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Neha Jain and Rainer Bauböck (Eds.)

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Abstract

Citizenship is generally considered an aspirational status that entitles its holder to a set of rights to be secured and perfected, including through prudent deployment of international law instruments and institutions relating to human rights. But what when citizenship, and its international counterpart, nationality, is wielded not as a shield that protects the dignity and personhood of its bearer but rather as a sword that states can command to harm or to oppress? Nationality attribution can be oppressive for both individuals and states. In the former case, it serves to denude an individual of rights they would have enjoyed but for the attribution. In the latter situation, it functions as a weapon to threaten or destabilise vital interests of other states. Should international law continue to refrain from intervening in a status the attribution of which is regarded as a sovereign prerogative? In her lead essay for this GLOBALCIT forum Neha Jain argues that international law should do more in situations of oppressive nationality. The ten contributors to this debate exploring the "dark side" of citizenship and potential remedies in international law include Jelena Džankić, Eleanor Knott, Lindsey Kingston, Ramesh Ganohariti, Timothy Jacob-Owens, Bronwen Manby, Peter Spiro, Rainer Bauböck, Noora Lori and Lior Erez.

Keywords

weaponised citizenship, oppressive nationality, passportisation, international law, contested territories, multiple citizenship, extraterritorial naturalisation

Kick-off contribution

Weaponised Citizenship: Should international law restrict oppressive nationality attribution?

Neha Jain*

Citizenship has been described by Rogers Brubaker as 'an international filing system, a mechanism for allocating persons to states',[1] but if so, this filing system has few centrally co-ordinated rules at the international level. And even the sparse international legal architecture that exists mostly assumes that the problem to be addressed is not the attribution of citizenship but rather its absence, i.e. statelessness. In other words, citizenship is considered an aspirational status that entitles its holder to a set of rights that are to be secured and perfected, including through the cautious deployment of international law instruments and institutions relating to human rights.[2] But what when citizenship, and its international counterpart, nationality, begins to be wielded not as a shield that protects the dignity and personhood of its bearer but rather as a sword that states can command to harm or to oppress? Should international law continue to refrain from intervening in a status the attribution of which is regarded as a sovereign prerogative? This essay argues that international law should do more in situations of oppressive nationality. Nationality attribution can be oppressive for both individuals and states. In the former case, it serves to denude an individual of rights they would have enjoyed but for the attribution. In the latter situation, it functions as a weapon to threaten or destabilise vital interests of other states.

Zombie citizenship

Citizenship, as Jo Shaw reminds us, is a bundle of rights and obligations.[3] However, the formal equality signalled by the status of citizenship may conceal deeply unequal substantive rights, duties, and experiences of belonging. In some cases, the content of the citizenship may be hollowed out to such an extent that it resembles less a political, social, or cultural relationship between the individual and the state that entails a series of mutual rights and duties, and more a form of zombie citizenship. One could argue that with the rise of a globally mobile population that often retains only the most tenuous links with the state of their nationality, this expectation of mutuality between the state and its citizenry has in any case been eroded over time. What is more, the international legal architecture concerning nationality attribution does not seek to peer into the quality of the citizenship conferred on the individual but rather limits itself to requiring that the state's ascription of nationality is exercised in conformity with international law, of which there is precious little. Indeed, this wide margin of discretion granted to the state is integral to the distinction between "citizenship" as a concept of domestic law and "nationality", which is an international legal concept.[4]

There have nonetheless been instances where international law has sought to dig deeper. As Peter Spiro recounts,[5] formal as well as informal norms concerning nationality ascription have been developed in different sites of international dispute resolution, emerging mainly in the context of naturalisation rather than citizenship allocation at birth. The first of these emphasise the requirement of individual consent whereby nationality acquisition must be voluntary and cannot be imposed on the individual against their will. The second prohibits states from attributing nationality willy-nilly to individuals with whom they have no connection through the requirement of a "genuine link" between the state and the individual in order for states to be able to exercise diplomatic protection on behalf of the individual.

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1 Brubaker R. (1992), *Citizenship and Nationhood in France and Germany*, Harvard University Press (hereinafter 'Brubaker 1992').
2 Spiro P. (2017), 'Citizenship Overrreach', *Michigan Journal of International Law* 38(2) 167-191 (hereinafter 'Spiro 2017').
3 Shaw J. (2020), *The People in Question: Citizens and Constitutions in Uncertain Times*, Bristol University Press.
4 *Id.*
5 Spiro 2017.

While the genuine link doctrine as introduced by the ICJ in the *Nottebohm* case does not assess the formal status or validity of citizenship allocation for the purposes of domestic law and is limited to the issue of diplomatic protection,[6] it has gradually been transplanted to other areas of international law, with some scholars arguing that it has morphed into a general principle regulating the recognition of nationality.[7]

These skeletal norms on non-recognition, however, have not served as a barrier to states allocating citizenship in order to circumvent yet other, stronger, international legal norms — those that govern statelessness and refugee protection. One example of this practice can be found in Noora Lori's incisive account of "offshoring citizenship" in the UAE.[8] Billed as a temporary documentation measure to "regularise" the status of its long-term resident minorities, the scheme involved the launching of a statelessness registration drive by the UAE Ministry of Interior whereby stateless individuals and those with pending naturalisation applications were issued stateless identity cards. These individuals, comprising various domestic minorities who in some cases had resided in the UAE for generations but had never been granted crucial identity documents, were then issued with stateless ID cards and passports bought by the UAE from the Union of Comoros, one of the world's poorest countries. Individuals with this zombie Comorian citizenship have no pre-existing ties to Comoros; nor does this citizenship entitle them to what are considered key attributes of the status: the right to enter and reside in the country and to call upon it for diplomatic protection (that could in any case be challenged under the *Nottebohm* ruling). However, the artificial attribution of the citizenship of Comoros enables the UAE to avoid having to explicitly deny these individuals Emirati citizenship and the formal statelessness that would ensue.

Another instance of a zombie citizenship is invoked by Audrey Macklin's illuminating discussion of "sticky citizenship" that she describes as 'situations where a state seeks to *stick* citizenship on an unwilling recipient or where an individual is *stuck* with a citizenship she wishes to disavow.'[9] Macklin draws on case studies of refugee claims in Australia and Canada by Jewish asylum seekers from the former Soviet Union and attempts by the UK government to revoke the citizenship of terrorist suspects to argue that, in both cases, the attribution of a putative citizenship functions to enable states to circumvent their international human rights law obligations. In the former case, Israel's Law of Return has been interpreted so as to turn all Jews into virtual Israeli citizens. This, in turn, would defeat their claim to surrogate protection due to a well-founded fear of persecution from (each) state of nationality on the basis that they would still be eligible for protection from the Israeli state. In the latter case, the Home Office has sought to argue that an individual who would be eligible for and could obtain the citizenship of another state (such as Iraq, of which the individual was formerly a national) would not be rendered stateless on account of denationalisation by the UK.

What is striking about these forms of zombie citizenship is that the state that is engaged in engineering the attribution is not the same as the state whose nationality is being ascribed. While in the case of offshore citizens, it is unclear that there is any consent, real or contrived, that is obtained from the newly minted Comorian citizens, sticky citizenship cases of the kind Macklin highlights do seek to peddle a form of consent: the putative citizen may "voluntarily" apply to be a citizen of the state where they are formally eligible to become nationals. In all cases, the individual stands to lose the protection of the international law of asylum and statelessness while acquiring either little to no substantive citizenship rights, or entirely speculative ones.

6 *Nottebohm, Liechtenstein v Guatemala,* Preliminary Objection (Second phase), Judgment, [1955] ICJ Rep 4, ICGJ 185 (ICJ 1955).

7 Sloane R. (2009), 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality', 50 *Harvard International Law Journal* 1; Brownlie I. (2003), *Principles of International Law*, 6th edn., Oxford University Press.

8 Lori N. (2019), *Offshore Citizens: Permanent Temporary Status in the Gulf*, Cambridge University Press (hereinafter 'Lori 2019').

9 Howard-Hassmann R. and Walton-Roberts M. (2015), *The Human Right to Citizenship: A Slippery Concept*, University of Pennsylvania Press (hereinafter Howard-Hassmann and Walton-Roberts 2015').

Long distance nationality

Commentators have emphasised that the ICJ's decision in *Nottebohm* did not pronounce upon his status in the country of naturalisation—Liechtenstein—but as Spiro suggests, 'only that his nationality could not be used as a weapon against another state.'[10] But what does the international law of today have to say about the latter situation? What constitutes the use of nationality "as a weapon" against a state and how may international law respond to this weaponisation?

Nottebohm, it is worth recalling, adopted a relatively orthodox approach to nationality to limit the reach of its narrow ruling on diplomatic protection, asserting that 'nationality has its most immediate, its most far-reaching and, for most people, its only effects within the legal system of the State conferring it.' This conception does not always hold true in cases of extra-territorial citizenship that see citizenship constellations emerging outside territorially circumscribed state boundaries in the form of naturalised citizens who do not, and may never intend to, reside on the territory of the state of naturalisation.[11] (Fitzgerald, 2000) The motivations for states as well as individuals to enter into this relationship can be complex and varied—ranging from affective attachment to projects of state building—but the decoupling of territory and citizenship as status, identity, and practice means that nationality allocation may have impacts that transcend the *Nottebohm* conception.

A particularly fraught case of extra-territorial citizenship are "passportisation" practices consisting of fast-track and large-scale extraterritorial naturalisation of individuals resident on the territory of another state. Though the term came to be widely used in the wake of the 2008 conflict between Russia and Georgia, scholars such as Anne Peters claim that Russian passportisation efforts started even earlier with the mass conferral of Russian citizenship in Crimea in 1991, which was then repeated in the contested territories of Abkhazia and South Ossetia beginning in 2002.[12] The legal basis for the passportisation was the 2002 Federal Law on Citizenship of the Russian Federation providing a simplified naturalisation procedure for citizens of the former Soviet Union as part of a policy of creating long-distance ethno-nationalists to use a term coined by Benedict Anderson.[13] For Anderson, these are emigrés who live their politics 'long distance, without accountability' and 'with no serious intention of going back to a home, which, as time passes, more and more serves as a phantom bedrock for an embattled metropolitan ethnic identity.'[14] Russian long-distance nationalism was intended to be just that: the would-be nationals were not expected to migrate to and take up residence in the "homeland"; rather, Vincent Artman argues that '[b]y conferring citizenship *en masse* to the residents of Abkhazia and South Ossetia, Russia discursively extended its sovereignty into territory legally owned by another state'.[15] Russia has since refined and improved upon its passportisation technique in other spaces, amending its citizenship law in 2014 to operationalise the fast-track naturalisation of a new legal category of Russian speakers following the annexation of Crimea and subsequently expanding the list of eligible persons in 2019 to include the residents of the territories of Donetsk and Luhansk in Eastern Ukraine. Following the Russian invasion of Ukraine, the fast-track citizenship process has steadily been extended by Presidential decree to apply to individuals in Russian occupied zones in the southern Zaporizhzhia and Kherson regions and, as of July 2022, to all Ukrainians.[16]

Russia's justification for these measures has been put forward in legalistic human rights terms, as articulated in the statement of the Russian Federation's representative to the Security Council in 2019, arguing that 'For five years, the inhabitants of Donbas have been deprived of the ability to

10 Spiro P. (2011), 'A New International Law of Citizenship', *American Journal of International Law* 105(4) 694–746 (hereinafter 'Spiro 2011').

11 FitzGerald D. (2000), *Negotiating Extra-Territorial Citizenship: Mexican Migration and the Transnational Politics of Community*, University of California Press.

12 Peters A. (2010), 'Extraterritorial Naturalizations: Between the Human Right to Nationality, State Sovereignty and Fair Principles of Jurisdiction', *German Yearbook of International Law* 53 (hereinafter 'Peters 2010').

13 Act No. 62-FZ of 31 May 2002 on Citizenship (Text No. 2031) (Russian Federation).

14 Anderson B. (1992), *Long-distance nationalism: World capitalism and the rise of identity politics*, The Wertheim lecture.

