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Regime change on the pretext of forcible protection of nationals abroad: selected case studies including Ukraine, Dominicana and Egypt

Beginning a large-scale military attack on Ukraine, the Russian Federation has been using the language of the law to defend its actions. As Elizabeth Wilmshurst notes, “in all the recent verbiage of President Vladimir Putin, some attempts at legal arguments can be elicited”¹. According to Marko Milanovic, the President of the Russian Federation made three possible arguments in his 24 February declaration of the invasion².

First, Russia is using force in self-defence, under Article 51 of the Charter of the United Nations³, to protect itself from threats emanating from Ukraine. Putin referred to the “further expansion of the infrastructure of the North Atlantic Alliance and”, the military development of the territories of Ukraine as creating an “anti-Russia” comprising a “real threat not just to our interests, but to the very existence of our state, its sovereignty”⁴.

The two remaining arguments are collective self-defence of the Donetsk and Luhansk republics, and “something like a humanitarian intervention argument”⁵ that Russia is acting to stop/prevent a “genocide” of Russians in Eastern Ukraine⁶.

¹ E. Wilmshurst, *Ukraine: Debunking Russia's legal justifications*, Chatham House, 24 February 2022, <https://www.chathamhouse.org/2022/02/ukraine-debunking-russias-legal-justifications> (accessed: 5.06.2022).

² M. Milanovic, *What is Russia's Legal Justification for Using Force against Ukraine?*, EJIL: Talk, 24 February 2022, <https://www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/> (accessed: 5.06.2022).

³ Charter of the United Nations and Statute of the International Court of Justice, 26 June 1945, 1 UNTS 16, Article 51.

⁴ President of Russia, Address by the President of the Russian Federation, 24 February 2022.

⁵ M. Milanovic, *op. cit.*

⁶ Address of the President, *op. cit.*

The latter argument and statements of other Russian senior officials detailed below indicate a potentially leading Kremlin's justification for using force in and against Ukraine⁷. Protection of nationals abroad involves an intervention by one State, represented by its armed forces, into another State to protect the lives of its citizens⁸. Historically, a rescue mission of a state's citizens or a monarch's subjects was a response to injury or insult. It was cloaked in terms of the maintenance of national honour and, as such, was used to justify a wide range of actions, including the use of force⁹. There is little doubt that before 1945 forcible protection of nationals extraterritorially was permitted¹⁰. Subsequently, the right was widely recognized and was exercised by certain powerful States. Even those who argue that the right no longer has existed since 1945 concede that "[t]he jurists of the nineteenth century universally considered as lawful the use of force to protect the lives and property of nationals"¹¹. Also after 1945, multiple States, including the United States, the United Kingdom, Israel, France, and Belgium have consistently asserted that the defence of nationals remains an acceptable justification for the use of force. Moreover, the view has been widely accepted by the international community, at least concerning hostage rescue and crisis evacuation military operations. Quite a scarce State practice regarding the third form of extraterritorial defence of nationals, forcible protection in host States, has been much more controversial in reception.

The most recent case of forcible protection of nationals abroad in its maximalist interpretation is, at least according to the Kremlin's narrative, the February 2022 Russian invasion of Ukraine. Its permissibility under the Charter of the United Nations is questionable, to say the least, and will be discussed below based on an examination of State practice, military doctrine documents and a cursory review of the literature.

While the Russian claim involves armed protection of Russian nationals in the territory of Ukraine, the officially confirmed goal of the mission is

⁷ Forcible protection of nationals abroad is usually regarded as permissible under contemporary right to use force for self-defence as recognized by Article 51 of the UN Charter. R. Fordoński identifies, however, 5 more grounds of its admissibility in contemporary international law. See R. Fordoński, *Forcible Protection of Nationals Abroad: Study of Contemporary Law and State Practice*, Olsztyn 2016, p. 15.

⁸ T. Ruys, *The "Protection of Nationals" Doctrine Revisited*, "Oxford Journal of Conflict and Security Law" 2008, Vol. 13, Issue 2, p. 234.

⁹ A.W.R. Thomson, *Doctrine of the Protection of Nationals Abroad: Rise of the Non-Combatant Evacuation Operation*, "Washington University Global Studies Law Review" 2012, Vol. 11, Issue 3, p. 631.

