

UNIVERSITY OF TARTU
FACULTY OF LAW
Institute of Constitutional
and International Law

Mari Alavere

**THE USE OF ARMED FORCE AND
PROTECTING NATIONALS ABROAD
IN LIGHT OF THE CRIMEAN CRISIS**

Master's Thesis

Supervisor
Dr. iur. René Värk

Tartu
2015

Table of Contents

Introduction	4
1. Legal Justifications for the Use of Force in the Modern Law	8
2. The Doctrine of Protecting Nationals Abroad.....	14
2.1. Theory	14
2.1.1. Protecting Nationals Abroad as an Action That Does Not Constitute a Use of Force within the Meaning of Article 2(4)	16
2.1.2. Protecting Nationals Abroad as Self-Defence	20
2.2. State Practice: An Overview of Invocations of the Doctrine After the Adoption of the Charter	25
2.2.1. The UK in Iran in 1946 and 1951 and in Egypt in 1952	26
2.2.2. The Suez Canal Case in 1956	26
2.2.3. The USA in Lebanon in 1958.....	27
2.2.4. Belgium in Congo in 1960 and With the USA in 1964.....	28
2.2.5. The USA in the Dominican Republic in 1965.....	30
2.2.6. The Mayaguez Incident in 1975	31
2.2.7. The Entebbe Raid in 1976	31
2.2.8. The Larnaca Incident in 1978.....	33
2.2.9. The Tehran Hostage Crisis in 1980	34
2.2.10. The Granada and Panama Incidents in 1983 and 1989.....	35
2.2.11. The USA in Libya in 1986, in Sudan and Afghanistan in 1998	36
2.2.12. Russian Intervention in Georgia in 2008	37
2.3. States' Standpoint While Discussing the Doctrine Beyond the Instances of Its Use	38
2.4. Conclusion	40
3. Non-Combatant Evacuation Operations.....	44
3.1. Theory of NEOs	44
3.2. State Practice Concerning NEOs	47

3.2.1.	Operation Sharp Edge 1990-1991, Operation Assured Response in 1996 and Operation Noble Obelisk in 1997.....	47
3.2.2.	Evacuation Operations in Albania in 1997.....	49
3.2.3.	The Thai Evacuation Operation in Cambodia in 2003	49
3.2.4.	Lebanon in 2006	50
3.2.5.	Evacuation Operations in Libya in 2011	50
3.3.	Conclusion	51
4.	Possible Changes in the Doctrine of Protecting Nationals Abroad.....	53
4.1.	State Practice: Russia's Invasion into Ukraine	53
4.1.1.	Historical Background.....	53
4.1.2.	Overview of the Crimean Crisis	55
4.2.	<i>Opinio Iuris</i>	57
4.2.1.	The International Community's Reaction to Russia's Actions in Crimea	57
4.2.2.	Russian <i>Opinio Iuris</i>	60
	Conclusion: <i>De Lege Ferenda</i>	62
	Relvastatud jõu kasutamine ja kodanike kaitsmine välismaal Krimmi kriisi vaguses. Resümee	66
	List of Used Materials	71

Introduction

Throughout history, one of the most important aspects of international law has been sovereignty. In the 20th century a new term has been added to the equation – human rights. However, there is often a conflict between these two concepts because sometimes human rights have to be protected in a way that infringes on the State's sovereignty. This has given rise to discussions about the legality of doctrines which restrict the sovereignty of States such as the protecting nationals abroad doctrine.

The relevance of this topic becomes clear when considering the fact that nowadays, most States are relatively restricted when it comes to the independent use of force. In order to act in a legal way, it is important to understand international rules. What is more, to keep universal peace and security it is necessary to reinforce the valid international rules at place. However, when dealing with international law, this can prove to be complicated due to the fact that these rules are constantly changing. Among other things, technical advancement, changes in international political attitudes and state practice have an impact on international treaty and customary law.

Throughout the coexistence of the doctrine of protecting nationals abroad with the United Nations (UN) Charter, scholars and States have never agreed upon its applicability, limits and compatibility with the Charter. The idea behind the doctrine is that a State has the right to protect all persons of its nationality, even though they might be situated in another State's territory and so, States claim to have an excuse to intervene with the latter's territorial integrity, *i.e.* sovereignty.

The Russian Federation is one of the most powerful States in the world, having one of the five permanent seats in the UN Security Council and being the largest territorial State in the world. Therefore, it has a potentially huge impact on the development of international law. What is more, from what can be determined from its behavior it seems Russia also has aspirations to shape the interpretation of international law in a way that is advantageous to Moscow. This however, does not mean that Russia enjoys the right to ignore established rules.

Russia's actions in Crimea since the beginning of the year 2014 can be seen as one of the biggest threats to peace in Europe since the Cold War. These recent events have brought attention to the principle of protecting nationals abroad and the application of said doctrine. Moscow's rhetoric has been that it was rescuing its nationals who were threatened and at risk

outside of Russia and claimed that this was sufficient justification for taking military action against Ukraine and deploying forces in Crimea.

This thesis will examine whether these events might have been cause to a change in the legality of the doctrine. The hypothesis is submitted that since the Russian intervention for the protection of its nationals in Crimea was *prima facie* not in accordance with the rules and limitations of the doctrine, there has been no change.

It is important to understand whether and how Russia has violated the rules of international law. If rules have been broken, a clear comprehension is necessary to find a long-term solution to the crisis. What is more, it can help prevent future analogous conflicts; and regrettably, analogous conflicts are not out of the question. Concerns about expansionist aggression of Moscow have also been expressed in Estonia and other States that share a border with Russia.

Having said that, if there is a clear consensus about the rules of the protecting nationals abroad doctrine, Western Countries, and hopefully others as well, will be able to react faster and more assertively. An understanding of the legality of Russian policy and strategies will make it possible for the international community to stand up for less powerful States' rights that are under attack and to stay undivided while securing international peace.

The aim of this research paper is to examine the legality of the protecting nationals abroad doctrine. In order to do so, first an overview of different legal justifications for the use of force in international law will be given. Here, for the most part the works of C. D. Gray¹ and M. E. O'Connell² will be examined. Additionally, some relevant International Court of Justice (ICJ) cases and the Commentary of the United Nations Charter³ will be studied.

Thereafter a more close analysis of the doctrine of protecting nationals abroad will be conveyed. Both the theory as well as most notable invocations of the doctrine will be examined. Within the framework of this thesis, the author will concentrate solely on the *ius ad bellum* part of the law. This means, the humanitarian law aspects of the Crimean Crisis or any other case will not be discussed, only the question about when a State has the right to intervene in another State's territory.

¹ C. D. Gray. *International Law and the Use of Force*. 3rd edition. New York: Oxford University Press 2008.

² M. E. O'Connell. *Peace and War*. B. Fassbender, A. Peters (editors). *The Oxford Handbook of the History of International Law*. Oxford: Oxford University Press 2012.

³ B. Simma, A. Randelzhofer (editors). *The Charter of the United Nations. A Commentary*. Volume I. 2nd edition. New York: Oxford University Press 2002.

During the analysis of the theory, most frequently works of the following legal scholars will be cited: D. W. Bowett,⁴ I. Brownlie⁵ and A. Cassese⁶. The study of the state practice will primarily be based on several UN Security Council and General Assembly documents, and additionally works of the following authors were referred to: M. Akehurst,⁷ M. D. Evans,⁸ N. Ronzitti,⁹ T. C. Wingfield and J. E. Meyen,¹⁰ and J. R. Dugard¹¹.

Following the chapter about the doctrine of protecting nationals abroad, a relatively new doctrine will be introduced – non-combatant evacuation operations. This is necessary because some scholars have come to the conclusion that the old doctrine has lost its importance and this new doctrine has replaced it. Due to the fact that the doctrine of non-combatant evacuation operations only emerged in the nineties, there is little literature about this topic and state practice is limited. Primarily the works of A. W. R. Thomson¹² and T. Ruys¹³ will be analyzed. What is more, a number of military publications will be used to get an overview of how States have regulated non-combatant evacuation operations in their national legislation.

Subsequently it will be examined whether there is enough evidence to determine if the doctrine of protecting nationals abroad has changed after Russia's intervention in Ukraine and if so, how and what the doctrine's new limitations are. First, a short introduction into the historical background and some of the most important details of the Crimean Crisis will be given. Next, the international community's reaction to Russia's intervention will be given. In addition, an attempt at trying to analyze the possible *opinio iuris* of the Russian Federation will be made.

It should be taken into account that the information regarding the crisis is ambiguous, often one-sided and sometimes contradicting. Nevertheless, the author will try her best to give an objective evaluation of the situation. It should also be considered that while writing this thesis

⁴ D. W. Bowett. *Self-defence in International Law*. Great Britain: Manchester University Press 1958.

⁵ I. Brownlie. *International Law and the Use of Force by States*. New York: Oxford University Press 1963.

⁶ A. Cassese (editor). *The Current Legal Regulation of the Use of Force*. Dordrecht: Martinus Nijhoff Publishers 1986.

⁷ M. Akehurst. *The Use of Force to Protect Nationals Abroad*. – *International Relations* 1977, volume 5

⁸ M. D. Evans (editor). *International Law*. 3rd edition. New York: Oxford University Press 2010.

⁹ N. Ronzitti. *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity*. Dordrecht: Martinus Nijhoff Publishers 1985

¹⁰ T. C. Wingfield, J. E. Meyen (editors). *Lillich on the Forcible Protection of Nationals Abroad*. *International Law Studies*. Vol 77. Newport, Rhode Island: U.S. Naval War College 2002

¹¹ J. R. Dugard. *Special Rapporteur on Diplomatic Protection*. First Report on Diplomatic Protection. International Law Commission. UN Doc. A/CN.4/506. 07.03.2000.

¹² 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, volume 11, issue 3.

¹³ T. Ruys. *The 'Protection of Nationals' Doctrine Revisited*. – *Journal of Conflict & Security Law* 2008, volume 13 number 2.

the author is limited to the information made public until the spring of 2015. Within this chapter, mostly reports by different news outlets and press releases about the Crimean Crisis and Security Council meetings are referred to.

Finally, with a look into the future, the potential *lex ferenda* will be analyzed. After coming to a conclusion about the legality of the use of force for the protection of nationals, the author will suggest possible solutions to the current dissension about the doctrine. The analyzed state practice, positions of States and legal scholars will be taken into account.

1. Legal Justifications for the Use of Force in the Modern Law

One of the most known rules in international law is the prohibition of the use of force. This is true even though it is not a particularly old rule – it came about in the beginning of the 20th century,¹⁴ as a reaction to the atrocities of war, especially the world wars, development of modern weaponry, including nuclear, biological and chemical weapons.¹⁵ During this time, preventing war became the main task of international politics.¹⁶

The international agreements that signify the start of setting limits to the use of force were the Hague conventions.¹⁷ The signatories of the Convention for the Pacific Settlement of International Disputes (Hague I) of 1899 agreed to “use their best efforts to insure the pacific settlement of international differences” and created the Permanent Court of Arbitration to which parties committed to appeal to before turning to arms.¹⁸ Article 1 of the Convention Relative to the Opening of Hostilities (Hague Convention III) of 1907 Stated the obligation to previously explicitly warn the State before commencing to war.¹⁹

Arguably the most significant change derived from the Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (Hague II) of 1907. In this, parties agreed “not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals”.²⁰ Additionally, the League of Nations Covenant tried to restrict the use of force in international law with the help of Article 10 which prohibited States to resort to force in any other case than in self-defence. However, Article 15(7) contradicted Article 10²¹ and so, the Covenant mainly managed to establish an obligatory cooling-off-period, not a prohibition of the use of force *per se*.²²

¹⁴ H. Wehberg, *Krieg und Eroberung Im Wandel des Völkerrechts*. Frankfurt am Main, Berlin: Alfred Metzner Verlag 1953. Pp 21-28.

¹⁵ B. Simma, A. Randelzhofer. P 114.

¹⁶ B. Simma, A. Randelzhofer. P 114.

¹⁷ B. Simma, A. Randelzhofer. P 115.

¹⁸ The Hague Convention for the Pacific Settlement of International Disputes of 1899 (1899 Hague I). Adopted 29.07.1899. Legal citation: 1 Bevens 230; 1 AJIL 103 (1907). Articles 1 and 20.

¹⁹ The Hague Convention Relative to the Opening of Hostilities (1907 Hague III). Adopted 18.10.1907. Legal citation: 205 CTS 264; 1 Bevens 619. Article 1.

²⁰ The Hague Convention Respecting the Limitation of Employment of Force for Recovery of Contract Debts (1907 Hague II). Adopted 18.10.1907. Legal citation: 36 Stat. 2241, 1 Bevens 607. Article 1.

²¹ M. E. O’Connell. P 287.

²² The Covenant of the League of Nations. Adopted 28.06.1919. Legal citation: 225 Parry 195; 1 Hudson 1; 112 BFSP 13; 13 AJIL Supp. 128 (1919). Articles 10-15.

The General Treaty for the Renunciation of War, also known as the Kellogg-Briand-Pact or the Pact of Paris, of 1928 was a turning point in international law.²³ In it the Signatory States agreed not to “recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another” and to settle “all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them” peacefully.²⁴ The idea behind it was to try to prevent future wars, particularly another world war, by only permitting war as means for self-defence. Regrettably, it failed in that objective, even though its provisions became customary international law.²⁵

Still, the League of Nations Covenant and the Kellogg-Briand-Pact served as examples for the United Nations when, after the Second World War, it took upon itself the responsibility to maintain international peace and security.²⁶ The United Nations Charter was signed on 26 June 1945 in San Francisco and entered into force on 24 October 1945.²⁷ Article 2(4) of the Charter, which constitutes the basis of any discussion of the use of force in modern international law,²⁸ states the following: „All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.“²⁹

²³ The Kellogg-Briand Pact, 1928. Milestones: 1921-1936. U.S. Department of State. Office of the Historian. *Sine loco. Sine anno.*

²⁴ Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact). Adopted 27.08.1928. Legal citation: 94 LNTS 57. Articles 1 and 2.

²⁵ B. Simma, A. Randelzhofer. P 116; I. Brownlie. 1963. P 110.

²⁶ I. Brownlie. Principles of Public International Law. 6th edition. New York: Oxford University Press 2003. P 698; M. E. O’Connell. P 287.

²⁷ Charter of the United Nations. Introductory Note.

²⁸ B. Simma, A. Randelzhofer. P 116. An interesting development that happened after the adoption of the Charter was that the word “war” was used considerably less and even war ministries were rebranded as defence ministries. See: M. E. O’Connell. P 290.

²⁹ According to Article 1 of the Charter, the Purposes of the United Nations are:

- 1) to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other reaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
- 2) to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
- 3) to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- 4) to be a center for harmonizing the actions of nations in the attainment of these common ends.

This norm, described by C. H. M. Waldock as the “corner stone of peace in the Charter,”³⁰ is intended to contain the widest possible prohibition on the use of force. It became a part of customary international law³¹ as well as a *ius cogens* norm³² and is therefore also binding to States that have not joined the UN. This is an absolute norm that has to be respected in all circumstances, including the cases in which there are circumstances precluding wrongfulness or a treaty that conflicts with it.³³ It is important to notice that the norm prohibits not only the use of force, but also the threat of force.

However, just as tends to be the case, the general rule has exceptions. The two generally accepted exceptions are provided for in the Charter itself: actions authorized by the UN Security Council deriving from Article 42 and self-defence according to Article 51.³⁴ Additionally, the kind of use of force that does not violate the rules set out in Article 2(4) is permitted. This includes the use of political or economic force, because only the use of military force is prohibited,³⁵ or use of force nationally as opposed to internationally.

Chapter VII contains the right to take collective security enforcement measures that need to be administered by the Security Council. According to Article 24, Member States have trusted the Security Council with primary responsibility for the maintenance of international peace and security. If the Council identifies a threat to the peace, a breach of the peace or an act of aggression, it can use several measures to solve the problem. It can use provisional measures (Article 40), non-military measures (Article 41) or resort to military measures (Article 42). Subsequently, Member States have an obligation to carry out the decisions of the Security Council under Articles 25, 48 and 49.³⁶

³⁰ C. H. M. Waldock. *The Regulation of the Use of Force by Individual States in International Law*. – Collected Courses. Volume 81. 1952-II. Hague Academy of International Law. Dordrecht: Martinus Nijhoff Publishers 1952. P 492.

³¹ I. Brownlie. 1963. P 113; A. Cassese. *International Law*. 2nd edition. New York: Oxford University Press 2005. P 59.

³² N. Schrijver. *Challenges to the Prohibition to Use Force*. In: N. Blokker, N. Schrijver, (editors). *The Security Council and the Use of Force: Theory and Reality – A Need for Change?* Leiden: Martinus Nijhoff Publishers 2005. P 41.

³³ J. R. Fox. *Dictionary of International & Comparative Law*. Dobbs Ferry: Oceana Publications. 1992. P 239; See also: Article 53 of the Vienna Convention on the Law of Treaties.

³⁴ There used to be an additional “transitional” exception to the prohibition of the use of force that has since become obsolete. This exception was provided for in Article 107 of the UN Charter and concerned possible actions against the so-called enemy States.

³⁵ Although there was an amendment proposed by Brazil at the San Francisco Conference of 1945, to also include the prohibition of threat or use of economic measures, but this suggestion was rejected; See: L. L. Sunga. *The Emerging System of International Criminal Law: Developments in Codification and Implementation*. The Hague: Martinus Nijhoff Publishers 1997. P 70.

³⁶ H. Kelsen. *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems*. With Supplement. 7th printing. Union, New Jersey: The Lawbook Exchange 2008. Pp 95-98.

Here, it is important to note that the Security Council consists of 15 Members, 5 of which are permanent and have veto rights. These are the United States of America (USA), the United Kingdom (UK), France, Russia and China. Because of the opposing views of these States on many matters, the Security Council is often dead-locked and therefore inefficient.³⁷

According to Article 51, States have the inherent right of individual or collective self-defence. The use of the word “inherent” means the right to self-defence is inalienable. In order to determine whether use of force is justified, several factors need to be taken into account. Firstly, the provision limits the right so that the State may exercise self-defence solely for the purpose of self-defence, *i.e.* armed force can only be used in the case when an armed attack occurs. The beginning of Article 51 of the UN Charter stipulates: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations /---/.”

In order to determine whether an armed attack against a State exists, Resolution 3314 that set out to define aggression adopted by the UN General Assembly could be examined. Articles 1 and 3 of the resolution State *inter alia*: “Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State /---/. Any of the following acts /---/ shall /---/ qualify as an act of aggression:

- 1) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation /---/ or any annexation /---/;
- 2) the blockade of the ports or coasts of a State by the armed forces of another State /---/;
- 3) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement /---/;
- 4) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State /---/.³⁸

Additionally, the International Court of Justice has emphasized the need to distinguish between the most grave forms of the use of force that constitute an armed attack from less

³⁷ P. Webb. Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria. – Journal of Conflict & Security Law 2014, volume 19(3).

³⁸ Definition of Aggression. Adopted by General Assembly Resolution 3314 (XXIX) of 14.12.1974. Document symbol: A/RES/3314. Articles 1 and 3.

grave forms of the use of force that do not constitute an armed attack in the meaning of Article 51 and as understood in international customary law on the use of force.³⁹

The practice of the ICJ and the opinions of many authors have been in support of the position that an attack has to be attributable to a State for it to be considered an armed attack in the meaning of Article 51 of the Charter of the UN.⁴⁰ However, nowadays this view has been changing due to an ever growing variety of actors that are able and willing to carry out attacks against States. Thus, attacks from non-State actors may also be considered as enough to constitute an “armed attack” within the meaning of Article 51.⁴¹

Furthermore, in some separate opinions of ICJ cases authors have recognized the right of self-defence against non-State actors if the attack amounts to a large-scale attack against the State.⁴² For example, the USA exercised the right of self-defence in Afghanistan against the Taliban after the actions on September 11th. Members of the North-Atlantic Treaty Organization (NATO) and the Inter-American Treaty of Reciprocal Assistance accepted that the attacks of September 11th constituted an armed attack within the meaning of Article 51 of the UN Charter. The principle has also been approved by the Security Council.⁴³

Article 51 further reads: “/---/ Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council /---/.”

This means the State relying on Article 51 has the obligation to report to the Security Council. This, however, is often forgotten about, either on purpose or accidentally. Nevertheless, the absence of reports of armed activities does not stipulate a violation which would exclude the

³⁹ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits. Judgement. ICJ. Reports 1986, p.14. Para 191; Oil Platforms (Islamic Republic of Iran v United States of America), Judgment, ICJ Reports 2003, p 161. Para 51.

⁴⁰ Military and Paramilitary Activities. Paras 131, 195, 229-230; Oil Platforms. Para 51.

⁴¹ In support of this view: E. Wilmshurst, F. Berman, *et al.* The Chatham House Principles of International Law on the Use of Force in Self-Defence Source – The International and Comparative Law Quarterly 2006, volume 55, number 4. Pp 969-971; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Separate Opinion of Judge Higgins. ICJ Reports 2004, p 207. Para 33; However, for an opposing view, see for example: D. W. Bowett. The Use of Force for the Protection of Nationals Abroad. In: A. Cassese. 1986. P 43.

⁴² Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda), Judgment, ICJ Reports 2005, p 168. Separate Opinion of Judge Kooijmans, ICJ Reports 2005, p 306. P 314; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda), Judgment, ICJ Reports 2005, p 168. Separate Opinion of Judge Simma, ICJ Reports 2005, p 334. P 336; For similar Statements, see also: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Declaration of Judge Buergenthal. ICJ Reports 2004, p 240; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Separate Opinion of Judge Kooijmans. ICJ Reports 2004, p 219. Para 35. Legal Consequences of the Construction of a Wall. Declaration of Judge Buergenthal.

⁴³ D. Bethlehem. Notes and Comments. Principles Relevant to the Scope of a State’s Right of Self-Defense Against an Imminent or Actual Armed Attack by Nonsate Actors. – The American Journal of International Law 2012, volume 106:000. P 3.

claim for self-defence.⁴⁴ Even so, a failure to report could weaken the intervening State's legal case that the reason for taking action was indeed self-defence.⁴⁵

Additionally, three crucial prerequisites apply: imminence, necessity and proportionality. These requirements, also called the Webster formula, are often linked to the 1837 Caroline incident⁴⁶ and have become international customary law.⁴⁷ Necessity is interpreted as self-defence being the last resort after all peaceful measures have failed.⁴⁸ Proportionality relates to the size, duration and target of the response and the questions of necessity and proportionality are dependent on the facts of the particular case.⁴⁹

What is more, there have been invocations of the responsibility to protect, pro-democratic interventions, peacekeeping missions and humanitarian interventions as justifications to use force. These doctrines will, however, not be further analyzed in this thesis.

⁴⁴ Military and Paramilitary Activities. Para 235.

⁴⁵ R. Higgins. *The Development of International Law Through the Political Organs of the United Nations*. London, New York, Toronto: Oxford University Press 1963. P 207; Y. Dinstein. *War, Aggression and Self-Defence*. 5th edition. Cambridge: Cambridge University Press 2012. Pp 188, 267, 272.

⁴⁶ Named after the Secretary of State Daniel Webster, who declared that self-defence is allowed if there is "a necessity of self-defence, instant, overwhelming [threat], leaving no choice of means and no moment for deliberation." Letter of Secretary of State Daniel Webster to Special Minister Ashburton, dated 27 July 1842. See also: R. Y. Jennings. *The Caroline and McLeod Cases*. – *American Journal of International Law* 1938, volume 32, number 1. P 89; C. D. Gray. P 148.

⁴⁷ J. O'Brien. *International law*. London: Cavendish Publishing Limited 2001. P 682

⁴⁸ J. Gardam. *Necessity, Proportionality and the Use of Force by States*. Cambridge: Cambridge University Press 2004. P 5.

⁴⁹ C. D. Gray. Pp 150-151.

2. The Doctrine of Protecting Nationals Abroad

2.1. Theory

The problem with defining the doctrine of protecting nationals abroad lies with the fact that no multilateral treaty regulates the protection of nationals abroad doctrine *expressis verbis* and with its complicated history. Generally, it can be said that States refer to the doctrine in cases where the State's nationals are in need of protection within the boundaries of another State, especially where the host State is either unwilling or unable to offer the nationals the needed protection.

However, this doctrine has also been used as justification to protect the property of nationals that is situated in another State. One of the first, albeit controversial, cases of use of force to protect nationals abroad that is discussed in literature is an example of this. In the case of Don Pacifico in 1850, Great Britain laid an embargo on all Greek merchant vessels as reaction to the Greek Government denying compensation to the British citizen for the loss he suffered during a riot.⁵⁰

In some cases, the application of the doctrine has also lead to long-term intervention in the host State to reestablish order and an environment that is secure for the nationals of the intervening State. This has said to be the case for example in the incidents of American interventions into Grenada in 1983 and into Panama in 1989.⁵¹

What is more, in some cases States have invoked the doctrine in order to rescue the nationals of a third State, albeit usually along with the nationals of the rescuing State. These kinds of rescue missions are rather instances of protecting nationals abroad than humanitarian interventions since the objective is to remove the people. Also, humanitarian interventions are used to protect the nationals of the host State.⁵² Compared to humanitarian interventions, a protecting nationals abroad intervention can and should in theory be much less invasive of the host State's territorial integrity or political independence. An example of a rescue mission in

⁵⁰ M. G. Abdullah, M. C. Anderson, *et al.* Don Pacifico Affair. Encyclopædia Britannica Online.; D. W. Bowett. 1958. P 100.

⁵¹ V. P. Nanda. The United States armed intervention in Grenada – impact on world order. – California Western International Law Journal 1984, volume 14. P 411; V. P. Nanda. The Validity of United States Intervention in Panama under International Law. – The American Journal of International Law 1990, volume 84, number 2. P 497.

