdmD8RNlr/content/id/393184](http://www.mid.ru/en/press_service/spokesman/official_statement/-/asset_publisher/t2GCdmD8RNlr/content/id/393184)

<sup>66</sup> A/RES/25/2625, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970.

<sup>67</sup> Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. USA*), Merits, 1986 ICJ Rep. 14, para. 205.



242. [...] There can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law. The characteristics of such aid were indicated in the first and second of the fundamental principles declared by the Twentieth International Conference of the Red Cross, that

*“The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours - in its international and national capacity - to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples.”*

The International Court of Justice also stated:

*“It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours only to relieve suffering, giving priority to the most urgent cases of distress.”*

243. [...] An essential feature of truly humanitarian aid is that it is given “without discrimination” of any kind. In the view of the Court, if the provision of “humanitarian assistance” is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely “to prevent and alleviate human suffering”, and “to protect life and health and to ensure respect for the human being”; it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the *contras* and their dependents.<sup>68</sup>

While the International Court of Justice (ICJ) thus considered impartiality to be a key feature of what it called strictly humanitarian aid, it is noteworthy that the ICJ did not insist on neutrality or the prior consent of the territorial state. Indeed, the very question before the ICJ was whether humanitarian assistance would fall foul of the principle of non-intervention in the absence of the territorial state’s prior consent. The fact that the ICJ held that true humanitarian assistance cannot be considered unlawful intervention suggests that genuine humanitarian aid may be provided by a state even in the absence of the affected state’s consent. If this is correct, the provision of impartial humanitarian aid by Russia to the populations of Abkhazia and South Ossetia would not constitute unlawful intervention in the absence of prior Georgian approval.

However, contrary to what the *Nicaragua* case may suggest, more recent developments indicate that neutrality and consent are in fact necessary preconditions for carrying out humanitarian relief efforts in the territory of other states. The Guiding Principles on humanitarian emergency assistance adopted by the United Nations General Assembly in 1991 declare as follows:

- 2. Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.
- 3. The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.<sup>69</sup>

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<sup>68</sup> Ibid., paras 242-3.

<sup>69</sup> A/RES/46/182, Strengthening of the coordination of humanitarian emergency assistance of the United Nations, 19 December 1991.

The principle of neutrality is further underlined in the Principles and Good Practice of Humanitarian Donorship of 2003,<sup>[viii]</sup> the Oslo Guidelines on the Use of Foreign Military and Civil Defence Assets In Disaster Relief of 2007,<sup>[ix]</sup> the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (the "IDRL Guidelines") of 2007,<sup>[x]</sup> and the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters of 2016,<sup>[xi]</sup> while the need for consent features prominently in the Oslo Guidelines,<sup>[xii]</sup> the IDRL Guidelines 2007<sup>[xiii]</sup> and the Draft Articles.<sup>[xiv]</sup>

Russia repeatedly acted without the full consent of Georgia. For example, in July 2004, Russia dispatched a humanitarian convoy at the request of the South Ossetian authorities.<sup>70</sup> Although it notified the Georgian authorities about the convoy,<sup>71</sup> Russia does not appear to have sought their prior permission for this relief action. Georgia responded by detaining the convoy and allowing it to proceed only after having passed customs procedures.<sup>72</sup> In turn, Russia accused the Georgian government of acting in breach of Article 4 of the Sochi Agreement of 1992,<sup>73</sup> which provides as follows:

*The Parties shall start immediately negotiations on economic restoration of the regions located in the conflict zone and creation of proper conditions for return of refugees.*

*The Parties deem it inadmissible to apply economic sanctions and blockade, and any other impediments to free movement of commodities, services and people and commit themselves to provide humanitarian assistance to the affected population.<sup>74</sup>*

In accordance with this agreement, Russia agreed to provide humanitarian assistance to the South Ossetian population, while Georgia committed itself to accept, as a minimum, Russian relief action. However, nothing in the Sochi Agreement specifies how Russian humanitarian aid was to be delivered. It would be far-fetched to deduce from what is a mere commitment to provide humanitarian assistance in Article 4 of the Sochi Agreement an obligation for Georgia to permit all Russian humanitarian assistance to South Ossetia unconditionally. While Georgia could not lawfully refuse Russian humanitarian assistance unreasonably, the general principles of humanitarian relief, together with the reference in the preamble of the Sochi Agreement to the principles of the United Nations Charter and the Helsinki Final Act, compel the conclusion that Georgia was entitled to impose reasonable conditions on the delivery of Russian aid. The completion of customs procedures, if carried out in good faith, would fall within the scope of such measures. Accordingly, a mere notification by Russia of the Georgian authorities was insufficient. Rather, Russia was mandated to coordinate its relief actions with the Georgian government. Similarly, Russia's protest concerning customs procedures were misplaced, as nothing in the Sochi Agreement removed Georgia's right to subject humanitarian relief consignments to searches and inspections, provided these were carried out in good faith.