¹⁰ I. Brownlie, *International Law and the Use of Force by States*, Oxford 1963, p. 289; C.H.M. Waldock, *The regulation of the use of force by individual states in international law*, "Recueil des cours de l'Académie de droit international de La Haye" 1952, Vol. 81, Issue 2, p. 467.

¹¹ K.E. Eichensehr, *Defending nationals abroad: assessing the lawfulness of forcible hostage rescues*, "Virginia Journal of International Law" 2007, No. 48, p. 459.

a forcible change of government in Kyiv as well¹². Does the contemporary concept of forcible protection of nationals extraterritorially involve the permissibility of regime change in the targeted country?

To address both questions, the following analysis describes the factual grounds of the current Russian intervention in Ukraine concerning the presence of Russian citizens in Ukraine. It presents the Russian claim concerning the forcible protection of nationals in Ukraine. The second part of the analysis involves a discussion concerning three cases of forcible protection of nationals abroad involving the prolonged military presence and attempted regime change in the host State.

Citizens of the Russian Federation in Ukraine

Article 61 para. 2 of the Russian constitution guarantees citizens “protection and patronage” even “beyond the borders” of Russian territory¹³.

Immediately following the annexation of Crimea, pro-Russian protests started also in three eastern Ukrainian cities – Kharkiv, Luhansk and Donetsk. On 11 May 2014, the separatists organized referenda on self-rule, in which a majority of voters supported the independence of these regions from Ukraine. As a result, on the next day, the leaders of the separatists declared the creation of the Donetsk People’s Republic (DPR) and Luhansk People’s Republic (LPR). Even more, attention was attracted by president Putin’s decision in February 2017 to sign the Executive Order On Recognition in the Russian Federation of Documents and Vehicle Registration Plates Issued to Ukrainian Citizens and Stateless Persons Permanently Residing in Certain Districts of Ukraine’s Donetsk and Lugansk Regions, which allows people living in those two self-proclaimed republics to travel, work and study in Russia. Kyiv authorities called it “another proof of Russian occupation as well as Russian violation of international law”¹⁴.

¹² *Russia doesn’t recognize current Ukrainian govt as democratic – Lavrov*, Interfax, 25 February 2022, <https://interfax.com/newsroom/top-stories/74257/> (accessed: 5.06.2022); *Goal of Russia’s operation in Ukraine is hold puppet regime accountable – Foreign Ministry*, TASS, 25 February 2022, <https://tass.com/world/1411471> (accessed: 5.06.2022); *Zelensky buries Minsk Agreements, draws Ukraine into NATO – Volodin*, Interfax, 25 February 2022, <https://interfax.com/newsroom/top-stories/74294/> (accessed: 5.06.2022); *Russian lawmaker calls on Ukrainians to lay down weapons and refrain from mobilizations*, TASS, 24 February 2022, <https://tass.com/politics/1409965> (accessed: 5.06.2022); A. Osborn, P. Nikolskaya, *Russia’s Putin authorises ‘special military operation’ against Ukraine*, Reuters, 24 February 2022, <https://www.reuters.com/world/europe/russias-putin-authorises-military-operations-donbass-domestic-media-2022-02-24/> (accessed: 5.06.2022).

¹³ F. Burkhardt, *Passports as Pretext: How Russia’s Invasion of Ukraine Could Start*, War on the Rocks, 17 February 2022, <https://warontherocks.com/2022/02/passports-as-pretext-how-russias-war-on-ukraine-could-start/> (accessed: 5.06.2022).

¹⁴ A. Kleczkowska, *Explaining the Meaning of ‘Grey Zones’ in Public International Law Based on the Example of the Conflict in Ukraine*, “Contemporary Central and East European Law” 2019, No. 1, pp. 85–86.