⁵² T. Ruys. P 234; Other differences also include the fact that humanitarian interventions seem to only be justified when human rights are violated on a massive scale and that while there some authors that argue for the legality of protection of property abroad, humanitarian interventions have not been used for this purpose. See: M. Akehurst. Pp 13-15.

which third States' nationals were evacuated is the German mission in Albania in 1997. During Operation Libelle a total of 120 people from 22 different nationalities were rescued, only 20 of who were German.⁵³

The practice of protecting nationals abroad began in the 16th century, during the awakening of sovereign States. With the beginning of migration of people and capital, States began to protect their nationals abroad by diplomatic means.⁵⁴ An attack on a national was seen as an attack on the State.⁵⁵ A new theory that allowed the use of armed force to protect persecuted nationals abroad appeared. The international law scholar H. Grotius (1585-1645) said: “/---/ Kings, and those who are invested with a Power equal to that of Kings, have a Right to exact Punishments, not only for Injuries committed against themselves, or their Subjects/---/.”⁵⁶

The legal foundation of the doctrine can be seen in the principles of 18th century Swiss legal expert E. de Vattel, who announced: “Whoever ill-treats a citizen indirectly injures the State, which must protect that citizen. The sovereign of the injured citizen must avenge the deed and, if possible, force the aggressor to give full satisfaction or punish him, since otherwise the citizen will not obtain the chief end of civil society, which is protection.”⁵⁷

In the 19th century and the beginning of the 20th century, before the Second World War and the UN Charter, most jurists agreed that the use of the doctrine was allowed.⁵⁸ With that said, the practice of using armed force in order to protect nationals abroad was not uncommon.⁵⁹ However, the doctrine of protecting nationals abroad was interpreted very widely. For example, more than nowadays, the use of armed force in order to protect the property of nationals was accepted.

Additionally, the right to protect nationals abroad was only one of the justifications given for interventions. For instance, the legality of the doctrine was justified as a reprisal against the

⁵³ C. Kreß. Die Rettungsoperation der Bundeswehr in Albanien am 14. März 1997 aus völker- und verfassungsrechtlicher Sicht. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 1997, volume 57. P 331.

⁵⁴ D. S. Weissbrodt. The Human Rights of Non-citizens. New York: Oxford University Press 2008. P 25; For the historic development of diplomatic relations, see also: R. Värk. Diplomaatiline õigus. Tallinn: Juura 2004. Pp 19-35.

⁵⁵ V. Kartashkin. Human Rights and Humanitarian Intervention. In: L. F. Damrosch, D. J. Scheffer (editors). Law and Force in the New International Order. Boulder, San Francisco, Oxford: Westview Press 1991. Pp 202-203.

⁵⁶ R. Tuck. Grotius, Hobbes, and Pufendorf on humanitarian intervention. In: S. Recchia, J. M. Welsh (editors). Just and Unjust Military Interventions. European Thinkers from Victoria to Mill. New York: Cambridge University Press 2013. P 106.

⁵⁷ E. de Vattel. The Law of Nations. Text of 1758, ed. 1916. P 136.

⁵⁸ I. Brownlie. 1963. P 289.

⁵⁹ On some accounts, the United States of America relied on this doctrine at least 70 times between the years 1813 and 1927. See for example: I. Brownlie. 1963. P 290.

host State, as a right to self-preservation or as a right to self-defence. What is more, in some cases it was clear that the reason for using force was not to protect nationals from immediate danger, but to guarantee their safety in the future, reprisals or other political aspirations. Still, these interventions also contained a humanitarian aspect.⁶⁰

After the prohibition of use of force in the Briand-Kellogg Pact in 1928 and during the time of the League of Nations Covenant, the number of jurists supporting the legality of the doctrine decreased.⁶¹ What is more, among the scholars who did support the doctrine, there was still no consensus as to the legal basis of the doctrine: some believed it to be an autonomous right of intervention;⁶² others saw it as a legitimate form of defence.⁶³

Nowadays the doctrine is held to have much narrower application. The creation of the Charter, especially the prohibition on the use of force in Article 2(4), had a huge impact on the doctrine and created a debate over the legality of the doctrine.⁶⁴ In modern law, the doctrine of protecting nationals abroad has two main legal justifications which will be examined subsequently.⁶⁵ Additionally, after researching the protecting nationals abroad, an overview about non-combatant evacuation operations (NEOs) will be given. The reason for this is that there exists a stance that the doctrine of protecting nationals abroad has lost its importance today and in its place this new doctrine has been created.

2.1.1. Protecting Nationals Abroad as an Action That Does Not Constitute a Use of Force within the Meaning of Article 2(4)

The first legal basis for the doctrine of protecting nationals abroad that will be examined is that an intervention in order to protect nationals abroad does not constitute a use of force in the meaning of Article 2(4).

⁶⁰ I. Brownlie. 1963. Pp 290-291.

⁶¹ I. Brownlie. 1963. P 292.

⁶² N. Ronzitti. Pp 22-23.

⁶³ I. Brownlie. 1963. P 292.

⁶⁴ A. W. R. Thomson. P 632.

⁶⁵ Admittedly, there are scholars who believe the right to protect nationals abroad has other legal bases. For example T. Schweisfurth believes there to exist a conflict of obligations that has to be solved by weighing protected interests. J. Raby supports the view that the State of necessity can justify the use of force. But since these views have few supporters, they will not be examined more closely in the context of this thesis. See: T. Schweisfurth. Operations to Rescue Nationals in Third States Involving the Use of Force in Relation to the Protection of Human Rights. – German Yearbook of International Law 1980, volume 23. P 177; J. Raby, The State of necessity and the use of force to protect nationals. – Canadian Yearbook of International Law 1988, volume 26. Pp 253-272.

Firstly, it is suggested that the use of force to protect nationals abroad does not infringe on the territorial integrity or political independence of a State or occupy part of its territory.⁶⁶ Instead, it is said that the doctrine is focused merely on the protection and rescue of its citizens.⁶⁷ If the force used does not infringe on the State's sovereignty and is not intended to change the territorial boundaries, it does not breach the prohibition.⁶⁸ O. Schachter has written in support of this interpretation and added three conditions that apply:

- 1) there has to exist an emergency to save lives;
- 2) a legitimate need for self-defense must occur;
- 3) no derogation of the territorial integrity or political independence of the State in whose territory the action occurred can take place.⁶⁹

The scholars in support of this view also use this logic to defend the legality of similar doctrines. For example, in defending the doctrine on humanitarian interventions, M. W. Reisman and M. S. McDougal claim that while examining Article 2(4), it becomes clear that only the use of force for certain purposes is prohibited, not all uses of force *per se*.⁷⁰

This was in fact the justification the United Kingdom used in the Corfu Channel case. The claim was made that the minesweeping Operation Retail in the territorial waters of Albania "threatened neither the territorial integrity nor the political independence of Albania. Albania suffered thereby neither territorial loss nor any part of its political independence."⁷¹

However, the ICJ did not accept this argumentation: "The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law."⁷²

⁶⁶ R. Higgins. Problems and process: international law and how we use it. New York: Oxford University Press 1995. Pp 245-246; J. Stone, B. B. Ferencz, J. Perkovich (general editor). Aggression and World Order: A Critique of United Nations Theories of Aggression. Berkley, Los Angeles: University California Press 1958. Pp 43, 95-96.

⁶⁷ B. Simma, A. Randelzhofer. Pp 132-133.

⁶⁸ R. J. Zedalis. Protection of Nationals Abroad: Is Consent the Basis of Legal Obligation? – Texas International Law Journal 1990, volume 25:209. P 221; L. C. Green. The contemporary law of armed conflict. 3rd edition. Manchester: Manchester University Press 2008. P 9.

⁶⁹ O. Schachter. The Right of States to Use Armed Force. – Michigan Law Review 1984, volume 82, number 5/6. P 1629.

⁷⁰ M. W. Reisman, M. S. McDougal. Humanitarian Intervention to Protect the Ibos. In: R. B. Lillich (editor). Humanitarian Intervention and the United Nations. Charlottesville: University Press of Virginia 1973. Pp 174-175, 438, 444.

⁷¹ See the Statement by sir E. Beckett (U.K.) – 12 XI 48 in: Corfu Channel Case. Oral Proceedings (first part). Judgements of 25.03.1948, 09.04 and 15.12.1949. Volume III. P 296.

⁷² Corfu Channel case, Judgment of 9.04.1949. ICJ Reports 1949, p. 4. P 35.

The ICJ furthermore expressed their concerns that this kind of use of force would seem to be reserved for the most powerful States and could therefore “/---/easily lead to perverting the administration of international justice itself.”⁷³

T. Ruys also does not support the narrow interpretation of Article 2(4) and instead believes the prohibition of force to be comprehensive in nature as indicated by the wording “or in any other manner.”⁷⁴ This means, that not only attacks on the territorial integrity or political independence of a State are prohibited.⁷⁵

What is more, the examination of the *travaux préparatoires*⁷⁶ of the Charter, which describes the documentary evidence of the negotiation, discussions, and drafting of a final treaty text, leads to the conclusion that Article 2(4) was meant to serve as a broad prohibition of the use of force.⁷⁷ The words “territorial integrity or political independence” were not added to be of qualifying nature, but to simply serve as examples.⁷⁸

I. Brownlie furthermore asserts that the wording under question should not be given, as Article 31 paragraph 1 of the Vienna Convention on the Law of Treaties says, its ordinary meaning, but instead it should be interpreted to have the same meaning it has often been given in international law – “the total of legal rights which a State has.”⁷⁹ According to H. Lauterpacht, the phrase “territorial integrity” should be interpreted as “territorial inviolability.”⁸⁰

One further claim is that certain forms of self-help are not inconsistent with the purposes of the United Nations. This argument asserts that for example the use of force for the protection of nationals abroad is a part of customary international law with the purpose of promoting

⁷³ Corfu Channel case, Judgment of April 9th, 1949: I.C. J. Reports 1949, p. 4. P 35.

⁷⁴ T. Ruys. P 237.

⁷⁵ Supporting views: T. M. Franck. *Recourse to Force: State action against threats and armed attacks*. Cambridge: Cambridge University Press 2002. P 12; L. Henkin. *International Law: Politics, Values and Functions: General Course on Public International Law*. Dordrecht: Martinus Nijhoff 1989. Pp 146-148; Y. Dinstein. P 90.

⁷⁶ Article 32 of the Vienna Convention on the law of treaties States that these documents can be used to supplement the interpretation of a treaty when the meaning is ambiguous or obscure when reading the treaty alone. Vienna Convention on the Law of Treaties. Concluded at Vienna on 23.05.1969. Document symbol: United Nations, Treaty Series, volume 1155, p. 331. Article 32.

⁷⁷ B. Simma, A. Randelzhofer. P 123; I. Brownlie. 2003. Pp 266-267; P. Malanczuk. *Akehurst's Modern Introduction to International Law*. 7th revised edition. London, New York: Routledge 1997. P 310.

⁷⁸ D. Kuwali. *The Responsibility to Protect: Implementation of Article 4(h) Intervention*. Dordrecht: Martinus Nijhoff Publishers 2011. P 113.

⁷⁹ I. Brownlie. 2003. P 266.

⁸⁰ L. Oppenheim, H. Lauterpacht (editor). *International Law. A Treatise*. Volume 2. 7th edition. London, New York, Toronto: Longmans, Green and co 1952. P 154.

human rights and is therefore consistent with the purposes set out in Article 1 of the Charter.⁸¹ However this reasoning is inconsistent with the systematic interpretation of the Charter. The Charter also names other purposes, such as international cooperation in solving international problems. This interpretation would lead to the conclusion that States are allowed to use force when other States that are uncooperative in finding solutions to international problems.⁸²

What is more, the first purpose mentioned in Article 1 of the Charter is the maintenance of international peace and security. M. Akehurst submits that the achievement of other purposes may not be the justification to breach international peace and security.⁸³ Therefore, a more systematical interpretation would lead to the conclusion that the wording at the end of the paragraph 4 was added in order to draw attention to the exceptions mentioned *expressis verbis* in the Charter.⁸⁴

Yet another argumentation in support of this view is that Article 2(4) prohibits the use of force only insofar as the UN succeeds in its task of maintaining international peace and security.⁸⁵ This is a reference to Article 62 of the Vienna Convention on the Law of Treaties which stipulates the *convention omnis intelligentur rebus sic stantibus* principle.⁸⁶ According to this principle, a tacit condition exists that treaties cease to be obligatory when the facts and conditions upon which the treaty was founded have substantially changed.⁸⁷ If Article 2(4) prohibits the use of force by States then the UN must guarantee their safety. However, due to the fact that the Security Council includes 5 veto powers and the General Assembly is slow to reach conclusions, sometimes the reaction to breaches of peace take too long or are ineffective. In this case, it is submitted that the pre-Charter legal order applies.

The counterargument, again, derives from the systematic reading of the Charter. I Brownlie maintains that the authors of the Charter must have predicted the possibility of the slow or imperfect reaction of the UN and so, this cannot constitute an unforeseen change of

⁸¹ D. W. Bowett. 1958. Pp 17, 186; J. Stone, B. B. Ferencz, J. Perkovich. Pp 43, 95-96.

⁸² M. Akehurst. P 16.

⁸³ M. Akehurst. P 16.

⁸⁴ I. Brownlie. 2003. P 268; M. Akehurst. P 16.

⁸⁵ A. Cassese. 2005. P 368; F. R. Tesón. Humanitarian Intervention: An Inquiry into Law and Morality. 2nd edition. New York: Transnational Publishers 1996. Pp 157-162; P. C. Jessup. A Modern Law of Nations. An Introduction. Hamden: Archon Books 1952. Pp 170-171; U. Beyerlin. Die israelische Befreiungsaktion von Entebbe in völkerrechtlicher Sicht. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 1977, volume 37. P 241.

⁸⁶ M. N. Shaw, C. Fournet. Commentary of Article 62. In: O. Corten, P. Klein (editors). Vienna Convention on the Law of Treaties. A Commentary. Volume 2. New York: Oxford University Press 2011. P 1412.

⁸⁷ H. C. Black, J. R. Nolan, *et al.* Black's Law Dictionary. Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern. 6th edition. St. Paul, Minnesota: West Publishing 1990. P 1267.

circumstances.⁸⁸ Seeing that the veto powers ended up on opposite sides of the Cold War soon after the adoption of the Charter, it was unavoidable that the Security Council would come across disagreements about international conflicts. Considering the amount of States represented in the General Assembly (even though the number was then smaller than what it has become now), it must have been clear that reaction would be slow. Still, no alternative for the case of an impasse in the Security Council was added to the Charter. The ICJ also spoke out against this interpretation in the Corfu case.⁸⁹

A broad interpretation of the prohibiting rule is also justified by Article 2(3) which obligates Member States to settle matters peacefully. What is more, other legal documents, like the Declaration Concerning Friendly Relations,⁹⁰ which reestablishes the prohibition of use of force, support this interpretation.⁹¹

Taking the aforementioned into account, the argument that the right to use force to protect nationals abroad derives from the fact that such uses of force do not infringe on Article 2(4), is a weak one at best. The author of this thesis tends to agree with the majority of scholars that the prohibition of force laid down in Article 2(4) should not be interpreted narrowly. Still, to get a complete overview, state practice also has to be considered. This will be done subsequently in Chapter 2.2 *infra*.

2.1.2. Protecting Nationals Abroad as Self-Defence

The second and more widespread approach holds that protecting nationals abroad constitutes an exercise of the right of self-defence. The doctrine of protecting nationals abroad as part of the right to self-defence is a very controversial one. States and legal scholars have been disagreeing on the compatibility of the doctrine with the UN Charter since its adoption and some (mostly Western) authors have come to the conclusion that States have the right to use armed force to protect the life, health, and in some cases the property of their own nationals.⁹² Lord A. McNair, a former President of the ICJ has Stated that if local authorities are either

⁸⁸ I. Brownlie. Thoughts on the Kind-Hearted Gunman. In: R. B. Lillich. 1973. Pp 145-146.

⁸⁹ Corfu Channel case, Judgment of 9.04.1949. P 35.

⁹⁰ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Adopted by General Assembly resolution 2625 (XXV) of 24.10.1970. Document symbol: A/RES/2625(XXV).

⁹¹ A. W. R. Thomson. P 635.

⁹² B. Simma, A. Randelzhofer. P 132. See also: D. W. Bowett. 1958. Pp 40-41, 49.

unable or unwilling to protect nationals from violence, the State has the right to protect them and their property.⁹³

However, the scholars that support this view are divided on the question what exactly the legal basis is. Some argue that since Article 51 legalizes States' "inherent" right to self-defence, it can be concluded that the Charter did not intend to change the customary law that allowed the protection of nationals abroad. Accordingly, supporters of this view believe that the content of the right to protect nationals abroad can be determined by customary international law. Others claim that an attack on a State's nationals can be considered as an attack on the State itself and therefore, protecting nationals abroad constitutes a form of self-defence, which is allowed under Article 51.

The first group of authors submit that the right is derived from the pre- and still existing customary international law allowing self-defence which *inter alia* extends to the protection of nationals abroad. D. W. Bowett justifies this view with the argumentation that the use of the word "inherent" in Article 51 refers to the fact that the authors of the Charter wanted to leave the customary law, including the customary rules concerning the protection of nationals abroad, lawful. D. W. Bowett acknowledges that the Charter sets some new limits to self-defence, like immediate reporting to the Security Council, but retains that the Article does not imply the unlawfulness of using force to protect nationals abroad.⁹⁴

On the opposing side, the argument is brought that since a treaty has the power to change customary law, the adoption of the Charter, especially Articles 2(4) and 51, have not left the customary right of self-defence unabridged.⁹⁵ According to this logic, Article 2(4) limits the use of force by individual States and thus ended the custom that gave States the right to protect nationals abroad.

Yet, D. W. Bowett brings the counterclaim that the doctrine of protecting nationals abroad is compatible with Article 2(4) because such action does not infringe another State's territorial integrity or political independence. Additionally, as there is no direct renouncement of the doctrine in the General Assembly's Declaration of Friendly Relations, as there is of the use of force for reprisal reasons, D. W. Bowett concludes that the doctrine remains legal also under the Charter.⁹⁶

⁹³ I. Brownlie. 2003. P 292.

⁹⁴ D. W. Bowett. 1986. In: A. Cassese. 1986. P 40.

⁹⁵ T. Ruys. P 237. Y. Dinstein. Pp 94-98.

⁹⁶ D. W. Bowett. 1986. In: A. Cassese. 1986. P 40.

Opponents of this view, like I. Brownlie, also claim that the custom of self-defence entails several forms of self-help, including self-protection and self-preservation, which are not compatible with the systematic interpretation of the Charter.⁹⁷ However, D. W. Bowett retains that since in essence, both the doctrine and the Charter have a humanitarian basis, the doctrine is indeed consistent with the purposes of the Charter set out in Article 1 and should thus be considered legal.⁹⁸

The second group of supporters of the interpretation that the use of force for the protection of nationals is a form of self-defence maintain that an attack on nationals can be seen as an armed attack on the State as a whole and thus, it triggers the right to self-defence under Article 51. Already in the nineteenth century, jurists saw nationals as an extension of the State itself and as being as vital to a State as its territory.⁹⁹ Thus, an attack on one's nationals was also considered an attack on the State.

H. Kelsen writes that in international law the essence of nationality is “nothing else but the status of legally belonging to the State” and concludes that a State has the right to protect its nationals.¹⁰⁰ T. J. Farer claims that since people are a “necessary condition for the existence of a State,” the right to protect nationals derives from the right to self-defence concluded in the Charter.¹⁰¹ International law defines sovereign States as having a permanent population, defined territory, one government, and the capacity to enter into relations with other sovereign State.¹⁰² Therefore, it can be argued that the right to protect nationals is stipulated in Article 51 of the UN Charter.

After the Second World War a number of scholars adopted this approach and they claimed that the content of the right to self-defence in Article 51 should be determined by customary law.¹⁰³ This logic is based on the use of the word “inherent” in Article 51 which is claimed to refer to the still existing customary right to self-defence.

⁹⁷ I. Brownlie. 2003. P 299.

⁹⁸ D. W. Bowett. 1986. In: A. Cassese. 1986. P 40.

⁹⁹ I. Brownlie. 2003. P 289.

¹⁰⁰ H. Kelsen, R. W. Tucker (editor). Principles of International Law. 2nd edition. New York, Chicago, San Francisco, Toronto, London: Holt, Rinehart and Winston 1966. P 373. See also: D. W. Bowett. 1958. Pp 91-94.

¹⁰¹ T. J. Farer. Panama: Beyond the Charter Paradigm. – American Journal of International Law 1990, volume 84. P 505.

¹⁰² The Montevideo Convention on the Rights and Duties of States of 1933 codified the declarative theory of Statehood and this is now accepted as part of customary international law. The Montevideo Convention on the Rights and Duties of States. Signed 26.12.1933. Legal citation: 165 LNTS 19; 49 Stat 3097. See also: M. N. Shaw. International Law. 5th edition. Cambridge: Cambridge University Press 2003. P 178.

¹⁰³ D. W. Bowett. 1986. In: A. Cassese. 1986. P 40; D. W. Bowett. 1958. Pp 87-105, 184-193; I. Brownlie. 2003. P 299.

This interpretation predicates that a right to protect nationals abroad was a part of the customary law of self-defence when the Charter was adopted. The fact that States used the doctrine before the adoption of the charter¹⁰⁴ supports this view. What is more, the ICJ in the Nicaragua judgement seemed to support this logic: “/---/Article 51 of the Charter is only meaningful on the basis that there is a “natural” or “inherent” right of self-defence, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter. Moreover the Charter, having itself recognized the existence of this right, does not go on to regulate directly all aspects of its content. For example, it does not contain any specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law.”¹⁰⁵

Some restrictive requirements for lawful use of force to protect the nationals abroad were concluded by C. H. M. Waldock. They are:

- 1) an imminent threat of injury to nationals abroad;
- 2) a failure or inability of the local sovereign to guarantee protection of them;
- 3) the measures of protection are strictly confined to the object of protecting them against injury.¹⁰⁶

Even though scholars do not agree on whether or not protecting nationals abroad should be accepted as legal, there exists a general consensus that if the doctrine exists, these conditions apply.¹⁰⁷ These are derived from the Webster formula concluded in the Caroline incident. The first requirement is basically the requirement of acting in self-defence of a threat that is overwhelming and leaves no choice of means and no moment for deliberation. The second corresponds to the provision on necessity. The last condition adds the requirement of proportionality.

I. Brownlie opposes this interpretation by claiming that for the content of the doctrine to be defined by customary law, there should be references to the Webster formula or the Waldock criteria in some nineteenth century practice, which are, however, nowhere to be found.¹⁰⁸

¹⁰⁴ The doctrine was referenced for example in the Caroline incident case and the Don Pacifico case, which were mentioned *supra*.

¹⁰⁵ Military and Paramilitary Activities. P 94. Para 176.

¹⁰⁶ C. H. M Waldock. P 467; See also: T. Ruys. Pp 234-235.

¹⁰⁷ A. R. Thomson. P 632.

¹⁰⁸ I. Brownlie. 2003. Pp 299-300.

What is more, there are scholars that do not consider an attack on nationals enough for it to constitute an attack on the State. The definition of aggression in Article 3 of the UN General Assembly Definition of Aggression does not include the possibility of an attack on nationals to be considered an act of aggression.¹⁰⁹

However, firstly, Article 51 does use the wording “act of aggression.” Instead, the Article expresses the right of self-defence in the case of an “armed attack.” Article 6 of the Definition clearly states that it should not be interpreted in a way that increases or decreases the scope of cases where use of force is lawful in the Charter. D. W. Bowett suggests that the Resolution was intended to help the Security Council detect acts of aggression, which is its obligation under Article 39 of the UN Charter.¹¹⁰

Secondly, even if an “act of aggression” was to be considered synonymous with the term “armed attack”, the list in Article 3 is not exhaustive, as Stated clearly in Article 4. What is more, paragraph (d) of Article 3 makes it evident that not exclusively attacks on a State’s territory can constitute an act of aggression.¹¹¹ This means that theoretically an attack on nationals could be considered an act of aggression.

However, according to the *exceptions sunt strictissimae interpretationis* principle, exceptions are to be interpreted narrowly.¹¹² In the Nicaragua Case and later in the Oil Platform Case the Court maintained that “the most grave forms of the use of force” need to be distinguished “from other less grave forms” and that an armed attack involves “the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries and a State’s substantial involvement therein.”¹¹³ B. Simma and A. Verdross hold that in many cases the host State merely tolerates or supports the attack on other States’ nationals, without an active participation, and their behavior should therefore not be seen as an armed attack.¹¹⁴

It should also be considered that the term “nationality” can generate some difficulties, since it has no legal definition.¹¹⁵ From the Nottebohm case it can be concluded that there should be some strong link between the State and its nationals, but there are no exact rules to determine

¹⁰⁹ For views that this supports the claim that an attack on nationals is not enough to justify an armed intervention see: B. Simma, A. Verdross. *Universelles Völkerrecht. Theorie und Praxis. Dritte Auflage.* Berlin: Duncker & Humboldt 1984. P 905. § 1338.

¹¹⁰ D. W. Bowett. 1986. In: A. Cassese. 1986. P 41.

¹¹¹ T. Ruys. P 237.

¹¹² J. R. Fox. P 142.

¹¹³ *Military and Paramilitary Activities.* Paras 191, 195; *Oil Platforms.* Para 51.

¹¹⁴ B. Simma, A. Verdross. P 905, § 1338.

¹¹⁵ I. Brownlie. 1963. P 300; *Nottebohm Case (second phase)*, Judgment of 6.04.1955. ICJ Reports 1955, p 4. Pp. 20-24.

nationality.¹¹⁶ This could (and possibly already has) also become a problem if a State, seeking to misuse the doctrine, decides to start giving out passports, *i.e.* to “produce” nationals in order to later go and protect them. Russia, for example, has been accused for handing out passports in neighboring Georgia and Ukraine.¹¹⁷ What is more, Russia does not exclusively look after its nationals, but has also used force to protect Russian-speaking people, ethnic Russians and even its compatriots abroad.¹¹⁸

It becomes clear that there is no consensus when it comes to the legality of the protecting nationals abroad doctrine. This is still a developing principle in international law and an analysis of the customary practice since the adoption of the Charter in 1945 could bring some answers.¹¹⁹ Whether or not the right to protect nationals abroad is well established in state practice, as some scholars contend, will help when drawing a conclusion about the legality of the doctrine. Therefore, invocations of the doctrine will be studied next.

2.2. State Practice: An Overview of Invocations of the Doctrine After the Adoption of the Charter

The practice of using force for the protection of nationals abroad is not uncommon in international law, even though the number of States that have relied on the doctrine is relatively low. In order to understand whether the doctrine should be seen as allowed under international law or not, an analysis of state practice is subsequently given.

