

NOREF Policy Brief

Civilian protection in Russia: legal issues and political interpretations

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Executive summary

This policy brief argues that international humanitarian law (IHL) plays a crucial role in Russia's international policy and normative convergence with the international community. For Russia, the acceptance of dominant norms and their implementation are the core criteria for integration into the normative order that is being formed across the globe. Yet this process is hindered by at least two obstacles. The first is the politicisation of legal norms, which results from their different interpretations based on different worldviews. Russia accuses the major Western countries of using humanitarian arguments to cover up their geopolitical goals, while the West accuses Russia of failure or reluctance to investigate mass-scale crimes against civilian populations committed in the north Caucasus

region. The second impediment to the effective implementation of civilian protection norms in Russia is the dysfunctional Russian state, ineffective security governance and the low quality of legal expertise.

Russia's problems with the implementation of IHL reflect a wider set of problems with the country's deficient political system, including the lack of parliamentary control over executive power, the weakness of Russia's political parties, the Kremlin's control over the mass media, electoral fraud, and the state's crusade against independent NGOs. As a result, civilian protection issues have unfortunately been marginalised in the Russian public discourse.

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Civilian protection norms in Russian legal documents

Russian legislation contains numerous references to international humanitarian law (IHL) norms. As far back as in the late Soviet Union, the “Order of the defence minister” of February 16th 1990 declared the Geneva Conventions of August 12th 1949 and their additional protocols to be the guiding principles for the Russian armed forces. On August 8th 2001 the Russian defence minister issued Order no. 360 “On measures assuring observance of IHL norms in the armed forces of the Russian Federation”. The Service Charter of the Russian Armed Forces directly prescribes to all military personnel the need to be aware of and observe the rules regulating military actions, including the proper treatment of civilian populations. In 2001 the defence minister issued the “Instructions on IHL for the Russian Federation’s armed forces”, which were applicable to all military personnel. The Federal Law on the Status of Military Service, the Combat Charter of the Land Forces and the Charter of Internal Service also contain direct references to the key principles of IHL. On September 23rd 1993, 11 member states of the Commonwealth of Independent States, including Russia, signed the Agreement on Urgent Measures for Defending Victims of Armed Conflicts, which incorporated the basic norms of civilian protection.

The Russian Criminal Code of 1997 established severe punishments for the use of illegal means and methods of waging war, crimes against peace and humanity, genocide, and attacks against persons or institutions protected by IHL. According to legal experts, the code’s criminalisation of torture was due to Russia’s accession to the Council of Europe.

The case of Chechnya: a “state of exception”?

However, despite the existing legal base, a series of military actions undertaken against Chechen rebels from the early 1990s made Russia an object of incessant criticism by Western governments and non-governmental organisations (NGOs) for its mistreatment of the civilian population and the

disproportionate use of force in Chechnya, which inflicted massive losses of human lives. Faced by condemnation from the West, the Russian authorities started playing a language game, arguing that the military operation in Chechnya was not an armed conflict, but a process of neutralising banditry and terrorist groups. This rhetoric was meant to justify the application of force at the military command’s full discretion (including the deployment of regular army instead of Interior Ministry forces), but without declaring a state of emergency. Should the latter be introduced, Russia, according to international law, would have to report to international bodies (the United Nations or the Council of Europe) and get approval from the upper chamber of the Russian parliament. Besides, it was not until the end of the second Chechen war that Russia adopted the Federal Law on Countermeasures to Terrorism (2006) which presupposed the partial suspension of citizens’ freedoms during loosely defined “counter-terrorist operations”, including documentation control, temporary detention for identity checks, unimpeded access to private apartments and houses, the interception of telephone conversations, resettlement, and other extraordinary measures.

The fostering of legal uncertainty was a purposeful policy of the Kremlin, since it gave more freedom of manoeuvre to Moscow. Its reverse side was heavy losses among the civilian population. The most typical IHL violations reported by Russian and international human rights organisations were mopping-up operations that led to the disappearance of civilians, the “filtration” of non-combatants, practices of warrantless searches, mass detentions, the mistreatment of detainees, torture and the extrajudicial execution of suspects.

International pressure

From the outset of the war in Chechnya the normative institutions of international society started exerting pressure on the Russian government, but the international legal mechanisms they used for this purpose turned out to be very weak and slow.