In another incident in June 2005, the mayor of Moscow sent a humanitarian convoy to South Ossetia without the consent of the Georgian authorities. Russia rebuffed Georgian protests by invoking Article 3 of the Agreement on Cooperation in Economic Rehabilitation in the Zone of the Georgian-Ossetian Conflict and in the Return of

<sup>70</sup> "Transcript of Remarks by Minister of Foreign Affairs of the Russian Federation Sergey Lavrov following Talks with Pakistani Minister of Foreign Affairs Khurshid Mahmud Kasuri, Moscow, July 9, 2004," 9 July 2004, [http://www.mid.ru/en\\_GB/press\\_service/minister\\_speeches/-/asset\\_publisher/7OvQR5KJWVmR/content/id/464762](http://www.mid.ru/en_GB/press_service/minister_speeches/-/asset_publisher/7OvQR5KJWVmR/content/id/464762)

<sup>71</sup> Ibid. See also "Replies by Russian First Deputy Minister of Foreign Affairs Valery Loshchinin to Media Questions following a Regular Meeting of the Mixed Control Commission for South Ossetia," 14 July 2004, [http://www.mid.ru/en/web/guest/maps/ge/-/asset\\_publisher/uwHHxf8KDaOY/content/id/464346](http://www.mid.ru/en/web/guest/maps/ge/-/asset_publisher/uwHHxf8KDaOY/content/id/464346)

<sup>72</sup> "On the Detention of a Truck Convoy with Russian Emergency Situations Ministry Humanitarian Assistance in South Ossetia," 13 July 2004, [http://www.mid.ru/en/web/guest/maps/ge/-/asset\\_publisher/uwHHxf8KDaOY/content/id/464498](http://www.mid.ru/en/web/guest/maps/ge/-/asset_publisher/uwHHxf8KDaOY/content/id/464498)

<sup>73</sup> Ibid.

<sup>74</sup> Agreement on the Principles of Settlement of the Georgian-Ossetian Conflict (fn. 4).



Russian President Dmitry Medvedev (center) signs Treaties on Friendship, Cooperation and Mutual Assistance with President of Abkhazia Sergei Bagapsh (left) and President of South Ossetia Eduard Kokoity (right) on 17 September 2008 / kremlin.ru

Refugees, concluded between Russia and Georgia on 23 December 2000,<sup>75</sup> which declares as follows:

*The Parties shall support initiatives of the administrative-territorial bodies, enterprises and organizations of Georgia and the Russian Federation on rendering support to the South Ossetian Side in the process of restoration works and promote attraction of funds in order to secure further development of the economy.*<sup>76</sup>

Unconvincingly, the Russian Foreign Ministry claimed that Russian administrative-territorial bodies were entitled to render humanitarian assistance to South Ossetia without “any restrictions” pursuant to this provision.<sup>77</sup> Article 3 of the Agreement imposes a duty on Georgia to support the initiatives of such bodies in rendering support to the South Ossetian Side in the field of reconstruction and investment, but it does not impose an obligation to permit humanitarian relief action or to do so unconditionally. The fact that the Russian mayor may have invited officials of the Georgian Embassy in Moscow to be present at the dispatch ceremony of the cargo so as to verify its “completely peaceful character” is immaterial.<sup>78</sup> Such an invitation did not expand Georgia’s legal commitments under Article 3 of the Agreement or remove its right to subject the delivery of humanitarian aid to reasonable conditions, such as inspections, within its own territory.