Not all the cases where the doctrine has been invoked will be analyzed. Instead, a selection of the most notable cases and instances since the adoption of the Charter, which sparked a conversation about the doctrine and where other justifications were not brought or where these played a minor role have been chosen.¹²⁰

¹¹⁶ Nottebohm case. P 22.

¹¹⁷ N. Higgins, K. O'Reilly. The Use of Force, Wars of National Liberation and the Right to Self-Determination in the South Ossetian Conflict. – International Criminal Law Review 2009, volume 9. P 582; T. Kuzio. Russian intelligence seeks to destabilize Crimea. – Eurasia Daily Monitor 01.10.2008, volume 5, issue 188; R. Allison. Russian ‘deniable’ intervention in Ukraine how and why Russia broke the rules. – International Affairs 2014, volume 90:6. P 1284.

¹¹⁸ UN Doc. S/PV.7124. 01.03.2014. Pp 3, 5.

¹¹⁹ N. Ronzitti. P 19; M. Akehurst. P 4.

¹²⁰ For more comprehensive studies of cases concerning the protecting nationals abroad doctrine, see: N. Ronzitti. Pp 26-62; T. C. Wingfield, J. E. Meyen (editors). Pp 41-108; T. Ruys. Pp 7-18.

2.2.1. The UK in Iran in 1946 and 1951 and in Egypt in 1952

In all of these cases, the United Kingdom contemplated using force to protect its nationals and either its or the nationals' property without an actual use of force taking place. In 1946 riots in Iran constituted a threat to the British oil installations and the British nationals working there. The UK sent troops into bordering Iraq in order that they may "be at hand for the protection, should circumstances warrant it, of Indian, British and Arab lives, and in order to safeguard British interests in South Persia."¹²¹

In 1951 the UK again threatened to use force in Iran to protect its property by sending warships to Abadan near the Persian Gulf.¹²² The reasoning brought by the UK was that Iran was nationalizing the British-owned property illegally.¹²³ Later the UK added that if need be, they would protect their nationals and claimed that they have a right and even an obligation to protect their nationals abroad.¹²⁴

One year later the UK planned on using force in Egypt in order to protect its nationals and their property during the riots in Cairo after nine British citizens were killed.¹²⁵ However, since no real actions were taken, there was no reaction from the international community.¹²⁶

2.2.2. The Suez Canal Case in 1956

In the first clear case of reliance on the protecting nationals abroad doctrine as a justification to use force since the adoption of the Charter, the UK, France and Israel intervened in Egypt. The nationalization of the Suez Canal by the Egyptian President was the motivation for this intervention.¹²⁷ Thus, Operation Musketeer was launched.¹²⁸

During parliamentary debates about the case, the UK claimed that protecting nationals abroad was the justification for the action and that the Charter allows protecting nationals and their

¹²¹ M. Akehurst. P 5; A. C. Arend, R. J. Beck. *International Law and the Use of Force: Beyond the U.N. Charter Paradigm*. Oxfordshire, England, New York: Routledge 1993. P 95.

¹²² D. W. Bowett. 1958. P 103.

¹²³ A. W. Ford. *The Anglo-Iranian Oil Dispute 1951-1952*. Berkley, Los Angeles, London: University of California Press, Cambridge University Press 1954. P 58.

¹²⁴ D. W. Bowett. 1958. P 103; *Anglo-Iranian Oil Co. case (jurisdiction)*, Judgement of 22.07.1952. ICJ Reports 1952, p 93. P 26.

¹²⁵ N. Ronzitti. Pp 27-28.

¹²⁶ M. Akehurst. P 6.

¹²⁷ Canal History. The Official Web Site of Suez Canal.

¹²⁸ A. W. R. Thomson. P 648.

property abroad.¹²⁹ According to the UK, legal basis for protecting nationals abroad was self-defence. The UK interpreted Article 51 of the Charter as allowing the forcible protection not only of a State's territory but also of its nationals abroad.¹³⁰

However, in the debates in the Security Council and the General Assembly, the UK mainly argued that it was protecting the international navigational rights through the Suez Canal and tried to prevent a clash between Israel and Egypt.¹³¹ Still, the need to protect nationals was also mentioned: "[W]e should certainly not want to keep any forces in the area for one moment longer that is necessary to protect our nationals."¹³²

The reason for also relying on other justifications could be that there was no evidence that British nationals actually needed protection and it could be argued that danger to them was caused by the disproportioned reaction of bombing by the Royal Air Force.¹³³

Reactions by other States were quite critical. However, there was condemnation mainly of the motives of the intervening States and the application of the doctrine, not the doctrine *per se* and therefore no clear conclusions about the legality of the doctrine can be drawn.¹³⁴ The case has become an example of how the doctrine can be abused.¹³⁵

2.2.3. The USA in Lebanon in 1958

In 1958 American troops were sent into Lebanon to protect its nationals. The USA claimed that the legal basis of the doctrine is self-defence and, like the UK in the Suez Canal case, interpreted Article 51 in a way that allows a State to forcibly protect nationals in a State's territory as well as abroad.¹³⁶

¹²⁹ House of Commons Debate. 31.10.1956, volume 558. Middle East (Situation). Para 1476; E. Lauterpacht. The Contemporary Practice of the United Kingdom in the Field of International Law. Survey and Comment. III. August 16- December 31, 1956. – The International and Comparative Law Quarterly 1957, volume 6, number 2 Pp 326-327.

¹³⁰ C. D. Gray. P 126. Para 3; House of Commons Debate. 31.10.1956, Para 1476.

¹³¹ UN Doc. A/PV.561. 01.11.1956. Paras 79-112; N. Ronzitti. Pp 28, 30; T. Ruys. P 239.

¹³² UN Doc. S/PV.749. 30.10.1956. Para 141.

¹³³ D. W. Bowett. 1958. Pp 15, 104; T. Ruys. P 239.

¹³⁴ M. Akehurst. P 7.

¹³⁵ T. C. Wingfield, J. E. Meyen (editors). P 98.

¹³⁶ C. D. Gray. P 167.

However, later this justification was abandoned and the reason of the intervention was said to be to encourage Lebanese independence, while emphasizing that they were acting at the request of the local government.¹³⁷

Most of the discussion about the intervention concentrated on the collective self-defence, but there were also negative reactions towards the doctrine.¹³⁸ For example India, Albania and Poland criticized the use of force to protect nationals abroad.¹³⁹ Ethiopia expressed its concern that the doctrine is a means for powerful States to intimidate others and therefore should not be allowed.¹⁴⁰

2.2.4. Belgium in Congo in 1960 and With the USA in 1964

After the independence of Congo, Belgium saw the need to save its own and others' nationals whose lives that were put in danger by non-State actors. In the Security Council debates concerning this intervention, Belgium claimed that the protection of nationals abroad is allowed by international law and a duty of the State.¹⁴¹

The following countries supported Belgian claims: the USA, Italy, the UK, France and Argentina.¹⁴² France claimed that the protection of nationals does not violate Article 2(4), because of the humanitarian nature of the doctrine.¹⁴³ Argentina even claimed that the protection of nationals is a “sacred duty to which all other considerations must yield.”¹⁴⁴ Most Western States understood Belgian wish and need to protect their nationals.

Several socialist and developing countries, including Congo, however, saw Belgium's actions as aggression because there had been no consent by the territorial State. The following countries agreed with Congo: Tunisia, the Union of Soviet Socialist Republics (USSR) and Poland.¹⁴⁵ Resolutions proposed by the USSR condemning Belgian actions were rejected.¹⁴⁶ It remains unclear whether the condemnation was towards the doctrine or the application of it,

¹³⁷ Whiteman, M. A Digest of International Law. – Columbia Law Review 1965, volume 5. Pp 474-475; United Nations Yearbook. 1958. P 38.

¹³⁸ T. Ruys P 239.

¹³⁹ UN Doc. A/PV.738. 18.08.1958. Para 116; UN Doc. A/PV.739. 18.08.1958. Para 76; UN Doc. A/PV.740. 19.08.1958. Para 84.

¹⁴⁰ UN Doc. A/VP.742. 20.08.1958. Paras 74-75.

¹⁴¹ UN Doc. S/VP.877. 20./21.07.1960. Para 91.

¹⁴² A. W. R. Thomson. P 648; T. Ruys. P 240; UN Doc. S/PV.873. 13.07.1960. Paras 116-147, 130, 144.

¹⁴³ UN Doc. S/PV.873. 13.07.1960. Para 144.

¹⁴⁴ UN Doc. S/PV.878. 21.07.1960. Para 118.

¹⁴⁵ United Nations Yearbook. 1960. Pp 63-64.

¹⁴⁶ UN Doc. S/PV.873. 13.07.1960. Paras 223-225.

but some authors believe that the condemnation was directed towards the application, not the doctrine *per se*. Two resolutions urged Belgium to draw its forces out of Congo.¹⁴⁷

Four years later an evacuation mission was launched by Belgium and the USA in order to rescue 1300 Europeans (1240 out of whom got evacuated) from Congolese rebels.¹⁴⁸ Among the hostages there were Belgians, Greeks, Indians, Pakistanis, Italians, Portuguese, Togolese, Dutchmen, Americans, Canadians and Brits, whereas before the rescue mission, 35 of them were killed or tortured.¹⁴⁹

One important difference between this mission and the one that took place in 1960 is that this time Belgium and the USA had consent from the host State. The head of the Western-minded Government in Congo had sent an invitation to the US Government in which he approved the use of force to protect foreigners;¹⁵⁰ however some States maintained the invitation was not given by the legal representative of Congo.¹⁵¹

The UK claimed that the protection of nationals abroad was allowed under international law, without mentioning the need for consent.¹⁵² France also supported the operation.¹⁵³ Some States, like Nigeria, Bolivia, Brazil and China seemed to support the idea that the consent made the operation legal.¹⁵⁴

On the other hand, some African and Asian States, Yugoslavia and the USSR deemed the intervention as an attempt to support the Western-minded Government in Congo, which some of them did not consider the legal government and thus not qualified to extend an invitation to the USA and Belgium.¹⁵⁵ Ghana and the United Arab Republic¹⁵⁶ denied the legality of the use of force to protect nationals abroad completely.¹⁵⁷ A resolution, which requested States not to intervene in Congo, was adopted.¹⁵⁸

¹⁴⁷ UN Doc. S/4387. 14.07.1960; UN Doc. S/4405. 22.07.1960.

¹⁴⁸ M. Akehurst. P 7.

¹⁴⁹ T. C. Wingfield, J. E. Meyen (editors). P 51.

¹⁵⁰ T. Ruys. P 241; G. Nolte. Intervention by Invitation. Max Planck Encyclopedia of Public International Law. Article last updated: January 2010. Para 6.

¹⁵¹ T. Ruys. P 241.

¹⁵² UN Doc. S/PV.1175. 15.12.1964. Paras 13-15.

¹⁵³ UN Doc. S/VP.1176. 15.12.1964. Paras 54-57.

¹⁵⁴ UN Doc. S/VP.1176. 15.12.1964. Para 8; UN Doc. S/VP.1183. 22.12.1964. Paras 69-71; UN Doc. S/VP.1177. 16.12.1964. Paras 89, 123.

¹⁵⁵ United Nations Yearbook. 1964. Pp 95 *et seq.*

¹⁵⁶ The United Arab Republic was a political union between Egypt and Syria between 1958 and 1961.

¹⁵⁷ UN Doc. S/PV.1170. 09.12.1964. Paras 129-135; UN Doc. S/PV.1174. 14.12.1964. Paras 3-5.

¹⁵⁸ UN Doc. S/6129. 30.12.1964

2.2.5. The USA in the Dominican Republic in 1965

As the Dominican civil war posed a threat to the people in the Dominican Republic, the USA initially defended its intervention with the fact that it was there to protect American and other nationals' lives.¹⁵⁹ Later, invitation to intervene and regional peacekeeping were added to the list of justifications.¹⁶⁰

Both in Lebanon in 1958 and in Congo in 1964 the USA had had permission to intervene, but this time, there was no effective government to grant it.¹⁶¹ Only one faction of the civil war gave the USA the consent to intervene, whereas the opposing side did not.¹⁶² This situation draws attention to a common problem about the legality of the consent.

Reactions to the interventions varied. The Netherlands expressed their gratitude for rescuing Dutch nationals.¹⁶³ So did the UK, which also maintained, once again, that the use of force to protect nationals abroad is legal under international law.¹⁶⁴ China also did not regard the action as an act of aggression.¹⁶⁵ France's Statement was similar to the one made by the UK, but also addressed the question about the real intent of the intervention and the limits of the doctrine.¹⁶⁶

Some States, for example Chile, Colombia, Malaysia, Peru, Uruguay and Venezuela, claimed the intervention was illegal.¹⁶⁷ Jordan, the USSR and Cuba maintained the doctrine was used merely as a pretext to intervene.¹⁶⁸ The Ivory Coast expressed the opinion that the UN Charter had been violated.¹⁶⁹

¹⁵⁹ M. Akehurst. P 8.

¹⁶⁰ UN Doc. S/PV.1200. 05.05.1965. Paras 16-17; UN Doc. S/VP.1212. 19.05.1965. Para 149; UN Doc. S/VP.1196. 03.05.1965. Paras 67-71.

¹⁶¹ M. Whiteman. A Digest of International Law. – Columbia Law Review 1971, volume 12. P 824.

¹⁶² M. Whiteman. 1971. P 824; N. Ronzitti. P 33.

¹⁶³ UN Doc. S/VP.1203. 07.05.1965. Para 4.

¹⁶⁴ UN Doc. S/PV.1198. 04.05.1965. Paras 56-57.

¹⁶⁵ UN Doc. S/VP.1202. 06.05.1965. Para 19.

¹⁶⁶ UN Doc. S/PV.1198. 04.05.1965. Paras 111-112.

¹⁶⁷ UN Doc. S/VP.1196. 03.05.1965. Paras 47-50; UN Doc. S/VP.1214. 21.05.1965. Paras 116-118; UN Doc. S/VP.1202. 06.05.1965. Paras 7-8; UN Doc. S/PV.1198. 04.05.1965. Para 8.

¹⁶⁸ UN Doc. S/PV.1200. 05.05.1965. Paras 4-9, 113-116, 145; UN Doc. S/VP.1196. 03.05.1965. Paras 15, 26-29, 97-100, 191-193.

¹⁶⁹ UN Doc. S/VP.1203. 07.05.1965. Para 22.

2.2.6. The Mayaguez Incident in 1975

In 1975 the American merchant vessel Mayaguez was seized in the territorial waters of Cambodia due to suspicions of espionage. The objective of the subsequent American intervention was to rescue the vessel and the people aboard. The USA claimed that it was using self-defence in accordance with Article 51.¹⁷⁰

This time, there was no doubt that the USA did not have consent of the territorial State – the territorial State Cambodia deemed the intervention an act of aggression.¹⁷¹ Reactions of the international community were also largely negative. For example China said the actions constituted a case of piracy.¹⁷² The case was not discussed in the Security Council, but the representative of Somalia mentioned it as an example of aggression in a different discussion.¹⁷³

2.2.7. The Entebbe Raid in 1976

This case is said to be a textbook example of the doctrine. In 1976, Pro-Palestinian terrorists took over the control of a passenger airplane on its way from Tel Aviv to Paris and redirected its flight to Uganda, where it consequently landed in the Entebbe airport.¹⁷⁴ Some passengers were released, but not the Jewish hostages, most of who were Israeli but some also other States' nationals.¹⁷⁵ After week-long negotiations failed to convince the hostage-takers to release the people, the Israeli Defence Force intervened without consent of the Ugandan Government.¹⁷⁶

Operation Thunderbolt was successful in that almost all the hostages were rescued, but on the other hand 3 hostages, 1 Israeli officer, 7 terrorists and 20 Ugandan soldiers were killed and also some Ugandan military equipment was destroyed.¹⁷⁷ Israel justified its actions by claiming that the local forces were cooperating with the terrorists, even though Uganda denied this.¹⁷⁸

¹⁷⁰ M. Akehurst. P 9.

¹⁷¹ N. Ronzitti. P 36.

¹⁷² N. Ronzitti. P 36.

¹⁷³ UN Doc. S/PV.1941. 12.07.1976. Para 39.

¹⁷⁴ Air France A-300B Airbus hijacked from Athens arrives at Entebbe Uganda. South African History Online; M. Akehurst. P 19.

¹⁷⁵ Entebbe raid. Encyclopædia Britannica Online.

¹⁷⁶ W. Stevenson, U. Dan. 90 Minutes at Entebbe. 9th edition. New York: Bantam Books 1976. Pp 17-23; M. Akehurst. Pp 19-20.

¹⁷⁷ Entebbe raid. Encyclopædia Britannica Online; M. Akehurst. P 20.

¹⁷⁸ UN Doc. S/PV.1939. 09.07.1976. Paras 21, 34.

In the Security Council Israel claimed that if the intervening State is using force for the "protection of a State's own integrity and its nationals' vital interests when the machinery envisaged by the United Nations Charter is ineffective in the situation," Article 2(4) is not violated.¹⁷⁹ Israel also and primarily maintained that Article 51 allowed States to use force for the protection of nationals abroad if the host State was either unwilling or unable to do so.¹⁸⁰ Israel was supported by the USA and, to a lesser extent, by the UK.¹⁸¹ France argued that the Israeli intent was not directed towards breaching the Ugandan territorial integrity, but the protection of lives,¹⁸² bringing thus attention to the link between intent and sovereignty.¹⁸³

However, a majority of States opposed Israel's actions. China, Cuba, Guinea, Guyana, India, Kenya, Libya, Qatar, Romania, Somalia, Tanzania and Yugoslavia qualified the actions as aggression.¹⁸⁴ Benin, Cameroon, Mauritania, Mauritius, Pakistan, the Soviet Union and Uganda claimed Israel had used excessive force;¹⁸⁵ therefore it could be that they were criticizing the application and not the doctrine.¹⁸⁶ Tanzania and, it seems also Panama, deemed the doctrine illegal.¹⁸⁷

A proposition that Israel had not breached Article 2(4) was not agreed upon and even States that did not condemn Israeli actions did not defend the operation either.¹⁸⁸ Sweden for example expressed the thought that even though the Israeli actions were illegal, Sweden also would not condemn the actions.¹⁸⁹ Taking into account that there was no consensus about whether protecting nationals abroad was a legal justification for the use of force or not, the representative of Italy called for the UN to work out a paper to keep the same problem from occurring again.¹⁹⁰

¹⁷⁹ UN Doc. S/PV.1939. 09.07.1976. Para 108.

¹⁸⁰ UN Doc. S/PV.1939. 09.07.1976. Paras 106-107.

¹⁸¹ UN Doc. S/PV.1941. 12.07.1976. Paras 74-96; UN Doc. S/PV.1940. 12.07.1976. Paras 92, 100-109.

¹⁸² UN Doc. S/PV.1943. 14.07.1976. Para 45.

¹⁸³ A. W. R. Thomson. P 637.

¹⁸⁴ See speeches of respective representatives in: UN Doc. S/PV.1939. 09.07.1976; UN Doc. S/PV.1940. 12.07.1976; UN Doc. S/PV.1941. 12.07.1976; UN Doc. S/PV.1942. 13.07.1976; UN Doc. S/PV.1943. 14.07.1976.

¹⁸⁵ See speeches of respective representatives in: UN Doc. S/PV.1939. 09.07.1976; UN Doc. S/PV.1940. 12.07.1976; UN Doc. S/PV.1941. 12.07.1976.

¹⁸⁶ M. Akehurst. P 20; M. Akehurst believes it is unlikely, but A. W. R. Thomson and A. Kessel see it as a possibility; A. W. R. Thomson. P 649; A. Kessel. Canadian Practice in International Law. At the Department of Foreign Affairs and International Trade in 2008-9. – Canadian Yearbook of International Law 2009, volume 47. P 413.

¹⁸⁷ UN Doc. S/PV.1941. 12.07.1976. Paras 103-105; UN Doc. S/PV.1942. 13.07.1976. Paras 16- 28. However, also see the Panamanian representative's response to the Russian intervention in Georgia in 2008: Chapter 2.2.12. *infra*.

¹⁸⁸ C. D. Gray. P 31.

¹⁸⁹ UN Doc. S/PV.1940. 12.07.1976. Paras 122-123.

¹⁹⁰ UN Doc. S/PV.1943. 14.07.1976. Para 56

When examining state practice about the doctrine it should be taken into account that M. Akehurst maintains that this was not a typical case of protecting nationals abroad. He claims that if Ugandan forces were working with the hostage-takers, it was also responsible for the foreign nationals ending up in Ugandan territory (against their will and illegally) and therefore it cannot plead the right of territorial sovereignty against a State who wants to rescue its nationals.¹⁹¹

2.2.8. The Larnaca Incident in 1978

This was the first time a non-Western State – Egypt – relied on the doctrine. When the passengers of an airplane, including delegates of the Afro-Asian Peoples Solidarity Organization were held hostage in an airport in Larnaca, Cyprus by a Palestinian dissident movement, Egypt intervened to save the hostages.¹⁹²

This case is also sometimes seen as a textbook example of the doctrine. Even though Egypt never relied on the doctrine of protecting nationals abroad, but instead claimed it was their duty to fight terrorism,¹⁹³ the similarities of this and the Entebbe case gives reason to also analyze this case within the framework of this thesis.

The Cyprian Government was still negotiating with the terrorists when Egyptian forces carried out an attack, which resulted in the deaths of a number of Egyptian soldiers.¹⁹⁴ Some Cyprian soldiers were injured as well.¹⁹⁵

While the Egyptians claim that since they got consent from Cyprus to land a plane, they also had consent to protect their nationals, Cyprus maintains that they did know the plane was carrying military forces and did not know of the planned operation.¹⁹⁶ The Cyprian Government accused Egypt of violating their sovereignty whereas Egypt maintained it had acted legally.¹⁹⁷ This case was not debated at the Security Council.¹⁹⁸

¹⁹¹ M. Akehurst. Pp 21-22.

¹⁹² A. W. R. Thomson. P 650.

¹⁹³ T. C. Wingfield, J. E. Meyen (editors). Pp 108-109.

¹⁹⁴ A. W. R. Thomson. P 650.

¹⁹⁵ N. Ronzitti. P 41.

¹⁹⁶ N. Ronzitti. P 41.

¹⁹⁷ T. Ruys. P 251.

¹⁹⁸ A. W. R Thomson. P 650.

2.2.9. The Tehran Hostage Crisis in 1980

This case concerns an operation to save diplomats who were held hostage for over a year in the American embassy in Tehran. The USA tried using peaceful means first.¹⁹⁹ Operation Eagle Claw to save 52 hostages was unsuccessful and eight American soldiers died²⁰⁰ and five were wounded.²⁰¹ According to the USA, the inherent right to self-defence as Stated in Article 51 is the legal basis for protecting nationals abroad if the host State is either unable or unwilling to do so.²⁰²

Reaction from States varied – some claimed it to be a legal use of force. The UK and Egypt were the biggest supporters of the American intervention; other States expressing either approval or understanding were Australia, Canada, Israel, Japan and many European States.²⁰³ Others, including China, Cuba, India, Pakistan, Saudi Arabia and the USSR, condemned the action and Iran criticized it as an act of invasion.²⁰⁴

The use of force to protect nationals in Tehran was not discussed in the Security Council, but it was the first case concerning the doctrine to be discussed in the ICJ. Regrettably, however, the Court pointed out that “neither the question of the legality of the operation of 24. April, 1980, under the Charter of the United Nations and under general international law, nor any possible question of responsibility flowing from it, is before the Court.”²⁰⁵ So the ICJ did not reject, nor affirm the legality of the doctrine. Still, since the Court was preparing its decision on the matter as the rescue mission took place, the Court expressed its concern that such operations can undermine the ICJ’s judgements. Even so, the Court also expressed its understanding of the American frustration.²⁰⁶

¹⁹⁹ Iran Hostage Crisis. Encyclopædia Britannica Online.

²⁰⁰ Iran Hostage Crisis. Encyclopædia Britannica Online.

²⁰¹ T. C. Wingfield, J. E. Meyen (editors). P 66.

²⁰² United States Diplomatic and Consular Staff in Tehran, Judgment, ICJ Reports 1980, p 3. Para 33.

²⁰³ N. Ronzitti. Pp 45-47.

²⁰⁴ N. Ronzitti. Pp 45, 47-48.

²⁰⁵ US Diplomatic and Consular Staff in Tehran. Para 94.

²⁰⁶ US Diplomatic and Consular Staff in Tehran. Para2 92-93.

2.2.10. The Granada and Panama Incidents in 1983 and 1989

After the *coup d'état* in Grenada, the President of the USA said Operation Urgent Fury was necessary to evacuate American tourists and medical students.²⁰⁷ According to the USA, the protection of nationals, the legal basis for which is self-defence, was the main reason for the intervention.²⁰⁸

Additionally, the USA also claimed that the operation was a humanitarian intervention to restore democracy and it was asserted that the governor general had invited Americans to intervene²⁰⁹ but the validity of the invitation is questionable.²¹⁰

Some States believed that the justifications were just a pretext and that the nationals were in no real danger and thus, that the intervention was illegal.²¹¹ The UN General Assembly also voted on a resolution, supported by 108 and opposed by only 9, deeming the intervention illegal.²¹² However, once again, most of the criticism was directed towards the application, not the legality of the doctrine.²¹³

Six years later, Operation Just Cause to protect the lives of American nationals included 24000 men sent to Panama and a new government was set up with Guillermo Endara as the new leader.²¹⁴ Again, the USA claimed that the legal basis of the doctrine is self-defence deriving from Article 51.²¹⁵

Additionally, the USA brought other justifications for the use of force. These include: 1) protection of democracy in Panama; 2) fight against drug traffic; 3) assurance of adherence to the Panama Canal Treaty.²¹⁶ The USA also claimed they had the mandate from President

²⁰⁷ T. C. Wingfield, J. E. Meyen (editors). P 242.

²⁰⁸ L. K. Wheeler. The Grenada Invasion: Expanding the Scope of Humanitarian Intervention. – Boston College International and Comparative Law Review 1985, volume 8, issue 2, Article 5. P 415.

²⁰⁹ O. Schachter. In Defence of International Rules on the Use of Force. – University of Chicago Law Review 1986, volume 53. P 118; UN Doc. S/VP.2491. 27.10.1983. Paras 66-75.

²¹⁰ C. D. Gray. P 99; A. W. R. Thomson. P 651.

²¹¹ See for example: UN Doc. S/PV 2489. 26.10.1983. Paras 21-25, 36-38, 93-97, 111..