The biggest objection though was raised by the Executive Order identifying groups of persons entitled to a fast-track procedure when applying for Russian citizenship on humanitarian grounds, signed by president Putin on 24 April 2019. That day the Kremlin published Decree No. 183, allowing simplified naturalisation for those with permanent residence in the Donbas territories that are not under the control of the Ukrainian central government. On 29 April Putin extended the circle of people entitled to the simplified procedure in a second decree (No. 187). Since then, the procedure has also applied to those who had their residence on the present territory of the two “People’s Republics” before they were proclaimed in April 2014 and who have documents that allow them to stay in the Russian Federation. Finally, in mid-July, Decree No. 343 extended the regulations on the original place of residence contained in Decree No. 187. From now on, the entire Donetsk and Luhansk regions, i.e. including those territories that were or are under the control of the Ukrainian central government, are considered the original place of residence¹⁵.

While the then Ukrainian Foreign Minister, Pavlo Klimkin, categorised passport station as a violation of state sovereignty and a further step in the “occupation” of his country, the European Council noted in its 20 June 2019 conclusions that passport station is contrary to both “the spirit and the objectives” of the Minsk Protocol. In October 2019, the European Union Commission issued guidance to create the basis for the non-recognition of such passports by its Member States¹⁶. As result, the Federal Government of Germany joined the EU in labelling the Russian passport station policy “a blatant violation of the sovereignty of Ukraine”. It consequently treated the nationalization of Ukrainian citizens residing in the Donetsk and Lugansk regions of Ukraine as not having any legal consequences for Germany. In response to a parliamentary question, the Federal Government in Berlin declared its view that “the issuing of Russian passports does not entail the acquisition of Russian citizenship”¹⁷.

Despite being rejected by the international community, Moscow’s passport station continued unabated. Governor of the Rostov Region, Vasily Golubev said during a press conference on 27 January 2022 that more than 720,000 residents of the DPR and LPR have so far exercised their right to obtain Russian citizenship under a simplified procedure¹⁸.

¹⁵ F. Burkhardt, *Russia’s “Passportisation” of the Donbas: The Mass Naturalisation of Ukrainians Is More Than a Foreign Policy Tool*, Stiftung Wissenschaft und Politik, 3 August 2020, <https://www.swp-berlin.org/10.18449/2020C41/> (accessed: 5.06.2022).

¹⁶ Ibidem.

¹⁷ S. Talmon, M. Lobo, *The Russian policy of “passportisation” in Ukraine’s Donetsk and Lugansk regions as a violation of the sovereignty of Ukraine*, “German Practice in International Law”, 9 July 2020.

¹⁸ *Rostov governor reveals how many Donbass residents obtained Russian citizenship*, TASS, 27 January 2022, <https://tass.com/world/1394013> (accessed: 5.06.2022).

Russian claim concerning forcible protection of nationals in Ukraine

The Russian discourse on Russian citizens in the Donbas has steadily escalated since spring 2021¹⁹. During the first major Russian troop buildup at the Ukrainian border deputy head of Russia's presidential administration Dmitry Kozak said that Russian forces could intervene to "defend Russian citizens" if Ukraine started military actions against the Donbas "republics". "Everything depends on the scale of the conflagration". He also warned that an escalation in Donbas could mark the "beginning of the end" for Ukraine – "not a shot in the leg, but the face"²⁰.

Russian Deputy Foreign Minister Sergei Ryabkov reaffirmed on 13 April 2021 that "if there is any escalation, we will do everything to ensure our security and the security of our citizens whenever they are"²¹.

In early December 2021, the deputy chairman of the Federation Council, Konstantin Kosachev, declared that Russia "without any doubt had the right to protect its citizens" from "military aggression"²². In late December, Foreign Minister Lavrov doubled down on this rhetoric, repeating that Russia would "undertake all necessary steps for the protection" of its citizens in the Donbas²³.

On 14 February 2022, Russia's ambassador to the European Union, Vladimir Chizhov said in an interview for the *Guardian* Moscow would be within its rights to launch a "counterattack" if it felt it needed to protect Russian citizens living in eastern Ukraine: "We will not invade Ukraine unless we are provoked to do that. If the Ukrainians launch an attack against Russia, you shouldn't be surprised if we counterattack. Or, if they start blatantly killing Russian citizens anywhere – Donbas or wherever"²⁴.