15 Artman V. (2013), 'Documenting Territory: Passportisation, Territory, and Exception in Abkhazia and South Ossetia', *Geopolitics* 18(3) 682-704.

16 'Putin extends a fast-track Russian citizenship to all Ukrainians', New York Times, 11 July 2022, Putin Extends Fast-Track Russian Citizenship Process to All Ukrainians - The New York Times (nytimes.com).

exercise their human rights and freedoms in Ukraine... We are not interfering in the internal affairs of Ukraine or engaged in a creeping annexation. We are simply giving people the opportunity to finally solve issues of vital importance to them, because the Kyiv authorities have refused to, in violation of the Minsk agreements… Russia is not imposing citizenship on the inhabitants of Donbas but rather giving them an opportunity to apply for it voluntarily and independently under the established procedure to the competent Russian authorities while preserving their Ukrainian citizenship.'[17] While it is easy enough to refute the credibility of these claims, it is nonetheless difficult to dismiss outright the trajectory of the passportisations in Crimea and the Donbas region as a blanket form of "personal annexation".[18] A strict consent/non-consent dichotomy indeed may underestimate the strategic targeting of the passportisation schemes that have historically relied on a mix of co-optation and coercion. While the former exploits the identity and influence of the former Soviet Union as a regional hegemon coupled with the provision of material benefits such as pensions and access to social services to passportised Russians, the latter penalises the rejection of Russian citizenship through administrative exclusion from public life.[19]

This exercise in strategic passportisation is thus difficult to challenge on the basis of current principles of consent in the international law on nationality. However, similar to the previous case of oppressive nationality, it may be possible to argue that the passportisations have had negative consequences for purported beneficiaries. Prior to the Russian invasion, and according to an intriguing claim by Burkhardt et al.,[20] this is a result of the perpetual state of limbo in which "diminished citizens" of Donetsk and Luhansk found themselves, whereby they had less than full membership in any political community, including Russia, due to the inability to exercise social and electoral rights similar to Russian citizen-residents. Instead, they were compelled to make rights claims before the parent state of Ukraine, the de facto state authorities in the Donetsk and Luhansk Republics, as well as the patron state of Russia.

For Burkhardt et al., passportisation, however, does not only result in diminished citizenship but also diminished sovereignty of the "parent state" by keeping the latter and its contested territory "in a permanent and fragile state of exception."[21] Indeed, it is this latter concern that has prompted reactions by international lawyers,[22] who have argued that naturalisation is not a bilateral, but rather a *trilateral* relationship between the original state of nationality, the naturalised individual, and the naturalising state, and one that moreover has an impact on the global public interest. This is due to the parent state's continuing interest in maintaining enduring ties to its nationals— a state that lost all its nationals to naturalisations could cease to be a state—and exercising diplomatic protection on their behalf. Scholars argue that mass naturalisations, in particular of individuals who do not have strong links to the state of naturalisation, may thus infringe upon the sovereignty of the parent state. And as such, they would constitute an abuse of rights by the state of naturalisation and violate international law norms such as the principle of good neighbourly relations between states. The abuse would consist in the exercise of rights (of allocating citizenship) in a manner that is arbitrary or that negatively impacts the enjoying of other states' rights.[23]

In the case of Russia, these concerns have been augmented by Russia's subsequent attempts to justify its use of force against Georgia, the annexation of Crimea, and the invasion of Ukraine, on the basis that it is acting to protect the rights of its citizens. But Russia is not the only country whose passportisation practices have set international alarm bells ringing. Indeed, though Russian policies have been widely condemned by the international community and Russian passports are not

17 'Letter dated 13 April 2014 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council', 8529th meeting of the Security Council, S/PV.8529 (2019).
18 Peters 2010.
19 Wrighton S. (2018), 'Authoritarian regime stabilization through legitimation, popular co-optation, and exclusion: Russian pasportizatsiya strategies in Crimea', *Globalizations* 15(2) 283-300.
20 Burkhardt F. Rabinovych M., Wittke C., and Bescotti E. (2022), *Citizenship Rights, And The Donbas Vote In Russia's 2021 Duma Elections*, Temerty Contemporary Ukraine Program.
21 *Id.*
22 *Id.*
23 *Id.*

recognised as valid travel documents by the EU and other countries, similar practices of extraterritorial naturalisations by Eastern European states such as Hungary had previously prompted ad hoc efforts to develop international law norms. The 2001 Venice Commission Report on the Preferential Treatment of National Minorities by their Kin-State[24] and the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations issued by the OSCE High Commissioner on National Minorities in 2008 both attempted to set out conditions under which states may extend preferential treatment to ethnic non-resident minorities.[25] These documents emphasise that the primary responsibility for the protection of minority rights lies with the state of residence. Other states who may have an interest in their welfare can provide benefits to minorities but only with the consent of the state of residence and with full respect for the principles of sovereignty and good neighbourly relations. This would include refraining from mass citizenship conferrals even in situations where the state of residence permits dual nationality. These principles, however, have not been transformed into hard international law prescriptions.

Similar to the previous case of oppressive nationality, the patchwork of international law norms that emerges to constrain nationality attribution in passportisation cases seems to emanate not from the relatively vague principles found in the international law governing nationality, but rather when this law bumps up against other stronger international law norms such as state sovereignty. And even these latter norms seem to have failed to sufficiently deter these practices.

A New New Law of Nationality

Writing a decade ago in the American Journal of International Law on 'A New Law of Citizenship', Peter Spiro asked 'will international law colonise the last bastion of sovereignty?'[26] Alas, the answer to that question is no more hopeful today than it was at the time it was first posed. If anything, citizenship, and its international twin nationality seem to have transformed into sites of "adaptive authoritarianism",[27] that is, democratic institutions that authoritarianisms mimic and retool to enhance regime survival and its reach. And not only authoritarians, but also liberal democracies seem to be complicit in its securitisation, albeit for different ends. The invasion of Ukraine that was presaged by the thousand cuts of passportisation has tested the resilience of international law in more ways than one. But it has also presented unexpected opportunities for both reaffirming long-standing international law principles,[28] such as the prohibition on the use of force, and invigorating international institutions, alliances, and standard-setting in diverse areas ranging from multilateral co-operation to the law of asylum. It can and should do the same when it comes to resisting the sophisticated ways in which states can weaponise the attribution of nationality.

International law has two possible ways to react to this securitised, oppressive nationality. It can beef up and more rigorously enforce international law norms on neighbourly relations, statelessness, and asylum that interact with the nationality attribution, thus preserving sovereign prerogative over questions of citizenship and nationality but strengthening the constraint that it can only be conferred in accordance with international law norms. Though this will be a welcome step that can benefit from and in turn contribute to efforts to strengthen international law norms in matters that affect nationality, it poses the risk that paralysis or setbacks in these other fields may end up delaying or even turning back any progressive agenda on nationality reform.

Any such agenda will thus need to be accompanied by a willingness to 'storm the last bastion' to transform the international law on nationality. This will require recognising that, quite apart from its consequential impact on the individual who is ascribed a nationality, nationality attribution does not have

24 'Report on the Preferential Treatment of National Minorities by their Kin-State, adopted by the Venice Commission at its 48th Plenary Meeting', Council of Europe, Doc. 168/2001.

25 'Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations', Organization for Security and Co-operation in Europe (2008).

26 Spiro 2011.

27 Ginsburg T. (2020), 'Authoritarian International Law?', *American Journal of International Law* 114(2) 221-234.

28 Chachko, E. & Linos, K. (2022), 'International Law After Ukraine: Introduction to the Symposium', *American Journal of International Law Unbound* 116, 124-129.

effects mostly 'within the legal system of the State conferring it' but can also have serious consequences for other states and for the stability of the international legal order. International law norms must not only be able to retrospectively evaluate whether the state engaged in the act of nationality attribution has committed an abuse of rights in this process, but rather pro-actively guide and constrain nationality ascription. International law could, for example, develop default rules proscribing mass naturalisations outside the state's territory barring exceptional situations such as statelessness. It could also establish principles for evaluating what types of conduct would constitute valid individual consent for the purposes of extraterritorial nationality attribution and the circumstances and fora in which host countries could challenge this attribution. These would just be the first steps towards recalibrating an international filing system for nationality that seems to be seriously compromised. Rather than trying to tinker at the margins with a system that was designed for a different era, a serious overhaul would be in order.

Regulation against weaponisation: a double-edged sword?

Jelena Džankić*

Prologue

My nationality was changed four times. I was never asked. It was given to me and taken away from me as if I were a "thing" to be numbered; an object marked by its barcode.

This is not the start of a dystopian novel. Anyone who has lived through territorial secession will have had their nationality changed by default. I am now a national of tiny Montenegro with a population of less than a million. Since my birth in the early 1980s, I was "filed into" different jurisdictions each time the state whose nationality – and thus citizenship – I was given would fall apart.

Therefore, I very much agree with Neha Jain that nationality attribution can be oppressive and weaponised.[29] It can easily be instrumentalized by states to persecute individuals or make territorial claims against other states. Involuntary nationality attribution can also turn individuals into weapons of war, by providing the legal basis for military conscription. This was common practice during the wars of Yugoslav disintegration.[30] The laws of the socialist Yugoslav federation provided for total mobilization in the case of war. When the country fell apart in 1992, the leadership of the Federal Republic of Yugoslavia (FRY), one of the successors to the socialist federation, was heavily influenced by the wartime ambitions of the Serbian president Slobodan Milošević. They deliberately postponed the adoption of the new citizenship act until 1996.[31] This enabled the FRY authorities to draft refugees arriving from Bosnia and Herzegovina, because they were still considered citizens of the same state even if that state no longer existed. The refugees were then forcibly recruited into the army of the Republika Srpska and sent back to Bosnia and Herzegovina to wage Milošević's war.

While the increasing abolition of military duty has made such scenarios less likely than in the 1990s, Jain convincingly illustrates other ways in which nationality assumes bayonet-like qualities. Where her argument is less convincing – at least for a political scientist – is when she suggests that regulating nationality matters through international law would put an end to states' abusive practices; at best, it could diminish them in some limited cases.

There are three key reasons for this. First, paradoxically, in many cases citizenship used to deprive individuals of rights or as a weapon against other states is often formally fully in line with international legal norms. Second, in many cases weaponised citizenship has not been attributed by states but acquired voluntarily by individuals. Third, international law has shown substantive weaknesses in regulating matters that touch upon the core of sovereignty: the links between individuals, territories, and states.

It's all by the book, but does this make it right?

The main problem of the weaponisation of citizenship is not that it is contrary to any human rights or international norms. Rather, it is most often fully in line with them; and it would likely continue to be so, whichever other rules were agreed upon at the international level. Most of the problematic citizenship acquisitions or attributions that states instrumentalise to harm individuals, groups, or other states are permissible. In *The Global Market for Investor Citizenship*,[32] I explored a number of problematic aspects associated with citizenship by investment programmes: from the inequalities they perpetuate, to the long-distance citizens they create, or to the corruption they are breeding.

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29 Jain N. (2022), 'Weaponised Citizenship: Should international law restrict oppressive nationality attribution?', GLOBALCIT, Weaponised Citizenship: Should international law restrict oppressive nationality attribution? - Globalcit (hereinafter 'Jain 2022').

30 Džankic J. (2015), *Citizenship in Bosnia and Herzegovina, Macedonia and Montenegro: Effects of Statehood and Identity Challenges*, Routledge.

31 Stiks I. (2011), *A Laboratory of Citizenship: Shifting Conceptions of Citizenship in Yugoslavia and its Successor States*, CITSEE Working Paper 2010/02, A Laboratory of Citizenship: Shifting Conceptions of Citizenship in Yugoslavia and its Successor States by Igor Stiks :: SSRN.

32 Džankić J. (2019), *The Global Market for Investor Citizenship*, Springer Link.

Nonetheless, every single one of these programmes, including the one of the Comoros that Jain mentions in her kick-off contribution, is perfectly lawful.