²¹² UN Doc. A/Res/38/7. 02.11.1983. Pp 19-20; T. C. Wingfield, J. E. Meyen (editors). P 242.

²¹³ A. W. R. Thomson. P 651.

²¹⁴ T. C. Wingfield, J. E. Meyen (editors). Pp 242-243; B. L Gordon. Panama. Encyclopædia Britannica Online; L. Henkin. The Invasion of Panama Under International Law: A Gross Violation. – Columbia Journal of Transnational Law 1991, volume 29. P 295.

²¹⁵ T. Ruys. P 243.

²¹⁶ UN Doc. S/VP. 2899. P 31. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/PRO/N89/613/28/PDF/N8961328.pdf?OpenElement>

Endara, but this invitation was of questionable value since the USA helped him regain power.²¹⁷

There were many negative reactions to the intervention, like a General Assembly resolution deploring the intervention²¹⁸ but, similarly to the Grenada case, most States criticized the application and not the doctrine itself.²¹⁹ Western States refrained from assessing the legality of the doctrine, but Latin-American States deemed the intervention as violating the Panamanian sovereignty.²²⁰ The USSR and China claimed the USA had violated international law.²²¹

A Security Council resolution condemning American actions was not passed due to vetoes from France, the UK and the USA²²² but the General Assembly later adopted it.²²³ Scholars condemn the intervention because of disproportionality – only 3 American nationals were affected in Panama, but about 300 Panamanian civilians and 200-300 soldiers were killed and 3000 wounded as a result of the intervention.²²⁴

2.2.11. The USA in Libya in 1986, in Sudan and Afghanistan in 1998

The intention of the interventions in Libya, Sudan and Afghanistan was not to rescue American or other nationals, but to prevent future attacks. In 1986, the USA tried to keep more attacks from taking place after a disco in West Berlin, where American soldiers often went to, was bombed.²²⁵ In 1998, possible future attacks against the US embassies of Nairobi and Dar Es Salaam were the reason for action.²²⁶

In the 1986 case, States mostly criticized the fact that the connection between the Libyan Government and the attacks was not proven and that the intervention was not proportionate and retaliatory in nature.²²⁷ The clearest declaration about the doctrine was given by the

²¹⁷ D. Cox. The Noriega file. – Los Angeles Times 5.10.2011.

²¹⁸ UN Doc. A/RES/44/240. 29.12.1989.

²¹⁹ A. W. R. Thomson. P 651.

²²⁰ UN Doc. S/PV 2899. 20.12.1989. Pp 3-17; UN Doc. S/PV 2900. 21.12.1989. Pp 21, 24-33, 34-37; UN Doc. S/PV.2902. 23.12.1989. Pp 16-20.

²²¹ UN Doc. S/PV 2899. 20.12.1989. Pp 17-21, 21-22.

²²² T. Ruys. P 244.

²²³ UN Doc. A/RES/44/240. 29.12.1989.

²²⁴ D'Amato, A. Agora: U.S. Forces in Panama: Defenders, Aggressors or Human Rights Activists. – American Journal of International Law 1990, volume 84. P 497; L. Henkin. 1991. P 294; R. Wedgwood. The Use of Armed Force in International Affairs: Self-Defense and the Panama Invasion. – Columbia Journal of Transnational Law 1991, volume 29. Pp 621–622.

²²⁵ T. Ruys. P 245.

²²⁶ T. Ruys. P 245.

²²⁷ See: UN Doc. S/PV 2674. 15.04.1986; UN Doc. S/PV 2675. 15.04.1986; UN Doc. S/PV 2676. 16.04.1986; UN Doc. S/PV 2677. 16.04.1986; UN Doc. S/PV 2678. 17.04.1986; UN Doc. S/PV 2679. 17.04.1986; UN Doc.

representative of Ghana, who spoke out against the legality to use force in self-defence for the protection of nationals abroad.²²⁸

In the 1998 incident, again, mainly the lack of proof of the local governments' connection to the bombings was criticized, as was the lack of proportionality – for example, during Operation Infinite Reach, a pharmaceutical factory was bombed.²²⁹

In both latter cases, attacks took place not simply against nationals, but American soldiers and embassies. It could be argued that these targets have a closer connection to the State than nationals²³⁰ and this should be kept in mind when drawing conclusions about the legality of the doctrine.

2.2.12. Russian Intervention in Georgia in 2008

In 2008 Russia claimed that after Georgia took military action to gain control over separatists, its nationals in South-Georgia were in danger and thus, an intervention to protect Russian nationals was carried out.²³¹ Russian President Medvedev claimed that the intervention was necessary to prevent genocide,²³² although these claims were unwarranted.²³³ According to Russia, Article 51 permitted the use of force to protect nationals abroad.²³⁴

Like several times in the past, most States were critical not of the doctrine but the application of it. Russian motives for the intervention and the disproportionality of the operation were criticized.²³⁵ In addition to claims that there was no real threat to Russian nationals and if there were, the Russian actions went beyond what was necessary to protect them, the prior distribution of Russian passports in the region was criticized.²³⁶

S/PV 2680. 18.04.1986; UN Doc. S/PV 2681. 18.04.1986; UN Doc. S/PV 2682. 22.04.1986; UN Doc. S/PV 2683. 24.04.1986.

²²⁸ UN Doc. S/PV 2680. 18.04.1986. Pp 31-32.

²²⁹ Letter from the Minister of State of Sudan. Letter dated 21 August 1998 from the Minister of State at the Ministry of Foreign Affairs of the Sudan addressed to the President of the Security Council. UN Doc. S/1998/786.

²³⁰ C. Greenwood. International Law and the United States' Air Operation Against Libya. – West Virginia Law Review 1986.1987, volume 89. Pp 941-942; Y. Dinstein. P 218.

²³¹ C. D. Gray. P 627.

²³² Russia recognises Georgian rebels. – BBC News 26.08.2008.

²³³ N. Higgins, K. O'Reilly. P 582.

²³⁴ UN Doc. S/PV.5952. 08.08.2008. P 5; UN Doc. S/PV.5953. 10.08.2008. P 9.

²³⁵ C. D. Gray. Pp 627-628; A. W. R. Thomson. P 662.

²³⁶ N. Higgins, K. O'Reilly. P 582.

Georgia made an application to the ICJ on August 12th, however the Court decided it had no jurisdiction to preside over the case.²³⁷ In the Security Council, almost all States condemned Russian actions.²³⁸ The UK representative said that the Russian intervention was a “grave violation of Georgia’s sovereignty and territorial integrity” and the Russian “actions have gone beyond any reasonable, proportionate response.”²³⁹ Mikhail Saakashvili, the Georgian President, declared Russian actions an intrusion of territory.²⁴⁰

Noteworthy is the reaction of the Panamanian Government. In a Statement in the Security Council they argued: “Panama is also concerned by and condemns the entirely disproportionate, and therefore illegitimate, use of force by the Russian Federation with the Stated aim of protecting its citizens and peacekeeping forces.”²⁴¹ This wording indicates that if the use of force were proportionate, it would also be legitimate. Thus, during the American intervention in Panama in 1989 the application and not the right of protection of nationals abroad must have been condemned.

2.3. States’ Standpoint While Discussing the Doctrine Beyond the Instances of Its Use

The doctrine has only been invoked by a few different States. This can be either because the situations, in which a State needs to protect its nationals abroad are seldom or because not every State has the possibility to do so. Whichever the case, this gives reason to look at what States have said in other contexts. Subsequently, an overview of States’ standpoint while discussing the doctrine beyond the instances of its use will be given.

In the process of adopting the Resolution on Non-Intervention only a few States expressed their views on the doctrine. In the first case, Cuba declared that it held the doctrine of protecting nationals and their property abroad illegal.²⁴² Jamaica expressed the idea that interventions “for humanitarian reasons” could be permissible; however it remained unclear whether the support was for the protection of nationals or humanitarian interventions.²⁴³

²³⁷ G. Zyberli. The ICJ decides it has no jurisdiction in Georgia v. Russia. – International Law Observer 01.04.2011.

²³⁸ A. W. R. Thomson. P 662.

²³⁹ UN Doc. S/PV.5953. 10.08.2008. P 11.

²⁴⁰ Russian tanks enter South Ossetia. – BBC News 08.08.2008.

²⁴¹ UN Doc. S/PV.5953. 10.08.2008. P 15.

²⁴² UN Doc. A/C.1/SR.1396. 03.12.1965. P 4. Para 23.

²⁴³ UN Doc. A/C.1/SR.1406. 10.12.1965. P 4. Para 32.

During the discussions about the Friendly Relations Declaration, Mexico spoke against the doctrine.²⁴⁴ When discussing Article 33 of the Draft Articles on State Responsibility, Romania declared that the pretext of necessity cannot justify intervention to protect nationals abroad.²⁴⁵

The *travaux préparatoires* of the Definition of Aggression reveals the proposals of several States on this matter. The USSR, Egypt, Iran, Mexico and Cyprus were against the legality of the doctrine.²⁴⁶ For example, the USSR wanted to add the intervention to protect nationals abroad to the list of acts that would not justify use of force.²⁴⁷

This proposition was opposed by Belgium²⁴⁸ and the United Kingdom. Representatives of the latter assured that when lives of nationals are in danger and there is a failure or inability to protect nationals by the host State, actions taken in order to protect them are not acts of aggression, but self-defence.²⁴⁹ Representatives of the Greece and Dutch Government declared that when a State uses force to protect its nationals who form an ethnic minority abroad, that force cannot be seen as aggression.²⁵⁰

It is also worth taking a look into the 1979 Convention against the Taking of Hostages since many of the cases in which the doctrine is relied on, the nationals are in danger because of hostage situations. Article 14 states that nothing in the convention should be “construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.”²⁵¹ The Convention regrettably does not clarify whether the doctrine should be seen as legal or not. If it is legal under the Charter, as a part of customary law or as self-defence, it is also under the Convention.²⁵²

Algeria, Mexico, Syria and Tanzania suggested that States should not have the right to intervene in another State’s territory in hostage situations, but other States found that it was

²⁴⁴ N. Ronzitti. P 49; O. Corten, B. Simma (editor). *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*. French Studies in International Law. Portland: Hart Publishing 2010. P 202.

²⁴⁵ N. Ronzitti. P 51.

²⁴⁶ N. Ronzitti. Pp 50-51. See for example: UN Doc. A/C.6/6/SR.293. 21.01.1952. Paras 12, 19-20; UN Doc. A/AC.134/SR.46, 208, 211. 30.07.1970-12.04.1974.

²⁴⁷ The Union of Soviet Socialist Republics: draft resolution on the definition of aggression. 4.11.1950. UN Doc. A/C.1/608.

²⁴⁸ UN Doc. A/C.6/6/SR.287. 15.01.1952. Para. 43.

²⁴⁹ M. Akehurst. Pp 6, 14; UN Doc. A/C.6/6/SR.292. 19.01.1952. Para 38.

²⁵⁰ UN Doc. A/C.6/6/SR.292. 19.01.1952. Para 7; N. Ronzitti. P 50.

²⁵¹ International Convention against the taking of hostages. Adopted 17.12.1979. Legal citation: GA res. 34/146 (XXXIV), 34 UN GAOR Supp. (No. 46) at 245, UN Doc. A/34/46 (1979); 1316 UNTS 205; TIAS No. 11081; 18 ILM 1456 (1979).

²⁵² N. Ronzitti. Pp 51-52.

unnecessary to add this to the text.²⁵³ Ultimately States agreed on a wording that did not clarify whether or not the use of force to rescue hostages from another State's territory is legal.²⁵⁴

In 2000, Special Rapporteur J. R. Dugard submitted a report for the International Law Commission while they were reviewing the subject of diplomatic protection. The objective was to give recommendations about how diplomatic protection should be carried out in the time where the importance of human rights is emphasized.²⁵⁵ Draft Article 2 of the so-called Dugard Report suggests that the use of force to protect nationals abroad is lawful, with some limitations (very similar to the Waldock criteria).²⁵⁶ J. R. Dugard claimed the right derives from the customary right to self-defence.²⁵⁷ However, only two delegates in the International Law Commission agreed with and supported him, with the rest denouncing draft Article 2.²⁵⁸

Therefore, it is impossible to draw clear and explicit conclusions about States' standpoints about the legality of the use of force to protect nationals abroad also after examining their stances while discussing the doctrine beyond the instances of its use.

2.4. Conclusion

Regrettably it becomes clear that since the adoption of the Charter, an establishment of the doctrine in treaty law, in a ICJ judgement, or in a Security Council or even a General Assembly Resolution, has not been successful. This is so despite the Italian Representative's suggestion during the discussions about the Entebbe incident to draw up papers on the matter. In the cases in which the doctrine was discussed and a resolution was passed, individual cases and the specific application of the doctrine were assessed, but no clear assessment of the legality of the doctrine has been given.²⁵⁹

There are some cases in which the use of force to protect nationals abroad was justified with the logic that this kind of action does not infringe on Article 2(4), however in most cases, self-defence is used as justification.²⁶⁰ The implementation of the doctrine has ranged from limited short-term evacuation operations (for example in Entebbe or the Tehran hostage situation) to

²⁵³ T. Ruys. P 255.

²⁵⁴ R. Rosenstock. International Convention Against the Taking of Hostages: Another International Community Step Against Terrorism. – Denver Journal of International Law and Policy 1980, volume 9. P 186.

²⁵⁵ J. R. Dugard. P 4.

²⁵⁶ J. R. Dugard. Draft Article 2.

²⁵⁷ J. R. Dugard. P 20.

²⁵⁸ T. Ruys. P 257.

²⁵⁹ N. Ronzitti. Pp 52-53; A. W. R. Thomson. P 652.

²⁶⁰ A. W. R. Thomson. P 638.

essentially occupation of a certain region (like in Panama and Grenada). These examples demonstrate the strengths of the doctrine as well as the weaknesses.

The doctrine has mostly been implemented for the protection of nationals, but also for other States' nationals and for the protection of nationals' and State's property. In most cases the threat to nationals derived from a breakdown of public order in the host State or the unwillingness or inability of the territorial State to offer nationals protection.

A tendency to criticize the application of the doctrine instead of claiming that the use of force to protect nationals abroad is entirely illegal can be seen. Recent state practice of interventions aimed at rescuing foreigners abroad, as long as the Waldock criteria are respected, have gone almost absolutely unchallenged.²⁶¹

A clear conclusion of the case study since the adoption of the UN Charter is that the doctrine has been evoked on a number of accounts, but only by limited number of States. With a few exceptions, Western Powers are the ones to use force with the justification of protecting nationals abroad. Similarly, almost invariably the host State is a developing country. It is then unsurprising that mostly Western Countries accept the protection of nationals abroad doctrine as legal and other States seem to oppose it.

States that have either relied on the doctrine, or expressed support or understanding for the need of it are: the USA, the UK, France, Egypt, Japan, Israel, Thailand, Germany, Belgium, Argentina, Italy, Greece, the Netherlands, Canada, Australia and Russia.

States that have opposed the use of the doctrine are: China, Cuba, India, Pakistan, Saudi-Arabia, Iran, Albania, socialist Poland, Congo, Tunisia, Socialist Federal Republic of Yugoslavia, Ghana, Egypt, the Ivory Coast, Guinea, Guyana, Kenya, Libya, Qatar, Romania, Somalia, Tanzania, Benin, Cameroon, Mauritania, Mauritius and the USSR.

Considering that the use of this doctrine is confined to a small number of countries, it could be argued that it lacks wide-spread acceptance which is necessary for it to be customary law. Since all the justifications for the legality of the doctrine contain an element or reference to customary law, this might be an argument against the legality of the doctrine. On the other

²⁶¹ T. Gazzini. *The Changing Rules on the Use of Force in International Law*. Manchester: Manchester University Press 2005. Pp 170-171.

hand, the fact that other countries do not use force to protect their nationals abroad might not derive from the belief that it is illegal, but the lack of means to do so.²⁶²

Also, they might not have been in such a situation where nationals need to be protected and it could be speculated that were such a situation to arise, some States might change their minds. As has, it seems, Russia. Whereas the USSR repeatedly and consistently argued against the doctrine, Russia, its legal successor, has now not only accepted the legality of, but has already relied on the legality of the use of force to protect nationals abroad.

What is more, the responsibility to “guarantee to its citizens protection and patronage abroad” is now enestablished in the Russian Constitution.²⁶³ In addition, the Concept of the Foreign Policy of the Russian Federation States that Russia views its objective as „protecting rights and legitimate interests of compatriots living abroad on the basis of international law and treaties concluded by the Russian Federation while considering the numerous Russian diaspora as a partner, including in expanding and strengthening the space of the Russian language and culture.”²⁶⁴

Another interesting fact that appears from this analysis is that Egypt protested the use of this doctrine in the Suez Channel case in 1956 and during the Belgian and American intervention into Congo in 1964, but supported it in the case of Larnaca in 1978. This casts a shadow of doubt over the importance of state practice and illustrates the fact that international law is greatly influenced by international politics. It seems that D. W. Bowett was correct when he claimed that a State’s opinion on the legality of the doctrine “depends as much on considerations of policy as on legal argument.”²⁶⁵

Most commonly, States have not clearly stated their views on the matter. These States’ criticism does not condemn the doctrine as such. The abusive application of the doctrine is what is most often disapproved of.²⁶⁶ Regrettably, after analyzing state practice, it becomes clear that the doctrine in question can be open to abuse and be used as a pretext for a State’s intervention in another State’s domestic affairs. For example, when Russia invoked the

²⁶² D. W. Bowett suggests that if even the USA in the Teheran case in 1980 was unsuccessful, then it is to be expected that other States do not have the capacity to go through with such dangerous operations. D. W. Bowett. 1986. In: A. Cassese. 1986. Pp 41, 52.

²⁶³ Constitution of the Russian Federation. Adopted at National Voting on 12.12.1993. Published in Rossiiskaya Gazeta newspaper as of 25.12.1993. Article 61(2).

²⁶⁴ Concept of the Foreign Policy of the Russian Federation. Approved by President of the Russian Federation V. Putin on 12 February 2013. Unofficial translation. The Ministry of Foreign Affairs of the Russian Federation.

²⁶⁵ D. W. Bowett. 1986. In: A. Cassese. 1986. P 39; See also: R. Allison. P 1295.

²⁶⁶ T. Ruys. P 261.

doctrine in 2008 in Georgia, Western States did not challenge the doctrine itself, but rather the disproportionality and motives behind the intervention.²⁶⁷

The problem with the doctrine is that it is easy for powerful States to use it as an excuse for following political ambitions. Some examples include the UK in the case of the Suez channel in 1956 and the USA in the Dominican Republic in 1965. Although they claimed to be protecting nationals abroad in hindsight it could be argued that they had alternative motives. Another bad example would be the USA in the Mayaguez case in 1975. But the fact that there is practice of breaking a rule, for example the disproportionality of some interventions, does not change the fact that there could be a rule. The legality of the doctrine remains unclear.

²⁶⁷ Evans, M. D. P 627.

3. Non-Combatant Evacuation Operations

3.1. Theory of NEOs

Some scholars have come to the conclusion that due to the vulnerability to abuse and the inability of States to agree on its legality, the classical doctrine of protecting nationals abroad should be abandoned.²⁶⁸ This however does not mean that States should not have any opportunities to help their nationals outside of their territory. These authors simply propose that there should be a shift from protecting to rescuing nationals abroad.

For this reason, a new doctrine – non-combatant evacuation operations – has been proposed. The purpose of NEOs is to quickly and safely move non-combatant evacuees from abroad if their lives are in danger from natural disasters, civil unrest or wars.

A couple of States have already adopted this new doctrine in their domestic regulation. Some of these include the USA, the UK, France, Canada and Australia.²⁶⁹ Additionally, NATO has also accepted this doctrine.²⁷⁰ Non-combatant evacuations have mostly been carried out by the USA and the UK²⁷¹ and have been used for evacuations from natural as well as man-made disasters, such as unrests in political order and wars.²⁷²

It is suggested that state practice since the 1990s has created this new kind of military operation and that the fact that the interventions have not led to discussions in the Security Council or protests by host States, seems to indicate that States believe these operations to be legal.²⁷³ What is more, also States that previously opposed the protecting nationals abroad doctrine might now accept the new doctrine.

²⁶⁸ T. Ruys. Pp 265-271; A. W. R. Thomson. Pp 652-658.

²⁶⁹ T. Ruys. P 265; US Department of the Army. Field Manual 90-29. 17.10.1994; US Joint Chiefs of Staff. United States Military Joint Publication 3-68, Noncombatant Evacuation Operations. 2007; Joint Centre for Concepts, Doctrines and Experimentations. Non-Combatant Evacuation Operation (NEO). Joint Doctrine 3.4.2. NEO. No. 136/DEF/CICDE/NP. 02.07.2009; Non-Combatant Evacuation Operations. Canadian Army. 01.06.2014; Ministry of Defence. Joint Doctrine Publication 3-51. Non-combatant Evacuation Operations. 2nd Edition. Development, Concepts and Doctrine Centre. February 2013; Australian Defence Doctrine Publication 3.10. Noncombatant Evacuation Operations. 2nd edition. 3.06.2011; See also: on 11.02.2015 Estonia passed the new National Defence Law. With this law coming into force on 01.01.2016, a new, fourth point will be added to § 45 of the Estonian Defence Forces Organisation Act. The new text will read: „The Defence Forces shall use force for the military defence of the State when evacuating persons in distress in the meaning of the Consular Act, their property and the State’s property from the crisis area.“ Estonian National Defence Law. (Riigikaitseadus). RT I, 12.03.2015, 1.

²⁷⁰ Handbook on the Analysis of Smaller-Scale Contingency Operations in Long Term Defence Planning. Prepared by the RTO Studies, Analysis and Simulation Panel (SAS). February 2005. Pp 1-2, B-28.

²⁷¹ A. W. R. Thomson. P 654.

²⁷² T. Ruys. P 265.

²⁷³ A. W. R. Thomson. Pp 653-654; C. D. Gray. P 159.

Reacting to the recurrence of NEOs,²⁷⁴ the UK concluded the first guide for them in 1998, according to which the Foreign and Commonwealth Office is responsible for the protection of nationals abroad.²⁷⁵ The Office can be supported by the Ministry of Defence if need be.²⁷⁶

Five years later, Canada adopted a similar regulation that states that the Canadian Government has the ultimate responsibility to protect its nationals.²⁷⁷ Outside of the Canadian territory, that responsibility belongs to the Department of Foreign Affairs and International Trade, who can be supported by the armed forces.²⁷⁸

In the USA, evacuation operations are led by the Department of State and NEOs are conducted with the military assistance of the Department of Defense, mostly when the local government is unable to protect American nationals due to natural disasters or armed conflicts.²⁷⁹ According to the American regulation, it is allowed to evacuate non-combatants, nonessential military personnel and selectively nationals of the host State as well as third states, whose lives are in danger.²⁸⁰ Additionally the evacuation of volunteers of non-governmental and private voluntary organizations, information officers and members of media organizations is allowed.²⁸¹

The organizers of the operation have to have knowledge about the domestic national law, international treaties and customary international law and take into account the national law of the host State.²⁸² Coordination, for example by concluding status of forces agreements,²⁸³

²⁷⁴ According to the Joint Warfare Publication on non-combatant evacuation operations, „[i]n the 3 years following the establishment of the Permanent Joint Headquarters (PJHQ), it planned and deployed troops to 25 operations in 14 countries, spanning 3 continents. Of those 25 operations, 11 were contingency Non-combatant Evacuation Operations (NEO), of which 5 were actually conducted in Sierra Leone (2), the Republic of Congo, Eritrea and Albania.“ Ministry of Defence. Joint Warfare Publication 3-51. Non-combatant Evacuation Operations. Director General Joint Doctrine and Concepts Centre. August 2000. P iii.

²⁷⁵ Ministry of Defence. Joint Warfare Publication 3-51. Pp iii, 1-1.

²⁷⁶ Ministry of Defence. Joint Warfare Publication 3-51. P 1-1.

²⁷⁷ R. Chaloux. Canadian Non-Combatant Evacuation Operations – A Better Way? *Sine loco*: Canadian Forces College / Golège des Forces Canadiennes 2007. Pp 3, 7.

²⁷⁸ R. Chaloux. P 7.

²⁷⁹ D. Kuchel, D (author), R. Pasupathy, S.-H. Kim, *et al* (editors). Analyzing Noncombatant Evacuation Operations Using Discrete Event Simulation. Proceedings of the 2013 Winter Simulation Conference. Fort Belvoir: Center for Army Analysis 2013. P 2751.

²⁸⁰ Chairman of the Joint Chiefs of Staff. Joint Tactics, Techniques, and Procedures for Noncombatant Evacuation Operations. Joint Publication 3-07.5. 30.09.1997. P vii.

²⁸¹ M. Anderson, E. Zukauskas (editors), J. Barkei, *et al*. Operational Law Handbook. International and Operational Law Department. Charlottesville, Virginia: The Judge Advocate General's Legal Center and School 2008. P 551.

²⁸² US Joint Chiefs of Staff. United States Military Joint Publication 3-68, P B-1; Joint Centre for Concepts, Doctrines and Experimentations. Non-Combatant Evacuation Operation (NEO). Joint Doctrine 3.4.2. P 32. Para A07.

²⁸³ T. Ruys. P 266.

memorandums of understanding or by drafting rules of engagement and communication with the territorial State is said to help make sure the operation is conducted legally.²⁸⁴

NATO defines NEOs as operations that are concluded either domestically, bilaterally or internationally and during which non-combatants are removed from a dangerous situation abroad to a safe place.²⁸⁵ While the Australian rules differentiate between situations where the host State is not opposed to the operation and has maintained the necessary control over the State to be able to give permission (so-called Services assisted evacuations) and between situations where the local government either has no control over the State or is opposed to the operation (so-called Services protected evacuations),²⁸⁶ the NATO definition of NEOs includes both situations.²⁸⁷

Depending on the nature of the environment, operations are divided into three: permissive, uncertain and hostile.²⁸⁸ In the first case, it is argued that the territorial State will not oppose the operation and consent can be presumed and in the two latter cases, the government is thought to not have enough control over the State to give consent for a rescue mission, whether it supports the operation or not, or if such a government exists but it is either unable or unwilling to protect the nationals.²⁸⁹ Therefore, permission is not seen as a prerequisite and one of the following is put forward as the legal base for the intervention: pre-Charter custom or state practice that allows NEOs or self-defence under Article 51.²⁹⁰

Different States have claimed different legal bases for the right to evacuate. Most States share the opinion that a consent given by the territorial State or permission from the Security Council are two possible legal bases for carrying out non-combatant evacuation operations. However, in situations where there is no possibility to ask for consent, for example when there is chaos and no functioning government, the right to self-defence, in accordance with the Waldock criteria, has also been mentioned as the legal base. This kind of justification has

²⁸⁴ US Joint Chiefs of Staff. United States Military Joint Publication 3-68. Pp II-9, JP 3-68 B-2-B-4; Ministry of Defence. Joint Doctrine Publication 3-51. P 3B-1. Paras 3B4-3B6; Joint Centre for Concepts. Doctrines and Experimentations. Non-Combatant Evacuation Operation (NEO). Joint Doctrine 3.4.2. P 32. Para A06.