The following day, the State Duma adopted a petition asking President Putin to immediately initiate formal recognition of the DPR and LPR. While the Duma accused Ukraine's government of committing a "genocide against

¹⁹ In August 2014 Foreign Minister Lavrov denied Russia had intentions to send troops there. He did say, however, that Russia would take military action if Russian citizens were under attack: "An aggression against Russian citizens is equal to an aggression against Russia itself" – F. Burkhardt, *Russia's "Passportisation"...*

²⁰ *Ukraine conflict: Moscow could 'defend' Russia-backed rebels*, BBC News, 9 April 2021, <https://www.bbc.com/news/world-europe-56678665> (accessed: 5.06.2022).

²¹ V. Isachenkov, *Russia says troop buildup near Ukraine is a response to NATO*, AP News, 13 April 2021, <https://apnews.com/article/ukraine-moscow-russia-sergei-shoigu-united-states-9e-23a53ca4db61dab2fbf7897d60b1be> (accessed: 5.06.2022).

²² F. Burkhardt, *Russia's "Passportisation"...*

²³ *Ibidem*.

²⁴ D. Boffey, S. Walker, *Russian envoy warns of right to counterattack in eastern Ukraine*, *The Guardian*, 14 February 2022, <https://www.theguardian.com/world/2022/feb/14/russian-envoy-warns-of-right-to-counterattack-in-eastern-ukraine>; *Russia to provide response to Ukraine should it attack or kill Russian citizens – envoy*, TASS, 15 February 2022, <https://tass.com/politics/1403303> (accessed: 5.06.2022).

its people”, its Speaker Viacheslav Volodin stated that “a solution needs to be found to guarantee the security of our citizens and compatriots”²⁵. His view was immediately shared by Federation Council speaker Valentina Matviyenko. “The unrecognized republics are home to many thousands of Russian citizens. We will not fail them in times of trouble, we will defend them. We will do everything we need to protect them. Naturally, our response will be proportionate to the aggression”²⁶.

Russia is ready to protect Russian citizens in the self-proclaimed Donetsk and Lugansk people’s republics if their lives are in danger, Speaker Volodin confirmed on Telegram on 19 February 2022. “If danger arises to the lives of Russians and compatriots living in the DPR and LPR, our country will defend them”²⁷. “It is no coincidence that the State Duma deputies expressed the need to recognize the DPR and LPR as sovereign states. (...) We are concerned about the protection of [our] Russian citizens and compatriots living there”, he emphasized²⁸.

Speaking at the Federation Council on 22 February 2022, the Russian Deputy Defense Minister Nikolai Pankov pointed out: “We must protect the inhabitants of these young states, many of them, hundreds of thousands, are citizens of the Russian Federation”²⁹.

After recognizing the independence of the DPR and LPR, and ratifying the treaties on friendship, cooperation and mutual aid on 22 February, Volodin wrote on his Telegram channel it should put a stop to “the slaughter and death of our citizens and compatriots living there”³⁰.

Finally, Ukraine considered Russia’s recognition and support for the DPR and LPR as an “act of armed aggression against Kyiv” under the pretext of “protecting” the Russian population in the temporarily occupied territories of Ukraine³¹.

²⁵ F. Burkhardt, *Russia’s “Passportisation”...*

²⁶ *Russia to give proportionate response if Kiev invades DPR, LPR – parliament speaker*, TASS, 16 February 2022, <https://tass.com/politics/1404015> (accessed: 5.06.2022).

²⁷ *Russia to protect its citizens in Donetsk, Lugansk if they are in danger – Duma speaker*, TASS, 19 February 2022, <https://tass.com/politics/1406317> (accessed: 5.06.2022).

²⁸ *Duma speaker points to Zelensky’s comments as proof of Kiev’s true intentions*, TASS, 18 February 2022, <https://tass.com/world/1405745> (accessed: 5.06.2022).

²⁹ *Deputy Minister of Defense of the Russian Federation Pankov announced the need to take under the protection of the inhabitants of the DPR and LPR*, Time News, 22 February 2022, <https://time.news/deputy-minister-of-defense-of-the-russian-federation-pankov-announced-the-need-to-take-under-the-protection-of-the-inhabitants-of-the-dpr-and-lpr/> (accessed: 5.06.2022).