**b. Armed Conflict.** As discussed earlier, Russia undertook substantial humanitarian relief action during the armed conflict with Georgia in August 2008. The legal framework of humanitarian assistance in international armed conflict, other than in the context of occupied territory, is set out in Articles 70 and 71 of Additional Protocol I.<sup>79</sup> Pursuant to Article 70, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken if the civilian population of any territory under the control of a party to the conflict, other than occupied territory, is not adequately provided with supplies. Such relief actions are subject to the agreement of the parties concerned, which may impose technical arrangements, including search, under which the passage of relief consignments through their territory is permitted. Pursuant to Article 71, relief

<sup>75</sup> “Russian MFA Information and Press Department Commentary Regarding Georgian Foreign Ministry Protest Over Humanitarian Aid to South Ossetia,” 29 June 2005, [http://www.mid.ru/en/web/guest/maps/ge/-/asset\\_publisher/uvwHHxf8KDaOY/content/id/434110](http://www.mid.ru/en/web/guest/maps/ge/-/asset_publisher/uvwHHxf8KDaOY/content/id/434110)

<sup>76</sup> Agreement on Cooperation in Economic Rehabilitation in the Zone of the Georgian-Ossetian Conflict and in the Return of Refugees, 23 December 2000, in Diasamidze (ed.) *Regional Conflicts* (fn. 26), 512.

<sup>77</sup> “Russian MFA Information and Press Department Commentary Regarding Georgian Foreign Ministry Protest Over Humanitarian Aid to South Ossetia” (fn. 79).

<sup>78</sup> *Ibid.*

<sup>79</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977, 1125 UNTS 3.

personnel may form part of the assistance provided in any relief action, where necessary. However, the participation of relief personnel is subject to the approval of the party in whose territory they carry out their duties.

It follows from these provisions that Russia was mandated to undertake relief action to support the populations of Abkhazia and South Ossetia with relief consignments, if the latter were inadequately supplied, and that Georgia was under an obligation to facilitate the distribution of such consignments. However, these provisions did not entitle Russia to deliver relief consignments or to deploy relief personnel in Georgian territory without the agreement of the Georgian government.

Different rules apply in the context of belligerent occupation. While Russia has denied that it was in occupation of any Georgian territory, a reasonable case may be made that Russia did become an occupying power once control over South Ossetian territories passed into its hands. If so, Russia was bound to provide the population of the occupied territory with food, medical supplies and other provisions essential to the survival of the civilian population pursuant to Article 55 of the Fourth Geneva Convention<sup>80</sup> and Article 69 of Additional Protocol I, if the resources of the occupied territory were inadequate. The prior consent of the Georgian government to such relief action was not required.

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<sup>80</sup> Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), 1949, 75 UNTS 287.

# NATIONAL SECURITY INTERESTS

## Critical Functions

Georgia published its first National Security Concept in 2006.<sup>81</sup> Key points from the National Security Concept relevant to the case study are listed below:

- It is the firm will of the citizens of Georgia to build a free, democratic society and to create a transparent and accountable system of governance based on the rule of law and the equality of every citizen before the law. This system will become the guarantor of the rights and freedoms of all citizens without distinction, and will serve as a substantial basis for the further development of the country.
- Georgia is enhancing its state defense by strengthening its Armed Forces, reinforcing mechanisms of civilian defense, cooperating with the international community to promote world peace and security, and developing crisis management mechanisms. Georgia is carrying out large-scale defense reforms aimed at developing modern, efficient and sustainable armed forces in line with NATO standards.
- The economic security policy of Georgia aims at providing the necessary economic conditions for ensuring Georgia's development and strengthening its national security. The ongoing process of economic recovery is a result of governmental policy aimed at achieving long-term sustainable economic growth based on free market principles.
- Infringed territorial integrity, that is, the existence of uncontrolled territories within Georgian borders, hampers Georgia's transformation into a full democracy. Therefore, reintegration of the state and restoration of the rule of law on the whole territory of Georgia is one of the top priorities of the national security policy. The state reintegration policy envisages participation of Abkhazia and the former Autonomous District of South Ossetia in developing the constitutional order of Georgia.
- Georgia realizes that effective public administration can only be ensured if the state information policy is cohesive and the decisions are based on credible information. Coherent and persuasive presentation of state positions, both internally and internationally, is an essential element of any state's national security. Georgia attributes considerable importance to the protection of classified information, legal regulation of security of information technologies, and protection of the critical information systems of the state. Moreover, secure flow of credible information before and during crises is a necessary precondition for successful crisis prevention and resolution.
- In order to ensure energy security and independence Georgia should conduct a policy aimed at diversification of energy generation and import sources, greater energy efficiency and creation of an energy crisis prevention and management system. For these purposes, Georgia should create favorable conditions for attracting foreign investments, enhance international cooperation in the energy sector, and actively participate in European and Western energy projects.