Since 1995 the European Court on Human Rights in Strasbourg has approved several dozen claims

from citizens of Chechnya against Russia. Most applications were submitted with the assistance of the Memorial organisation and the European Human Rights Centre. The court ruled that Russia bears responsibility for gross violations of citizens' fundamental rights to life, effective protection and the possession of property. The court established that Russia was guilty of failing to provide due protection to the civilian population and to investigate war crimes committed by the military. Russia was obliged to pay financial compensation to numerous claimants, but these measures were deemed insufficient by the Parliamentary Assembly of the Council of Europe, which in 2003 called for an international tribunal on Chechnya. The Society for Russian-Chechen Friendship, a Nizhny-Novgorod-based NGO that supports this idea, admitted that, for political reasons, its practical implementation is hardly possible in the immediate future.

The Russian state on the defensive ...

However, it would be incorrect to claim that the Russian state has completely turned a blind eye to the human rights situation in Chechnya. Russian courts have handed down several judgments against Russian military personnel – and many more against Chechen rebels accused of mass murders. The most widely publicised was the trial of Colonel Yuri Budanov, who in 2003 was sentenced to ten years in jail for the abuse of power, abduction and murder. His military rank and awards were revoked. The subsequent story reveals all the weakness of the Russian legal system: as soon as Budanov applied for a pardon, the head of Chechnya Ramzan Kadyrov threatened that if this were to be approved, revenge would be taken against Budanov. In 2009 Budanov was released on parole and in 2011 an unidentified individual killed him in Moscow.

Aware of the scale of mistreatment of the local population, in 2001 and 2002 the high command of the Russian forces in Chechnya issued a number of orders explicitly aimed at preventing the extrajudicial violence widely practised by federal troops. The Prosecutor-General's Office also issued a number of orders for strengthening legal supervision of the operation of federal forces

in Chechnya. Some NGO activists claimed that this was done under their direct and constant pressure. Military and security personnel, however, overtly sabotaged these measures by intentionally complicating and obstructing inspections.

The transfer of security functions to local Chechen detachments that are integrated into the Russian law-enforcement system but have wide autonomy of action has led to a relative decrease in the numbers of crimes against the civilian population, but has provoked other forms of lawlessness by the forces under the control of the authorities in Grozny.

... and on the attack

In the case of the conflict between Georgia and South Ossetia, it was Russia that – at least verbally – resorted to international legal mechanisms to investigate what President Medvedev dubbed genocide against the Ossetian population. On Medvedev's orders a group of investigative officers started collecting evidence of crimes committed by Georgia and instituted legal proceeding on the alleged genocide. The Russian ombudsman, Vladimir Lukin, with the support of the Russian Foreign Ministry, proposed to convene an international tribunal on South Ossetia. The Russian authorities stated their intention to utilise the experience of the Hague Tribunal and mechanisms of the International Court of Human Rights in this regard, but no concrete actions followed.

Russia preferred to describe its action against Georgia in August 2008 as a "peace enforcement operation". Yet peace enforcement presupposes a UN mandate, which Russia obviously lacked in this case. Besides, the Russian government ignored the June 1995 Federal Law on the Procedure of Allocation of Russian Military and Civil Personnel for Participating in Actions Aimed at Supporting or Restoring International Peace and Security, which stipulates the necessity for a supporting resolution of the Council of the Federation. Moscow claimed that the only way to defend the civilian population of South Ossetia and Abkhazia from Georgia was the recognition of these areas' independence, but none of Russia's closest allies followed the Russian example,

thus leaving the Kremlin in diplomatic isolation. Therefore, Russia's claims of a role as security guarantor in the Caucasus are substantiated by mostly rhetorical references to political categories (like the "will of the people") and are in clear disconnection with legal norms.

On its part, Georgia on August 12th 2008 brought an action against Russia in the International Criminal Court for committing genocide against Georgians in Abkhazia since 1992. The claim was accepted, but no further action has been taken so far. Georgia appealed to the European Human Rights Court, which responded by asking both Moscow and Tbilisi to keep it informed on the actions they undertook to avoid further complications in the human rights situation in conflict areas. The Russian representative to the court, Georgy Matushkin, called on the court to reject the Georgian claim on the ground of Russia's lack of legal jurisdiction over South Ossetia and Abkhazia – as if it were only such jurisdiction that would make it possible to press charges against his country.¹

Internal Russian politicisation

On the one hand, international institutions and NGOs passing judgement on the most controversial cases of military conflicts involving Russia try by and large to avoid "big" political questions, such as whether Chechnya had the right to secede from the Russian Federation, whether Russia had the right to use armed force to prevent this, or whether the August 2008 war over South Ossetia and Abkhazia was a just one. Indeed, IHL only regulates the tools and methods of military actions, and remains silent on political issues. It is violations of the norms of conducting war that are punishable, irrespective of the political aims behind the war in question.