²⁸⁵ Handbook on the Analysis of Smaller-Scale Contingency Operations in Long Term Defence Planning. P B-28.

²⁸⁶ Australian Defence Force Publications. Operation Series. ADFP 37. Law of Armed Conflict. 1996. P 1-5.

²⁸⁷ Handbook on the Analysis of Smaller-Scale Contingency Operations in Long Term Defence Planning. P B-40.

²⁸⁸ US Joint Chiefs of Staff. United States Military Joint Publication 3-68. P I-3; Ministry of Defence. Joint Doctrine Publication 3-51. Pp 1-2-1-3. Para 105; US Department of the Army. Field Manual 90-29. Chapter 1 – Overview. Section ‘NEO Environments’.

²⁸⁹ US Joint Chiefs of Staff. United States Military Joint Publication 3-68. P I-3; Ministry of Defence. Joint Doctrine Publication 3-51. P 3B-1. Para 3B2.

²⁹⁰ M. Anderson, E. Zukauskas (editors), J. Barkei, *et al.* P 161; Development, Concepts and Doctrine Centre. Ministry of Defence. Joint Doctrine Publication 3-51. P 3B-1. Para 3B2.

for example been brought by the UK (Article 51),²⁹¹ Australia (inherent)²⁹² France (inherent)²⁹³ and arguably by Canada (inherent).²⁹⁴

In any case, the use of force can only be used to the extent that is necessary and proportionate to conclude the operation.²⁹⁵ Thereby it is important to note that the use of force is only allowed for the protection of oneself and others, mainly evacuees.²⁹⁶ The Canadian doctrine indicates that NEOs are only to be used in defence, not offence. R. Chaloux writes in his paper about Canadian non-combatant evacuation operations: „[NEOs] are conducted to reduce to a minimum the number of citizens at risk and to protect them during the evacuation process. They are not an intervention in the issues in the host nation.“²⁹⁷

A view into state practice can bring some clarity as to whether NEOs are a part of international law. In recent years, there have been many smaller or larger NEOs. Some smaller ones include the American Operation Shepherd Sentry in the Central African Republic in 2002 and Operation Shining Express in Liberia in 2003.²⁹⁸ Below, some notable examples of NEOs will be briefly discussed.

3.2. State Practice Concerning NEOs

3.2.1. Operation Sharp Edge 1990-1991, Operation Assured Response in 1996 and Operation Noble Obelisk in 1997

One noteworthy example of a non-combatant evacuation operation is the American Operation Sharp Edge in Liberia in 1990-1991.²⁹⁹ After the First Liberian Civil War broke out in 1989 and threats by a rebel leader were made to arrest all foreigners in Monrovia and as a response to the general deterioration of security in Liberia, the USA sent 225 soldiers to Liberia.³⁰⁰ The

²⁹¹ Ministry of Defence. Joint Doctrine Publication 3-51. P 3B-1.

²⁹² Australian Defence Doctrine Publication 3.10. P 4-15.

²⁹³ Joint Centre for Concepts, Doctrines and Experimentations. Non-Combatant Evacuation Operation (NEO). Joint Doctrine 3.4.2. P 32. Para A06.

²⁹⁴ A. Kessel. P 412.

²⁹⁵ Ministry of Defence. Joint Doctrine Publication 3-51. P 3B-1. Para 3B3.

²⁹⁶ S. L. Bumgardner. A NEO is More than a Maneuver. Marine Corps University. Command and Staff College. Subject Area National Military Strategy. *Sine loco*: 1992.

²⁹⁷ R. Chaloux. P 6.

²⁹⁸ M. Anderson, E. Zukauskas (editors), J. Barkei, *et al.* P 159; For a comprehensive list of American NEOs, see: Non-combatant Evacuation Operations (NEO). – Global security *sine anno*.

²⁹⁹ S. L. Bumgardner.

³⁰⁰ T. C. Wingfield, J. E. Meyen (editors). Pp 243, 255; T. Ruys. Pp 252-253.

USA acknowledged the operation initiated by the American Ambassador to Liberia as a non-combatant evacuation operation.³⁰¹

In addition to 226 Americans Canadian, French, Iraqi, Italian and Lebanese nationals, a total of 2400 people, were evacuated from the Liberian capital city.³⁰² There was no consent from either aspiring leader of the country for the USA to intervene.³⁰³

Third States seemed to be content with the intervention or as R. B. Lillich observed, there seemed to be a “near-complete absence of legal or other criticism” of the two week American operation.³⁰⁴ A factor that might have helped with the international recognition of the operation might have been that no weapons were fired during the rescue mission.³⁰⁵

Five years later, in 1996, President Clinton announced the evacuation Operation Assured Response because of the „deterioration of the security situation and the resulting threat to American citizens“ in Liberia.³⁰⁶ The aim of the operation was to evacuate „private U.S. citizens and certain third-country nationals who had taken refuge in the U.S. Embassy compound.“³⁰⁷ During the initial stages of the NEO 2100 civilians, 435 of who were Americans and the rest nationals of 72 different countries, were rescued.³⁰⁸

In May 1997, after a coup ousted the first democratically elected government in Sierra Leone in three decades, the USA launched Operation Noble Obelisk in order to evacuate about 450 Americans (civilians and employees of the Embassy) and over 2000 nationals of other countries.³⁰⁹ The operation was deemed a success and the US Defense Secretary commended it as „safe, fast and efficient.“³¹⁰

³⁰¹ S. L. Bumgardner.

³⁰² T. C. Wingfield, J. E. Meyen (editors). Pp 243, 255 T. Ruys. Pp 252-253; S. L. Bumgardner.

³⁰³ T. C. Wingfield, J. E. Meyen (editors). Pp 243-244.

³⁰⁴ R. B. Lillich. Forcible Protection of Nationals Abroad: The Liberian "Incident" of 1990. – German Yearbook of International Law 1992, volume 35. Pp 222-223; C. D. Gray. P 129.

³⁰⁵ S. L. Bumgardner.

³⁰⁶ R. F. Grimmett. Instances of Use of United States Armed Forces Abroad, 1798-2009. *Sine loco*: Congressional Research Service 27.01.2010. P 18.

³⁰⁷ R. F. Grimmett. P 18.

³⁰⁸ L. D. Kozaryn. Liberia Evacuation Ends, Security Guard Remains. American Forces Press Service. 25.04.1996.

³⁰⁹ Operation Noble Obelisk. – Global Security *sine anno*; R. F. Grimmett. P 18; L. D. Kozaryn. U.S. Forces Evacuate 2,500 from Sierra Leone. American Forces Press Service. 12.06.1997.

³¹⁰ L. D. Kozaryn. 12.06.1997.

3.2.2. Evacuation Operations in Albania in 1997

The German Operation Libelle was just one of several rescue operations undertaken by Western Countries in Albania in 1997, as a response to armed riots in Tirana.³¹¹ This was the first time, since the Second World War, that German soldiers shot their guns outside of Germany.³¹² In total, 250 shots were fired and 120 people of 22 different nationalities were rescued, out of whom only 20 were Germans.³¹³

The American rescue mission was called Operation Silver Wake and during it, about 900 civilians were evacuated.³¹⁴ Additionally, during Operation Kosmas 52 Greek citizens, as well as 5 Belgians and a number of Jordanians and Palestinians were rescued by the Greek navy.³¹⁵

Whereas it seems that other European States had been invited to intervene in Albania, Germany did not have the consent of the local government.³¹⁶ Still, it could be argued that there was implied consent.³¹⁷ Since the operations were proportional there was very little criticism.³¹⁸

3.2.3. The Thai Evacuation Operation in Cambodia in 2003

In 2003 public demonstrations in Cambodia over who controls the Angkor Wat temple turned violent and after riots in front of the Thai embassy, one man was presumed dead.³¹⁹ As a reaction, the Thai Prime Minister threatened to use force to evacuate several hundred nationals after attacks on them and the Thai embassy in Phenom Penh.³²⁰

Later, with cooperation by the Cambodian army, an evacuation operation was carried out and over 500 Thai nationals were relocated with the help of four military transport planes.³²¹

³¹¹ T. Ruys P 253; L. Zanga. Albania in 1997. Encyclopædia Britannica Online.

³¹² Operation "Libelle". Tirana '97: Das erste Gefecht der Bundeswehr. – RP Online 14.03.2007.

³¹³ Talmon, S. Changing views on the use of force: the German position. – Baltic Yearbook of International Law 2005, volume 5. P 71.

³¹⁴ M. Anderson, E. Zukauskas (editors), J. Barkei, *et al* P 159.

³¹⁵ Evacuation of 240 Foreign Dignitaries from Albania. Operation „Kosmas“. Hellenic National Defence General Staff. Announcements Archive. 15.03.1997. P 1

³¹⁶ Kreß, C. Die Rettungsoperation der Bundeswehr in Albanien am 14. März 1997 aus völker- und verfassungsrechtlicher Sicht. Z.a.ö.R.V. Vol 57. 1997. P 331.

³¹⁷ C. Kreß. Pp 337–339, 347–349, 361.

³¹⁸ T. Ruys. P 253.

³¹⁹ Panicked Thais flee Cambodia. – BBC News 30.01.2003.

³²⁰ A. Hinton. Khmerness and the Thai 'Other': Violence, Discourse and Symbolism in the 2003 Anti-Thai Riots in Cambodia. – Journal of Southeast Asian Studies 2006, volume 37(3). P 445.

³²¹ Panicked Thais flee Cambodia. – BBC News 30.01.2003.

Similarly to the Libelle and other recent evacuation operations, this mission was also not criticized.³²²

3.2.4. Lebanon in 2006

Another notable example of a NEO is the exceptionally large operation concluded in Lebanon during the Israeli-Hizbollah conflict in 2006.³²³ During the summer of 2006, in order to try to force Israel to release Lebanese prisoners, the Hezbollah paramilitary forces launched a military operation and killed several Israeli soldiers and took two as prisoners of war.³²⁴

In reality, there were several evacuation operations carried out by several States. The USA evacuated about 15000 nationals³²⁵ and during Operation Highbrow, the UK rescued 4500 people, roughly 2500 of who were British citizens.³²⁶ Further evacuation operations were conducted for example by Sweden (some 7000), Canada (approximately 7000 nationals), France (about 4500 French nationals and 1200 foreigners), India (nearly 2000), Italy (767), Spain (at least 539), Poland (about 220), Russia (almost 200) and China (143).³²⁷

These numbers shows that the Israeli-Hizbollah conflict brought about one of the most extensive multinational evacuation operations in recent history. Following the trend of earlier rescue operations, this case was not discussed in the Security Council and there was no condemnation of the operations by the international community.³²⁸

3.2.5. Evacuation Operations in Libya in 2011

During the Arab Spring in 2011, Libya experienced large-scale unrests and a civil war between forces loyal to the country's leader of more than 40 years, Muammar Gaddafi, and his opponents.³²⁹ Gaddafi used the Libyan military as well as mercenaries to defeat the

³²² T. Ruys. P 253.

³²³ State Department: The July 2006 Evacuation of American Citizens from Lebanon. GAO-07-893R. The United States Government Accountability Office. Washington, DC. 07.06.2007. P 2.

³²⁴ M. Haddad. Lebanon in 2006. Encyclopædia Britannica Online.

³²⁵ State Department: The July 2006 Evacuation of American Citizens from Lebanon. GAO-07-893R. The United States Government Accountability Office. Washington, DC. 07.06.2007. P 1; C. Sutherland. Operation Deference. The Multinational NEO Evacuation Coordination Cell Concept. – The RUSI Journal 2012, volume 157, issue 3. Pp 15-16.

³²⁶ At-a-glance: Lebanon evacuations. – BBC News 25.07.2006; P. Boissier. The Challenges Today of Supporting Both Land and Sea Operations. – RUSI Defence Systems. February 2008.

³²⁷ At-a-glance: Lebanon evacuations. – BBC News 25.07.2006; 200 svenskar kvar i södra Libanon. – svt.se 25.07.2006.

³²⁸ A. W. R. Thomson. P 658.

³²⁹ T. Bahrapour, C. Murphy. For longtime autocrat, a violent end. – The Washington Post 20.10.2011

opposition, but in the end he was unsuccessful.³³⁰ As a result of this, several States decided to evacuate their nationals from the conflict region.

For example, China deployed 19 chartered flights and three vessels in order to evacuate a total of almost 35900 Chinese nationals as well as 41 Maltese, Italian, Croatian, Vietnamese and Filipino citizens.³³¹

The UK Operation Defence, lasting less than a month,³³² began on 24 February when 64 people, including 51 British citizens were picked up in the Tripoli airport and transferred to Malta.³³³ During the first days of the operation, around 600 British nationals and over 1000 foreign nationals from 43 different countries were evacuated.³³⁴

3.3. Conclusion

A clear trend can be seen that the protection of nationals abroad with the help of non-combatant evacuation operations have been successful and proportional. Usually, a large amount of people have been evacuated from a dangerous situation in a matter of a short period of time. The assessment of the US Defense Secretary to the rescue mission in Sierra Leone could apply to most NEOs – they tend to be „safe, fast and efficient.“³³⁵ Also, NEOs do not seem to be carried out for the protection of any kind of property.³³⁶

Another trend is that not only the nationals of the rescuing State are evacuated, but also other nationals are offered help. At times, the amount of foreign nationals supersedes the number of the nationals of the rescuing State. This aspect should be seen as a positive development because it has been suggested that one of the reasons so few different States carried out operations to protect their nationals, was the fact that they lacked the means to do so.³³⁷ In light of this change, also nationals of less powerful States can receive help. This was for

³³⁰ R. Ziemba. Libya in 2011. Encyclopædia Britannica Online.

³³¹ Chinese evacuation from Libya via Malta ends. – China.org 5.03.2011.

³³² C. Sutherland. P 15.

³³³ UK Ministry of Defence. Prime Minister praises military effort in Libyan evacuations. 2011. 28.02.2011.

³³⁴ Cameron, D. Prime Minister's Statement on Libya. Announcement. 28.02.2011; Burt, A. Libya: the consular response. Announcement. 3.03.2011.

³³⁵ L. D. Kozaryn. 1997.

³³⁶ A. W. R. Thomson. P 662; T. Ruys. P 16.

³³⁷ D. W. Bowett. 1986. In: A. Cassese. 1986. Pp 41, 52.

example the case in Lebanon in 2006, when Norway and Finland helped evacuate 10 Icelandic nationals.³³⁸

An additional tendency appears to be that these operations have not been criticized by the international community. Therefore, the author of this thesis agrees with the conclusion made by A. W. R. Thomson: “The NEO is well established in both doctrine and practice.”³³⁹

³³⁸ The evacuation of these nationals could have proven difficult for a little State with a population of 400000 with no army or even Ministry of Defence; Icelanders try to Flee from Lebanon. – Iceland on Review 12.07.2006; Icelanders on Finnish Bus from Lebanon. – Iceland on Review 17.07.2006.

³³⁹ A. W. R. Thomson. P 658.

4. Possible Changes in the Doctrine of Protecting Nationals Abroad

Even though Russia has brought several justifications for its actions in Crimea, the protection of nationals abroad was the original pretext for military action in Ukraine.³⁴⁰ As we know, international customary law is composed of state practice (*longa consuetudo*) and *opinio iuris*. In order to figure out whether Russia has managed to change international customary law with its actions, both of these aspects have to be examined. Therefore, subsequently an overview of the Crimean Crisis will be given.

As we have seen, state practice where the protection of nationals abroad doctrine has been relied on, is limited. However, if Russia's actions in Ukraine are to be considered as state practice that might give rise to the emergence of new customary international law, it makes sense to continue with an examination of *opinio iuris*. In other words, did the international community believe that the actions carried out in Crimea were legal?

4.1. State Practice: Russia's Invasion into Ukraine

4.1.1. Historical Background

Crimea was first annexed by Russia in 1783, having formerly belonged to Turkey and mostly inhabited by Crimean Tatars.³⁴¹ After the annexation, demographics changed due to land being distributed to Russians and furthermore by Tatars being deported in 1944.³⁴² Subsequently, by the time the 1979 census was carried out, only 0.3% of the population in Crimea was Tatar; Russians constituted the majority with 68.4% and Ukrainians were the second biggest ethnic group with 25.6%.³⁴³

During Soviet rule, First Secretary of the Communist Party Nikita Khrushchev transferred Crimea from the Russian Soviet Federative Socialist Republic to the Ukrainian Soviet Socialist Republic in 1954 so that after the Ukrainian independence in 1991, Crimea stayed in

³⁴⁰ S. Etezazian. Ukraine Insta-Symposium: The Crisis in Crimea – The Protection of Nationals Abroad and the Legality of Ukraine's Possible Use of Force in Self-Defence. – *Opinio Iuris* 9.03.2014.

³⁴¹ Stuster, J. D. Sorry, Turkey: You're Not Getting Crimea Back. – *Foreign Policy* 20.03.2014.

³⁴² G. L. Uehling. *Beyond Memory: The Crimean Tartars' Deportation and Return*. New York: Palgrave Macmillan 2004. Pp 79-107.

³⁴³ M. Drohobycky (editor). *Crimea: Dynamics, Challenges and Prospects*. Maryland: Rowman & Littlefield Publishers 1995. P 73.

the Ukrainian territory.³⁴⁴ Notwithstanding, Crimea was given a large amount of autonomy and its official name was the Autonomous Republic of Crimea within Ukraine.³⁴⁵

Sevastopol, a city located in the southwestern region of Crimea, was home to the Soviet Black Sea Fleet. After the Ukrainian independence, Russia refused to recognize Ukrainian sovereignty over Crimea, until 1994, when the Budapest Memorandum was signed by Russia, the UK, the USA and France. According to the memorandum, Russia recognized Ukraine in its borders and in return Ukraine delivered its nuclear weapons to Russia.³⁴⁶

Still, fighting over the Black Sea Fleet and the port continued until the bilateral Treaty of Friendship and Cooperation between Russia and Ukraine was signed.³⁴⁷ This treaty helped confirm Ukrainian State borders and confirmed the Ukrainian sovereignty over Sevastopol, but in a separate 1997 status of forces agreement on the Black Sea Fleet it was agreed upon that Ukraine will lease the land to Russia for 25 years with the possibility to prolong the lease.³⁴⁸ Later, in April 2010, the lease was extended for another 25 years, that is, until the year 2024.³⁴⁹ In 2003, the bilateral Agreement on the State Border between Ukraine and Russia was signed.³⁵⁰

By the 2001 Ukrainian census, ethnic Russians comprised 58.5%, Ukrainians 24.4% and Crimean Tatars 12.1% of the Crimean population.³⁵¹ After the annexation of the territory, Moscow terminated the bilateral treaties due to an alleged fundamental change of circumstances under Articles 61 and 62 of the Vienna Convention on the Law of Treaties.³⁵²

³⁴⁴ U. Kulke. Geschichte. Krim-Übertragung. War der Dnjepr-Kanal der Grund? – Die Welt 12.03.2014.

³⁴⁵ S. Schmemann. Crimea Parliament Votes to Back Independence From Ukraine. – New York Times 06.05.1992.

³⁴⁶ V. Zaborsky. Crimea and the Black Sea Fleet in Russian - Ukrainian Relations. Discussion Paper 95-11. Center for Science and International Affairs, John F. Kennedy School of Government, Harvard University, September 1995.

³⁴⁷ N. Caspersen. Unrecognized States. The struggle for sovereignty in the modern international system. Cambridge, Malden: Polity Press 2012. P 4; Russia plans to invest heavily in Sevastopol base. – RIA Novosti/Sputniknews 9.05.2010.

³⁴⁸ N. Caspersen. P 4.

³⁴⁹ Medetskly, A. Deal Struck on Gas, Black Sea Fleet. – The Moscow Times 22.04.2010.

³⁵⁰ T. Zhurzhenko. Ukraine's Border with Russia before and after the Orange Revolution. In: M. Malek. (Herausgeber). Die Ukraine: Zerrissen zwischen Ost und West? Wien: Schriftenreihe der Landesverteidigungsakademie 2007. P 71.

³⁵¹ All-Ukrainian population census 2001. National composition of population. Autonomous Republic of Crimea. State Statistics Committee of Ukraine.

³⁵² B. N. Mamlyk. Mapping Developments in Ukraine from the Perspective of International Law. – Cambridge Journal of International and Comparative Law 12.03.2014.

4.1.2. Overview of the Crimean Crisis³⁵³

In order to understand the conflict between Russia and Ukraine in the Crimean Crisis better, a short overview of how the Crisis evolved will subsequently be given.

The Russian military intervention into Ukraine started after the Ukrainian revolution and Euromaidan movement in February 2014. This was followed by pro-Russian unrest in Eastern Ukraine and a secession crisis in Crimea which subsequently led to the Crimean status referendum held on March 16th 2014.

Allegedly, the referendum on whether to join Russia had a turnout of 83% and more incredibly, 97% of them supposedly voted in favor of the annexation to Russia.³⁵⁴ President Putin reacted by saying that he will “respect the choice of the Crimean people.”³⁵⁵ Later this led to Russian legislation that enabled the incorporation of Crimea to Russian territory, even though the secession was in contradiction to the Ukrainian constitution.³⁵⁶ Even so, on March 19th the Russian constitutional court ruled that the annexation was in compliance with the Russian Constitution.³⁵⁷

V. Bílková differentiates between two instances of use of force by the Russian Federation in Crimea: firstly the use of Russian units already deployed in Crimea and secondly the use of the so-called little green men, *i.e.* Russian servicemen in local-looking uniforms and without insignia.³⁵⁸ Thus, a couple of concrete examples of both will be brought.³⁵⁹

Firstly, it has been reported that Russian servicemen operated outside their bases, for example by taking control over certain strategic locations like military installations in Crimea, by blocking the Black Sea ports and supporting the local pro-Russian militias,³⁶⁰ which was not in accordance with the rules set out in the 1997 status of forces agreement on the Black Sea

³⁵³ The Crimean Crisis is part of a wider military intervention by Russia in the Ukraine. The larger crisis also includes the Donbass region in the east of Ukraine. This thesis focuses on the Crimean Crisis.

³⁵⁴ These curiously high numbers are most probably lies; See for example: P. R. Gregory. Putin’s Human Rights Council? Accidentally Post Real Crimean Election Results. – Forbes 05.05.2014.

³⁵⁵ M. Collett-White, R. Popeski. Crimeans vote 90 percent to quit Ukraine for Russia. – Reuters 16.03.2014

³⁵⁶ R. Allison. P 1260.

³⁵⁷ R. Allison. P 1260.

³⁵⁸ V. Bílková. The Use of Force by the Russian Federation in Crimea. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 2015, volume 27. Pp 30-37.

³⁵⁹ Here, it should be kept in mind that reports about these instances of the use of force are often different and, at times, even contradictory to each other in the West and East. The author of this thesis has taken the liberty to analyze some of these reports without claiming that they reflect the objective truth.

³⁶⁰ A. Aratunyan. Crimea Crisis: Role of Russia’s Black Sea Fleet. – The Moscow News 03.03.2014; S. Webb, D. Gayle. Vladimir Putin scuttles his own navy warship in Black Sea to BLOCK Ukrainian vessels from leaving port as Crimeans face referendum on whether to join Russia. – Daily Mail Online 06.03.2014; F. Dahl. OSCE team say Crimea roadblock gunmen threatened to shoot at them. – Reuters 12.03.2014

Fleet. This kind of action also probably violates the prohibition of the use of force and, according to Article 3 paragraphs (c) and (e) of the UN General Assembly Definition of Aggression,³⁶¹ could constitute acts of aggression.

There were also reports of presence of military personnel equipped with Russian weapons, military vehicles with Russian registration plates and Russian-made uniforms (albeit without the insignia).³⁶² Although Russia first denied it, Putin later admitted that Russian forces had backed the Crimean pro-Russian forces.³⁶³

The so-called little green men were firstly accused of taking actively part in military operations, for example occupying the Simferopol International Airport and military bases, blocking roads and creating security checks.³⁶⁴ Additionally, they were blamed for taking over some local public institutions, such as the Crimean parliament the Supreme Council.³⁶⁵

These actions, like the actions discussed earlier, probably violate the prohibition of the use of force and constitute an act of aggression. This time the basis for the latter is paragraph (a) of Article 3, which states that an attack by the armed forces, or any military occupation, however temporary, or any annexation by the use of force of the territory of another State or part thereof, constitutes an act of aggression.

While exercising military aggression in Ukraine, Russia relied on various arguments and justifications, some of which are the protection of Russian nationals abroad³⁶⁶ (*i.e.* in Ukraine), intervention by invitation by the former Ukrainian President Yanukovich³⁶⁷ and historic reunification.³⁶⁸ Still, as mentioned earlier, the protection of nationals abroad was the original reason.³⁶⁹ During the UN Security Council's 7125th meeting Russia's Permanent Representative to the UN Vitali Churkin said: "In this extraordinary situation, which is not of our making and in which the lives and security of the inhabitants of Crimea and south-eastern Ukraine are under genuine threat from the irresponsible and provocative acts of gangs and

³⁶¹ These paragraphs define as an act of aggression the blocking of a port and the use of armed forces which are within the territory of another State in contravention to the conditions provided for in the agreement between these two States.

³⁶² Warning shots end OSCE Crimea entry bid. – Aljazeera 08.03.2014; M. Lipman. Putin's Crisis Spreads. – The New Yorker 08.03.2014.

³⁶³ K. Lally. Putin's remarks raise fears of future moves against Ukraine. – The Washington Post 17.04.2014; Direct Line with Vladimir Putin. President of Russia. 17.04.2014.