Russian humanitarian activities carried out in support of the Abkhaz and South Ossetian populations since the early 1990s strengthened its ties with the two breakaway regions and thereby hampered the efforts of the Georgian authorities to (re-)integrate them into the Georgian body politic. Whilst the lack of Georgian control

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<sup>81</sup> Ministry of Defence of Georgia, National Security Concept of Georgia, 2006.

over Abkhazia and South Ossetia threatened Georgia's critical functions across the entire PMESII spectrum, it is safe to assume, based on the available evidence, that the provision of humanitarian assistance by Russia at best played merely a secondary and indirect role. Other measures adopted by Russia in and against Georgia, such as passportisation, economic assistance, arms supplies, and eventually full military intervention, presented a direct and far more severe challenge to Georgia's critical functions than humanitarian aid. From the Russian perspective, humanitarian assistance is likely to be of diplomatic and information value, as it enabled Russia to portray itself as a neutral actor motivated by considerations of civilian protection. This perception threatened Georgia's efforts to obtain international support and backing for its own military operations and its efforts to portray Russia as an aggressor in relevant international fora, such as the Security Council.

## **Vulnerabilities**

The unresolved political status of Abkhazia and South Ossetia, and the role that Russia played since the dissolution of the Soviet Union in managing the conflict, rendered Georgia particularly vulnerable to Russia's actions. The fact that Georgia never established its full authority over the break-away regions laid the foundation for Russia to have significant leverage over the Georgian government. Georgia simply could not impose its will on Russia and stop the provision of Russian humanitarian assistance without running the risk of escalation. The point is illustrated by Georgia's inability to prevent Russia from reinforcing its peacekeeping contingent in April 2008.

## **Threats**

Russia's humanitarian activities in support of Abkhazia and South Ossetia presented a number of threats to Georgia. First, activities threatened to strengthen the political and social ties between Russia and the Abkhaz and South Ossetian populations at the expense of weakening their allegiance to the Georgian state. Second, they threatened to undermine Georgia's international standing by demonstrating its inability to prevent Russian interference in its internal affairs and its inability to exercise effective control over its territory and borders. Third, they threatened to worsen Georgia's relationship with Russia by increasing tension and carrying the risk for violent confrontation. Finally, and perhaps most importantly, they threatened to legitimise Russia's actions in and against Georgia, including its military intervention in August 2008, in the eyes of third parties.

## **Effects**

Moscow's humanitarian activities did not directly threaten Georgia's critical functions. Rather, they demonstrated Georgia's incapability to prevent Russian intervention in its domestic affairs and physical territory as well as its continued inability to assert its authority over Abkhazia and South Ossetia.

Before the August 2008 conflict, the Georgian government responded to the threats presented by Russian humanitarian activities by issuing an official protest and, on occasion, taking practical action, such as subjecting a Russian convoy to customs procedures in 2004. It is likely that the Georgian government was mindful that more forcible action against humanitarian relief efforts could lead to escalation and play into the hands of Russia, strengthening Russian narratives. However, attempts to assert its authority over Russia did not prove successful, as Russia was able to intervene and violate Georgian territorial sovereignty through other means. The Georgian government was also at pains to expose certain Russian actions, such as the reconstruction of the railway link between Sokhumi and Ochamchire, as not humanitarian in nature. These efforts were aimed at denying Russia any diplomatic and informational benefit it may derive from its humanitarian activities.

During the 2008 conflict, Georgia thus did not appear to have taken any action to stop Russian humanitarian relief efforts but it continued to call into question Russia's narrative of being an impartial humanitarian actor. Speaking in the Security Council on 10 August 2008, Georgian Ambassador to the United Nations Irakli Alasania, argued that Russian "claims of a humanitarian purpose are clearly not credible."<sup>82</sup> Georgian efforts to prevent Russia from deriving legitimacy from its humanitarian actions did not stop Russian activities on the ground or compel Russia to change its narratives. However, they are likely to have had a positive effect on other parties, including Western nations, which questioned Russia's humanitarian narrative. Overall, the direct effect of Russia's humanitarian activities on Georgia's critical functions appear to have been very limited, other than in the diplomatic and information domain, where, however, it is assessed that they did not achieve any significant effect in shifting pre-existing positions held by the Georgian government.

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<sup>82</sup> S/PV.5953, 10 August 2008, 6.