The same is true of any of the other "zombie citizenship" categories, creating extraterritorial communities with little to no connection to the state of which they have become nationals. Russian expansive passport policies are as lawful as the grant of passports to ethnic kin, practiced, among others, by Bulgaria, Croatia, Hungary, Romania, or Serbia.[33] By letter of the law, they are also not dissimilar from policies adopted by Spain, Portugal, or Poland to bring remedial justice to populations who have historically been persecuted;[34] or policies seeking to maintain links with emigrants and diasporas that Italy, Spain and Portugal have in place for Latin American countries.[35] This leads us to the key question about the instrumentalization of citizenship policies by states: does the fact that something is permissible under the law make it right?

The plethora of examples that Jain raises give a clear answer.[36] And it is important to discuss the ways in which abusive grants of nationality can take place and propose ways to prevent them. An international regulation of nationality, or an enhanced human rights protection system, are insufficient for that, as such nationality grants are within the parameters of law. For as long as individuals remain insufficiently educated on the value of membership – not as nationality but as belonging to a political community of fellow human beings – the rules for citizenship conferral will remain a weapon in the hands of power-thirsty autocrats on the lookout for new territories or means to stay in power.

Your will, your problem: or is it?

A vast majority of individuals worldwide acquire their citizenship at birth, involuntarily, through what Ayelet Shachar has referred to as the "birthright lottery".[37] The diffusion of dual citizenship tolerance, coupled by the increase in global mobility, and the enhanced opportunities one might have by virtue of being a national in more than one country, made multiple nationality highly desirable for individuals.[38] This is particularly the case with citizens from countries located in the so-called Global South, or those living in the peripheral regions of Europe or North America.[39] Hence, except for nationality changes that occur due to redrawing of territorial boundaries, most nationality acquisitions are, at least to some degree, voluntary. That is, they are based on an individual's action permissible under the law. Extraterritorial citizens often initiate the acquisition of their second nationalities themselves, even if these are offered for instrumental purposes by states and prone to misuse by them. Individual motives include a multitude of reasons: from mere opportunistic ones (mobility or travel),[40] to compliance with hidden coercion (state officials conducting door-to-door campaigns)[41] or deprivation of some kind (owning property).[42] If such citizenships are weaponised, they can have severe ramifications: in the first case, for the countries concerned; in the second, for the individuals affected.

The Russian passportisation is obviously the most extreme manifestation of the first kind of such ramifications. Yet in other cases of extraterritorial citizenship the grant of nationality through ethnic kinship or cultural affiliation ultimately led to claims against the state whose citizens were the main beneficiaries of the external nationality-granting state. For instance, over 120,000 citizens of North

33 Dumbrava C. (2019), The ethno-demographic impact of co-ethnic citizenship in Central and Eastern Europe', *Journal of Ethnic and Migration Studies*, 45:6, 958-974.
34 Maatsch A. (2011), *Ethnic Citizenship Regimes: Europeanization, Post-war Migration and Redressing Past Wrongs*, Springer.
35 Escobar, C. (2007). 'Extraterritorial Political Rights and Dual Citizenship in Latin America' (Derechos Políticos Extra-Territoriales y Doble Ciudadanía en América Latina), *Latin American Research Review*, 42(3), 43–75.
36 Jain 2022.
37 Shachar A. (2009), *The Birthright Lottery: Citizenship and Global Inequality*, Harvard University Press.
38 Vink M. et. al. (2019), 'The international diffusion of expatriate dual citizenship', *Migration Studies,* 7(3) 362–383.
39 Harpaz Y. & Mateos P. (2019), 'Strategic citizenship: negotiating membership in the age of dual nationality', *Journal of Ethnic and Migration Studies*, 45:6, 843-857.
40 *Id.*
41 'Elections in Canada', Oral Questions Period, House of Commons Canada (16 October 1995), Debates (Hansard) No. 240 - October 16, 1995 (35-1) - House of Commons of Canada (ourcommons.ca).
42 Akcapar S. and Simsek D. (2018), 'The Politics of Syrian Refugees in Turkey: A Question of Inclusion and Exclusion through Citizenship', *Social Inclusion* 6(1).

Macedonia have obtained the passport of neighbouring Bulgaria,[43] whose ethnic citizenship policy was a means for these individuals to access the rights of European Union (EU) citizenship. In 2022, the Bulgarian government conditioned the opening of EU accession negotiations with the formal recognition of ethnic Bulgarians as a constitutional minority in North Macedonia. The request was supported by records on Bulgarian citizenship acquisitions by North Macedonian citizens. Hence the large number of instrumental citizens became leveraged in claims made by foreign authorities against their state of residence and original citizenship.

The second kind of repercussions that can arise from malleable citizenship acquisition rules and practices happened in the Comoros mentioned by Neha Jain.[44] In *The Cosmopolites*, Atossa Abrahamian explains how this worked for the *bidoons in the UAE and Kuwait.*[45] The legal basis for the grant of citizenship by investment had already existed by means of the 2008 Comorian Economic Citizenship Law. Once the government of the Comoros made arrangements with the governments of the Gulf states, *bidoons were enticed to apply for the Comorian passports with a promise that it would be the first step towards acquiring the nationality of the states where they lived. UAE government officials used examples of influential bidoons to promote their "externalization of nationality", while posing increasing hurdles for the bidoon population in their everyday lives (e.g., for registering a car). As a result, many opted to apply for the Comorian passport and become vulnerable and precarious in their homeland.*

In all of these cases, strategic choices by individuals have had adverse consequences. Yet weaponisation of such choices happened only when states "cashed in on" individual decisions on nationality acquisition in a different state. This is at the heart of the second problem with the idea of an international law that would regulate nationality acquisition: how to strike a balance between respecting individual choices and preventing misuse of such choices by states. If this cannot be achieved, it might prove more harmful for already vulnerable individuals than the absence of regulation.

Would it make a difference?

The final concern related to an international law that would regulate the misuse of citizenship acquisition and attribution is ostensibly a practical one: what form would it take? Nonetheless, even such a simple question raises crucial concerns related to the functioning of the international state system and challenges the substance of norms associated with our understanding of free contemporary societies.

First, it is unlikely that the international law regulating the acquisition of nationality would entail any restriction on multiple status. Since the 1960s, dual nationality diffusion became associated with liberal democracies, where increased mobility patterns have substantively altered the meaning of "national" identity.[46] This is not as much the case in countries and societies contested by or contesting other state and nation building projects: there, dual citizenship is restricted or promoted for a completely different purpose.[47] Openness toward dual nationality is often not a mechanism of inclusion; rather, it is often deployed as a tool for achieving geostrategic objectives. Yet restricting a "liberal" norm because it can be misused questions the system of values that has led to the acceptance of such norm.

Second, it is also questionable to what extent the misuse of nationality acquisition can be regulated through human rights law. Norms for the protection against statelessness, as well as those aimed at

43 Nikolov K. (2022), 'Progress in Sofia's talks with Skopje despite census debate', EURACTIV, 1 April 2022, Progress in Sofia's talks with Skopje despite census debate – EURACTIV.com.
44 Jain 2022.
45 Abrahamanian A. (2015), *The Cosmopolites: The Coming of the Global Citizen*, Columbia Global Reports.
46 Vink M. et. al. (2019), 'The international diffusion of expatriate dual citizenship', *Migration Studies* 7(3),362–383
47 Džankic J. (2016), *Citizenship in Bosnia and Herzegovina, Macedonia and Montenegro: Effects of Statehood and Identity Challenges*, Taylor and Francis.

ensuring racial and gender equality are already in place.[48] Yet the possibility to derogate from specific provisions in the human rights treaties leaves substantive margin for their potential weaponisation through citizenship acquisition (and loss). In other words, for as long as states have the monopoly over the rules for inclusion and exclusion, and for as long as nationality attribution is a core matter of sovereignty, the misuse of those rules will be possible.

A solution?

It is easy to be critical of Jain's proposal for a new international nationality law because of its "broad brush" approach without offering an alternative solution.[49] And I do not have one – at least not one that could realistically be put in practice in the near future within the limits of the current international state system. If we accept that the creation of boundaries that "keep some in" and "shut others out" are at the heart of human relations that construct societies, the abuse of such boundaries will always remain a possibility: be it through nationality laws, or whichever other principle will be used to govern the linkages between individuals and territorial jurisdictions. To overcome the systemic problem of states "manufacturing statelessness" and weaponising citizenship for that purpose, educating citizens of their role as participants in collective decision-making is crucial.[50] A person aware of their rights in society, aware and respectful of the rights of others, and conscious of the limits of states' power is the best 'shield' against states or groups taking advantage of laws to harm others. After all, being a citizen is not only about "being filed into" a state.[51] It is also about creating communities of individuals with equal rights.

Epilogue

I have many file numbers, in many places: R48FC8132, DZNJLN16E97B582L, 1391970144972, PK 45 78 99. I have no voting rights anywhere in this world. But I have a voice. Somewhere.

48 Spiro P. (2014), 'Citizenship, nationality, and statelessness', in Chetail V. and Bauloz C. (eds.), *Research Handbook on International Law and Migration*, Edward Elgar.
49 Jain 2022.
50 Jain, N. (2022), 'Manufacturing Statelessness', *American Journal of International Law* 116(2), 237-288.
51 Brubaker 1999.

The Weaponisation of More than Citizenship

Eleanor Knott*

I approach the topic of weaponised citizenship through an empirical – albeit critical – lens regarding the world how it is rather than through a normative lens of how the world ought to be. Neither approach or perspective is better or worse; both need the other for cross-fertilization of ideas and insights. Rather, I note my empirical perspective to indicate the position I come from when considering the concept of weaponised citizenship and assessing its utility in the contexts where I have researched dual citizenship.

In this response, I do not dispute the usefulness of weaponised citizenship as a concept and political practice. Neha Jain indicates many poignant instances where weaponised citizenship has been used by states who hollow out, offshore, or impose citizenship as part of coercive, oppressive, and authoritarian politics.[52] My point is that empirical nuance is needed when understanding actual or potential instances of weaponised citizenship. In particular, it is important to revisit when and under what conditions citizenship has been weaponised, such as in passportisation policies, which are the focus of my response.

Adding empirical nuance is not only about disputing facts or laying bear that weaponisation of citizenship can occur before, or as a consequence of, conflict. Empirical nuance also demonstrates how it is not only citizenship that can be weaponised by authoritarian nationalist states. First, states like Russia are also weaponising fuzzier concepts of quasi-citizenship. While domestic law and international norms offer some legal codification of citizenship, there is no such codification for quasi-citizenship. Second, states like Russia (in particular) are weaponising ethno-nationalist claims offering protection – via annexation and conflict – to external co-ethnic communities, whether or not such external co-ethnic communities view themselves as needing, or consenting to, protection.

Weaponisation of citizenship: before or after annexation?

First, we should question what we know, or what we think we know, about *when* Crimea was passportised: whether before or after annexation.

Suppose Crimea's residents were passportised by Russia before annexation. In that case, this process points to very different analytical insights and alters our understanding of annexation and passportisation, compared to a situation where Crimea's residents were passportised after annexation. In the former case, we would view passportisation as a precursor to annexation and as a sign of Crimea's and Ukraine's weakness vis-à-vis Russia. We might view Crimea's residents' Russian citizenship status as indicating that annexation was almost an inevitable consequence of passportisation as it may seem that Crimea's residents supported annexation as Russian citizens. But, if Crimea's residents were passportised after annexation, then we would view passportisation differently: as a consequence of annexation rather than a cause or a symptom of Ukraine's weakness and as an imposed practice following annexation rather than preceding it.

Neha Jain suggests that Russian passportisation preceded, and was a precursor of, Russia's annexation of Crimea.[53] In particular, drawing on Anne Peters, Jain suggests that Russian passportisation occurred in Crimea as early as 1991 and resulted in massive conferral of Russian citizenship.[54] Moreover, Jain claims that passportisation in Crimea preceded – and thus repeated – that same policy in Abkhazia and South Ossetia after 2002, and before Russia's invasion of Georgia in 2008. The implication is that passportisation in Crimea was a long-standing policy of mass conferral of Russian citizenship in contested territories in the "near abroad" preceding invasion or annexation.

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52 Jain 2022.

