

РОЗДІЛ 1

ПОЛІТИКО-ПРАВОВИЙ РОЗВИТОК ДЕРЖАВИ: СУЧАСНІ ВИКЛИКИ ТА ШЛЯХИ ЇХ ПОДОЛАННЯ

UDC 316.485.26:477:430(043.2)

Bruno Arich-Gerz, Dr. phil., Postdoc,
RWTH Aachen University, Aachen, Germany

FROM NO-FLY ZONES (NFZ) TO THE DELIVERY OF FIGHTER JETS. A SHORT ANALYSIS OF GERMAN POLITICAL AND PUBLIC DISCOURSE ON AIRBORNE WAR-INTERVENTION IN THE UKRAINE WAR, FEBRUARY 2022 – JANUARY 2023

The Russian invasion of Ukraine, commonly understood as a war but dubbed *Специальная Военная Операция* or ‘military special operation’ by the aggressor, has from its outbreak on February 24, 2022, been evaluated by neighboring states and other European and NATO countries in terms of their own military role, and the risks of their intervention in it. This chapter will in all brevity focus on the political and, as its resonance, public discourse on a primarily legal issue: that of determining the moment from which one becomes an involved party in the conflict and thus a party ‘in war with another’, here Russia. An interesting case in point to demonstrate and clarify this is the Federal Republic of Germany’s successively changing attitude – both that of its political leaders’ decision-making and that of its citizens and, as their spokespersons, publicists – to the option of intervening ‘by air’, i.e., with airborne intervention technologies such as radar supervision and other measures to warrant a no-fly zone (NFZ) or the delivery of fighter jets to the Ukrainian military forces. The period of the inspected discursive material spans over almost a year, from late February 2022 to late January 2023.

On March 4, 2022, NATO General Secretary Jens Stoltenberg ruled out the possibility of establishing no-fly zones over Ukrainian territory. “‘We have a responsibility as NATO allies to prevent this war from escalating beyond Ukraine because that would be even more dangerous, more devastating and would cause even more human suffering’, he said following a NATO meeting in Brussels” [1], which invited immediate and disappointed responses from Ukrainian President Volodymyr Zelenskiy (“a weak summit, a confused summit”, *ibid.*). The legal underpinnings of Stoltenberg’s and NATO’s rejection to establish a NFZ were picked up and explained to a German audience by Amy Walker on March 22, 2022, in *Südwest Presse*. Walker describes the procedure of preparing a resolution at United Nations Security

Council, whose coming into effect would be a prerequisite for the installation of a NFZ, and she estimates the chances small for it. At the same time, she shies from formulating a pro-NFZ decision and its consequences in legal terms but calls it ‘likely impossible’ due to Russia’s seat and veto-right in the Council:

A no-fly zone must generally be approved by the United Nations Security Council. This requires nine votes in the Security Council in favor of the resolution. All five permanent members must agree. These are: USA, China, Russia, France and Great Britain. If one of these five countries vetoes the resolution, it cannot be passed. In the Ukraine war, it is therefore considered impossible for a NFZ to be implemented via the UN Security Council, as Russia is a party to the war. Therefore, if there is a no-fly zone by NATO independently of the Security Council, this could also be controversial in this respect [2].¹

The absence of a legal basis, explicated by mass media to their users and consumers, for a NFZ seems to have contributed to a by-the-feel opinion of the public about this issue. Thus, *PolitPro* launched an online opinion poll on the NFZ, 52 % of ca. 3.200 voted against its establishing under the heading of NATO, 21% found it ‘useful’ (*sinnvoll*) [3]. Publicists such as Markus Feldenkirchen mirrored – or influenced, given the broad range of Germany’s number one online news platform SPIEGEL – the outcome of the poll. On March 18, 2022, his online column titled ‘No to NFZ!’ (Nein zur Flugverbotszone!) [4].

The question of a military engagement in the war by Germany and that of the legal status and consequences of such an intervention has since been a kind of background noise informing public and political discourse. In April 2022, petitions launched as *Offene Briefe* (open letters) to German chancellor Olaf Scholz by public figures spoke out first against, then in favor of a military engagement in the form of weapon deliveries; both found wide resonance but left no significant trace among Germany’s top decision makers, nor did they back up their arguments with legal considerations and acknowledged states of law. Given the obviously volatile and by then obscure(d) character of Russian President Putin, their argumentation abandoned the principle of nation(s)-binding legal obligation to the whims of an individual in charge whose actions they tag as unpredictable:

But whether Germany or NATO becomes a party to the war depends primarily on Putin’s arbitrariness anyway [...]: “The Russian president’s

¹ „Eine Flugverbotszone muss generell vom **Sicherheitsrat der Vereinten Nationen** beschlossen werden. Dafür braucht es neun Stimmen im Sicherheitsrat, die die Resolution befürworten. Dabei müssen alle fünf ständigen Mitglieder zustimmen. Diese sind: **USA, China, Russland, Frankreich und Großbritannien**. Gibt es ein Veto von einem dieser fünf Länder, kommt die Resolution nicht zustande. Im Ukraine-Krieg gilt es daher als unmöglich, dass über den UN-Sicherheitsrat eine NFZ implementiert wird, da Russland Kriegspartei ist. Sollte es also von der Nato unabhängig vom Sicherheitsrat eine Flugverbotszone geben, könnte das auch in dieser Hinsicht umstritten sein“.

interpretation can make a reason for war out of anything.” Putin could, for example, use economic sanctions or an oil embargo to argue his case. The attitude and actions of the German government are therefore of secondary importance in this matter, he said. When Germany becomes a party to the war “will be decided by the Kremlin, not by us,” [German feminism icon] Alice Schwarzer added on Deutschlandfunk on May 2, 2022 [5].²

What followed militarily was not only successful resistance, but a partly reconquering of Ukrainian territory by Ukrainian forces away from the Russians. Until early January 2023, this was brought about without almost no airborne weapons, although German media, too, noted an obviously effective drone attack, “Drohnenangriff” against Russia’s Engels (ЭНГЕЛЬС) air base in late December, 2022 [6]. The continuation of the war was, in the mirror of German perception(s), characterized by an ongoing reluctance to view its own involvement in legal terms – as a consequence-bearing taking of sides – that went along with the recognition of a chance to bring an end to the conflict, presumably unique and pressurized by Germany’s eastern NATO allies such as Poland and the Baltic states, by delivering tanks from its war industry’s Leopard production line. On January 25, 2023, chancellor Scholz yielded to their and Ukraine’s request and, after consulting his US partners (arguably to shoulder the legal consequences with him), he all-cleared the delivery of the tanks. Public discourse in Germany largely welcomed the decision and came to appreciate the chancellor’s sudden resoluteness after criticizing him before for his hesitation (“a wise statesman or a break shoe?”) [7].³

The applause for Olaf Scholz included another hesitation of his, now with regard to the readiness to deliver fighter jets. While 53% of the interviewees of a survey set up by German Forsa institute welcomed the decision to provide tanks to Ukraine’s armed forces (which includes training session for soldiers and which speaks for a turn from the early-2022 non-interventional politics), the next-higher-level in military and legal terms – air supremacy over Ukraine and, in its wake, the consequential establishing of no-reach zones for Russian aircrafts – gets refused: by Scholz, the key decision maker, and by German discourse participants following and shaping the ensuing discussion. “24 percent of respondents [...] believe the West should also provide Kiev with

² „Ob Deutschland oder die NATO zur Kriegspartei werden, hänge aber ohnehin vor allem von Putins Willkür ab, meint Thomas Jäger: ‚Die Interpretation des russischen Präsidenten kann aus allem einen Kriegsgrund machen‘. Putin könne dabei beispielsweise auch die Wirtschaftssanktionen oder ein Öl-Embargo zur Argumentation nutzen. Die Haltung und Handlungen der deutschen Regierung seien daher in dieser Frage zweitrangig. Wann Deutschland zur Kriegspartei werde, ‚wird der Kreml entscheiden, nicht wir‘, sagte auch Alice Schwarzer am 2.5.2022 im Deutschlandfunk“.

³ „ein kluger Steuermann oder ein Bremsklotz?“

fighter jets, as demanded by some members of Ukraine's government. The vast majority (63 percent) believe the West should not do so" [8].⁴

Air attacks, airborne defense against the attackers and the control of airspace seem to have been crucial in the Ukrainian-Russian war ever since it was kicked off in February 2022. Their status as interventions has ever since been an issue of oppressed or silently ongoing, legal consideration taken by those in charge in Germany: the decision makers up to the office of the Chancellor. Public discursive representation and public opinion in the country seem to mirror this: while there was a recent support for deliveries of tanks, which in itself seems to override previously existing standards of when one enters an armed conflict legally at the side of one of the parties, there is still reservation about *going all in*, i.e., legally as an air-forced party.