# CONCLUSIONS

Russia used humanitarian assistance to Abkhazia and South Ossetia as an instrument to pursue broader policy goals that were not humanitarian in nature. This assessment is supported by Moscow's attempts to characterise acts beyond the scope of humanitarian relief, efforts to portray itself as a neutral and impartial arbiter, partly with reference to its humanitarian activities, the link Moscow established between humanitarian relief, civilian protection, and the defence of Russian nationals in Abkhazia and South Ossetia and the way in which it deployed dubious legal arguments to support its right to deliver humanitarian aid unilaterally and against the wishes of the Georgian government.

Law and legal arguments played a role in Russia's attempts to justify its humanitarian activities. However, it appears that these arguments were designed merely to provide a semblance of legality and legitimacy, rather than to make a compelling legal case. In other words, Russia used the law instrumentally as part of a broader narrative. This conclusion is supported by the fact that Russia sought to benefit from the rudimentary nature of some of the applicable bilateral agreements, overlooked and contradicted the requirement of consent and neutrality and invoked legal instruments in support of its legal position which dealt with vaguely related, but ultimately distinct, matters.

Despite relevant legal arguments to Russia's humanitarian activities in Georgia, the present case study is not the best example for "lawfare," understood as the strategy of using or misusing law as a substitute for traditional military means to achieve an operational objective.<sup>83</sup> This is so for three reasons. First, the law played at best a secondary, rather than a core, role in Russia's actions. Second, the instrumental (mis)use of the law occurred before the August 2008 conflict, that is, in times of peace. Third, there is nothing to suggest that Russia employed legal arguments relating to humanitarian aid as a substitute for traditional military means in order to achieve an operational objective.<sup>84</sup>

Nonetheless, Russia's use of legal arguments offers certain lessons. First, the instrumental use of law is not limited to armed conflict, but also occurs in times of peace. The term "lawfare" may be too narrow, if applied to describe the use of law as a substitute for conventional military means, to capture the instrumental use of legal arguments outside of armed conflict and the military context. Second, the dividing line between the instrumental use and abuse of law is narrow, as Russia employed legal arguments which had at least one point to utilise. Moreover, it is worth noting that the law of belligerent occupation, to the extent that it applies to Russia, in fact compelled Moscow to carry out humanitarian relief action. Third, there is a close link between legality and legitimacy and between legal justifications and broader strategic narratives. Russia relied on law as a source of legitimacy in support of its humanitarian activities and also employed legal arguments offensively to delegitimise the Georgian government's actions. Fourth, Russia's appeal to humanitarianism as a way to justify its support for Abkhazia and South Ossetia and its intervention in Georgia has only had partial success. It certainly did not

<sup>83</sup> Charles J Dunlap, Jr, "Lawfare Today: A Perspective," *Yale Journal of International Affairs* 3, no.1 (2008), 146. See also Charles J. Dunlap, Jr, "Does Lawfare Need an Apologia?" *Case Western Reserve Journal of International Law* 43, no.1 (2010); Charles J Dunlap, Jr, "Lawfare Today... and Tomorrow," *International Law Studies* 87 (2011).

<sup>84</sup> By comparison, consider the use of human shields, where the law of armed conflict plays a critical role in rendering the use of human shields into an effective, though unlawful, tactic for insulating military objectives from attack.



convince Western nations, as may be gleaned from the following statement made by Karen Pierce, UK Deputy Permanent Representative to the United Nations, in the Security Council on 10 August 2008:

*“Humanitarian assistance cannot be used as a pretext for the presence of non-Georgian troops, and a return to the status quo ante, which is obviously desirable, must be such that it too is effective on non-Georgian as well as Georgian forces. We also call for international engagement in a South Ossetian peace process.”<sup>85</sup>*

The Georgian government handled Russia’s instrumental use of law and humanitarian action well. Its responses included a blend of assertive direction action, such as the stopping of a Russian humanitarian convoy in 2004, and the deployment of counter-narratives in key international fora, such as UN Security Council. Whether due to the weakness of Russia’s narrative or the effectiveness of Georgia’s counter-narratives, Western nations and institutions were not swayed by Moscow’s explanations, but aligned themselves with Tbilisi’s position.

