

Conflict in the Caucasus: Restoring Peace and Principle

Written by Mary Ellen O'Connell

This PDF is auto-generated for reference only. As such, it may contain some conversion errors and/or missing information. For all formal use please refer to the official version on the website, as linked below.

Conflict in the Caucasus: Restoring Peace and Principle

<https://www.e-ir.info/2008/08/14/conflict-in-the-caucasus-restoring-peace-and-principle/>

MARY ELLEN O'CONNELL, AUG 14 2008

Watching for signs of war with Iran, many of us probably took our eyes off other hot spots where President Bush's imminent departure is a strategic consideration. Georgia's Saakashvili launched his military action to regain control of South Ossetia, no doubt with the departure in mind and probably thinking America's pro-war administration would back him—that President Bush would tamp down any Russian response while watching the Olympics together with Prime Minister Putin.

But Saakashvili's action was unlawful and foolhardy. The world is rightly condemning the disproportionate Russian response. President Bush and both presidential candidates have done so. The McCain and Obama camps have both cited violations of international law—it must, however, be emphasized that those include the Georgian raid.

Georgia's claim to title of both South Ossetia and Abkhazia is good. However, groups in both regions want independence from Georgia on the basis of human rights violations and historic grievances. Violence has erupted among ethnic groups in both places. In the early 1990s, Georgia agreed to the presence of "peacekeeping" troops to keep order. These have mostly been Russian soldiers supporting those who want independence. The agreements clearly do not strip Georgia of title, but they do mean that until they are terminated and foreign troops are given a chance to exit, Georgia has no right to use military force to expel them. These principles were re-stated most recently in a 2005 ICJ judgment, *Armed Activities on the Territory of Congo*.

Given its right to be in South Ossetia, Russia also had the right to take defensive action against Georgia. That means, however, only action necessary and proportional to accomplish the purpose of defense. Russian bombing beyond South Ossetia, striking civilians—even inadvertently—cannot be justified. Israel was heavily criticized in 2006 in its war with Hezbollah in Lebanon for disproportionate force. Israel also had the right to take defensive action against Hezbollah rockets, but bombing far beyond the rocket positions in heavily populated civilian areas was condemned. Surely Russia joined in that condemnation?

Russia's purpose in its excessive use of force may well be to create a situation where it can make excessive demands in peace negotiations. It may demand independence for Abkhazia and South Ossetia and that Saakashvili step down.

The right response to the Russians is to repeat back the arguments they have been making for years with respect to Kosovo—territory does not change hands because of human rights violations against inhabitants. Territory should never change hands because of the unlawful use of force. International law mandates other means and mechanisms of protecting human rights. Indeed, the Russian use of such arguments now—so close to the European and American arguments for Kosovo—must be intentional. Consequently, we are hardly in a position to renounce them when it comes to Georgia.

Aiding a breakaway province is one thing, invading a sovereign state is a far more serious crime in international law. The *Guardian* is reporting that early on Thursday, 14 August, Russian troops were within 30 miles of Tbilisi, the capital of Georgia. Again, while the United States, the U.K., Australia, and Poland may be in no position to demand the Russians back down, having unlawfully invaded Iraq, the rest of the world is in such a position. All states in the international community have an interest in ensuring the rules on the use of force, the prohibition on war as an

Conflict in the Caucasus: Restoring Peace and Principle

Written by Mary Ellen O'Connell

instrument of foreign policy be reinforced, not torn down.

President Bush is sending Secretary Rice and an enhanced U.S. military presence to Georgia as Russian troops close in on Tblisi. At the time of writing this appears to be a game of chicken—will the Russians pull back to let Secretary Rice land in Georgia or will her plane have to turn back?

How did we get to such a point where force is being used so cavalierly in 2008?

Ironically, the end of the Cold War did not see a renewal of commitment to the regime of peace. The 1990s were an era in which norms against force were diluted—not just by neo-con Americans and messianic Brits but by well-meaning human rights advocates. This latest tragic war for promotion of policy should be the last.

China opposed both the Iraq invasion and the independence of Kosovo. It joined Russia in arguing that Kosovo's independence violates international law. China should be encouraged to join the mediation of this conflict—supporting the international rule of law. Other traditional supporters of peace—the Scandinavians, South Africa, Costa Rica, New Zealand, Canada, Austria, need to renounce any support they might have given to the bizarre concept of war for human rights—killing to save lives—and get involved with resolving this conflict on the basis of international law.

Indeed, the time is right for a general renewal of commitment to peace and the international law that supports it in the face of yet another unlawful, foolhardy, and tragic war.

*Mary Ellen O'Connell holds the Robert and Marion Short Chair in Law and is a fellow of the Kroc Institute for Peace Studies at the University of Notre Dame. She has published widely on international law, especially the law on the use of force and the peaceful settlement of disputes. Her books include *The Power and Purpose of International Law* (Oxford University Press 2008). This article builds on Professor O'Connell's recent guest post at the *IntLawGrrls* blog. For a discussion on the 'Responsibility to Peace', see the February 2008 edition of *Foreign Voices*.*

About the author:

Mary Ellen O'Connell holds the Robert and Marion Short Chair in Law and is a fellow of the Kroc Institute for Peace Studies at the University of Notre Dame. She has published widely on international law, especially the law on the use of force and the peaceful settlement of disputes.