³⁶⁴ V. Shevchenko. "Little green men" or "Russian invaders"? – BBC News 11.03.2014.

³⁶⁵ Shuster, A. Putin's Man in Crimea Is Ukraine's Worst Nightmare. – Time 10.03.2014.

³⁶⁶ Lavrov: Troops in Crimea Protecting Russian Citizens. – Voice of America 03.03.2014.

³⁶⁷ UN Doc. S/PV.7125. 03.03.2014. Pp 3-4.

³⁶⁸ V. Lazumirskyy. Perversion of a doctrine: protection of nationals abroad and Russia's invasion of Crimea. Master's thesis. Riga: Riga Graduate School of Law 2014. P 2.

³⁶⁹ S. Etezazian.

ultranationalist elements, we emphasize once again that Russia's actions are entirely appropriate and legitimate.”³⁷⁰

Taking the aforementioned into account, one can see that the Russian intervention in Crimea for the protection of their nationals abroad, was quite an extensive operation. On some accounts, there were about 30000 Russian troops in Crimea in the beginning of March 2014³⁷¹ and 7000 troops inside Ukraine and yet another 40000 - 50000 on the border with Ukraine in November 2014.³⁷² The Russian intervention consequently led to the annexation of the territory.

4.2. *Opinio Iuris*

4.2.1. The International Community's Reaction to Russia's Actions in Crimea

Next, the *opinio iuris* will be examined. An overview of reactions from different individual States and international organizations will assist in the evaluation of whether or not the international community and Russia thought that the intervention in Crimea was legal. First, the opinions of the international community will be analyzed and later, the Russian view will be examined.

On March 27th the UN General Assembly passed a non-binding resolution that declared Crimea's referendum on seceding from Ukraine invalid. Out of 193 Member States, 100 voted in favor, 11 against and 58 abstained.³⁷³ Several States, such as the United States, and international organizations, like the European Union, decided to apply sanctions against individuals and businesses from Russia as an expression of discontent with its actions. NATO condemned Russia's military actions and Stated that it constituted a breach of international law.³⁷⁴ The Council of Europe expressed its full support for Ukraine's territorial integrity.³⁷⁵ Even representatives of China, who tend to support Russia's policies, have spoken against the military intervention.³⁷⁶ Overall, most of the United Nations Member States have declared that they do not recognize the Russian rule in Crimea.

³⁷⁰ UN Doc. S/PV.7125. 03.03.2014. P 4.

³⁷¹ J. Boyle (editor). Ukraine says Russian troops in Crimea have doubled to 30,000. – Reuters 7.03.2014.

³⁷² S. Harris. Thousands of Putin's Troops Now in Ukraine, Analysts Say. – The Daily Beast 11.11.2014.

³⁷³ L. Charbonneau, M. Donath. U.N. General Assembly declares Crimea secession vote invalid. – Reuters 27.03.2014.

³⁷⁴ North Atlantic Council Statement on the situation in Ukraine. Press release (2014) 033. 02.03.2014.

³⁷⁵ Standing Committee. PACE strongly supports Ukraine's territorial integrity and national sovereignty. – Parliamentary Assembly 07.03.2014.

³⁷⁶ Economy, E. China's Soft 'Nyet' To Russia's Ukraine Intervention. – Forbes 05.03.2014.

Ukraine declared that Russian forces had illegally entered Ukrainian territory and deemed their intervention an act of aggression.³⁷⁷ The Ukrainian claims were supported by representatives from Australia, the UK, the USA and Canada in the Security Council.³⁷⁸ Furthermore, the British Foreign Secretary William Hague gave quite a harsh assessment of the intervention in a debate in the House of Commons: “No amount of sham and perverse democratic process or skewed historical references can make up for the fact that this is an incursion into a sovereign State and a land-grab of part of its territory, with no respect for the law of that country or for international law.”³⁷⁹

As was explained earlier, there is no consensus on the legality of the use of force to protect nationals abroad. However, it is submitted that even if the doctrine was legal, it would still be highly unlikely that Russia’s military actions in Crimea fall within the limits of Article 51 of the UN Charter. This is so mainly because *prima facie* the intervention does not meet some of the conditions of the doctrine, more exactly the preconditions of necessity and proportionality.³⁸⁰

The right to invoke the doctrine of protecting nationals abroad does not emerge until it is clear that no other methods for achieving a peaceful resolution would work. The doctrine should only be used as a last resort. However, this does not seem to be the case in Ukraine. First of all, there was little evidence of any immediate threat to Russian nationals. As the United States permanent Representative to the UN put it: “There is no evidence, for example, that churches in eastern Ukraine are being or will be attacked. The allegation is without basis. There is no evidence that ethnic Russians are in danger. On the contrary, the new Ukrainian Government has placed a priority on internal reconciliation and political inclusivity. Acting President Turchynov has made clear his opposition to any restriction on the use of the Russian tongue.”³⁸¹

Secondly, even if the existence of a threat to the life or health (or even property) of Russian nationals could be proven, other means of finding a resolution were still applicable. Article 33(1) of the UN Charter stipulates the obligation of Member States to seek peaceful means to

³⁷⁷ UN Doc. S/PV.7124. 01.03.2014. P 3.

³⁷⁸ UN Doc. S/PV.7124. 01.03.2014. P 6; UN Doc. S/PV.7125. 03.03.2014. Pp 5, 10; General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region. General Assembly Meetings Coverage. GA/11493. 27.03.2014.

³⁷⁹ For a full UK assessment of the Russian legal arguments, see: Hague, W. Oral Statement to Parliament by Foreign Secretary William Hague. Russian actions in Crimea. 18.03.2014.

³⁸⁰ S. Etezazian.

³⁸¹ UN Doc. S/PV.7125. 03.03.2014. P 4.

settle a dispute. Mainly using diplomatic means could have solved the crisis without having to resolve to military action. Moreover, Russia could have called for the UN to take action.

As to proportionality, there are limitations placed upon actions taken in self-defence. As N. Lubell so eloquently put it: “/---/ actions taken in self-defence must /---/ be measured in relation to the achievement of this legitimate aim.”³⁸² Some authors argue that the intensity of the force used should be about the same as the intensity defended against.³⁸³ Yet, even if one were to disagree and allow a response of greater magnitude, it can evidentially be submitted that the condition of proportionality was not fulfilled.

Furthermore, the Russian invasion into Crimea can certainly not be seen as a non-combatant evacuation operation. First of all, Russia claimed to have the right to protect the members of the Black Sea Fleet.³⁸⁴ These people combatants and thus, by definition, a NEO cannot be launched for the evacuation of these nationals.

What is more, as with the doctrine of protecting nationals abroad, also during a NEO the conditions of proportionality and necessity have to be fulfilled. As has been shown above, this has not been the case. To the contrary, the Russian operation culminated with the annexation of the Ukrainian peninsula rather than evacuation of the supposedly threatened nationals.

Thus, it can be summarized that two conditions of the doctrine of protecting nationals abroad, necessity and proportionality, were not fulfilled. Additionally, the Russian intervention into Crimea was not a NEO. Therefore it is not surprising that the majority of the international community seems to agree that Russia's military intervention in Ukraine was not a legitimate use of force.

³⁸² N. Lubell. *Extraterritorial Use of Force Against Non-State Actors*. New York: Oxford University Press 2010. P 65; See also: M. N. Schmitt. *Counter-Terrorism and the Use of Force in International Law*. The Marshall Center Papers number 5. Garmisch-Partenkirchen: The Marshall Center Papers 2002. P 21.

³⁸³ F. L. Kirgis. *Some Proportionality Issues Raised by Israel's Use of Armed Force in Lebanon*. – American Society of International Law Insights 2006, volume 10, issue 20; However, not all authors agree. M. N. Schmitt for example argues that since the aggressor acquires an advantage by initiating the attack, the counter-attack could need a greater force: M. N. Schmitt. P 20.

³⁸⁴ Putin submitted that there was a „threat to citizens of the Russian Federation, our compatriots, the personnel of the military contingent of the Russian Federation Armed Forces deployed on the territory of Ukraine (Autonomous Republic of Crimea).“; See: Vladimir Putin submitted appeal to the Federation Council. President of Russia. 1.03.2014.

4.2.2. Russian *Opinio Iuris*

For the sake of argumentation, it is interesting to try to figure out whether Russia believed its own actions in Crimea to be legal. Even though it is difficult to examine such a subjective element, some evidence seems to point to the likelihood that also Russian *opinio iuris* does not exist.

First of all, the fact that Russia used so many different justifications for the intervention shows that there was not enough trust in any of them. Similarly, for example, when the Security Council deemed Belgium's protection of nationals in Congo illegal, Belgium made sure to have another justification (the consent of the legitimate Congolese authorities) four years later, when together with the US, another intervention was launched in Congo.

Since these claims are many yet unconvincing, it is safe to assume that not even Russia expected the international community to believe in the legality of Moscow's actions. However, they did seem to be successful in creating a certain amount of doubt. Confusion and the exploiting of uncertainty in international law seem to be a part of Putin's tactic³⁸⁵ in order to try "to muddy the waters of international opinion."³⁸⁶ Russia has been very productive in the use of non-military instruments of influence like media propaganda, legal rhetoric and diplomacy in order to create at least plausible deniability and give an impression that its actions are lawful.³⁸⁷ By doing this, Russia has managed to keep the West from taking effective action and on the other hand keep Putin's domestic popularity rating high as ever.

Secondly, while exercising military aggression in Ukraine, Russia denied that its forces had been involved in the Crimean Crisis until April 2014. As a contrast, Ukrainian authorities accused Russia of aggression in Crimea as early as the beginning of March.³⁸⁸ The denial might be an indication that the Russian Government did not believe in the legality of the military actions. There seems to be no other logical reason than at first, Moscow tried to hide their involvement and later, as the amount of evidence became too overwhelming to continue the denial, they had no other option than to bite the bullet and tell the truth.

What is more, if the majority of the international community disagrees with Russia, it is difficult to believe that no doubt was aroused in Moscow. Not only were the actions

³⁸⁵ R. Allison. P 1259.

³⁸⁶ W. Hague. Oral Statement to Parliament by Foreign Secretary William Hague. Russian actions in Crimea. 18.03.2014.

³⁸⁷ R. Allison. P 1258.

³⁸⁸ D. Friedman, B. Hutchinson. Ukraine accuses Russia of 'pure aggression'; Kerry criticizes Putin over Crimea. – New York Daily News 03.03.2014.

condemned, but also relatively severe sanctions were imposed on Russia. Of course, doubt is not enough to prove the nonexistence of *opinio iuris*, but combined with other arguments, the logical conclusion would be that even Russia probably did not believe in the legality of the actions in Crimea.

Conclusion: *De Lege Ferenda*

After analyzing the state practice since the adoption of the UN Charter and the positions of different States and legal scholars it becomes clear that the doctrine of protecting nationals abroad is still developing. Therefore there is no certainty as to whether or not the use of force for this purpose should be considered legal.

While there are good arguments on both the *pro* and *contra* side, the fact remains that States do rely on the doctrine and carry out operations for the protection of their nationals. Even though the amount of different countries doing so is not large, the strong belief that the doctrine is illegal is probably not the principal reason for this. This could for example be seen when Egypt at first denied the legality of the doctrine and later relied on it during the intervention in Larnaca in 1978.

Taking into account that States mostly have criticized the application of the doctrine and not the concept *per se*, the author of this thesis concludes that the Achilles heel of the doctrine is its exposure to abuse. For example, it is quite clear that Russia has not been acting in good faith during the Crimean Crisis. First of all, the application of the protection of nationals abroad was neither justified nor proportional. Secondly, even if Russia believed it to be so, the *opinio iuris* of the majority of the intentional community states the opposite.

With a view into the future, rather ironically it is important to keep in mind that ultimately Ukraine and the Western States have to abide by the rules, even if Russia has not. This means that if there is a wish to restore Ukraine's territorial integrity, it would not be lawful to resort to forceful measures against Russia unless measures other than force are likely to be unsuccessful in rectifying the wrong.

As to the hypothesis of this thesis, the author concludes that the protection of nationals abroad doctrine has not been changed by Russia's actions in Crimea since the doctrine was used as an excuse to follow political aspirations. Therefore, as before, the application limitations remain unclear.

Whereas it is true that the doctrine is open to abuse, there is also a legitimate need for a possibility to protect nationals in some cases. If a State's nationals were subjected to deliberate or widespread abuse, the State would be under great political pressure to act. It would be futile to demand inaction on behalf of that State. It is submitted that when weighing humanitarian interests *versus* political interests, the possible breaches of the law do not

outweigh the potential risks of denying the legality of action in an urgent situation. In the case of danger to the life and health of people, there is often no use of remedy after the fact.³⁸⁹

This is especially true now, when there is a trend of human rights gaining importance because in essence, the protection of nationals is humanitarian. In these situations what is mainly needed is quick action. This is also the reason why an intervention under Article 42 cannot be seen as a viable alternative – sanctions by the Security Council take time.

It is regrettable that the UN Security Council, the General Assembly, the ICJ or any other authoritative organization has not taken it upon themselves to fill this legal gap. Especially when taking into account that the Italian Representative called for a paper to be concluded in order to keep the same problems from occurring again. It is quite remarkable that all United Nations organs have managed to avoid taking a stand regarding the doctrine, especially because it has caused conflicts since the adoption of the UN Charter – almost 70 years now.

However, after analyzing the theory and state practice of non-combatant evacuation operations, it is submitted that the new proposed doctrine could solve the problems that accompanied the doctrine of protecting nationals abroad. The discussed NEOs have been more proportional than most invocations of the old doctrine and have often not been criticized by the international community.

Still, the author of this thesis believes that the *status quo* is not the optimal solution. It is clear that there is an urgent need for legislation. International coherent regulation would eliminate the ambiguity of the legality of rescue missions for the protection of nationals and could prevent NEOs from having such negative effects as the old doctrine had.

This is especially true since most of the animosity towards the latter has been caused either by its wrong, not proportionate or unnecessary application or the fear of smaller, developing States that powerful Western Countries will exploit the doctrine. This was the case in or example the Suez Canal case in 1956, the American interventions into Grenada in 1983 and into Panama in 1989, Belgium armed interference in Congo in 1960 and 1964 and more recently, Russia in Georgia and Ukraine.

The author of this thesis submits that clear international legislation could help prevent potential instances of abuse. In order to act in a legal way, it is important to understand

³⁸⁹ G. Fitzmaurice says that „there is no remedy except prevention.“ G. Fitzmaurice. *The General Principle of International Law. Considered from the Standpoint of the Rule of Law.* – Collected Courses. Volume 92. 1957, II. Hague Academy of International Law. Dordrecht: Martinus Hijhoff Publishers 1957. P 173.

international rules. Also, these valid international rules need to be reinforced so that international peace and security can be kept. When rules have been broken, a clear understanding is also necessary to find a long-term solution to the crisis.

This all cannot be done without comprehensibility of when the use of force is legal and when it is not. Even if the solution is that the protecting of nationals abroad doctrine is deemed illegal, this would finally create legal certainty for the future. And even though at times it might be argued that there is no remedy except prevention, in the cases of illegal interventions, affected States would gain grounds for some sort of reprisals.

There is a few legal scholars discussing the topic but regrettably their decisions and opinions are not legally binding. Therefore, that is just not enough. It is understandable that the Security Council might not be able to find a proper solution because of the five permanent Veto Powers. However, the task of the Sixth Committee, *i.e.* Legal Committee of the General Assembly is to deal with international legal matters.

Alternatively, if the ICJ once again has the chance to discuss the matter, the author hopes this opportunity will not be left unused as it was during the Tehran case in 1980. After all, according to Article 38(1) of the ICJ Statute, judgements of the Court serve as secondary sources of law for not only *inter partes*, but also generally.

Additionally, this would be a prime opportunity to regulate possible misuses of the doctrine that have come into light during the Crimean Crisis, such as the active and fairly generous administration of Russian passports to the inhabitants of regions that Russian troops were going to enter. This is a justified question because similar practice of offering citizenship to people living in former Soviet States, such as Georgia, have been noted.

Finally, some proposals for legislative improvements will be given. First of all, the Waldock criteria or some other analogous restrictions should apply to NEOs. Secondly, rescue missions should be limited to people. This means that NEO for the evacuation of property it should not be allowed. However, there are no good reasons for disallowing the rescuing of nationals of other States'. NEOs should be allowed for the evacuation of nationals from both natural as well as man-made disasters, such as unrests and wars.

Furthermore, in the case of a permissive environment, *i.e.* when the territorial state has the power to grant permission, an invitation to intervene by the host state should be preferred to an intervention without consent. Cooperation with the local government, for example in the

form of status of forces agreements, memorandums of understanding or by drafting rules of engagement can help with the fulfilment of the proportionality criteria.

Even so, permission should not be seen as a prerequisite. This is especially true in uncertain and hostile environments, where the local government does not have enough control over the state to give consent for a rescue mission, or if such a government exists but it is either unable or unwilling to protect the nationals.

Relvastatud jõu kasutamine ja kodanike kaitsmine välismaal Krimmi kriisi vaguses. Resümee

Aegade jooksul on rahvusvahelise õiguse kõige olulisemaks tunnuseks olnud riikide suveräänsus. Alates eelmisest sajandist on üha olulisemaks muutunud inimõigused, mis tihti seisavad vastu riigi suveräänsusega. Seda põhjusel, et vahel tuleb indiviidi õigusi kaitsta riigi suveräänsuse arvelt. Sellest tulenevalt on tekkinud arutelud nende doktriinide õiguspärasuse üle, mis riigi suveräänsust piiravad. Selliste doktriinide hulka kuulub ka kodanike kaitsmine välismaal.

Nimetatud temaatika on oluline arvestades, et tänapäeval on riikide individuaalne relvastatud jõu kasutamine võrdlemisi piiratud. Õiguspäraselt käitumiseks on vaja rahvusvaheliste normide mõistmist. Veelgi enam, maailma rahu ja julgeoleku kaitsmise seisukohast on oluline kontrollida reeglitest kinnipidamist ning rikkumise esinemisel reageerida. See võib aga osutuda keeruliseks, kuna rahvusvaheline õigus on pidevas muutumises. Nii mõjutavad seda muuhulgas uued tehnikasaavutused, rahvusvaheliste poliitikate muutumine ja riikide praktika.

Alates Ühendatud Rahvaste Organisatsiooni (ÜRO) loomisest 1945. aastal, ei ole õigusteadlased ja riigid suutnud kokkuleppele jõuda doktriini kodanike kaitsmine välismaal piirides ega õiguspärasuses. Doktriini idee seisneb selles, et riikidel on õigus oma kodanikke välismaal kaitsta ning see annab aluse rikkuda teise riigi suveräänsust.

Venemaa kuulub ÜRO Julgeolekunõukogu viie alalise liikme hulka ja on üks mõjuvõimsamaid riike maailmas. Riigil on potentsiaalselt tohutu mõju rahvusvahelisele õigusele ning senisest käitumisest on võimalik järeldada, et soov rahvusvahelist õigust Moskva meelepärasel suunas mõjutada on olemas.

Venemaa tegevust Krimmis alates 2014. aasta algusest võib näha kui suurimat ohtu rahule Euroopas alates külma sõja lõppemisest. Need sündmused on jällegi elavdanud arutelu kodanike kaitsmise doktriini õiguspärasuse üle. Sekkumist kriisi kommenteerides väitis Venema, et kuna tema kodanikud olid Krimmi poolsaarel ohus, oli see militaarselt sekkumiseks küllaldane õigustus.

Käesoleva magistritöö eesmärk on uurida, kas Krimmi kriisi sündmused on olnud aluseks doktriini õiguspärasuse muutumiseks. Püstitatud hüpoteesi kohaselt ei ole doktriin muutunud, kuna Venemaa-poolne relvastatud jõu kasutus ei vastanud *prima facie* olemasolevatele doktriini reeglitele ja piirangutele.

On oluline mõista, kas Venemaa rikkus rahvusvahelisi norme, kuna see aitab kriisile pikaajalise lahenduse leidmisel. Veelgi enam, see võib aidata kaasa tulevikus analoogsete rikkumiste ärahoidmisele. See on eriti oluline, kuna potentsiaalsete sarnaste rikkumiste toimepanek ei ole välistatud – Moskva ekspansionistlik agressiivsus on muret tekitanud ka Eestis ja teistes Venemaaga piirnevates riikides. Kui kodanike kaitsmise doktriini puudutavad reeglid oleksid kõigile üheselt mõistetavalt selged, oleks teistel riikidel võimalik reageerida rikkumistele kiiremini ja ennastkehtestavamalt.

Magistritöö eesmärgi saavutamiseks uuritakse kõigepealt relvastatud jõu kasutamise erinevaid õigustusi. Ülevaate loomisel esimeses peatükis kasutatakse peamiselt tunnustatud õigusteadlaste kirjutisi, Rahvusvahelise Kohtu lahendeid ning ÜRO Hartat. Olulisim ülevaate juures on see, et rahvusvahelises õiguses on alates Harta jõustumisest riikide õigus kasutada jõudu piiratud Harta artikkel 2 lõikega 4. Nagu enamasti, on ka sellel reeglil erandid. Lubatud on kasutada jõudu Julgeolekunõukogu mandaadi alusel ning enesekaitseks.

Teises peatükis keskendutakse kodanike kaitsmisele välismaal. Doktriinist uuritakse nii teooria poolelt kui ka märkimisväärsemat riikide praktikat arvesse võttes. Käesoleva magistritöö raames pöörab autor tähelepanu ainult *ius ad bellum*-le. See tähendab, et Krimmi kriisi ja teisi juhtumeid ei uurita humanitaarõiguse aspektist, vaid keskendutakse üksnes küsimusele, millal on riikidel õigus sekkuda kodanike kaitseks teise riigi territooriumile. Teooria analüüsi käigus kasutatakse jällegi peamiselt rahvusvahelise õiguse teadlaste töid ning riikide praktikat uurides viidatakse lisaks asjassepuutuvatele ÜRO Julgeolekunõukogu ja Peaassamblee dokumentidele.

Kõnealusest peatükist selgub, et õigusteadlaste seas ei valitse üksmeel doktriini lubatavuse kohta. Lisaks erineb erimeelsusi ka nende seas, kes põhimõtteliselt doktriini õiguspärasust toetavad – nimelt ei jõuta kokkuleppele doktriini õigusliku aluse küsimuses. Leidub autoreid, kes on veendunud, et kodanike kaitsmine ei kvalifitseeru jõu kaustamiseks ja seega ei keela Harta sellist tegevust.

Teine, suurem grupp õigusteadlasi on seisukohal, et kodanike kaitsmine välismaal on osa enesekaitseõigusest. Ka nende teadlaste hulgas esineb erinevaid arvamusi. Nii väidavad mõned, et riikidevaheline praktika enne ÜRO Harda jõustumist tõestab, et kodanike kaitse välismaal on tavaõigusliku enesekaitseõiguse osa. Valdav osa teadlasi on aga arvamusel, et kuna rünnak kodaniku vastu on võrreldav rünnakuga riigi kui terviku vastu, rakendub sellisel juhul Harta artiklist 51 tulenev enesekaitseõigus.

Kuigi doktriini lubatavuse ja selle õiguslike aluse seisukohast leidub palju erimeelsusi, on enamused autoreid üksmeelel, et juhul kui doktriin on lubatud, kohalduvad sellele piirangud. Briti teadlane C. H. M. Waldock on sätestanud enim tuntud kitsendused: eelseisev reaalne oht kodanikele välismaal, kohalike võimude võimetus või tahtmatu kodanikke kaitsta ning sekkumise proportsionaalsus.

Riikide praktikat uurides selgub, et tihti kaasneb sekkumisele rahvusvaheline kriitika. Seejuures on oluline täheldada, et enamasti on kriitika suunatud viisile, kuidas relvastatud jõudu kasutatakse, mitte doktriini kui sellise õiguspärasusele. Oma kodanikke on välismaal kaitsnud vaid piiratud arv erinevaid riike, enamused neist lääneriigid. Praktika analüüsist selgub, et Egiptus muutis kodanike kaitsmise vajaduse tekkides oma meelt doktriini õiguspärasuse kohta. Seega tuleb praktikale hinnangut andes arvestada asjaoluga, et rahvusvahelises õiguses omab poliitika sama suurt rolli kui õigus.

Kodanike kaitse doktriini uurimisele järgneb rahvusvahelises õiguses üsna uudse doktriini – mittevõitlejate evakuatsiooni operatsioonide – tutvustus. See on vajalik, kuna mõned teadlased on jõudnud järeldusele, et kodanike kaitsmise doktriin on ennast tänaseks ammendanud ning selle asemele on tekkinud evakueerimisoperatsioonid. Arvestades et nimetatud operatsioonid sagesid üheksakümnendatel, on teema kohta vaid piiratud kogus materjale. Enamuse jaoks tugineb autor erinevate riikide sõjaväelistele publikatsioonidele.

Selgub, et mõned riigid on oma siseriiklikus õiguses uue doktriini omaks võtnud. Nende riikide hulka kuulub Ameerika Ühendriikide, Inglismaa, Kanada, Prantsusmaa ja Austraalia kõrval ka Eesti. Evakuatsiooni operatsioonid erinevad kodanike kaitsmise eesmärgil sekkumisest mitmeti: näiteks kestavad need tavaliselt lühemat aega, sageli on olemas territoriaalriigi (vaikiv) nõusolek ning tihti evakueeritakse ka kolmandate riikide kodanikke.

Neljandas peatükis keskendutakse Krimmi kriisile ning sellele, kas ja kuidas see kodanike kaitse doktriini mõjutanud on. Selleks edastatakse esiteks lühike kokkuvõtte Krimmi kriisi ajaloolisest taustast. Sellele järgneb ülevaade rahvusvahelise kogukonna reaktsioonist Venemaa tegevusele. Lisaks püütakse analüüsida, milline on Venemaa võimalik *opinio iuris*. Peatüki kirjutamisel tuginetakse peamiselt eri ajaleheväljaannete uudistele, Krimmi kriisi puudutavatele pressiteadaannetele ning Julgeolekunõukogu dokumentidele.

Selgub, et rahvusvaheline üldsus on peaaegu üksmeelselt Venemaa sekkumise Krimmis hukka mõistnud. Autor oletab, et põhjus, miks Venemaa oma interventsiooni Krimmis lisaks

kodanike kaitsmise doktriinile veel mitme erineva õigustusega põhjendas, on see, et ka Venemaa ei uskunud oma tegevuse õiguspärasusse.