Overall, the case study underlines the significance between law and legitimacy and thus the close link between legal arguments and strategic communications. Russia’s instrumental use of legal arguments in this and other contexts strongly suggests that it exploits the link between law and legitimacy in a deliberate manner and that legal arguments are a key component of the way that Russia executes its information security strategy. No doubt, the same is also true of Western nations and institutions. However, to counter the Russian instrumentalisation of the law more effectively, Western nations and institutions should conceive of law as an operating domain.<sup>86</sup> This would allow the extension of familiar doctrinal concepts, including the “prepare, deter and defend” triad, to the legal environment. This, in turn, would foster a more dynamic approach to the use of law and legal argument both to counter hybrid threats and to counter adversary lawfare.

## Recommendations

It is recommended that Western nations should:

- **Develop a better understanding of the instrumentalisation of law** in the context of hybrid warfare and hybrid threats, for example by developing a taxonomy of lawfare tools.
- **Undertake further case studies** to build awareness and understanding of the use of lawfare by specific adversaries, and how the use of lawfare fits in with their strategic communications more broadly.
- **Take stock of national and institutional vulnerabilities and threats in the legal domain.**
- **Increase legal preparedness and resilience**, for example by developing mechanisms to monitor adversary lawfare, increasing information sharing among nations and relevant institutions, sharing best practices, fostering closer cooperation between legal and strategic communication experts and including credible lawfare scenarios (and legal red teams) in exercise regimes.
- **Develop an ability to deter and defend against adversary lawfare**, for example by improving the speed of response, coordinating more closely between the operational and the strategic levels and between different nations and institutions and developing defensive and offensive lawfare capabilities .
- **Develop a lawfare doctrine to serve as a framework of response.** Initial efforts in this direction have now been made under the auspices of the European Centre for Countering Hybrid Threats, which launched a legal resilience network in November 2017.<sup>87</sup>

<sup>85</sup> S/PV.5952, 8 August 2008, 6.

<sup>86</sup> See Aurel Sari, “Hybrid Warfare, Law and the Fulda Gap,” forthcoming in *Complex Battle Spaces*, edited by Christopher Ford and Winston Williams (Oxford: Oxford UP), available at <https://ssrn.com/abstract=2927773>

<sup>87</sup> Network on Legal Resilience launched, 27 November 2017, <https://www.hybridcoe.fi/news/network-on-legal-resilience-launched/>

# Endnotes

<sup>i</sup> See Protocol of consultations on the regulation of the conflict between Georgia and Abkhazia, 29 August 1992, in T'amaz Diasamidze and Nana Chkoidze-Japaridze (eds.), *Regional Conflicts in Georgia: The Autonomous Oblast of South Ossetia, the Autonomous SSR of Abkhazia, 1989-2008: The Collection of Political-Legal Acts* (Tbilisi: Regionalism Research Centre, 2008), 205:

6) The Russian Federation will render humanitarian assistance to the population affected by the conflict. The Red Cross Organizations of three Sides will determine the procedure and distribution of humanitarian aid. The representatives of Russian federation reaffirmed their readiness to carry out the role of mediator in the conflict settlement.

<sup>ii</sup> Moscow Agreement, 3 September 1992 (<http://peacemaker.un.org/georgia-moscow-agreement92>):

Article 7: The Sides will carry out measures to restore the regions and render the humanitarian assistance, including at the international level, to the population affected in conflict. The Red Cross organizations, in coordination with the Commission on Control and Inspection shall determine the procedures of delivery and distribution of such assistance.

<sup>iii</sup> Decision of the Council of the CIS Heads of States on Usage of Collective Forces to Maintain Peace in the Conflict Zone of the Georgian-Abkhaz Conflict, in Diasamidze (ed.), *Regional Conflicts* (fn. 26), 291:

5. Within the term of effect of this Decision, the Collective Force shall carry out the following tasks:  
[...] d) to facilitate restoration of regions damaged in time of conflict, including the humanitarian aid, mine clearing and renovation of the principal systems of public life.

<sup>iv</sup> Communique on Russian-Abkhaz Consultations, 6 May 1993, in Diasamidze (ed.) *Regional Conflicts* (fn. 26), 239:

Representatives of Abkhazia expressed their satisfaction with regard the readiness of the Russian side to offer humanitarian aid to the starving and suffering population, irrespective of their ethnic origin and religious affiliation, trapped in the conflict zone.