³⁰ *Speaker says recognizing Donbass’ independence should end bloodshed, deaths of civilians*, TASS, 22 February 2022, <https://tass.com/world/1408001> (accessed: 5.06.2022).

³¹ Ministry of Foreign Affairs of Ukraine, Statement of the Ministry of Foreign Affairs of Ukraine on the decision of the Federation Council of the Russian Federation on the use of the Armed Forces of the Russian Federation abroad, 23 February 2022, <https://mfa.gov.ua/en/news/statement-ministry-foreign-affairs-ukraine-decision-federation-council-russian-federation-use-armed-forces-russian-federation-abroad> (accessed: 5.06.2022).

Forcible protection of nationals abroad and regime change in the targeted State

While the right of forcible protection of nationals abroad has been systematically limited to the right to rescue individuals being in direct and imminent danger for their lives, foremost hostages since 1945³², the major question remains whether the contemporary concept involves a prolonged military presence and regime change in the host State to re-establish the security of protected nationals remaining there.

UK-French invasion of Egypt (1956)

The first State to pursue the goal of regime change under the pretext of the protection of nationals' doctrine after 1945 was the United Kingdom, which invoked it to justify the Anglo-French intervention during the 1956 Suez crisis.

The crisis began when Egypt's President Gamal Abdel Nasser announced the intention of his government to nationalise the Suez Canal, owned and operated by the joint British-French enterprise since its construction in 1869. In response, London and Paris held secret military consultations with Israel, resulting in the creation of a joint plan to invade Egypt and overthrow its President³³. As the plan failed, Prime Minister Anthony Eden stated before the House of Commons that "there is nothing (...) in the [UN] Charter which abrogates the right of a Government to take such steps as are essential to protect the lives of their citizens"³⁴.

Selwyn Lloyd, Secretary of State for Foreign Affairs, argued that "self-defence undoubtedly includes a situation where the lives of the State's nationals abroad are in imminent danger". His comments included three criteria for when protection of nationals operation would meet the requirements of customary international law: "The first is where there is an imminent threat of injury to our nationals. (...) The second is where there is a failure or inability on the part of the territorial sovereign to protect the nationals in question. The third is where the measures of protection are strictly confined to the object of protecting the nationals against injury"³⁵.

A considerable number of States, including the Soviet Union, took a negative stance on the intervention. It was also generally agreed that the British justification lacked any foundation. British lives were not imminently threat-

³² R. Fordoński, *op. cit.*, p. 206.

³³ U.S. Department of State Office of the Historian, *The Suez Crisis*, 1956.

³⁴ R. Fordoński, *op. cit.*, p. 25.

³⁵ *Ibidem*.

ened, and, even if one would hold otherwise, the bombing of Egyptian airports and the continued occupation of key positions along the Canal went beyond what was necessary for the protection of British residents. It should be also noted that the UK government advanced its position even against the advice of its Law Officers, forcing Prime Minister Anthony Eden to declare “lawyers are always against us doing anything. For God’s sake keep them out of it. This is a political affair”³⁶.

U.S. intervention in Dominicana (1965)

In April 1965 fighting between rival factions in the Dominican Republic plunged the country into anarchy. Washington took its first public action on 26 April, announcing that it harboured no intention of intervening in the conflict. Simultaneously, President Lyndon Johnson ordered the Secretary of Defence “to put the necessary American troops ashore to give protection to hundreds of Americans who are still in the Dominican Republic and to escort them safely back to this country”³⁷.

On 30 April 1965, Johnson advanced a new argument for US intervention, namely, that “people trained outside the Dominican Republic are seeking to gain control” of the country³⁸.

Two days later, while once again maintaining that the mission of the troops was solely to protect and evacuate the US and other foreign nationals, Johnson publicly asserted that the Dominican revolution had been “seized and placed in the hands of a band of Communist conspirators (...) [m]any of them trained in Cuba”. He did not attempt to justify the dispatch of additional U.S. forces by continued reliance upon the protection of national arguments. Instead, the President proclaimed what came to be known as the Johnson Doctrine, namely, that “[t]he American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere”³⁹.