Literature

1. Lewis, Simon and Ingrid Melander (2022): NATO rejects Ukraine no-fly zone, unhappy Zelenskyy says this means more bombing. *Reuters* March 4. 2022. Retrieved February 2, 2023. URL: <https://www.reuters.com/business/aerospace-defense/nato-meets-ukraine-calls-no-fly-zone-hinder-russia-2022-03-04/>

2. Walker, Amy (2022): Was ist eine Flugverbotszone und welche Rolle spielt sie im Krieg? *Südwest Presse* March 22. Retrieved February 2, 2023. URL: https://www.swp.de/panorama/flugverbotszone-ukraine-nato_-was-bedeutet-das-und-wie-wird-sie-durchgesetzt_-62983165.html

3. PolitPro (2022): Umfrage in der PolitPro Community. Die Einrichtung einer Flugverbotszone halte ich für ... *PolitPro*, no date. Retrieved February 2, 2023. URL: <https://politpro.eu/de/deutschland/umfrage/die-einrichtung-einer-flugverbotszone-uber-der-ukraine-unter-fuehrung-der-nato-halte-ich-fur-477>

4. Feldenkirchen, Markus (2022): Der gesunde Menschenverstand. Nein zur Flugverbotszone! *SPIEGEL online* March 18. Retrieved February 2, 2023. URL: <https://www.spiegel.de/politik/deutschland/ukraine-nein-zur-flugverbotszone-kolumne-a-c1e5fb1b-5fe8-45f6-bec1-1049fb73e988>

5. Anon. (2022): Pro und Contra. Sollte Deutschland sich militärisch stärker für die Ukraine engagieren? *Deutschlandfunk* May 3. Retrieved February 2, 2023. URL: <https://www.deutschlandfunk.de/waffenlieferungen-ukraine-deutschland-offener-brief-pro-contra-krieg-100.html>

6. Anon. (2022): Moskau meldet Tote und Verletzte nach Drohnenangriff auf russischen Luftwaffenstützpunkt Engels. *RedaktionsNetzwerk Deutschland* December 26. Retrieved February 2, 2023. URL: <https://www.rnd.de/politik/russland-erneut-explosion-auf-luftwaffenstuetzpunkt-engels-nach-drohnenangriff-NURIWQDSZGU7UDTZND7QRRIJNI.html>

7. Anon. (2023): Kampfpanzer-Debatte: Das sind die Knackpunkte. *ZDF* January 24. Retrieved February 2, 2023. URL: [zdf.de](https://www.zdf.de), 24 January 2023. URL:

⁴ „24 Prozent der Befragten [...] sind der Ansicht, der Westen sollte Kiew – wie von einigen Regierungsmitgliedern der Ukraine gefordert – auch Kampfflugzeuge zur Verfügung stellen. Die große Mehrheit (63 Prozent) meint, der Westen solle dies nicht tun“.

<https://www.zdf.de/nachrichten/politik/kampfpanzer-debatte-deutschland-ukraine-krieg-100.html>

8. Drewello, Marc (2023): Rückendeckung für Scholz. Mehrheit der Bundesbürger unterstützt Panzerlieferungen an Ukraine. *Stern* January 25. Retrieved February 2, 2023. URL: <https://www.stern.de/politik/deutschland/ukraine-blitzumfrage--mehrheit-der-deutschen-unterstuetzt-panzerlieferungen-33135386.html>

UDC 341.231.14:540(043.2)

Chougala Ravindra Bapuji, Bachelor of Arts,
Karnataka Arts College,
automobile race organizer,
proprietor for lubricants distributor firm R.B.C. Lubes,
Dharwad, Karnataka, the Republic of India
Myronets O.M., PhD in Law, Assoc.Prof. of the department,
National Aviation University, Kyiv, Ukraine

SOME ASPECTS OF HUMAN RIGHTS PROTECTION IN INDIA

Law in every country may be fair and effective only if it understands a human as the highest value. This process may take much time in the historical dimension; however, it has consequences in ordered stable life, reliable legislation, and real human rights implementation and protection as well.

Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a “member of the human family”, irrespective of any other consideration. The concept of human rights is as old as the ancient doctrine of “natural rights” founded on natural law, the expression “human rights” is of recent origin, emerging from (post-Second World War) international Charters and Conventions [1].

According to the National Human Right Commission of India, Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India [2].

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterised as the “Magna Carta” of India [3].

Human Rights as Incorporated in Indian Laws: Indian Constitution incorporated several provisions of human rights...Directive Principles of State Policy from Articles 36 to 51... Some Other Related Laws and Policies in India: - The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006); - The Right to Fair Compensation