53 *Id.*

54 Peters 2010.

But Anne Peters herself offers a few caveats that Jain misses. Importantly, Peters suggests that "an active Russian 'passportisation' policy" was "allegedly" pursued in Crimea since 1991. Given this uncertainty, she chooses not to include Crimea as a case. Instead, her analysis focuses on the 'most conspicuous and documented instances of Russian extraterritorial naturalization policies, namely in Abkhazia, South Ossetia, and Transnistria'.

As Peters outlines, but Jain misses, the nature of Crimea's passportisation is messier and less clear compared to other cases where en masse conferral of Russian passports is more easily identifiable.

That Crimea was passportised by Russia prior to annexation is an often-repeated statement as if it were a fact. Many scholars and policy observers, including Jakob Hedenskog and Merle Maigre, have suggested that Crimea was passportised long before annexation.[55] Similarly, Taras Kuzio indicates that up to one hundred thousand of Crimea's residents were passportised by Russia as of 2008.[56]

Before annexation, this lens of passportisation was used to suggest that Crimea was "next" on Russia's violent roadmap. After annexation, scholars described passportisation as a "post-factum" justification for Russia's annexation of Crimea.[57] For example, Charles King suggested that passportisation made Crimea susceptible to annexation by Russia, as if Crimea's residents supported annexation because they were already Russian citizens.[58] Such perspectives suggest annexation was a fait accompli because of passportisation.

But numbers, such as those quoted by Kuzio, are difficult to trace back to original sources and skate over the reality of who were Russian citizens in Crimea prior to annexation. In the main, Russian citizens were not ordinary residents of Crimea, but those associated with the Russian military base in Crimea, including military pensioners.

Individual Agency and the Lens of Passportisation

Moreover, the lens of passportisation denies agency to those assumed to have been passportised. It grants agency to the state passportising but not to the individuals *being* passportised. Restoring agency is also about addressing consent as an empirical question. Did Crimea's residents want Russian citizenship or not? Why? What kind of individuals wanted Russian citizenship or had Russian citizenship? How did they acquire it? And after acquisition, how did they use it?

I address these questions in my recently published monograph, Kin Majorities.[59] Specifically, I explore who wanted Russian citizenship, who had Russian citizenship, and how Russian citizenship practices of acquisition aligned (or did not) with self-identification of people as ethnically Russian and with the Russian state.

In my fieldwork conducted in 2012 and 2013, months before annexation, none of my interviewees in Crimea had Russian citizenship. Moreover, very few participants wanted Russian citizenship. Most saw Russian citizenship not only as unavailable and accessible, at least through legal means, but as illegitimate and undesirable. For them, Russian citizenship conferred rights that they neither wanted nor needed.

A small minority of participants in Crimea did want Russian citizenship as a leverage against Ukraine. They saw Russian citizenship as a way to gain greater rights and protection within Ukraine. But this small minority was also a very specific constituency of participants, associated

55 Hedenskog J. (2008), *Crimea After the Georgian Crisis*, Swedish Defense Research Agency, Crimea After the Georgian Crisis - DocsLib; Maigre M. (2008), *Crimea: The Achilles' Heel of Ukraine*, International Centre for Defence Studies, Merle Maigre - Crimea the Achilles Heel of Ukraine.pdf (icds.ee).

56 Kuzio T. (2008), 'Russian Passports as Moscow's Geopolitical Tool', *Eurasia Daily Monitor* 5(176).

57 Jordana J. et. al. (2019), *Changing Borders in Europe: Exploring the Dynamics of Integration, Differentiation and Self-Determination in the European Union*, Routledge.

58 King C. (2014), 'Crimea, The Tinderbox', New York Times, 1 April 2014, Opinion | Crimea, the Tinderbox - The New York Times (nytimes.com).

59 Knott E. (2022), *Kin Majorities: Identity and Citizenship in Crimea and Moldova*, McGill-Queen's University Press.

with pro-Russian organizations and the pro-Russian political party. Only those associated with such associations saw ethnic Russians and Russian speakers in Crimea as discriminated against. All other participants regarded these claims as ridiculous and the pro-Russian associations as political losers, given their marginal place in Crimean politics and their poor election results before 2014. It is the leaders of these pro-Russian associations that came to power as a result of annexation.

Weaponisation of Citizenship as a Consequence of Annexation in Crimea

I agree with Wrighton,[60] who argues that Crimea's residents were passportised *after* rather than prior to annexation. After annexation, *en masse* conferral of Russian citizenship was used as a coercive practice by an annexing power to force individuals – in a 'climate of fear and repression' – to become Russian citizens.[61] The options to remain resident were either acquiring Russian citizenship, to retain property and other rights, or registering as a foreigner. As dissenting Russian politicians suggested, passportisation after annexation made Crimea not a republic but 'a concentration camp inside Russia'.[62] In doing so, Russia willingly breached the Geneva Convention, for example, by forcibly requiring state employees to renounce Ukrainian citizenship.[63]

As I outline above, it is important to identify when weaponisation of citizenship takes place, in particular, to find out when it occurs in relation to conflict. Passportisation unlikely occurred as a precursor to conflict in the case of Crimea. Instead, it occurred during and as a consequence of violent conflict, via Russia's annexation.

However, in Crimea, Russia not only weaponised citizenship but also forms of quasi-citizenship. In March 2014, Putin suggested that both Russian citizens and those Russia claimed as "compatriots" in Crimea were at an alleged risk and needed the Russian state to intervene to protect them.[64]

Weaponisation Beyond Citizenship and the Expanding Weaponisation of Citizenship

In 2008 in Georgia, Abkhazia, and South Ossetia, Russia weaponised only citizenship, albeit citizenship achieved via passportisation policies. But in 2014, the weaponised community expanded beyond citizens and citizenship, to include fuzzier constituencies of those Russia claimed as compatriots.

Again, following Jain, we return to the issue of consent: no one asks individuals whether they want to be regarded as quasi-citizens, and whether they want such claims of quasi-citizen status to be weaponised. Moreover, the states where these individuals reside are not asked for consent since these claims precisely take place in the context of conflict, war, occupation, and/or invasion.

Keeping pace with the community that authoritarian, ethno-nationalist, and violent states wish to weaponise is, therefore, a challenge. This eventuality does not weaken the concept of weaponised citizenship but should make us mindful of how such a concept can become blunted if it is expanded by political actors.

Following the weaponisation of "compatriots" in Crimea, as a category of quasi-citizens, Russia laid broader citizenship claims to Ukraine before launching war and invasion on 24 February 2022. As Igor Zevelev shows, Russia first facilitated fast-track naturalization to residents of the Donetsk and Luhansk "People's Republics" (the DNR and LNR) in 2019, before then granting such fast-track

60 Wrighton S. (2018), 'Authoritarian regime stabilization through legitimation, popular co-optation, and exclusion: Russian pasportizatsiya strategies in Crimea', *Globalizations*, 15:2, 283-300,

61 'Ukraine: Fear, Repression in Crimea: Rapid Rights Deterioration in 2 Years of Russian Rule,' Human Rights Watch, 18 March 2016, Ukraine: Fear, Repression in Crimea | Human Rights Watch (hrw.org).

62 Forsberg, T. & Mäkinen, S. (2019), 'Russian Discourse on Borders and Territorial Questions – Crimea as a Watershed?', *Russian Politics*, 4(2), 211-241.

63 'Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)' Human Rights Council 36th session, September 2017, A/HRC/36/CRP.3.

64 'Vladimir Putin submitted an appeal to the Federation Council', Kremlin RU, 1 March 2014, Vladimir Putin submitted an appeal to the Federation Council • President of Russia (kremlin.ru).

naturalization to the larger constituency of those residing in the oblasts/regions of Donetsk and Luhansk (7 million people).[65] In other words, Russia first opened up rights to those residing in regions where Russia had stoked conflict, before expanding these rights to regions where Russia had not yet stoked conflict but would in 2022. In 2020, Russia expanded fast-track naturalization even further to all citizens of Ukraine, Belarus, Kazakhstan, and Moldova.[66]

Jelena Džankić is right that Russia considers its actions of expansionary citizenship acquisition beyond its borders as lawful.[67] However, Russia's actions are not lawful in the eyes of states, like Ukraine, that forbid acquisition of dual citizenship. This legal contrast raises again the question of how we regulate, or not, citizenship when states disagree about lawfulness of citizenship acquisition across borders, in particular when they are viewed precisely as aggressive threats to sovereignty. Moreover, what do we do in cases of weaponised quasi-citizenship or ethnic claims? Such claims are less legally codified than citizenship and involve similar issues about consent – no one asks individuals of such weaponised claims if they accept or identify with them.

As Jain concludes, Russia's war against and invasion of Ukraine holds important consequences for the concept of citizenship. Citizenship can imply a "personal annexation", with weaponisation of citizenship via passportisation a stark and alarming precursor to conflict.[68] Whereas such weaponisation occurred as a consequence of annexation in Crimea, Russia has since weaponised citizenship again as a precursor to conflict, as it did in 2008 in Georgia.

However, Russia is not only weaponising citizenship. It is weaponising what it means to be ethnically Russian and a Russian speaker where Russia can manufacture claims of oppression as pretext for intervention, even where such conflict means indiscriminately killing Ukrainian citizens, whether ethnic Ukrainians or ethnic Russians, speakers of Ukrainian or speakers of Russian.[69]

65 Zevelev I. (2021), 'Russia in the Post-Soviet Space: Dual Citizenship as a Foreign Policy Instrument', 2 *Russia in Global Affairs*.
66 *Id.*
67 Džankić J. (2022), 'Regulation against weaponisation: a double-edged sword?', GLOBALCIT, Weaponised Citizenship: Should international law restrict oppressive nationality attribution? - Page 2 of 12 - Globalcit (hereinafter 'Džankić 2022').
68 Peters 2010.
69 Knott E. (2023), 'Existential Nationalism: Russia's War Against Ukraine', *Nations and Nationalism* 29(1), 45– 52.

When powerful states play games with citizenship

Lindsey N. Kingston*

When my Sicilian grandfather Giuseppe "Joe" Carlisi petitioned to naturalise in 1957, he signed his English name and scrawled the words 'I can go to work.' He saw American citizenship as an escape from poverty, war, and discrimination. He was not alone: For generations, migrants across the world have considered nationality the key to enjoying fundamental human rights, or what Hannah Arendt called 'the right to have rights.' Citizenship supposedly offers national identity, indicates worthiness, and even proves one's existence. Those without it are rendered vulnerable to an array of human rights abuses. Without passports or other state documentation, the United Nations High Commissioner for Refugees says stateless people 'officially don't exist' – well, at least on paper.[70]

Citizenship is not only a force for good, however. My work on the weaponisation of citizenship highlights how the same documentation that can protect migrants might also open them up to extensive social control and rights violations.[71] This weaponisation impacts non-migrants, too; laws granting Indigenous peoples citizenship in settler states were used to privatise and ultimately seize their land, for instance. Important messages about who does (and does not) belong in a country are highlighted with the granting or revocation of citizenship, sometimes fuelling mass atrocity crimes like ethnic cleansing and genocide. These kinds of violations require us to look at citizenship with a critical eye – not only to recognise the potential for weaponising citizenship, but also to consider how to punish and prevent what Neha Jain calls "oppressive nationality".[72] She asks: What should the international community do when citizenship is wielded not to protect human rights, but rather 'as a sword that states can command to harm or to oppress?' Jain argues that international law should do more in these situations, especially since nationality attribution can oppress both individuals and states.