Lõpuks edastatakse töö käigus selgunud järeldused ning uuritakse, milline võiks olla *lex ferenda*. Ilmneb, et kodanike kaitse doktriini üksikasjad ei ole veel selgelt välja kujunenud ning sellest tulenevalt ei ole võimalik kindlalt väita, et jõu kasutamine sellel eesmärgil on õiguspärane. Siiski saab analüüsitud praktikale tuginedes kinnitada, et riigid kasutavad relvastatud jõudu kodanike välismaal kaitsmise eesmärgil.

Arvestades et riikide kriitika on enamasti suunatud sellele, kuidas kodanikke kaitstakse ja mitte sellele, et seda tehakse, on õigustatud väita, et doktriini Ahilleuse kand on, et seda on kerge kuritarvitada. Näiteks on üsna selge, et Venemaa ei tegutsenud Krimmis heas usus kuna tõestust pole leidnud asjaolu, et sealsed Vene kodanikud oleksid tegelikult ohus olnud.

Selgub, et töö alguses püstitatud hüpotees, et Vene tegevus Krimmis ei ole muutnud kodanike kaitse doktriini, leiab kinnitust, kuna Moskva kasutas kodanike kaitsmise vajadust vaid ettekäändena. Seega ei loo kõnealune kaasus selgust doktriini piirides.

Kuigi on vaieldamatult tõsi, et doktriini ärakasutamine kujutab endast reaalselt probleemi, ei saa eeldada, et riigid oma kodanikke ei abistaks, kui selleks tekib vajadus. Sellises olukorras on riik suure poliitilise surve all ning keeld tegutseda oleks tulutu. Töö autor usub, et kui kaalukausile panna ühelt poolt humanitaarseid huvid ja teiselt poolt poliitilised huvid, ei kaalu võimalikud seaduse rikkumised üle potentsiaalseid riske, mida tooks endaga kaasa kiireloomulises olukorras reageerimise keelamine. See on eriti tõsi tänapäeval, mil inimõigused omavad järjest rohkem tähtsust, kuna sisuliselt on kodanike kaitsmisel välismaal humanitaarne olemus. Pealegi ei ole sellistes pakilistes olukordades tihti hilinemisega reaktsioonist enam kasu. See on ka põhjus, miks Harta artiklis 42 toodud sekkumine ei ole mõistlik alternatiiv – Julgeolekunõukogu otsused võtavad aega.

On katehtsusväärne, et ÜRO ükski organ ei ole siiani suutnud problemaatilisele õiguse lüngale lahendust leida ning üheseltmõistetavat regulatsiooni välja töötada. Eriti arvestades, et sellekohaseid üleskutseid on tulnud ÜRO liikmesriikidelt ning problem on eksisteerinud juba Harta vastuvõtmisest alates – nüüdseks juba peaaegu 70 aastat.

Riikide praktika mittevõitlejate evakuatsiooni operatsioonide läbiviimisel näitab, et uus doktriin on hea lahendus kodanike kaitsmise doktriini probleemidele. Analüüsitud

evakueerimisoperatsioonid on olnud proportsionaalsed ja rahvusvaheline ülduses ei ole neid kritiseerinud.

Siiski leiab käesoleva töö autor, et *status quo* ei ole optimaalne lahendus. On selge, et vaja on selget, ühtset ja üheselt mõistetavat regulatsiooni. See aitaks vältida olukorda, kus riigid mittevõitlejate evakuatsiooni operatsioone ekslikult valel eesmärgil või viisil läbi viivad, või lausa kuritarvitavad, nagu seda on tehtud kodanike kaitsmise doktriiniga. Lisaks aitab selge arusaam doktriini piiridest vajadusel tuvastada rikkumised ja vastavalt edasi käituda. Isegi kui doktriini käsitleva reeglistiku väljatöötamisel selgub, et evakueerimisoperatsioonide läbiviimine ei ole õiguspärane, looks selline lahendus kauaoodatud õiguskindlust.

Mittevõitlejate evakuatsiooni operatsioonide teemal on mõned õigusteadlased juba kirjutanud, kuid nende seisukohad ei ole õiguslikult siduvad. On arusaadav, et Julgeolekunõukogus otsusele jõudmine on keeruline, kuna selles on esindatud viis vetoõigusega alalist liiget, kes tihti esindavad vastandlikke arusaamasid rahvusvahelisest õigusest. Siiski võib eeldada, et Peaassamblee Kuues Peakomitee, kelle ülesandeks on tegeleda õigusküsimustega, on võimeline regulatsiooni välja töötama. Autor jääb samuti lootma, et kui Rahvusvahelisel Kohtul esineb jälle võimalus problemaatikat lahata, nagu 1980 aastal Teherani kaasuse puhul, ei jäeta võimalust kasutamata.

Uut regulatsiooni välja töötades on võimalik pöörata tähelepanu probleemidele, mis Krimmi kriisi valguses ilmsiks on tulnud. Näiteks tuleks arvestada problemaatikat seoses rohkete passide väjastamisega teise riigi piirkonnas, kus hiljem kodanikke kaitstakse.

Lõpetuseks esitab autor oma ettepanekud, mida tuleks uue regulatsiooni väljatöötamisel arvestada. Esiteks, vajalikud on Waldocki kriteeriumid või mõned muud analoogsed piirangud. Teiseks, päästeoperatsioone tuleks läbi viia vaid inimeste aitamiseks. See tähendab, et kodanike või vara evakueerimiseks kõnealune doktriin ei sobi. Samas tuleks võimaldada operatsiooni käigus vajadusel ka kolmandate riikide kodanike päästmine. Oht, mis loob aluse evakueerimisoperatsiooni läbiviimiseks, võib olla nii looduslik kui inimese poolt põhjustatud, näiteks (kodu)sõjad ja rahutused.

Olukorras, kus territoriaalliigi valitsus on võimul ning (vaikiva) nõusoleku andmine võimalik, tuleks seda eelistada loata riiki sisenemisele. Koostöö kohalike võimudega tagab ka operatsiooni proportsionaalsuse. Siiski, nõusolek ei tohiks olla eeltingimus, eriti kui operatsioon viiakse läbi ebakindlas või ähvardavas keskkonnas, kus kohalik valitsus on kaotanud võimu või pole kas võimeline või ei taha kodanikke kaitsta.

List of Used Materials

Literature

1. Arend, A. C., Beck, R. J. International Law and the Use of Force: Beyond the U.N. Charter Paradigm. Oxfordshire, England, New York: Routledge 1993.
2. Blokker, N., Schrijver, N. (editors). The Security Council and the Use of Force: Theory and Reality – A Need for Change? Leiden: Martinus Nijhoff Publishers 2005.
3. Bowett, D. W. Self-defence in International Law. Great Britain: Manchester University Press 1958.
4. Brownlie, I. International Law and the Use of Force by States. New York: Oxford University Press 1963.
5. Brownlie, I. Principles of Public International Law. 6th edition. New York: Oxford University Press 2003.
6. Bumgardner, S. L. A NEO is More than a Maneuver. Marine Corps University. Command and Staff College. Subject Area National Military Strategy. *Sine loco*: 1992. Available at: <http://www.globalsecurity.org/military/library/report/1992/BSL.htm> (03.05.2015).
7. Caspersen, N. Unrecognized States. The struggle for sovereignty in the modern international system. Cambridge, Malden: Polity Press 2012.
8. Cassese, A (editor). The Current Legal Regulation of the Use of Force. Dordrecht: Martinus Nijhoff Publishers 1986.
9. Cassese, A. International Law. 2nd edition. New York: Oxford University Press 2005.
10. Chaloux, R. Canadian Non-Combatant Evacuation Operations – A Better Way? *Sine loco*: Canadian Forces College / Golège des Forces Canadiennes 2007. Available at: <http://www.cfc.forces.gc.ca/259/290/293/286/chaloux.pdf> (03.05.2015).
11. Corten, O., Klein, P. (editors). Vienna Convention on the Law of Treaties. A Commentary. Volume 2. New York: Oxford University Press 2011.
12. Corten, O., Simma, B (editor). The Law Against War: The Prohibition on the Use of Force in Contemporary International Law. French Studies in International Law. Portland: Hart Publishing 2010.
13. Damrosch, L. F., Scheffer, D. J. (editors). Law and Force in the New International Order. Boulder, San Francisco, Oxford: Westview Press 1991.
14. Dinstein, Y. War, Aggression and Self-Defence. 5th edition. Cambridge: Cambridge University Press 2012.

15. Drohobycky, M. (editor). *Crimea: Dynamics, Challenges and Prospects*. Maryland: Rowman & Littlefield Publishers 1995.
16. Evans, M. D. (editor). *International Law*. 3rd edition. New York: Oxford University Press 2010.
17. Fassbender, B., Peters, A. (editors). *The Oxford Handbook of the History of International Law*. Oxford: Oxford University Press 2012.
18. Ford, A. W. *The Anglo-Iranian Oil Dispute 1951-1952*. Berkley, Los Angeles, London: University of California Press, Cambridge University Press 1954.
19. Franck, T. M. *Recourse to Force: State action against threats and armed attacks*. Cambridge: Cambridge University Press 2002.
20. Gardam, J. *Necessity, Proportionality and the Use of Force by States*. Cambridge: Cambridge University Press 2004.
21. Gazzini, T. *The Changing Rules on the Use of Force in International Law*. Manchester: Manchester University Press 2005.
22. Gray, C. D. *International Law and the Use of Force*. 3rd edition. New York: Oxford University Press 2008.
23. Green, L. C. *The contemporary law of armed conflict*. 3rd edition. Manchester: Manchester University Press 2008.
24. Henkin, L. *International Law: Politics, Values and Functions: General Course on Public International Law*. Dordrecht: Martinus Nijhoff 1989.
25. Higgins, R. *Problems and process: international law and how we use it*. New York: Oxford University Press 1995.
26. Higgins, R. *The Development of International Law Through the Political Organs of the United Nations*. London, New York, Toronto: Oxford University Press 1963.
27. Jessup, P. C. *A Modern Law of Nations. An Introduction*. Hamden: Archon Books 1952.
28. Kelsen, H. *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems. With Supplement*. 7th printing. Union, New Jersey: The Lawbook Exchange 2008.
29. Kelsen, H., Tucker R. W. (editor). *Principles of International Law*. 2nd edition. New York, Chicago, San Francisco, Toronto, London: Holt, Rinehart and Winston 1966.
30. Kuchel, D. (author), Pasupathy, R., Kim, S.-H., *et al* (editors). *Analyzing Noncombatant Evacuation Operations Using Discrete Event Simulation*. Proceedings of the 2013 Winter Simulation Conference. Fort Belvoir: Center for Army Analysis

2013. Available at: <http://informs-sim.org/wsc13papers/includes/files/243.pdf> (03.05.2015).
31. Kuwali, D. The Responsibility to Protect: Implementation of Article 4(h) Intervention. Dordrecht: Martinus Nijhoff Publishers 2011.
 32. Lazumirskyy, V. Perversion of a doctrine: protection of nationals abroad and Russia's invasion of Crimea. Master's thesis. Riga: Riga Graduate School of Law 2014.
 33. Lillich, R. B. (editor). Humanitarian Intervention and the United Nations. Charlottesville: University Press of Virginia 1973.
 34. Lubell, N. Extraterritorial Use of Force Against Non-State Actors. New York: Oxford University Press 2010.
 35. Malanczuk, P. Akehurst's Modern Introduction to International Law. 7th revised edition. London, New York: Routledge 1997.
 36. Malek, M. (Herausgeber). Die Ukraine: Zerrissen zwischen Ost und West? Wien: Schriftenreihe der Landesverteidigungsakademie 2007.
 37. O'Brien, J. International law. London: Cavendish Publishing Limited 2001.
 38. Oppenheim, L., Lauterpacht, H. (editor). International Law. A Treatise. Volume 2. 7th edition. London, New York, Toronto: Longmans, Green and co 1952.
 39. Recchia, S., Welsh, J. M. (editors). Just and Unjust Military Interventions. European Thinkers from Victoria to Mill. New York: Cambridge University Press 2013.
 40. Ronzitti, N. Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity. Dordrecht: Martinus Nijhoff Publishers 1985.
 41. Schmitt, M. N. Counter-Terrorism and the Use of Force in International Law. The Marshall Center Papers number 5. Garmisch-Partenkirchen: The Marshall Center Papers 2002.
 42. Shaw, M. N. International Law. 5th edition. Cambridge: Cambridge University Press 2003.
 43. Simma, B., Randelzhofer, A. (editors). The Charter of the United Nations. A Commentary. Volume I. 2nd edition. New York: Oxford University Press 2002.
 44. Simma, B., Verdross, A. Universelles Völkerrecht. Theorie und Praxis. Dritte Auflage. Berlin: Duncker & Humboldt 1984.
 45. Stevenson, W, Dan, U. 90 Minutes at Entebbe. 9th edition. New York: Bantam Books 1976.
 46. Stone, J., Ferencz, B. B., Perkovich, J. (general editor). Aggression and World Order: A Critique of United Nations Theories of Aggression. Berkley, Los Angeles: University California Press 1958.

47. Sunga, L. L. The Emerging System of International Criminal Law: Developments in Codification and Implementation. The Hague: Martinus Nijhoff Publishers 1997.
48. Tesón, F. R. Humanitarian Intervention: An Inquiry into Law and Morality. 2nd edition. New York: Transnational Publishers 1996.
49. Uehling, G. L. Beyond Memory: The Crimean Tartars' Deportation and Return. New York: Palgrave Macmillan 2004.
50. Värk, R. Diplomaatiline õigus. Tallinn: Juura 2004.
51. Wehberg, H. Krieg und Eroberung Im Wandel des Völkerrechts. Frankfurt am Main, Berlin: Alfred Metzner Verlag 1953.
52. Weissbrodt, D. S. The Human Rights of Non-citizens. New York: Oxford University Press 2008.
53. Wingfield, T. C., Meyen, J. E. (editors). Lillich on the Forcible Protection of Nationals Abroad. International Law Studies. Vol 77. Newport, Rhode Island: U.S. Naval War College 2002.

Articles

54. Akehurst, M. The Use of Force to Protect Nationals Abroad. – International Relations 1977, volume 5.
55. Allison, R. Russian 'deniable' intervention in Ukraine how and why Russia broke the rules. – International Affairs 2014, volume 90:6.
56. Bethlehem, D. Notes and Comments. Principles Relevant to the Scope of a State's Right of Self-Defense Against an Imminent or Actual Armed Attack by Nonsatate Actors. – The American Journal of International Law 2012, volume 106:000. Available at: <http://www.un.org/law/counsel/Bethlehem%20-%20Self-Defense%20Article.pdf> (03.05.2015).
57. Beyerlin, U. Die israelische Befreiungsaktion von Entebbe in völkerrechtlicher Sicht. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 1977, volume 37.
58. Bílková, V. The Use of Force by the Russian Federation in Crimea. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 2015, volume 27.
59. D'Amato, A. Agora: U.S. Forces in Panama: Defenders, Aggressors or Human Rights Activists. – American Journal of International Law 1990, volume 84.
60. Etezazian, S. Ukraine Insta-Symposium: The Crisis in Crimea – The Protection of Nationals Abroad and the Legality of Ukraine's Possible Use of Force in Self-Defence. – Opinio Iuris 9.03.2014. Available at:

- <http://opiniojuris.org/2014/03/09/ukraine-insta-symposium-crisis-crimea-protection-nationals-abroad-legality-ukraines-possible-use-force-self-defense> (03.05.2015).
61. Farer, T. J. Panama: Beyond the Charter Paradigm. – American Journal of International Law 1990, volume 84.
62. Fitzmaurice, G. The General Principle of International Law. Considered from the Standpoint of the Rule of Law. – Collected Courses. Volume 92. 1957, II. Hague Academy of International Law. Dordrecht: Martinus Hijhoff Publishers 1957.
63. Greenwood, C. International Law and the United States' Air Operation Against Libya. – West Virginia Law Review 1986.1987, volume 89.
64. Henkin, L. The Invasion of Panama Under International Law: A Gross Violation. – Columbia Journal of Transnational Law 1991, volume 29.
65. Higgins, N., O'Reilly, K. The Use of Force, Wars of National Liberation and the Right to Self-Determination in the South Ossetian Conflict. – International Criminal Law Review 2009, volume 9.
66. Hinton, A. Khmerness and the Thai 'Other': Violence, Discourse and Symbolism in the 2003 Anti-Thai Riots in Cambodia. – Journal of Southeast Asian Studies 2006, volume 37(3). Available at: <http://www.ncas.rutgers.edu/sites/fasn/files/Khmerness%20and%20the%20Thai%20Other.pdf> (03.05.2015).
67. Jennings, R. Y. The Caroline and McLeod Cases. – American Journal of International Law 1938, volume 32, number 1.
68. Kessel, A. Canadian Practice in International Law. At the Department of Foreign Affairs and International Trade in 2008-9. – Canadian Yearbook of International Law 2009, volume 47.
69. Kirgis, F. L. Some Proportionality Issues Raised by Israel's Use of Armed Force in Lebanon. – American Society of International Law Insights 2006, volume 10, issue 20.
70. Kreß, C. Die Rettungsoperation der Bundeswehr in Albanien am 14. März 1997 aus völker- und verfassungsrechtlicher Sicht. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 1997, volume 57.
71. Lauterpacht, E. The Contemporary Practice of the United Kingdom in the Field of International Law. Survey and Comment. III. August 16- December 31, 1956. – The International and Comparative Law Quarterly 1957, volume 6, number 2.
72. Lillich, R. B. Forcible Protection of Nationals Abroad: The Liberian "Incident" of 1990. – German Yearbook of International Law 1992, volume 35.

73. Mamlyk, B. N. Mapping Developments in Ukraine from the Perspective of International Law. – Cambridge Journal of International and Comparative Law 12.03.2014. Available at: <http://cjicl.org.uk/2014/03/12/mapping-developments-ukraine-perspective-international-law/> (03.05.2015).
74. Nanda, V. P. The United States armed intervention in Grenada – impact on world order. – California Western International Law Journal 1984, volume 14.
75. Nanda, V. P. The Validity of United States Intervention in Panama under International Law. – The American Journal of International Law 1990, volume 84, number 2.
76. Raby, J. The State of necessity and the use of force to protect nationals. – Canadian Yearbook of International Law 1988, volume 26.
77. Rosenstock, R. International Convention Against the Taking of Hostages: Another International Community Step Against Terrorism. – Denver Journal of International Law and Policy 1980, volume 9.
78. Ruys, T. The ‘Protection of Nationals’ Doctrine Revisited. – Journal of Conflict & Security Law 2008, volume 13 number 2.
79. Schachter, O. In Defence of International Rules on the Use of Force. – University of Chicago Law Review 1986, volume 53.
80. Schachter, O. The Right of States to Use Armed Force. – Michigan Law Review 1984, volume 82, number 5/6.
81. Schweisfurth, T. Operations to Rescue Nationals in Third States Involving the Use of Force in Relation to the Protection of Human Rights. – German Yearbook of International Law 1980, volume 23.
82. Sutherland, C. Operation Deference. The Multinational NEO Evacuation Coordination Cell Concept. – The RUSI Journal 2012, volume 157, issue 3.
83. Talmon, S. Changing views on the use of force: the German position. – Baltic Yearbook of International Law 2005, volume 5.
84. 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, volume 11, issue 3.
85. Vattel, E. de. The Law of Nations. Text of 1758, ed. 1916. (As cited in: Borchard, E. The Protection of Citizens Abroad and Change of Original Nationality. – Yale Law Journal 1934, volume 20, number 4.)
86. Waldock, C. H. M. The Regulation of the Use of Force by Individual States in International Law. – Collected Courses. Volume 81. 1952-II. Hague Academy of International Law. Dordrecht: Martinus Nijhoff Publishers 1952.

87. Webb, P. Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria. – Journal of Conflict & Security Law 2014, volume 19(3).
88. Wedgwood, R. The Use of Armed Force in International Affairs: Self-Defense and the Panama Invasion. – Columbia Journal of Transnational Law 1991, volume 29.
89. Wheeler, L. K. The Grenada Invasion: Expanding the Scope of Humanitarian Intervention. – Boston College International and Comparative Law Review 1985, volume 8, issue 2, Article 5. Available at: <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?Article=1424&context=iclr> (03.05.2015).
90. Whiteman, M. A Digest of International Law. – Columbia Law Review 1971, volume 12.
91. Whiteman, M. A Digest of International Law. – Columbia Law Review 1965, volume 5.
92. Wilmshurst, E., Berman, F. *et al.* The Chatham House Principles of International Law on the Use of Force in Self-Defence Source – The International and Comparative Law Quarterly 2006, volume 55, number 4.
93. Zedalis, R. J. Protection of Nationals Abroad: Is Consent the Basis of Legal Obligation? – Texas International Law Journal 1990, volume 25:209.

Judicial Decisions

International Court of Justice

94. Corfu Channel Case. Oral Proceedings (first part). Judgements of 25.03.1948, 09.04 and 15.12.1949. Volume III. Available at: <http://www.icj-cij.org/docket/files/1/10905.pdf> (03.05.2015).
95. Corfu Channel case, Judgment of 9.04.1949. ICJ Reports 1949, p. 4. Available at: <http://www.icj-cij.org/docket/files/1/1645.pdf> (03.05.2015).
96. Anglo-Iranian Oil Co. case (jurisdiction), Judgement of 22.07.1952. ICJ Reports 1952, p 93. Available at: <http://www.icj-cij.org/docket/files/16/1997.pdf> (03.05.2015).
97. Nottebohm Case (second phase), Judgment of 6.04.1955. ICJ Reports 1955, p 4. Available at: <http://www.icj-cij.org/docket/files/18/2674.pdf> (03.05.2015).
98. United States Diplomatic and Consular Staff in Tehran, Judgment, ICJ Reports 1980, p 3. Available at: <http://www.icj-cij.org/docket/files/64/6291.pdf> (03.05.2015).
99. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits. Judgement. ICJ Reports 1986, p.14. Available at <http://www.icj-cij.org/docket/files/70/6503.pdf> (03.05.2015).

100. Oil Platforms (Islamic Republic of Iran v United States of America), Judgment, ICJ Reports 2003, p 161. Available at: <http://www.icj-cij.org/docket/files/90/9715.pdf> (03.05.2015).
101. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Separate Opinion of Judge Higgins. ICJ Reports 2004, p 207. Available at: <http://www.icj-cij.org/docket/files/131/1681.pdf> (03.05.2015).
102. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Separate Opinion of Judge Kooijmans. ICJ Reports 2004, p 219. Available at: <http://www.icj-cij.org/docket/files/131/1683.pdf> (03.05.2015).
103. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Declaration of Judge Buergenthal. ICJ Reports 2004, p 240. Available at: <http://www.icj-cij.org/docket/files/131/1687.pdf> (03.05.2015).
104. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda), Judgment, ICJ Reports 2005, p 168. Separate Opinion of Judge Kooijmans, ICJ Reports 2005, p 306. Available at: <http://www.icj-cij.org/docket/files/116/10463.pdf> (03.05.2015).
105. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda), Judgment, ICJ Reports 2005, p 168. Separate Opinion of Judge Simma, ICJ Reports 2005, p 334. Available at: <http://www.icj-cij.org/docket/files/116/10467.pdf> (03.05.2015).

United Nations Documents

Security Council

106. UN Doc. S/4387. 14.07.1960.
107. UN Doc. S/4405. 22.07.1960.
108. UN Doc. S/6129. 30.12.1964.
109. UN Doc. S/PV 2489. 26.10.1983.
110. UN Doc. S/PV 2674. 15.04.1986.
111. UN Doc. S/PV 2675. 15.04.1986.
112. UN Doc. S/PV 2676. 16.04.1986.
113. UN Doc. S/PV 2677. 16.04.1986.
114. UN Doc. S/PV 2678. 17.04.1986.
115. UN Doc. S/PV 2679. 17.04.1986.
116. UN Doc. S/PV 2680. 18.04.1986.
117. UN Doc. S/PV 2681. 18.04.1986.

118. UN Doc. S/PV 2682. 22.04.1986.
119. UN Doc. S/PV 2683. 24.04.1986.
120. UN Doc. S/PV 2899. 20.12.1989.
121. UN Doc. S/PV 2900. 21.12.1989.
122. UN Doc. S/PV.1170. 09.12.1964.
123. UN Doc. S/PV.1174. 14.12.1964.
124. UN Doc. S/PV.1175. 15.12.1964.
125. UN Doc. S/PV.1198. 04.05.1965.
126. UN Doc. S/PV.1200. 05.05.1965.
127. UN Doc. S/PV.1939. 09.07.1976
128. UN Doc. S/PV.1940. 12.07.1976.
129. UN Doc. S/PV.1941. 12.07.1976.
130. UN Doc. S/PV.1942. 13.07.1976.
131. UN Doc. S/PV.2902. 23.12.1989.
132. UN Doc. S/PV.5952. 08.08.2008.
133. UN Doc. S/PV.5953. 10.08.2008.
134. UN Doc. S/PV.7124. 01.03.2014.
135. UN Doc. S/PV.7125. 03.03.2014.
136. UN Doc. S/PV.749. 30.10.1956.
137. UN Doc. S/PV.873. 13.07.1960.
138. UN Doc. S/PV.878. 21.07.1960.
139. UN Doc. S/VP.1176. 15.12.1964.
140. UN Doc. S/VP.1177. 16.12.1964.
141. UN Doc. S/VP.1183. 22.12.1964.
142. UN Doc. S/VP.1196. 03.05.1965.
143. UN Doc. S/VP.1202. 06.05.1965.
144. UN Doc. S/VP.1203. 07.05.1965.
145. UN Doc. S/VP.1212. 19.05.1965.
146. UN Doc. S/VP.1214. 21.05.1965.
147. UN Doc. S/PV.1943. 14.07.1976.
148. UN Doc. S/VP.2491. 27.10.1983.
149. UN Doc. S/VP.877. 20./21.07.1960.