The appraisal of third States was mixed. Several States expressed understanding for the operation, with the UK and the Netherlands conveying their gratitude for the saving of their nationals. France, while acknowledging US interest in protecting its nationals there, cautioned that “such operations must be limited in an objective, duration, and scale, or run the risk of becoming armed intervention, for which there appeared to be no need in this case”⁴⁰. Indeed, Washington openly declared before the Security Council that it could

³⁶ *Ibidem*, p. 26.

³⁷ *Ibidem*, p. 85.

³⁸ *Ibidem*.

³⁹ *Ibidem*, p. 86.

⁴⁰ *Ibidem*, p. 87.

not permit “the establishment of another communist government in the western hemisphere”⁴¹.

The Soviet Union and Cuba spared no effort to clarify that the “protection of nationals” was nothing but a pretext for intervention. It is difficult, however, to determine whether States denouncing the action were opposed to “protection of nationals” *per se* or saw the intervention as an abusive application thereof (only Cuba explicitly rejected the doctrine as such)⁴².

Criticism of the Johnson administration’s action was widespread also in the U.S. Most scholars agreed with Senator William Fullbright that the “danger to American lives was more a pretext than a reason for the massive US intervention”⁴³.

Ved Nanda pointed out that “the United States action was not limited in its objective [to] protecting the lives of its nationals; furthermore, it was not limited in its scope or duration either”⁴⁴.

Richard Lillich also expressed a similar view: “When you are talking about evacuating citizens, this is a limited objective, and, of course, you must evacuate them as rapidly as possible”⁴⁵.

While acknowledging, like Nanda, that “[t]here is respectable authority for the view that the original limited intervention to protect US citizens from imminent danger, in a situation of anarchy, did not violate international law”, Wolfgang Friedmann believed the massive build-up and continued presence of U.S. forces in the Dominican Republic to be “patently, by standards of international law, an illegal action” and “intervention in the internal affairs of another small power by a big power, to effect a change of political regime”⁴⁶.

U.S. invasion of Panama (1989)

On 20 December 1989, U.S. forces invaded the tiny Central American Republic of Panama and the country’s leader, General Antonio Manuel Noriega, who sought refuge in the Vatican Embassy in Panama, was persuaded to give himself up to U.S. authorities⁴⁷.

President George H. W. Bush justified the U.S. use of military force in Panama in part as “an exercise of self-defence recognized in Article 51 of the

⁴¹ *Ibidem*, p. 88.

⁴² *Ibidem*.

⁴³ *Ibidem*, p. 89.

⁴⁴ R. Fordoński, *op. cit.*, p. 90.

⁴⁵ V.P. Nanda, *The United States’ action in the 1965 Dominican crisis: impact on world order-Part I*, “Denver Law Journal” 1966, No. 43, p. 472.

⁴⁶ W. Friedmann, *United States Policy and the Crisis of International Law*, “American Journal of International Law” 1965, No. 59, p. 867.

⁴⁷ R. Fordoński, *op. cit.*, p. 41.

United Nations Charter (...) and to fulfil our responsibilities under the Panama Canal Treaties”. As the President noted in his report, a US Marine officer had been killed, a US Navy officer had been beaten, and the naval officer’s wife had been abused and threatened as part of “[a] series of vicious and brutal acts directed at U.S. personnel and dependents” in Panama by elements of the Panama Defense Forces. Subsequently, the “deployment of US Forces is an exercise of the right of self-defence recognized in Article 51 of the United Nations Charter and was necessary to protect American lives in imminent danger”⁴⁸.

According to the Department of State, the operation had four objectives: (1) to safeguard the lives of Americans in Panama, (2) to protect the democratic election process, and (3) to apprehend Noriega and bring him to the United States to stand trial for drug trafficking, and (4) to protect the integrity of the Panama Canal Treaty⁴⁹.

International law experts said the first reason is the strongest and the last the weakest. Secretary of State James Baker also emphasized that the “leading objective” of the US military action had been “to protect American lives”⁵⁰.

Reaction to the invasion was generally negative. By a narrow margin, the General Assembly passed a resolution condemning the Panama invasion⁵¹. All Latin American nations condemned the incursion. The Soviet Union called the operation “a violation of the United Nations Charter and the universally accepted norms of behaviour between sovereign states”. China simply labelled it “a violation of international law”. The UK and other Western nations were supportive of the operation. The U.S., UK, and France vetoed a Security Council resolution condemning the invasion⁵².