On the other hand, being short of legal counter-arguments, the Russian state perceives all attempts to raise the issue of IHL implementation as a political threat. Thus, it was political reasoning that prevailed in Russian discussions about ratification of the Rome Statute establishing the International Criminal Court, which hypothetically might trigger arrest orders for high-ranking Russian officials.

External politicisation: Libya and Syria in focus

The issue of interpreting civilian protection norms is at the core of Russia's strategic disconnections with the West in 2011 (the crisis in Libya) and 2012 (the civil war in Syria). This type of politicisation is due to the inclusion of civilian protection issues in wider debates on multipolarity, the West's democracy promotion strategy and its repercussions for Russia, etc.

Russia, which abstained in the UN Security Council vote on the Libya resolution, later complained that under the guise of normative principles, including the responsibility to protect (R2P), the Western coalition pursued its political purpose of regime change in Tripoli. The Russian Ministry of Foreign Affairs issued a statement that criticised the broad definition of the principles of R2P and humanitarian intervention. However, Russia seems to be caught in a logical trap: on the one hand, it argues that R2P and other civilian protection principles lack universal meaning and have to be adjusted to specific situations on the ground,² yet, on the other hand, Russian diplomacy claims that all peacekeeping operations have to be implemented by the majority of UN member states – a condition that Russia itself violates.

Another clear symptom of the political character of the debate is the question of whether the operation in Libya was a model (as many in the West deem) or an exception (as Russia wishes to be the case). Moscow has proposed a different model case approach – that taken towards Yemen, where the key international actors, both nation states and international organisations, were not controlled by pre-given positions and did not establish "artificial deadlines" for the end of hostilities.

These debates reveal divergent understandings of legal norms on the part of Russia and the West. The Russian government overtly refuses to accept the Western claim that the coalition's intervention in Libya saved numerous civilian lives. On the contrary, the Kremlin accuses the West of killing civilians during the intervention. According

2 <<http://www.mid.ru/bdomp/ns-dmo.nsf/66d11ad1c1bc0a7bc32576790039c04a/b1d0994f63c95f86c32578ce0039986b!OpenDocument>>.

1 <<http://www.newsru.com/world/23sep2011/echarguments.html>>.

to Mikhail Bogdanov, the Russian president's special representative on the Middle East, Russia intends to prevent R2P and humanitarian intervention principles from being implemented in regions where it has political influence. Regarding the situation in Syria, in the words of Sergey Lavrov, the Western policy of "reliance on one-sided support for the opposition, particularly for its most belligerent part ... runs counter to the goal of protecting the civilian population. What seems to prevail in that option are attempts to bring about regime change in Damascus as an element of a larger regional geopolitical game"³ that is ultimately targeting Iran.

As we see, the whole lexicon of Russia's Foreign Ministry is explicitly political. Lavrov tries to challenge Western credibility by accusing NATO of "failing to pass the exam in Libya". The Russian representative at the UN has demanded an investigation of anti-Qaddafi military operations. The UN secretary-general was also sharply criticised by pro-Kremlin experts for his unconditional support for the Libyan operation as the first example of practically implementing the concept of R2P. This criticism undermines the legitimacy of the very organisation that the Kremlin always refers to as the most authoritative international body.

Conclusion

This brief analysis leads to several conclusions. Firstly, Russia's problems with the implementation of IHL norms reflect a wider set of problems with the country's deficient political system, including the lack of parliamentary control over executive power, the weakness of Russia's political parties, the Kremlin's control over the mass media, electoral fraud, and the state's crusade against independent NGOs. As a result, civilian protection issues have unfortunately been marginalised in the Russian public discourse.

Secondly, despite the relative stabilisation of the situation in Chechnya, the issue of IHL in Russia will retain its importance, since the federal government keeps losing legal cases in the European Court of Human Rights, while the

current methods of security governance in the north Caucasus practised by both federal troops and local squads trigger justifiable concerns from human rights organisations worldwide.

Thirdly, the politicisation of civilian protection norms seems unavoidable since – despite the Kremlin's rhetoric of "the rule of law" – these norms are largely perceived through the prism of explicitly political signifiers, such as Russia's territorial integrity and great power ambitions that are allegedly denied by the unfriendly West, whose human rights record, in Moscow's eyes, is far from perfect. Yet there is at least one positive repercussion of this process of politicisation: it makes clear that Russia's proclaimed European identity will always remain incomplete – if not illusory – unless it fully adheres to the judgments of the European Court and complies with IHL norms.

³ <http://www.huffingtonpost.co.uk/sergei-lavrov/russia-syria-on-the-right-side-of-history_b_1596400.html?utm_hp_ref=uk>.