<sup>v</sup> Order of the Council of Ministers, Government of the Russian Federation, 30 May 1993, in Diasamidze (ed.) *Regional Conflicts* (fn. 26), 241, para. 1:

Ministry of Foreign Affairs of Russia shall work out with the Georgian side the possibility of restoration of operations on supplying the cargo of humanitarian assistance to the population of town of Tkvarcheli and evacuation of refugees from the conflict zone, sending to town of Tkvarcheli the mixed expert commission on elaboration of measures for avoiding the threat of explosion of gas methane in the coal mines. In case of reception of the positive response to solve the issues of providing for security of flights of the Russian helicopters for the realization of the mentioned operation.

<sup>vi</sup> Memorandum of Understanding between the Georgian and Abkhaz Sides at the Negotiations at Geneva, 1 December 1993, in Diasamidze (ed.) *Regional Conflicts* (fn. 26), 262:

8. The next round of negotiations for a comprehensive settlement of the Georgian-Abkhaz conflict under the aegis of the United Nations, with the Russian Federation as facilitator and with the participation of the CSCE representatives will begin on 11 January 1994 in Moscow or Geneva.

<sup>vii</sup> S/2008/545, 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:

The scale of the attack against the servicemen of the Russian Federation deployed in the territory of Georgia on legitimate grounds, and against citizens of the Russian Federation, the number of deaths it caused as well as the statements by the political and military leadership of Georgia, which revealed the Georgian side's aggressive intentions, demonstrate that we are dealing with the illegal use of military force against the Russian Federation. In those circumstances, the Russian side had no choice but to use its inherent right to self-defence enshrined in Article 51 of the Charter of the United Nations.

I have the honour to assure you that the use of force by the Russian side is strictly proportionate to the scale of the attack and pursues no other goal but to protect the Russian peacekeeping contingent and citizens of the Russian Federation from the illegal actions of the Georgian side and to prevent future armed attacks against them.

See 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*, edited by James A. Green and Christopher P.M. Waters (Basingstoke: Palgrave Macmillan, 2010), 54; Luchterhandt (fn. 24), 468-9; Hofmeister (fn. 24), 170;

Robert P. Chatham, "Defense of Nationals Abroad: The Legitimacy of Russia's Invasion of Georgia," *Florida Journal of International Law* 23, no.1 (2011).

viii Principles and Good Practice of Humanitarian Donorship, <https://www.ghdinitiative.org/ghd/gns/principles-good-practice-of-ghd/principles-good-practice-ghd.html>:

2. Humanitarian action should be guided by the humanitarian principles of humanity, meaning the centrality of saving human lives and alleviating suffering wherever it is found; impartiality, meaning the implementation of actions solely on the basis of need, without discrimination between or within affected populations; neutrality, meaning that humanitarian action must not favour any side in an armed conflict or other dispute where such action is carried out; and independence, meaning the autonomy of humanitarian objectives from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

ix Guidelines on the Use of Foreign Military and Civil Defence Assets In Disaster Relief, <http://www.refworld.org/docid/47da87822.html>:

20. As per UN General Assembly Resolution 46/182 humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.

Humanity: Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women and the elderly. The dignity and rights of all victims must be respected and protected.

Neutrality: Humanitarian assistance must be provided without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature.

Impartiality: Humanitarian assistance must be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of the suffering must be guided solely by needs and priority must be given to the most urgent cases of distress.

x Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/>:

4. Responsibilities of Assisting Actors

[...] 2. Assisting actors should ensure that their disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality [...].

xi Draft Articles on the Protection of Persons in the Event of Disasters, [http://legal.un.org/docs/?path=..//ilc/texts/instruments/english/draft\\_articles/6\\_3\\_2016.pdf&lang=EF](http://legal.un.org/docs/?path=..//ilc/texts/instruments/english/draft_articles/6_3_2016.pdf&lang=EF):

Article 6 (Humanitarian principles): Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.

xii Guidelines on the Use of Foreign Military and Civil Defence Assets In Disaster Relief (fn. 67):

21. In addition to these three humanitarian principles, the United Nations seeks to provide humanitarian assistance with full respect for the sovereignty of States. As also stated in General Assembly Resolution 46/182: "The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country."

xiii Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (fn. 68):

10. Initiation

1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly. [...]

11. Initiation of Military Relief

1. Military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of the affected State, after having considered comparable civilian alternatives.

xiv Draft Articles on the Protection of Persons in the Event of Disasters (fn. 69):

Article 13 (Consent of the affected State to external assistance)

1. The provision of external assistance requires the consent of the affected State.

2. Consent to external assistance shall not be withheld arbitrarily.