Conclusions

As detailed above, the Russian Federation has advanced the concept of forceful protection of nationals extraterritorially as one of the justifications for its use of force against Ukraine in spring 2022.

First, the forcible protection exception to Article 2(4) of the UN Charter does not apply to the situation of “Russian citizens in Ukraine”, including in Donbas in spring 2022. Russia has had no “right to protect its citizens” from “military aggression” since there are no Russian citizens in the self-proclaimed

⁴⁸ *Ibidem*.

⁴⁹ *Ibidem*.

⁵⁰ *Ibidem*, p. 44.

⁵¹ G.A. Res. 44/240, U.N. Doc. A/RES/44/240, 29 December 1989, para. 1.

⁵² R. Fordoński, *op. cit.*, p. 44.

Donetsk and Lugansk people's republics. Put it simply, "the issuing of Russian passports [by the Russian government] does not entail the acquisition of Russian citizenship".

Second, the invasion's *modus operandi* raises the question of whether the post-1945 concept involves armed protection of nationals in the territory of the host State and regime change in the targeted country.

It cannot be denied that States do use force to protect nationals. Moreover, States that have not overtly claimed a right to rescue nationals have been reluctant to deny the existence of the right when it has been exercised by others⁵³. When States have tried to justify uses of force because they were acting to protect their nationals in danger in another state, "countries condemning these cases of intervention have always preferred to deny the existence of a situation of danger, rather than deny the very existence of the right to use force"⁵⁴. In other words, condemning States have questioned the threat posed to the nationals who were supposedly in danger or questioned whether the claim of defence of nationals served as a mere pretence for other ambitions by the intervening State⁵⁵.

The contemporary concept is, however, understood as "the use of armed force by a state to remove its nationals from another state where their lives are in actual or imminent peril"⁵⁶. Accordingly, regarding the nature of the operation, known currently as Non-combatant Evacuation Operation (NEO) – it is a "limited intervention operation", "fundamentally defensive in nature", involving "swift insertions of force, temporary occupation of an objective, and a planned withdrawal upon completion of the mission"⁵⁷. According to the Canadian NEO doctrine, these operations "are conducted to reduce to a minimum the number of [nationals] at risk and to protect them during the evacuation process. They are not an intervention in the issues in the host nation"⁵⁸.

Tom Ruys observes that the contemporary concept of protection of nationals abroad cannot be used to justify a prolonged stay in a foreign State⁵⁹. This "right to removal"⁶⁰ does involve neither the armed protection of nationals in the territory of the host State nor the permissibility of regime change in the targeted country.

The Russian invocation of the contemporary concept of forcible protection of nationals abroad in the context of its invasion of Ukraine is baseless and legally ineffective if followed in the international forum.

⁵³ K.E. Eichensehr, *op. cit.*, p. 460.

⁵⁴ *Ibidem.*

⁵⁵ *Ibidem.*

⁵⁶ A.C. Arend, R.J. Beck, *International Law and The Use of Force*, New York 1993, p. 94.

⁵⁷ R. Fordoński, *op. cit.*, p. 201.

⁵⁸ *Ibidem.*

⁵⁹ T. Ruys, *op. cit.*, p. 264.

⁶⁰ A.W.R. Thomson, *op. cit.*, p. 662.

References

- Arend A.C., Beck R.J., *International Law and The Use of Force*, Routledge, New York 1993.
- Brownlie I., *International Law and the Use of Force by States*, Clarendon Press, Oxford 1963.
- Friedmann W., *United States Policy and the Crisis of International Law*, "American Journal of International Law" 1965, No. 59.
- Fordoński R. *Forcible Protection of Nationals Abroad: Study of Contemporary Law and State Practice*, University of Warmia and Mazury Press, Olsztyn 2016.
- Eichensehr K. E., *Defending nationals abroad: assessing the lawfulness of forcible hostage rescues*, "Virginia Journal of International Law" 2007, No. 48.
- Kleczkowska A., *Explaining the Meaning of 'Grey Zones' in Public International Law Based on the Example of the Conflict in Ukraine*, "Contemporary Central and East European Law" 2019, No. 1.
- Nanda V.P., *The United States action in the 1965 Dominican crisis: impact on world order-Part I*, "Denver Law Journal" 1966, No. 43.
- Ruys T., *The "Protection of Nationals" Doctrine Revisited*, "Oxford Journal of Conflict and Security Law" 2008, Vol. 13, Issue 2.
- Thomson A.W.R., *Doctrine of the Protection of Nationals Abroad: Rise of the Non-Combatant Evacuation Operation*, "Washington University Global Studies Law Review" 2012, Vol. 11, Issue 3.
- Waldock C.H.M., *The regulation of the use of force by individual states in international law*, "Recueil des cours de l'Academie de droit international de La Haye" 1952, Vol. 81, Issue 2.