General Assembly

150. UN Doc. A/AC.134/SR.46, 208, 211. 30.07.1970-12.04.1974.

151. UN Doc. A/C.1/SR.1396. 03.12.1965.
152. UN Doc. A/C.1/SR.1406. 10.12.1965.
153. UN Doc. A/C.6/6/SR.287. 15.01.1952.
154. UN Doc. A/C.6/6/SR.292. 19.01.1952.
155. UN Doc. A/C.6/6/SR.293. 21.01.1952.
156. UN Doc. A/PV.561. 01.11.1956.
157. UN Doc. A/PV.738. 18.08.1958.
158. UN Doc. A/PV.739. 18.08.1958.
159. UN Doc. A/PV.740. 19.08.1958.
160. UN Doc. A/Res/38/7. 02.11.1983.
161. UN Doc. A/RES/44/240. 29.12.1989.
162. UN Doc. A/VP.742. 20.08.1958.

Other UN Documents

163. Dugard, J. R. Special Rapporteur on Diplomatic Protection. First Report on Diplomatic Protection. International Law Commission. UN Doc. A/CN.4/506. 07.03.2000. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/330/76/PDF/N0033076.pdf?OpenElement> (03.05.2015).
164. Letter from the Minister of State of Sudan. Letter dated 21 August 1998 from the Minister of State at the Ministry of Foreign Affairs of the Sudan addressed to the President of the Security Council. UN Doc. S/1998/786. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/245/77/IMG/N9824577.pdf?OpenElement> (03.05.2015).
165. The Union of Soviet Socialist Republics: draft resolution on the definition of aggression. 4.11.1950. UN Doc. A/C.1/608. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NL5/021/16/PDF/NL502116.pdf?OpenElement> (03.05.2015).
166. United Nations Yearbook. 1958. Available at: <http://www.unmultimedia.org/searchers/yearbook/page.jsp?volume=1958&page=48> (03.05.2015).
167. United Nations Yearbook. 1960. Available at: <http://www.unmultimedia.org/searchers/yearbook/page.jsp?volume=1960&page=74> (03.05.2015).

168. United Nations Yearbook. 1964. Available at:
<http://www.unmultimedia.org/searchers/yearbook/page.jsp?volume=1964&page=107>
(03.05.2015).

Military Publications

169. Australian Defence Doctrine Publication 3.10. Noncombatant Evacuation Operations. 2nd edition. 3.06.2011. Available at:
http://www.defence.gov.au/adfwc/Documents/DoctrineLibrary/ADDP/ADDP_3_10_Noncombatant_Evac_Ops.pdf (03.05.2015).
170. Australian Defence Force Publications. Operation Series. ADFP 37. Law of Armed Conflict. 1996. Available at:
<http://www.navedu.navy.mi.th/stg/databasestory/data/laukniyom/workjob/bigcountry-workjob/Australia/ADDP06.4LOAC.pdf> (03.05.2015).
171. Chairman of the Joint Chiefs of Staff. Joint Tactics, Techniques, and Procedures for Noncombatant Evacuation Operations. Joint Publication 3-07.5. 30.09.1997. Available at:
http://www.globalsecurity.org/military/library/policy/dod/jp3_07_5.pdf (03.05.2015).
172. Handbook on the Analysis of Smaller-Scale Contingency Operations in Long Term Defence Planning. Prepared by the RTO Studies, Analysis and Simulation Panel (SAS). February 2005. Available at:
[http://ftp.rta.nato.int/public//PubFullText/RTO/TR/RTO-TR-SAS-027///TR-SAS-027-\\$\\$ALL.pdf](http://ftp.rta.nato.int/public//PubFullText/RTO/TR/RTO-TR-SAS-027///TR-SAS-027-$$ALL.pdf) (03.05.2015).
173. Joint Centre for Concepts, Doctrines and Experimentations. Non-Combatant Evacuation Operation (NEO). Joint Doctrine 3.4.2. NEO. No. 136/DEF/CICDE/NP. 02.07.2009. Available at: http://www.cicde.defense.gouv.fr/IMG/pdf/JD_3-4-2_NP.pdf (03.05.2015).
174. Ministry of Defence. Joint Doctrine Publication 3-51. Non-combatant Evacuation Operations. 2nd Edition. Development, Concepts and Doctrine Centre. February 2013. Available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/142584/20130301-jdp3_51_ed3_neo.pdf (03.05.2015).
175. Ministry of Defence. Joint Warfare Publication 3-51. Non-combatant Evacuation Operations. Director General Joint Doctrine and Concepts Centre. August 2000. Available at: <http://indianstrategicknowledgeonline.com/web/NON-COMBATANT%20EVACUATION%20OPERATIONS.pdf> (03.05.2015).

176. Non-Combatant Evacuation Operations. Canadian Army. 01.06.2014. Available at: <http://www.army-armee.forces.gc.ca/en/operations-training/non-combattant-evacuation-operation.page> (03.05.2015).
177. US Department of the Army. Field Manual 90-29. 17.10.1994. Available at: <http://www.globalsecurity.org/military/library/policy/army/fm/90-29/index.html> (03.05.2015).
178. US Joint Chiefs of Staff. United States Military Joint Publication 3-68, Noncombatant Evacuation Operations. 2007. Available at: <http://fas.org/irp/doddir/dod/jp3-68.pdf> (03.05.2015).

Other Publications and Materials

179. All-Ukrainian population census 2001. National composition of population. Autonomous Republic of Crimea. State Statistics Committee of Ukraine. Available at: <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea> (03.05.2015).
180. Anderson, M., Zukauskas, E. (editors), Barkei, J., *et al.* Operational Law Handbook. International and Operational Law Department. Charlottesville, Virginia: The Judge Advocate General's Legal Center and School 2008. Available at: http://www.au.af.mil/au/awc/awcgate/law/oplaw_hdbk.pdf (03.05.2015).
181. Chief of the Editorial, Terminology and Reference Service, Department for General Assembly and Conference Management. United Nations Editorial Manual Online. 2004-2014. New York. Available at: <http://dd.dgacm.org/editorialmanual> (03.05.2015).
182. Concept of the Foreign Policy of the Russian Federation. Approved by President of the Russian Federation V. Putin on 12 February 2013. Unofficial translation. The Ministry of Foreign Affairs of the Russian Federation. Available at: http://www.mid.ru/brp_4.nsf/0/76389FEC168189ED44257B2E0039B16D (03.05.2015).
183. Government Accountability Office. State Department: The July 2006 Evacuation of American Citizens from Lebanon. Report. 07.06.2007. Available at: <http://www.gao.gov/products/GAO-07-893R> (03.05.2015).
184. Grimmett, R. F. Instances of Use of United States Armed Forces Abroad, 1798-2009. *Sine loco*: Congressional Research Service 27.01.2010. Available at: <http://www.au.af.mil/au/awc/awcgate/crs/r132170.pdf> (03.05.2015).

185. House of Commons Debate. 31.10.1956, volume 558. Middle East (Situation). Available at: <http://hansard.millbanksystems.com/commons/1956/oct/31/middle-east-situation> (03.05.2015).
186. Letter of Secretary of State Daniel Webster to Special Minister Ashburton, dated 27 July 1842. Letter with enclosures available at http://avalon.law.yale.edu/19th_century/br-1842d.asp (03.05.2015).
187. Non-combatant Evacuation Operations (NEO). – Global security *sine anno*. Available at: <http://www.globalsecurity.org/military/ops/neo-list.htm> (03.05.2015).
188. The Kellogg-Briand Pact, 1928. Milestones: 1921-1936. U.S. Department of State. Office of the Historian. *Sine loco. Sine anno*. Available at: <https://history.State.gov/milestones/1921-1936/kellogg> (03.05.2015).
189. Zaborsky, V. Crimea and the Black Sea Fleet in Russian - Ukrainian Relations. Discussion Paper 95-11. Center for Science and International Affairs, John F. Kennedy School of Government, Harvard University, September 1995. Available at: http://belfercenter.hks.harvard.edu/publication/2934/crimea_and_the_black_sea_fleet_in_russian_ukrainian_relations.html (03.05.2015).

Newspaper Articles

190. 200 svenskar kvar i södra Libanon. – svt.se 25.07.2006. Available at: <http://www.svt.se/nyheter/inrikes/200-svenskar-kvar-i-sodra-libanon> (03.05.2015).
191. Aratunyan, A. Crimea Crisis: Role of Russia's Black Sea Fleet. – The Moscow News 03.03.2014. Available at: <http://themoscownews.com/news/20140303/192276993/Crimea-crisis-Role-of-Russias-Black-Sea-Fleet.html> (03.05.2015).
192. At-a-glance: Lebanon evacuations. – BBC News 25.07.2006. Available at: http://news.bbc.co.uk/2/hi/middle_east/5184134.stm (03.05.2015).
193. Bahrapour, T., Murphy, C. For longtime autocrat, a violent end. – The Washington Post 20.10.2011. Available at: http://www.washingtonpost.com/world/middle_east/moammar-gaddafi-confirmed-dead-in-libya/2010/09/21/gIQAFOCV0L_story.html (03.05.2015).
194. Boissier, P. The Challenges Today of Supporting Both Land and Sea Operations. – RUSI Defence Systems. February 2008. Available at: https://www.rusi.org/downloads/assets/Challenges_Supporting_Ops_82-85.pdf (03.05.2015).

195. Boyle, J. (editor). Ukraine says Russian troops in Crimea have doubled to 30,000. – Reuters 7.03.2014. Available at: <http://www.reuters.com/Article/2014/03/07/us-ukraine-crisis-troops-idUSBREA260PW20140307> (03.05.2015).
196. Charbonneau, L., Donath, M. U.N. General Assembly declares Crimea secession vote invalid. – Reuters 27.03.2014. Available at: <http://www.reuters.com/Article/2014/03/27/us-ukraine-crisis-un-idUSBREA2Q1GA20140327> (03.05.2015).
197. Chinese evacuation from Libya via Malta ends. – China.org 5.03.2011. Available at: http://www.china.org.cn/world/2011-03/05/content_22065482.htm (03.05.2015).
198. Collett-White, M., Popeski, R. Crimeans vote 90 percent to quit Ukraine for Russia. – Reuters 16.03.2014. Available at: <http://www.reuters.com/Article/2014/03/16/us-ukraine-crisis-idUSBREA1Q1E820140316> (03.05.2015).
199. Cox, D. The Noriega file. – Los Angeles Times 5.10.2011. Available at: <http://Articles.latimes.com/2011/oct/05/opinion/la-oe-cox-noriega-20111005> (03.05.2015).
200. Dahl, F. OSCE team say Crimea roadblock gunmen threatened to shoot at them. – Reuters 12.03.2014. Available at: <http://www.reuters.com/Article/2014/03/12/us-ukraine-crisis-osce-idUSBREA2B1C120140312> (03.05.2015).
201. Economy, E. China's Soft 'Nyet' To Russia's Ukraine Intervention. – Forbes 05.03.2014. Available at: <http://www.forbes.com/sites/elizabetheconomy/2014/03/05/chinas-soft-nyet-to-russias-ukraine-intervention/> (03.05.2015).
202. Friedeman, D., Hutchinson, B. Ukraine accuses Russia of 'pure aggression'; Kerry criticizes Putin over Crimea. – New York Daily News 03.03.2014. Available at: <http://www.nydailynews.com/news/world/ukraine-new-pm-urges-putin-pull-back-military-Article-1.1707914> (03.05.2015).
203. Gregory, P. R. Putin's Human Rights Council' Accidentally Post Real Crimean Election Results. – Forbes 05.05.2014. Available at: <http://www.forbes.com/sites/paulroderickgregory/2014/05/05/putins-human-rights-council-accidentally-posts-real-crimean-election-results-only-15-voted-for-annexation> (03.05.2015).

204. Harris, S. Thousands of Putin's Troops Now in Ukraine, Analysts Say. – The Daily Beast 11.11.2014. Available at: <http://www.thedailybeast.com/Articles/2014/11/11/thousands-of-putin-s-troops-now-in-ukraine-analysts-say.html> (03.05.2015).
205. Icelanders on Finnish Bus from Lebanon. – Iceland on Review 17.07.2006. Available at: <http://icelandreview.com/news/2006/07/17/icelanders-finnish-bus-lebanon> (03.05.2015).
206. Icelanders try to Flee from Lebanon. – Iceland on Review 12.07.2006. Available at: <http://icelandreview.com/news/2006/07/16/icelanders-try-flee-lebanon> (03.05.2015).
207. Kulke, U. Geschichte. Krim-Übertragung. War der Dnjepr-Kanal der Grund? – Die Welt 12.03.2014. Available at: <http://www.welt.de/geschichte/Article125714881/War-der-Dnjepr-Kanal-der-Grund.html> (03.05.2015).
208. Kuzio, T. Russian intelligence seeks to destabilize Crimea. – Eurasia Daily Monitor 01.10.2008, volume 5, issue 188 Available at: http://www.jamestown.org/programs/edm/single/?tx_ttnews%5Btt_news%5D=33985&tx_ttnews%5BbackPid%5D=166&no_cache=1#.VT0eviGeDGc (03.05.2015).
209. Lally, K. Putin's remarks raise fears of future moves against Ukraine. – The Washington Post 17.04.2014. Available at: http://www.washingtonpost.com/world/putin-changes-course-admits-russian-troops-were-in-crimea-before-vote/2014/04/17/b3300a54-c617-11e3-bf7a-be01a9b69cf1_story.html (03.05.2015).
210. Lavrov: Troops in Crimea Protecting Russian Citizens. – Voice of America 03.03.2014. Available at: <http://www.voanews.com/content/lavrov-troops-in-crimea-protecting-russian-citizens/1863103.html> (03.05.2015).
211. Lipman, M. Putin's Crisis Spreads. – The New Yorker 08.03.2014. Available at: <http://www.newyorker.com/news/news-desk/putins-crisis-spreads> (03.05.2015).
212. Medetskly, A. Deal Struck on Gas, Black Sea Fleet. – The Moscow Times 22.04.2010. Available at: <http://www.themoscowtimes.com/business/Article/deal-struck-on-gas-black-sea-fleet/404501.html> (03.05.2015).
213. Operation "Libelle". Tirana '97: Das erste Gefecht der Bundeswehr. – RP Online 14.03.2007. Available at: <http://www.rp-online.de/politik/deutschland/tirana-97-das-erste-gefecht-der-bundeswehr-aid-1.2313287> (03.05.2015).

214. Operation Noble Obelisk. – Global Security *sine anno*. Available at: http://www.globalsecurity.org/military/ops/noble_obelisk.htm (03.05.2015).
215. Panicked Thais flee Cambodia. – BBC News 30.01.2003. Available at: <http://news.bbc.co.uk/2/hi/asia-pacific/2708193.stm> (03.05.2015).
216. Russia plans to invest heavily in Sevastopol base. – RIA Novosti/Sputniknews 9.05.2010. Available at: <http://sputniknews.com/russia/20100509/158943279.html> (03.05.2015).
217. Russia recognises Georgian rebels. – BBC News 26.08.2008. Available at: <http://news.bbc.co.uk/2/hi/7582181.stm> (03.05.2015).
218. Russian tanks enter South Ossetia. – BBC News 08.08.2008. Available at: <http://news.bbc.co.uk/2/hi/europe/7548715.stm> (03.05.2015).
219. Schmemmann, S. Crimea Parliament Votes to Back Independence From Ukraine. – New York Times 06.05.1992. Available at: <http://www.nytimes.com/1992/05/06/world/crimea-parliament-votes-to-back-independence-from-ukraine.html> (03.05.2015).
220. Shevchenko, V. "Little green men" or "Russian invaders"? – BBC News 11.03.2014. Available at: <http://www.bbc.com/news/world-europe-26532154> (03.05.2015).
221. Shuster, A. Putin's Man in Crimea Is Ukraine's Worst Nightmare. – Time 10.03.2014. Available at: <http://time.com/19097/putin-crimea-russia-ukraine-aksyonov> (03.05.2015).
222. Stuster, J. D. Sorry, Turkey: You're Not Getting Crimea Back. – Foreign Policy 20.03.2014. Available at: <http://foreignpolicy.com/2014/03/20/sorry-turkey-youre-not-getting-crimea-back> (03.05.2015).
223. Warning shots end OSCE Crimea entry bid. – Aljazeera 08.03.2014. Available at: <http://www.aljazeera.com/news/europe/2014/03/warning-shots-end-osce-crimea-entry-bid-20143815135639790.html> (03.05.2015).
224. Webb, S., Gayle, D. Vladimir Putin scuttles his own navy warship in Black Sea to BLOCK Ukrainian vessels from leaving port as Crimeans face referendum on whether to join Russia. – Daily Mail Online 06.03.2014. Available at: <http://www.dailymail.co.uk/news/Article-2574567/EU-leaders-hold-emergency-summit-discuss-response-Russias-Crimean-invasion-ousted-Ukrainian-president-Yanukovych-assets-frozen-alleged-embezzling.html> (03.05.2015).
225. Zyberli, G. The ICJ decides it has no jurisdiction in Georgia v. Russia. – International Law Observer 01.04.2011. Available at:

<http://www.internationallawobserver.eu/2011/04/01/no-jurisdiction-in-georgia-v-russia> (03.05.2015).

Press Releases

226. Burt, A. Libya: the consular response. Announcement. 3.03.2011. Available at: <https://www.gov.uk/government/news/libya-the-consular-response> (03.05.2015).
227. Cameron, D. Prime Minister's Statement on Libya. Announcement. 28.02.2011. Available at: <https://www.gov.uk/government/news/prime-minister-s-statement-on-libya> (03.05.2015).
228. Direct Line with Vladimir Putin. President of Russia. 17.04.2014. Available at: <http://en.kremlin.ru/events/president/news/20796> (03.05.2015).
229. Evacuation of 240 Foreign Dignitaries from Albania. Operation „Kosmas“. Hellenic National Defence General Staff. Announcements Archive. 15.03.1997.
230. General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region. General Assembly Meetings Coverage. GA/11493. 27.03.2014. Available at: <http://www.un.org/press/en/2014/ga11493.doc.htm> (03.05.2015).
231. Government Accountability Office. State Department: The July 2006 Evacuation of American Citizens from Lebanon. Report. 07.06.2007. Available at: <http://www.gao.gov/products/GAO-07-893R> (03.05.2015).
232. Hague, W. Oral Statement to Parliament by Foreign Secretary William Hague. Russian actions in Crimea. 18.03.2014. Available at: <https://www.gov.uk/government/speeches/russias-actions-in-crimea> (03.05.2015).
233. Kozaryn, L. D. Liberia Evacuation Ends, Security Guard Remains. American Forces Press Service. 25.04.1996. Available at: <http://www.defense.gov/news/newsArticle.aspx?id=41436> (03.05.2015).
234. Kozaryn, L. D. U.S. Forces Evacuate 2,500 from Sierra Leone. American Forces Press Service. 12.06.1997. Available at: <http://www.defense.gov/news/newsArticle.aspx?id=41046> (03.05.2015).
235. North Atlantic Council Statement on the situation in Ukraine. Press release (2014) 033. 02.03.2014. Available at: http://www.nato.int/cps/en/natolive/official_texts_107681.htm (03.05.2015).
236. Standing Committee. PACE strongly supports Ukraine's territorial integrity and national sovereignty. – Parliamentary Assembly 07.03.2014. Available at:

- <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4908&lang=2&cat=17> (03.05.2015).
237. State Department: The July 2006 Evacuation of American Citizens from Lebanon. GAO-07-893R. The United States Government Accountability Office. Washington, DC. 07.06.2007. Available at: <http://www.gao.gov/assets/100/94959.pdf> (03.05.2015).
238. UK Ministry of Defence. Prime Minister praises military effort in Libyan evacuations. 2011. 28.02.2011. Available at: <https://www.gov.uk/government/news/prime-minister-praises-military-effort-in-libyan-evacuations> (03.05.2015).
239. Vladimir Putin submitted appeal to the Federation Council. President of Russia. 1.03.2014. Available at: <http://en.kremlin.ru/events/president/news/20353> (03.05.2015).

Dictionaries, Encyclopedias, Glossaries

240. Abdullah, M. G., Anderson, M. C. *et al.* Don Pacifico Affair. Encyclopædia Britannica Online. Available at: <http://www.britannica.com/EBchecked/topic/168905/Don-Pacifico-Affair> (03.05.2015).
241. Air France A-300B Airbus hijacked from Athens arrives at Entebbe Uganda. South African History Online. Available at: <http://www.sahistory.org.za/dated-event/air-france-300b-airbus-hijacked-athens-arrives-entebbe-uganda> (03.05.2015).
242. Black, H. C., Nolan, J. R., *et al.* Black's Law Dictionary. Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern. 6th edition. St. Paul, Minnesota: West Publishing 1990.
243. Canal History. The Official Web Site of Suez Canal. Available at: <http://www.suezcanal.gov.eg/sc.aspx?show=8> (03.05.2015).
244. Entebbe raid. Encyclopædia Britannica Online. Available at: <http://www.britannica.com/EBchecked/topic/188804/Entebbe-raid> (03.05.2015).
245. Fox, J. R. Dictionary of International & Comparative Law. Dobbs Ferry: Oceana Publications. 1992.
246. Gordon, B. L. Panama. Encyclopædia Britannica Online. Available at: <http://www.britannica.com/EBchecked/topic/440722/Panama/213961/Rule-by-Torrijos-and-Noriega#ref468299> (03.05.2015).

247. Haddad, M. Lebanon in 2006. Encyclopædia Britannica Online. Available at: <http://www.britannica.com/EBchecked/topic/1243533/Lebanon-in-2006> (03.05.2015).
248. Iran Hostage Crisis. Encyclopædia Britannica Online. Available at: <http://www.britannica.com/EBchecked/topic/272687/Iran-hostage-crisis> (03.05.2015).
249. Nolte, G. Intervention by Invitation. Max Planck Encyclopedia of Public International Law. Article last updated: January 2010. Available at: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1702?prd=EPIL> (03.05.2015).
250. Zanga, L. Albania in 1997. Encyclopædia Britannica Online. Available at: <http://www.britannica.com/EBchecked/topic/12477/Albania-in-1997> (03.05.2015).
251. Ziemba, R. Libya in 2011. Encyclopædia Britannica Online. Available at: <http://www.britannica.com/EBchecked/topic/1804223/Libya-in-2011> (03.05.2015).

Normative Materials

International Agreements

1. Charter of the United Nations. Adopted by General Assembly Resolutions 1991A and B (XVIII) of 17.12.1963. Document symbol: 1 UNTS XVI. Available at: <http://www.un.org/en/documents/charter/index.shtml> (03.05.2015).
2. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Adopted by General Assembly resolution 2625 (XXV) of 24.10.1970. Document symbol: A/RES/2625(XXV). Available at: <http://www.un-documents.net/a25r2625.htm> (03.05.2015).
3. Definition of Aggression. Adopted by General Assembly Resolution 3314 (XXIX) of 14.12.1974. Document symbol: A/RES/3314. Available at: <http://www1.umn.edu/humanrts/instree/GAres3314.html> (03.05.2015).
4. International Convention against the taking of hostages. Adopted 17.12.1979. Legal citation: GA res. 34/146 (XXXIV), 34 UN GAOR Supp. (No. 46) at 245, UN Doc. A/34/46 (1979); 1316 UNTS 205; TIAS No. 11081; 18 ILM 1456 (1979). Available at: <http://www.un.org/en/sc/ctc/docs/conventions/Conv5.pdf> (03.05.2015).
5. The Covenant of the League of Nations. Adopted 28.06.1919. Legal citation: 225 Parry 195; 1 Hudson 1; 112 BFSP 13; 13 AJIL Supp. 128 (1919). Available at: http://avalon.law.yale.edu/20th_century/leagcov.asp (03.05.2015).
6. The Hague Convention for the Pacific Settlement of International Disputes of 1899 (1899 Hague I). Adopted 29.07.1899. Legal citation: 1 Bevens 230; 1 AJIL 103

- (1907). Available at: http://avalon.law.yale.edu/19th_century/hague01.asp (03.05.2015).
7. The Hague Convention Relative to the Opening of Hostilities (1907 Hague III). Adopted 18.10.1907. Legal citation: 205 CTS 264; 1 Bevans 619. Available at: http://avalon.law.yale.edu/20th_century/hague03.asp (03.05.2015).
 8. The Hague Convention Respecting the Limitation of Employment of Force for Recovery of Contract Debts (1907 Hague II). Adopted 18.10.1907. Legal citation: 36 Stat. 2241, 1 Bevans 607. Available at: http://avalon.law.yale.edu/20th_century/hague072.asp (03.05.2015).
 9. The Montevideo Convention on the Rights and Duties of States. Signed 26.12.1933. Legal citation: 165 LNTS 19; 49 Stat 3097. Available at: <http://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf> (03.05.2015).
 10. Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact). Adopted 27.08.1928. Legal citation: 94 LNTS 57. Available at: http://avalon.law.yale.edu/20th_century/kbpact.asp (03.05.2015).
 11. Vienna Convention on the Law of Treaties. Concluded at Vienna on 23.05.1969. Document symbol: United Nations, Treaty Series, volume 1155, p. 331. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (03.05.2015).

National Law

12. Constitution of the Russian Federation. Adopted at National Voting on 12.12.1993. Published in Rossiiskaya Gazeta newspaper as of 25.12.1993. Available at: <http://www.constitution.ru/en/10003000-03.htm> (03.05.2015).
13. Estonian National Defence Law. (Riigikaitseadus). RT I, 12.03.2015, 1. Available online: <https://www.riigiteataja.ee/akt/112032015001> (03.05.2015).

Lihtlitsents lõputöö reprodutseerimiseks ja lõputöö üldsusele kättesaadavaks tegemiseks

Mina, Mari Alavere,

1. annan Tartu Ülikoolile tasuta loa (lihtlitsentsi) enda loodud teose „*The Use of Armed Force and Protecting Nationals Abroad in Light of the Crimean Crisis*“, mille juhendaja on René Värk,
 - 1.1.reprodutseerimiseks säilitamise ja üldsusele kättesaadavaks tegemise eesmärgil, sealhulgas digitaalarhiivi DSpace-is lisamise eesmärgil kuni autoriõiguse kehtivuse tähtaja lõppemiseni;
 - 1.2.üldsusele kättesaadavaks tegemiseks Tartu Ülikooli veebikeskkonna kaudu, sealhulgas digitaalarhiivi DSpace'i kaudu kuni autoriõiguse kehtivuse tähtaja lõppemiseni.
2. olen teadlik, et punktis 1 nimetatud õigused jäävad alles ka autorile.
3. kinnitan, et lihtlitsentsi andmisega ei rikuta teiste isikute intellektuaalomandi ega isikuandmete kaitse seadusest tulenevaid õigusi.

Tartus, 04.05.2015