Given the current political climate – I am writing eight months after Russia invaded Ukraine – it is understandable that Russia has played an important role in this conversation so far. Jain considers the issue of "passportisation" practices in her essay, citing the mass conferral of Russian citizenship in Crimea as a method of fast-tracking large-scale extraterritorial naturalisation.[73] Eleanor Knott raises compelling questions about the timing of passportising Crimea's residents, but ultimately argues that Russia has been weaponising both citizenship and what it means to be ethnically and/or linguistically Russian to create a pretext for intervention.[74] Indeed, Jelena Džankić points out that even when extraterritorial citizens themselves initiate the acquisition of second nationalities, it may cause severe ramifications for the countries concerned and/or individuals affected.[75]

Yet while Russia is important in this conversation about weaponising citizenship, it is also vital to investigate the ways in which liberal democracies – so ready to declare themselves bastions of human rights – are guilty of using and benefitting from oppressive nationality. Just as the international community has built fundamental flaws into the human rights regime by relying on citizenship to identify human rights claimants, so too has the United Nations created vulnerabilities to weaponised citizenship by prioritising state sovereignty over individual rights.[76] Liberal democracies such as the United States have "gamed the system"[77] to manipulate the provision of citizenship to suit their ends, all while staying fully in line with international legal norms (as Džankić reminds us is often the case

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70 'What does it mean to be stateless?', UNHCR, 18 October 2019, https://www.youtube.com/watch?v=U8xZpNG39oc&t=42s.

71 Kingston, L. N. (2021), 'The weaponisation of citizenship: Punishment, erasure, and social control' in *Statelessness, governance, and the problem of citizenship*, Manchester University Press.

72 Jain 2022.

73 *Id.*

74 Knott E. (2022), 'The Weaponisation of More than Citizenship', GLOBALCIT, Weaponised Citizenship: Should international law restrict oppressive nationality attribution? - Page 3 of 12 - Globalcit (hereinafter 'Knott 2022').

75 Džankić 2022.

76 Kingston L. (2019), *Fully Human: Personhood, Citizenship, and Rights*, Oxford University Press.

77 "Gaming the system" can be defined as using the rules meant to protect a system to instead manipulate that system for a desired outcome. In other words, it means going against the intent and purpose of a system while technically followings its rules.

when citizenship is weaponised).[78] In fact, the U.S. has frequently celebrated the provision of U.S. citizenship as a "gift" or a social good, even when such status leads to disastrous social and political consequences for the new Americans in question.

Gaming the system

To conceptualise this "gaming" of the system, consider Jeffrey S. Bachman's work on the politics of genocide and outlaw states.[79] Bachman's view of the outlaw state differs from much of the existing literature; from his perspective, the law has no practical meaning for persistent outlaws because they simply bend the law to their will, guaranteeing their actions remain technically legal even if ethically suspect. He argues that some of the world's most powerful governments engage in "persistent outlawry" that few can achieve, thus acting with perpetual impunity. With the creation of the UN Genocide Convention, for example, powerful states such as Russia, the United Kingdom, and the United States ensured that the prevention of genocide is firmly limited by a system of territorial jurisdiction.[80] (Those powerful states now remain untouched by the Responsibility to Protect doctrine, which they sometimes wield against weaker states).[81] They also insisted that certain groups or crimes were omitted from the final draft, including cultural genocide and the targeting of political groups – crimes that permanent members of the UN Security Council could be guilty of, if constituted as genocidal acts under the Convention. 'Persistent outlawry is not defined by perpetual engagement in illegal activities, such as genocide,' Bachman writes. 'Rather, persistent outlawry is defined by the perpetual impunity with which persistent outlaws act domestically and/or internationally.

When it comes to oppressive nationality, the international community's firm commitment to state sovereignty – as enshrined in the UN Charter, again at the insistence of influential states – leaves it up to state governments to protect the "right to a nationality" and to determine how and when citizenship is granted or revoked.[82] This takes the bite out of existing international law related to citizenship, including the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.[83] This does not mean only powerful states take advantage of these systemic weaknesses – there are plenty of examples of weaker states invoking sovereignty as grounds for non-interference with their internal affairs. But this system was created by powerful actors who gamed the system for their own benefit, not out of concern for the state interests of weaker players. Given the United States' role as a global hegemon and a self-proclaimed champion for human rights, it is worth acknowledging how it has benefitted from oppressive nationality while engaging in a form of persistent outlawry – and how its game playing continues to impact citizenship and rights today.

Oppressive uses of citizenship by the United States

The United States offers various examples of how citizenship provision can be weaponised by a powerful government as a tool of assimilation and subordination, rather than a guarantee of rights protection. Many cases begin before the creation of the UN, but the normative foundations underpinning such oppressive nationality remain intact. By the time the United States offered Indigenous peoples the "gift" of U.S. citizenship with the 1887 Dawes Act in hopes of creating "good Americans," for instance, citizenship was increasingly understood in assimilationist terms. For Indigenous peoples, Cristina Stanciu notes that 'the forced assimilation and Americanization was

78 Džankić 2022.

79 Bachman J. (2022), *The Politics of Genocide: From the Genocide Convention to the Responsibility to Protect*, Rutgers University Press.

80 Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948, entered into force 12 January 1951, 78 U.N.T.S. 276.

81 *WHAT IS R2P?,* Global Centre for the Responsibility to Protect, Background briefing, What is R2P? - Global Centre for the Responsibility to Protect (globalr2p.org).

82 UN Convention Relating to the Status of Stateless Persons, adopted 28 September 1954, entry into force 6 June 1960), 360 U.N.T.S. 117.

83 UN 1961 Convention on the Reduction of Statelessness, adopted 30 August 1961, entered into force 13 December 1975, 989 U.N.T.S. 175.

an extension of the colonial practices, a replacement of one civic status with another – domestic dependent, ward, or U.S. citizen – and a reflection of the American colonial ambivalence vis-à-vis Native subjects.'[84] The acquisition of American citizenship went hand in hand with the privatization (and loss) of Indigenous lands and the erosion of tribal sovereignty. (If cultural destruction was indeed recognised by the UN Genocide Convention, the forced naturalisaton of Indigenous peoples would surely count as part of that genocidal process.) These issues remain central for Indigenous peoples who demand respect for treaty rights, recognition of inherent rights to self-determination, and the return of political and economic control of native lands via the "Land Back" movement.[85]

The U.S. territory of Puerto Rico is another site where citizenship has been used to justify American empire and to control strategic resources, offering a hollow legal status for Brown/Spanish-speaking people without the rights and protections associated with legal nationality. The people of Puerto Rico have historically existed as what Sam Erman calls "almost citizens" – neither citizens nor aliens, living on an island that is deemed neither foreign nor domestic.[86] The Jones Act of 1917 provided for the collective naturalisation of residents of Puerto Rico at a time when the new Panama Canal increased the island's strategic value – and while U.S. President Woodrow Wilson promoted democracy abroad as Congress defended colonialism at home. 'To mitigate the embarrassment of having permanent noncitizen subjects, Congress legislated,' writes Erman.[87] '[F]or Puerto Rico it proposed a collective naturalisation that foreclosed independence and brought no new rights.' Although Puerto Ricans acquired birthright U.S. citizenship in 1941, they have not enjoyed the same rights as Americans living on the mainland, including equal voting rights and representation in federal government. In calls for equal recognition before the law, Jacqueline N. Font-Guzmán writes that Puerto Rico remains a place where 'inequality allows for U.S. citizenship to become simultaneously a source of agency for the colonized and a mechanism of oppression for the colonizer.'[88]

These instances of shallow American citizenship highlight the importance of what I term "functioning citizenship" – that is, citizenship requiring 'an active and mutually-beneficial relationship between the state and the individual.'[89] This perspective asks us to look beyond mere legal status and to question how we recognise rights holders; citizenship is not just legality and identity documents, but rather a relationship that may or may not be fully functioning in rights-protective ways. Once we stop equating citizenship with belonging and worthiness, we also must acknowledge that political membership cannot be proven with an identity card or contained by state borders. More attention to functioning citizenship is partly what I believe Džankić is calling for when she writes that citizenship will remain a weapon as long as people are 'insufficiently educated on the value of membership – not as nationality but as belonging to a political community of fellow human beings.'[90] Her own story of having her nationality changed four times without her consent, and now living without voting rights anywhere in the world, is a powerful example of what a lack of functioning citizenship looks like in "real" life.

How can we solve the problem of weaponised citizenship in a system where legal nationality holds such power – and where "persistent outlaw" states have ensured their control over the provision of such status? Like Džankić, I am doubtful that international law can adequately address the weaponisation of citizenship and yet I struggle to offer any realistic alternative solutions.[91] The international community privileges citizenship – to access vital documentation, to enjoy fundamental rights, to hold legal identity – but at the same time affords powerful states almost unchecked authority over it.

84 Stanciu, C. (2021), 'Native Acts, Immigrant Acts: Citizenship, Naturalization, and the Performance of Civic Identity during the Progressive Era', *Journal of the Gilded Age and Progressive Era*, 20(2), 252-276.
85 See Land Back's work at LANDBACK - Building lasting Indigenous sovereignty..
86 Erman, S. (2018), *Almost Citizens: Puerto Rico, the U.S. Constitution, and Empire (Studies in Legal History)*, Cambridge University Press.
87 *Id.*
88 Font-Guzmán J. (2015), *Experiencing Puerto Rican Citizenship and Cultural Nationalism*, Palgrave Macmillan.
89 Kingston, L. N. (2014), 'Statelessness as a Lack of Functioning Citizenship', *Tilburg Law Review,* 19(1-2), 127-135.
90 Džankić 2022.
91 *Id.*

Without changing the very foundations of the international system, including how we identify rights holders and prioritise state sovereignty, there will always be outlaw states willing to manipulate and weaponise citizenship.

The difficult question for me is not *should* international law restrict oppressive nationality attribution, but rather *can* international law do so in a system that privileges powerful states who play games with citizenship?

Conditions for regulating the weaponisation of citizenship

Ramesh Ganohariti*

In her opening contribution, Neha Jain puts forward the argument that International Law should have a place in regulating situations of oppressive nationality.[92] She rightly identifies that the weaponisation of citizenship can be directed against individuals and/or other states. Given the guiding question, this contribution discusses under what conditions international law can and should restrict oppressive nationality attribution as a regulation in its own right. Drawing on my research on passportisation[93] and the regulation of citizenship in Abkhazia and South Ossetia,[94] I present three questions that must be answered if international law is to regulate the weaponisation of citizenship.

Was the attribution conducted by a recognized state, and did it affect people outside its de iure territory?

The previous contributors pointed out that forceful citizenship attribution can be in the form of extraterritorial nationality attribution (e.g. pre-2022 eastern Ukraine) or citizenship attribution to the population residing on the territory that is *de facto* but not *de iure* part of a state (e.g. post-2014 Crimea). Neither Ukraine[95] nor the international community recognizes nationality attribution in either of these cases.[96] Similarly, Georgia does not recognize Russian citizenships and passports conferred to individuals living in the "occupied territories" as this occupation violates international law, including Georgia's territorial sovereignty.[97] While not illegal under international law, these acts of passportisation have been condemned, and there is strong political motivation to regulate extraterritorial nationality attribution as it interferes with other states' sovereignty and stability. Thus, there is a degree of acceptance that such attributions should be regulated.

On the other hand, there are two instances where reprimanding citizenship weaponisation under international law would not be possible, or at the very least, very difficult. The first relates to nationality attribution within a state's internationally recognized borders. States have the freedom to regulate nationality, including its attribution within their borders. However, some populations may oppose such attribution and consider it as oppressive imposition of nationality. One group, identified by Lindsey Kingston, is indigenous peoples in North America.[98] The other group are citizens of aspirant states like Abkhazia and South Ossetia, who are entitled to the base state's nationality, in their case, that of Georgia.[99] However, the populations of these two aspirant states refuse to accept and recognize the "sticky" Georgian citizenship.[100] Further, these individuals lack a "genuine link" with Georgia to morally justify the attribution.

Moreover, Georgia's enticement and co-option of the two populations to accept Georgian passports is critiqued by the aspirant states. The most cited example is the liberalization of the EU visa regime for Georgian nationals,[101] which Georgia used as an incentive to encourage Abkhazians and South Ossetians to acquire Georgian citizenship. Residents of the two aspirant states also

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92 Jain 2022.

93 Ganohariti, R. (2021), 'Politics of Passportization and Territorial Conflicts', in Richmond O. and Visoka G. (eds.), *The Palgrave Encyclopedia of Peace and Conflict Studies*, Palgrave Macmillan.