Summary

Regime change on the pretext of forcible protection of nationals abroad: selected case studies including Ukraine, Dominicana and Egypt

Keywords: international law, Ukraine, Russian Federation, use of force, protection of nationals abroad, regime change.

Since 1945, multiple States, including the United States, the United Kingdom, Israel, France, and Belgium have consistently asserted that protecting the lives of their citizens caught in violence abroad remains an acceptable justification for the use of force. The view has been widely accepted by the international community, at least concerning hostage rescue and crisis evacuation military operations. Quite a scarce State practice regarding the third form of extraterritorial defence of nationals, forcible protection in the host State, is much more controversial in reception. The Article aims to discuss the permissibility of such protection on the example of the February 2022 Russian invasion of Ukraine. As Moscow failed to achieve what was likely its main

political objective, to overthrow the Kyiv government in a blitzkrieg military campaign, the analysis also addresses the question of whether the contemporary concept of extraterritorial protection of nationals from imminent danger involves permissibility of regime change in the targeted State. The result of the analysis is unambiguous. Based on an examination of State practice, military doctrine documents and a cursory review of literature, the Article rejects the Kremlin's claims involving both protection of Russian citizens in the territory of Ukraine and regime change in the targeted country.

Streszczenie

Zmiana rządu pod pretekstem ekstraterytorialnej ochrony obywateli przy użyciu siły zbrojnej: wybrane studia przypadku Ukrainy, Dominikany i Egiptu

Słowa kluczowe: prawo międzynarodowe, Ukraina, Federacja Rosyjska, użycie siły w stosunkach międzynarodowych, ekstraterytorialna ochrona obywateli za granicą przy użyciu siły zbrojnej, interwencja zbrojna w celu zmiany rządu.

W sytuacji, w której Federacja Rosyjska podjęła karkołomną próbę uzasadnienia pełnoskalowej agresji na Ukrainę w świetle zakazu użycia siły zbrojnej we współczesnym prawie międzynarodowym, artykuł podejmuje potencjalnie kluczowy wątek narracji rosyjskiej – konieczność obrony liczącej ponad 700 tys. osób grupy posiadaczy paszportów Federacji Rosyjskiej, zamieszkujących terytoria donieckiej i ługańskiej republik ludowych, przez zbrojną agresją „nazistowskiego reżimu w Kijowie”. Celem artykułu jest ocena skutków prawnych akcji tzw. paszportyzacji na okupowanych przez Rosję terytoriach Ukrainy z perspektywy prawa do ochrony własnych obywateli na terytorium innego państwa oraz zakres uprawnienia do użycia siły zbrojnej w tym celu. Prezentacja wybranych przykładów praktyki państw po 1945 r. oraz komentarzy doktryny do niej dowodzi bowiem akceptacji większości członków wspólnoty międzynarodowej dopuszczalności transgranicznego użycia siły we wskazanym celu, pod warunkiem ograniczenia przedsięwziętych środków wojskowych do ewakuacji znajdujących się w bezpośrednim niebezpieczeństwie obywateli własnych oraz państw trzecich ze strefy zagrożenia. Prawo to nie rozciąga się na dopuszczalność ustanowienia efektywnej kontroli nad terytorium innego państwa w celu ochrony własnych obywateli. Zmiana rządu w drodze interwencji zbrojnej jest również każdorazowo nadużyciem prawa do ekstraterytorialnej ochrony przynależnych przy użyciu siły zbrojnej.