94 Ganohariti, R. (2020), 'Dual Citizenship in De Facto States: Comparative Case Study of Abkhazia and Transnistria,' *Nationalities Papers*, 48(1), 175-192.

95 'Statement of the Ministry of Foreign Affairs of Ukraine on the provocative and unlawful decision by Kremlin to issue Russian passports to Ukrainian citizens in occupied territories', Ministry of Foreign Affairs of Ukraine, 24 April 2019, Statement of the Ministry of Foreign Affairs of Ukraine on the provocative and unlawful decision by Kremlin to issue Russian passports to Ukrainian citizens in occupied territories | Ministry of Foreign Affairs of Ukraine (mfa.gov.ua).

96 'Non-recognition of Russian travel documents issued in occupied foreign regions', European Parliament, 2022/0274 (COD).

97 'Report of the Independent International Fact-Finding Mission on the Conflict in Georgia', Vol. II, September 2009.

98 Kingston L. (2022), 'When powerful states play games with citizenship', GLOBALCIT, Weaponised Citizenship: Should international law restrict oppressive nationality attribution? - Page 4 of 12 - Globalcit (hereinafter 'Kingston 2022').

99 Organic Law of Georgia on Georgian Citizenship (2014) (Georgia).

100 Howard-Hassmann and Walton-Roberts 2015.

101 'Abkhazia denounces Tbilisi's offer to enjoy visa free travel to Europe', OC Media, 3 February 2017, Abkhazia denounces Tbilisi's offer to enjoy visa free travel to Europe (oc-media.org).

have access to the Georgian healthcare system.[102] While my interlocutors were grateful for the provision of healthcare, they cited past cases where some hospitalized individuals were expected to sign documents acknowledging the acceptance of Georgian citizenship. Thus, from their perspective, Georgia is engaging in a subtle form of oppressive citizenship policy.

That said, under the current international system, little can be done to control states using citizenship laws to regulate populations within their sovereign territory. Peter Spiro argues that even though *ius solis* and *ius sanguinis* are both forms of ascriptive citizenship, they have been accepted as legitimate criteria for conferring citizenship.[103] The attribution would be within the state's competence and should not be regarded as a weaponisation of citizenship as it is not directed against another state, even if a particular subset of the population does not accept it. Furthermore, international law has been more concerned with forceful denaturalisation and statelessness reduction and views attempts to ensure that individuals have access to a nationality within the reduction of statelessness framework.[104] Nevertheless, I envisage that this dimension may push us to think about states' coercive use of nationality beyond extraterritorial nationality attribution and citizenship-stripping.

The other instances of weaponisation of citizenship that would be difficult to restrict under international law are processes of passportisation and documentation carried out by non-state actors, which can range from aspirant states (e.g. Abkhazia),[105] to rebel groups (e.g. in Syria).[106] The extreme case is ISIS, a terrorist group which engaged in state-like functions.[107] The degree of voluntariness in acquiring documentation and citizenship of non-state actors may differ, but in most cases people are compelled to do so. Even in Abkhazia, where the majority identify as Abkhazians and have voluntarily accepted the local citizenship, some ethnic Georgians were compelled (2008-2013) to acquire Abkhazian citizenship in order to enjoy certain rights.[108] Abkhaz authorities consider such acquisitions of Abkhazian citizenship voluntary. While any forceful attribution of citizenship must be condemned, it would not be possible to regulate these actors the same way as states. Doing so would be politically unacceptable since this would mean that the international system would give recognized states and these actors the same status. The non-recognized status, however, does not absolve the aspirant state authorities. International humanitarian law[109] and international criminal law establish accountability for non-state actors for acts that violate human rights.[110] However, in cases of peacetime, responsibility for human rights violations falls upon the patron state that supports the aspirant state.[111] While, to my knowledge, no international case law exists on the weaponisation of citizenship by non-state actors, any international legal regulation will likely draw upon the existing legal regimes. Thus, under international law, in the case of Abkhazia, Russia may be recognized as the responsible party for the forceful ascription of Abkhazian citizenship. Furthermore, due to the non-recognition of these actors as states, their citizenship (laws) and documents remain largely unrecognized.[112] Thus, legally, it would not be possible to call these acts "weaponisation of nationality", and an alternative legal term needs to be found.

102 Bakradze N. (2022), *Georgia's Health Diplomacy*, Institute for War and Peace Reporting, Georgia's Health Diplomacy | Institute for War and Peace Reporting (iwpr.net).

103 Spiro 2017.

104 Vink M. et. al. (2022), *Instrumentalising Citizenship in the fight against terrorism,* Institute on Statelessness and Inclusion and Global Citizenship Observatory, Instrumentalising_Citizenship_Global_Trends_Report.pdf (institutesi.org).

105 Kvarchelia L. (2014), *Abkhazia: Issues of citizenship and security*, Centre for Humanitarian Programme.

106 Sosnowski M. (2021), "*The Right to Have Rights": Legal Identity Documentation in the Syrian Civil War*, German Institute for Global and Area Studies.

107 Callimachi R., 'The ISIS Files: When terrorists run the city hall', New York Times, 4 April 2018, The ISIS Files: When Terrorists Run City Hall - The New York Times (nytimes.com).

108 'Living in Limbo: Rights of Ethnic Georgians Returnees to the Gali District of Abkhazia', Human Rights Watch, 15 July 2011, Living in Limbo: Rights of Ethnic Georgians Returnees to the Gali District of Abkhazia | HRW.

109 *Report of the International Committee of the Red Cross,* International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, 4427_002_ International Humanitarian Law and the Challenges of Contemporary Armed Conflicts – Recommitting To Protection In Armed Conflict On The 70th Anniversary Of The Geneva Conventions: 10.2019: 500 (icrc.org).

110 Ambos K., 'The new enemy of mankind: The Jurisdiction of the ICC over members of "Islamic State"', EJIL: Talk!, 26 November 2015, The new enemy of mankind: The Jurisdiction of the ICC over members of "Islamic State" – EJIL: Talk! (ejiltalk.org).

111 Cwicinskaja, N. (2018), 'International Human Rights Law and Territorial Non-State Actors: Cases of the Council of Europe Region', in Summers J. and Gough A. (Eds.), *Non-State Actors and International Obligations*, Brill | Nijhoff.

112 Krasniqi G., *Contested territories, liminal polities, performative citizenship: a comparative analysis*, GLOBALCIT Working Paper, EUI RSCAS, 2018/13.

The answer to our first question is thus: If international law is to regulate oppressive nationality attribution as a category of its own, it can only do so in cases where a recognized state is involved in citizenship attribution towards people living outside its *de iure* territory.

Was citizenship attributed collectively and forcefully?

As identified by the previous contributors, it is difficult to follow a strict consent/non-consent dichotomy when it comes to acquisition of citizenship, but this is essential to consider when designing any potential legal frameworks. Eleanor Knott argued that post-annexation passportisation in Crimea was used as a coercive practice to force (most) individuals to acquire Russian citizenship.[113] On the other hand, in Abkhazia and South Ossetia, the acquisition of Russian citizenship was voluntary and on an individual basis. This is demonstrated by the fact that not all Abkhazians and South Ossetians managed to acquire Russian citizenship in the early 2000s. It is also important to acknowledge that Russia's passportisation in aspirant states is in response to a demand from the people who wish to acquire a more strategic/compensatory citizenship with greater instrumental value than their local citizenship. Thus, individual agency needs to be considered.[114] The fact that Russia highjacked the individual agency of residents of aspirant states for geo-political and strategic reasons does not eliminate the necessity and legitimacy of Russian citizenship in the eyes of these populations.

A strong argument exists against collective attribution, but it would be more challenging to regulate and identify cases where citizenship was acquired voluntarily and on an individual basis. Thus, any international legal regulation should only address cases of collective and forceful attribution of citizenship.

Did the weaponisation occur simultaneously with the attribution of citizenship?

The last question is whether or not the weaponisation of citizenship occurred after or before passportisation. What may have been a benevolent or humanitarian act could easily be weaponised later. This ties to the above-mentioned dimension and to Jelena Džankić's point that most acquisitions are voluntary 'even if these are offered for instrumental purposes by states and prone to misuse by them'.[115] Extraterritorial nationality attribution that could potentially result in the weaponisation of citizenship (such as in Abkhazia and South Ossetia) is more difficult to regulate since it would involve pre-emptive regulation. On the other hand, when passportisation is used as part of a package of coercive means to achieve geo-political goals and engage in warfare, it should be regulated and condemned.

Thus, it is vital to differentiate Russia's actions in Abkhazia and South Ossetia from those in Ukraine. In the former cases, there was a significant time gap between the initial passportisation in the early 2000s and the 2008 Russo-Georgian war, and the need 'to protect the lives and dignity of Russian citizens"' was, from the aspirant state's perspective, rightfully used as an argument to intervene.[116] When Russia engaged in extraterritorial naturalization, it did not do so with the clear objective of using passportisation as a geo-political tool. In contrast, Russia weaponised citizenship in Crimea (2014) and Eastern Ukraine (2019-present) within the context of a broader conflict. It used passportisation to gain and justify control over the territory and population. While I acknowledge that determining temporal precedence is difficult, I believe that if the extraterritorial naturalization occurred significantly before its weaponisation, it should not be regarded as an instance of oppressive nationality attribution. That said, if weaponisation occurs *post facto*, international law could still reprimand the state, but only after it begins weaponising an already granted nationality.

113 Knott 2022.
114 Harpaz Y. (2019), 'Compensatory citizenship: dual nationality as a strategy of global upward mobility,' *Journal of Ethnic and Migration Studies*, 45:6, 897-916.
115 Džankić 2022.
116 'Statement on the Situation in South Ossetia', Kremlin RU, 8 August 2008, Statement on the Situation in South Ossetia • President of Russia (kremlin.ru).

Punishment and pre-emption of weaponisation of citizenship

This contribution has asked three key questions that must be taken into account when determining the instances where international law can and should regulate oppressive nationality attribution. My view is that international law will be able to restrict oppressing nationality attribution only in cases where all three questions are affirmatively answered. This is because the current state-based system will not allow regulation of nationality attribution within states nor will it recognize citizenships conferred by non-state actors within the same legal framework (Question 1). Secondly, many states already pursue citizenship policies that allow extraterritorial nationality acquisition on a voluntary and an individual basis, and this practice is generally recognized as legal and legitimate. It is only when the nationality attribution is forceful and carried out *en masse* that the sovereignty of states becomes challenged and thus must be regulated (Question 2). Lastly, a criminal intent and act aimed at the weaponisation of citizenship must exist for a state to be reprimanded (Question 3). If the weaponisation of citizenship did not happen concurrently with nationality attribution but happened later, then such cases can be addressed by international law only after the weaponisation. I also acknowledge that it may be more challenging to answer the latter two questions affirmatively. Thus, I see the possibility of further nuancing these two conditions to identify which cases can be regulated by international law. That said, I believe the three questions must guide the formulation of any international legal regime on the weaponisation of citizenship.

If states agree upon the three conditions, the next question is how transgressing states should be reprimanded. While I do not have concrete solutions, I do believe some of the current solutions are inappropriate. Current responses to passportisation have ranged from banning dual citizenship with neighbouring countries (e.g. Slovakia-Hungary)[117] or refusing to recognize travel documents issued by individuals affected by passportisation policies. The EU's recently announced policy of non-recognition of Russian passports in occupied territories ultimately hurts the people living in these regions, not the Russian state.[118] Human rights, including freedom of movement and access to education and healthcare, are affected by not recognizing the travel documents. By adopting such an approach, the EU and other states further push the passportised individuals into Russia's grasp.

An alternative approach would be to look at why some instances of weaponised citizenship occurred in the first place. In Abkhazia and South Ossetia, Russia could eventually weaponise citizenship because the people of these territories had no other option. Had the international system and the base state created mechanisms to address the demands of the local populations, we might not be in the current situation. While the idea may be radical, in aspirant states, the solution is to recognize the passports of these territories as valid travel documents. This would remove the incentives for these populations to seek more powerful passports for compensatory reasons.

Thus, my proposition for dealing with the weaponisation of citizenship is to create mechanisms where individuals living in contested territories and possessing weak passports can more easily travel and gain access to education and healthcare. Had the international community provided a solution in the 1990s for Abkhazians and South Ossetians to travel more easily there would have been a lesser demand for Russian passports. Moreover, had the Abkhazian and Ossetian passports been recognized as travel documents, the demand for Russian citizenship would have dropped even further. This could have reduced Russia's grasp over the region and encouraged these regions to adopt a multi-vector approach rather than be forced to get closer to their only partner – Russia. By isolating these populations and restricting their freedoms, Georgia (and the EU/West) also contributed to the inevitable passportisation. So, they must also take some responsibility.

117 Bauböck R. (2010), *Dual citizenship for transborder minorities? How to respond to the Hungarian-Slovak tit-for-tat*, EUDO Citizenship Observatory Working Paper, EUI RSCAS, 2010/75 (hereinafter 'Bauböck 2010').

118 'The EU will not recognize Russian passports issued in the occupied territories of Georgia and Ukraine', JAM News, 13 October 2022, EU does not recognize Russian passports in Abkhazia, JAMnews (jam-news.net).

Thus, the response to the weaponisation of citizenship must be two-fold. While it may be too late for the EU/West to balance against Russia, the immediate recognition of travel documents will be received positively by the population of the aspirant states, as it would decrease their isolation and reliance on Russia. Concurrently, international legal mechanisms must be established that are targeted at reprimanding the state engaging in citizenship weaponisation, rather than the individuals affected by it.

Imperial citizenship and the weaponisation of international law

Timothy Jacob-Owens*

Neha Jain raises concerns regarding the nefarious uses of citizenship by states – illustrated, *inter alia*, by the Russian "passportisation" tactics in Georgia and Ukraine – arguing that these demonstrate the need for international law to 'restrict oppressive nationality attribution'.[119] More precisely, she suggests that international law should 'pro-actively guide and constrain nationality ascription', including by 'proscribing mass naturalizations outside the state's territory' and 'establish[ing] principles for evaluating what types of conduct would constitute valid individual consent for the purposes of extraterritorial nationality attribution'. While I share Jain's concerns about the specific cases she discusses, I am sceptical that international law offers the most effective means of addressing them. My scepticism stems from the simple observation that, in principle, states may have good reason to offer targeted routes to citizenship acquisition for groups outside their territories. On Jain's view, such practices only become 'oppressive' if they have 'negative consequences for purported beneficiaries' and/or 'threaten or destabilise vital interests of other states'. In order to identify a genuine instance of "weaponised citizenship", international law will therefore need to be able to accurately determine the interests of both the target group(s) and the affected state(s). As Eleanor Knott demonstrates, this requires considerable "empirical nuance".[120]

With this in mind, I argue that it would be very difficult, if not impossible, to formulate a set of globally applicable standards with sufficient precision that they could capture every relevant instance of "oppressive" nationality attribution without simultaneously creating a barrier to legitimate forms of facilitated, extra-territorial naturalization. I illustrate this argument by reference to the unresolved politics of citizenship and decolonization in the United Kingdom (UK). I begin by discussing the historical weaponisation of citizenship (or subjecthood) as a tool of British imperialism. I then turn to contemporary efforts to facilitate access to British citizenship for (formerly) colonized groups, focusing on the case of the Chagos Islanders, before reflecting on how such efforts might be stymied by a "new international law of nationality".

Imperial subjecthood as weaponised citizenship

The core of British subjecthood, as articulated in *Calvin's Case* of 1608, was a reciprocal relation between the subject and sovereign, wherein the former owed an obligation of allegiance and obedience in return for the protection of the latter: *protectio trahit subjectionem, et subjectio protectionem* (protection draws subjection, and subjection protection).[121] On this basis, following the *ius soli* principle, anyone born within the Crown's 'power and protection' was automatically deemed to be a British subject, necessarily owing a concomitant obligation of allegiance and obedience, thereby ensuring that territorial conquest and the subjection of colonized peoples went hand-in-hand. British imperial subjecthood can thus be considered an early form of what Jain calls "long distance nationality": the involuntary attribution of subject status to colonized peoples beyond the metropole served to bolster the image of a unified political community stretching across the territory of the Empire.

While superficially uniform (and unifying), British subjecthood was also, as Devyani Prabhat discusses, substantively "indeterminate", masking an unequal distribution of rights between white colonizers and racialized, colonized populations.[122] For the latter, British subjecthood was in practice often no more than the "zombie citizenship" Jain describes in her kick-off contribution. A relatively recent illustration of this appeared in the late 1960s and early 1970s, as documented

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119 Jain 2022.

120 Knott 2022.

121 *Calvin's case,* The reports of Sir Edward Coke, knt. [1572-1617], #25 - The reports of Sir Edward Coke, knt. [1572-1617]. ... v. 4. - Full View | HathiTrust Digital Library.

122 Prabhat D. (2020), 'Unequal Citizenship and Subjecthood: A rose by any other name..?', *Northern Ireland Legal Quarterly* 71(2), 175-191.

by Ian Sanjay Patel, when British Asians were denied the right to enter the UK as they fled persecution in the former protectorates of Kenya and Uganda.[123] The latent inequalities of British subjecthood were later (partially) formalized under the British Nationality Act 1981, which distinguished between full "British citizenship"[124] and the lesser categories of "British Dependent Territories citizenship"[125] and "British Overseas citizenship",[126] as well as a residual category of "British subjects". [127] Only individuals holding the first of these statuses, predominantly white Britons with ancestral ties to the British Isles, held an unqualified right to enter the UK. Weaponised citizenship – both in the form of "long distance nationality" and "zombie citizenship" – has thus historically been a core tool of empire, allowing Britain to claim supremacy over colonized populations while simultaneously denying them core citizenship rights.

Oppressive nationality or reparative citizenship?

In more recent years, the UK government has taken steps to facilitate access to British citizenship for various (formerly) colonized groups who were previously denied access to the status. These include the historical inhabitants of the Chagos Islands (officially known as the British Indian Ocean Territory or BIOT), an archipelago recently described by Philippe Sands as Britain's "last colony" in Africa,[128] who were forcibly removed in the mid-1960s in order to make room for a US military base. At the time, no plan was made to compensate the Chagos Islanders or to allow them to resettle in the UK, leaving many stranded in Mauritius or the Seychelles. As a consequence, while some members of the Chagossian diaspora have subsequently been able to acquire either full British citizenship or British Dependent Territories citizenship (later renamed "British Overseas Territories citizenship"),[129] others hold citizenship of Mauritius or the Seychelles. In 2002, limited provision was made to allow the children of women born on the Chagos Islands to access full British citizenship.[130] Twenty years later, following sustained campaigning by members of the Chagossian community,[131] a new citizenship registration route has now been created for all "direct descendants" of individuals born on the islands.[132]

These measures can be thought to exemplify what Amanda Frost has called "reparative citizenship", i.e. a form of corrective justice for the members of groups (and their descendants) who have historically been unjustly excluded.[133] This chimes with the views expressed by some of the Chagos Islanders themselves. For instance, in written evidence submitted to the UK parliament, the BIOT People's Empowerment Social Media Platform argued that facilitated access to British citizenship was needed to address 'historical unfairness'[134] and 'to make proper amends for the discrimination that the Ilois [i.e. Chagossians] have suffered' at the hands of the UK government.[135] From this perspective, providing a fast-track, extra-territorial route to acquiring British citizenship, which carries with it a legal right of abode in the UK, would seem to go some way towards remedying the injustices of the past.

There are further empirical nuances to consider, however. Chagossian Voices, another campaign group, has argued in favour of facilitated access to British citizenship on the basis that this would offer a means of escaping the marginalization and discrimination still suffered by those residing in

123 Patel I. (2021), *We're Here Because You Were There: Immigration and the End of Empire*, Verso Books.
124 British Nationality Act 1981, Part I (United Kingdom).
125 *Id.*, part II.
126 *Id.*, part III.
127 *Id.*, part IV.
128 Sands P. (2022), *The Last Colony A Tale of Exile, Justice and Britain's Colonial Legacy*, Blackwell's.
129 British Overseas Territories Act 2002, s.2 (United Kingdom).
130 *Id.*, s.6.
131 Grierson J., 'Chagos Islands descendants can apply to become British nationals', The Guardian, 23 March 2022, Chagos Islands descendants can apply to become British nationals | Chagos Islands | The Guardian.
132 Nationality and Borders Act 2022, s.3 (United Kingdom).
133 Amanda Frost (2022), 'The rise of reparative citizenship', *Citizenship Studies*, 26:4-5, 454-459.
134 Written evidence from BIOT Citizens (NBB0019), UK Parliament, committees.parliament.uk/writtenevidence/38467/pdf/.
135 *Id.*

Mauritius and the Seychelles, where the Chagossians form an Afro-Creole minority.[136] This raises potential issues of consent: if their only other option is marginalization and discrimination in Mauritius or the Seychelles, are the Chagos Islanders and their descendants really in a position to freely consent to acquiring British citizenship? Indeed, the priority for many Chagossian campaigners is not access to British citizenship and the UK mainland, but rather access to their ancestral home, which the UK government continues to deny them. According to Olivier Bancoult, leader of the Chagos Refugees Group, '[w]e are not against giving citizenship to the third and fourth-generation descendants […] but it is most important that the UK government should give us the right to live on the Chagos Islands'.[137] In the absence of this right, for at least some members of the Chagossian diaspora, British citizenship remains no more than a "zombie citizenship".

The measures to facilitate access to British citizenship also do nothing to resolve the UK's ongoing territorial dispute with the former colony of Mauritius, from which the Chagos Islands were unlawfully separated prior to independence.[138] From a Mauritian perspective, as Vishwanath Petkar argues, 'the UK government's move seems like an attempt to retain control over the islands and stem domestic dissent, rather than actually fix the conflict'.[139] In this way, the measures bear a striking resemblance to the passportisation tactics deployed by Russia in Georgia and Ukraine, offering a 'fast-track naturalization' route targeting a specific population resident in a foreign State with whom there is an ongoing territorial dispute. On this basis, and particularly in light of the historical weaponisation of British imperial subjecthood described above, the extension of British citizenship to all Chagossian descendants might be viewed as perpetuating a form of weaponised "long-distance nationality", undermining the interests of both Mauritius and (some of) the Chagos Islanders themselves.

Weaponising international law

Lindsay Kingston argues that Jain's proposed international norms would have no meaningful effect on the citizenship practices of powerful and persistent "outlaw" states, who disregard international legal norms as and when it suits their interests.[140] My concern is that such states might instead strategically deploy these norms to reinforce their imperialist practices. Had these norms been in force at the turn of the 21st century, for example, the UK government might have exploited the ongoing territorial dispute with Mauritius and the divergent interests among the Chagos Islanders to deny calls to facilitate their access to full British citizenship, arguing that this would constitute a prohibited form of nationality attribution and hence a breach of international law.

This risk is by no means limited to the case of the Chagossians, but rather applies to any targeted, facilitated route to citizenship acquisition that seeks to right the wrongs of the past. In the UK context, for example, the same issues might also arise in relation to the registration route for British Nationals (Overseas) who have historical ties with Hong Kong,[141] and the facilitated naturalization scheme for members of the Windrush generation, who came to the UK from its former colonies in the Caribbean.[142] There are also parallels, as Jelena Džankić discusses, with the measures introduced in Spain and Portugal to facilitate access to citizenship for Sephardic Jews.[143] The crux of the issue is the difficulty of distinguishing – in both formal legal and policy terms – between oppressive nationality and reparative citizenship. My claim here is not that these measures necessarily *should* be considered a form of oppressive nationality attribution, merely that they could plausibly be framed as such. In turn,

136 Response To the proposed Nationality and Borders Bill 2021, Chagossian Voices, UK Parliament.
137 Syal R., 'Evicted Chagos Islanders' descendants to get British citizenship', The Guardian, 1 September 2022.
138 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95.
139 Petkar V., 'Mauritius dispatch: UK Chagos citizenship scheme raises concerns for former and current islanders', Jurist, 30 March 2022, Mauritius dispatch: UK Chagos citizenship scheme raises concerns for former and current islanders - JURIST - News.
140 Knott 2022.
141 British Nationality Act 1981, s.4 (United Kingdom).
142 See Windrush Scheme: full eligibility details, Windrush Scheme: full eligibility details - GOV.UK (www.gov.uk).
143 *von Pezold v. Zimbabwe*, ICSID Case No ARB/10/15, https://ic-sid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/15.

these ambiguities could allow states to reject reparative citizenship claims as potential violations of international law. In this way, Jain's proposal might have the perverse effect of legitimising oppressive nationality denial, rather than challenging oppressive nationality attribution.

We might imagine that this risk would be averted if the proposed new norms were to be accompanied by a new international adjudicatory body charged with their enforcement. Indeed, Jain makes reference to the establishment of 'fora in which host countries could challenge [extraterritorial nationality] attribution'.[144] However, a cautionary tale might be drawn from the 2015 *Von Pezold* arbitral award, in which an international tribunal found that Zimbabwe's post-independence policy of land expropriation and redistribution was racially discriminatory against white landholders. A seemingly progressive international legal norm – the prohibition of racial discrimination – was thus interpreted as proscribing domestic efforts to meet local demands for land reparations, eliding the wider context of colonial dispossession, as Ntina Tzouvala has shown.[145] This finding does not necessarily mean that a 'new international law of nationality' would hinder (post-)colonial reparative citizenship claims. But the long-standing constitutive relationship between international law and European imperialism – illustrated, as Kanad Bagchi explains,[146] by the "Chagos tragedy" itself – is far from reassuring.

I do not wish to suggest that there is no hope for a more comprehensive set of international norms of the sort Jain envisages, subject to strict conditions along the lines proposed by Ramesh Ganohariti.[147] But it strikes me that there is always a risk that imperialist states would weaponise the international law of citizenship just as easily as they do its domestic counterpart.

144 Jain 2022.

145 Tzouvala N. (2022), 'Invested in Whiteness: Zimbabwe, the von Pezold Arbitration, and the Question of Race in International Law', *Journal of Law and Political Economy* 2(2), 226.

146 Bagchi K., 'Imperialism, international law and the Chagos Islands,' Volkerrechtsblog, 1 March 2019, Imperialism, international law and the Chagos Islands - Völkerrechtsblog (voelkerrechtsblog.org).

147 Ganohariti R. (2022), 'Conditions for regulating the weaponisation of citizenship', GLOBALCIT, Weaponised Citizenship: Should international law restrict oppressive nationality attribution? - Page 5 of 12 - Globalcit (hereinafter 'Ganohariti 2022').

Weaponisation of citizenship: two wrongs will not make a right (or respect rights)

Bronwen Manby*

Neha Jain calls both for existing international law norms on nationality to be beefed up and enforced, and for nationality law to be transformed so that state discretion is further constrained.[148] She urges that attention should be paid not only to deprivation of nationality and statelessness but also to the establishment of principles to evaluate 'what types of conduct would constitute valid individual consent for the purposes of extraterritorial nationality attribution'. The reason for this focus is especially the Russian invasion of Ukraine, and Russian "passportisation" of Ukrainian citizens, in which Russia has carried out a mass naturalization of those resident in the occupied territories – nominally voluntary, but in practice under forms of coercion whose details will no doubt emerge over time.

It is hard to disagree with these calls – even if, like the other contributors to this forum, we despair of the likelihood of success. But in this piece, I want to warn also about unintended consequences of non-recognition of nationality that has been imposed in violation of (even existing) international law, with particular reference to the Moroccan nationality attributed to residents of the former Spanish territory of Western Sahara, occupied by Morocco since 1975 in defiance of rulings from a range of international bodies, starting with the International Court of Justice.[149]

Imposition of nationality in international law

In some ways, Neha Jain is returning to the origins of international norms on nationality. Before the institution of the post-war legal regime under the UN Charter, international law was more concerned about questions of wrongful attribution of nationality than it was about deprivation of nationality or statelessness. The principal concern was that a state's imposition of nationality on individuals that it could not reasonably claim as its own would infringe on the sovereignty of other states.

This indeed was the issue considered in the 1923 Advisory Opinion requested by Britain and France from the Permanent Court of International Justice on the Nationality Decrees issued in Tunis and Morocco,[150] which established the first limits to state discretion in nationality matters. At that time, Tunis and Morocco were French protectorates, established by treaty in 1881 and 1912 respectively. In 1921, in agreement with France, the monarchs of the two territories under French "protection", adopted laws regulating questions of nationality, in which it was stated that a person born in either Tunis or Morocco of one parent also born there would acquire nationality of that protectorate automatically. This rule of "double *ius soli*" – which would not raise an eyebrow among international lawyers today – was considered by Britain to be an infringement on the rights of the children of British subjects born in the territories, imposing on them a nationality against their will. The PCIJ opinion was the first authoritative statement that there were limits to national discretion in nationality matters. These limits related to the obligations undertaken by France towards other states in the treaties establishing the protectorates. The principle that other states would recognize nationality laws only in so far as they are 'consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality' was then enshrined in Article 1 of The Hague Convention of 1930 on Certain Questions Relating to the Conflict of Nationality Laws.[151]

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148 Jain 2022.

149 *Western Sahara, Advisory Opinion*, [1975] ICJ Rep 12, 16 October 1975.

150 *Advisory Opinion No. 4, Nationality Decrees Issued in Tunis and Morocco*, 4, Permanent Court of International Justice, 7 February 1923.

151 Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930, 179 League of Nations series 89, No. 4137.

The recognition of these limits did not at that time encompass any hint of concern about the rights of the individual people attributed nationality. Thus, Rudolf Graupner could write in 1946 that in nationality matters 'at most the States concerned may have rights and duties against each other, the individuals merely being the objects of international law'.[152] At the time Paul Weis was writing his foundational text on nationality and statelessness in international law – first published in 1956 and updated in 1979 – the view remained much the same. [153] In general, 'the acquisition of a new nationality must contain an element of voluntariness on the part of the individual acquiring it, [and] must not be conferred against the will of the individual'.[154] The remedy, however, remained only in the hands of the states concerned: if nationality was compulsorily imposed against these norms, it was the state of the person's original nationality that would have the right to intervene on that person's behalf.

Nationality and state succession

Aside from the attribution of nationality to children, which only the most radical authors have suggested should not be automatic in any circumstances, the most egregious non-voluntary acquisitions of citizenship occur in the context of state succession, where sovereignty over a territory is transferred by agreement or by conquest. Even in these cases, international law has historically recognized some element of voluntariness. Although the basic rule was understood to be that (subject to other agreement between the parties) nationality was acquired on the basis of habitual residence at the time of transfer of sovereignty, those former residents not physically present within the territory were generally not automatically affected. Others who wanted to reject the new nationality were also able to do so by leaving the territory – although at the cost of statelessness if another nationality was not accessible. These were the basic principles followed in the agreements on nationality after the first and second world wars; nonetheless, the right of option was respected in some cases.[155]

The especially egregious manipulation of citizenship law by the Nazi regime in Germany provoked more concern. Decrees imposing German nationality on persons living in territories occupied by Germany during the Second World War were regarded as 'obviously inconsistent with international law'.[156] Following the war, both German and other courts also paid attention to the will of the person concerned and the avoidance of undesired outcomes.[157]

In 1999, the International Law Commission (ILC) adopted Articles on Nationality of Natural Persons in Relation to the Succession of States, which moved the needle a degree further towards a consideration of the wishes of those impacted by transfers of territory.[158] The ILC articles endorse the starting principle of attribution after state succession based on habitual residence (rather than former nationality), but also propose the possibility of an option, and that 'States concerned shall give consideration to the will of persons concerned.' The Council of Europe treaties on nationality adopted in 1997[159] and 2006[160] follow the same pattern. These instruments apply, however, only to 'the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations'.[161] How should we consider their relevance to the imposition of nationality in Ukraine?

152 Graupner, R. (1946), 'Nationality and State Succession General Principles of the Effect of Territorial Changes on Individuals in International Law', *Transactions of the Grotius Society,* 32, 87–120.
153 Weis P. (1970), *Nationality and Statelessness in International Law*, Brill.
154 *Id.*
155 'Report on Nationality, Including Statelessness by Mr. Manley O. Hudson', United Nations Special Rapporteur, A/CN.4/50 (1952).
156 *Id.*
157 Lasswell H. et. al. (1973), 'Nationality and Human Rights: The Protection of the Individual in External Arenas', 83 *Yale L.J.* 900.
158 Mikulka V., Articles on Nationality of Natural Persons in Relation to the Succession of States 1999.
159 European Convention on Nationality, adopted 6 November 1997, entry into force 1 March 2000, ETS No. 166.
160 Convention on the avoidance of statelessness in relation to State succession, Council of Europe, adopted 19 May 2006, entry into force 1 May 2009, CETS No. 200.
161 Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, International Law Commission, Supplement No. 10 (A/56/10), chp.IV.E.1, art.3.

Although the Russian policy is to offer facilitated naturalization rather than impose its nationality unilaterally, it has been argued that "individualized naturalizations are illegal under international law if the affected persons' consent is not free".[162] Others consider that, while this argument goes beyond the current state of international law, the Ukraine case raises "the possibility of non-recognition [of Russian nationality acquired in this way] based on breach of recognized international norms", because the grant of nationality is associated with an act of aggression.[163] The decades-old occupation of Western Sahara by Morocco and attribution of nationality to those resident there provides a frame through which to consider the impact of these views in the longer term.

Western Sahara

The status of the former Spanish territory of Western Sahara has been disputed between the Kingdom of Morocco and the Polisario Front independence movement for almost 50 years.[164] When Spain finally agreed to apply the principle of self-determination to the previously Spanish territory in 1975, the UN Security Council referred the situation to the International Court of Justice (ICJ), the successor to the PCIJ. In its 1975 Advisory Opinion,[165] the court rejected the claims of both Morocco and Mauritania to the territory, meaning that an option for independence had to be put to referendum. Just days after the ICJ ruling, Moroccan armed forces crossed the border and occupied most of the northern part of the Western Sahara territory; followed by a 'green march' of tens of thousands of Moroccan civilians to 'reclaim' the region for Morocco. Mauritania subsequently withdrew its claim, leaving the territory in the control of Morocco. Since 1991, a UN mission has had the brief to organise a referendum on the status of Western Sahara, but, despite some overtures from time to time, there is no agreement on terms – in particular on who should have the right to vote.[166]

While this dispute has remained unresolved, with Morocco in occupation of the territory, tens of thousands of former residents of the territory and their descendants, known as Sahrawis, have lived as refugees in Algeria; while the descendants of those who remained in Western Sahara are now outnumbered four-to-one by people who have moved to the territory from within the internationally recognised borders of Morocco.[167] Only a narrow strip in the east is under the control of the Polisario's Sahrawi Arab Democratic Republic (SADR), which also administers perhaps 100,000 people living in camps near the southern Algerian oasis town of Tindouf.[168] The population in the area of Western Sahara under Moroccan administration is assessed by the Moroccan authorities at around half a million people.[169] Morocco considers the great majority of these residents (those who do not have another nationality) to be Moroccan nationals, and issues identity documents and passports accordingly. The refugees are generally not able to acquire Algerian nationality, although they may for some purposes be issued Algerian passports as travel documents, on the request of the SADR authorities.

Neither Moroccan sovereignty nor status as "administering power" of the territory under the legal framework for non-self-governing territories have been recognized by the UN or the Organisation of African Unity/African Union.[170] In 2018, the Court of Justice of the European Union, ruling in the context of a challenge to a fisheries agreement with Morocco, affirmed that 'the territory of Western Sahara is not covered by the concept of "territory of Morocco"'.[171]

162 Peters A., Passportisation: 'Risks for international law and stability – Part I', EJIL: Talk!, 9 May 2019, Passportisation: Risks for international law and stability – Part I – EJIL: Talk! (ejiltalk.org).

163 Fripp E., 'Passportisation: Risks for International Law and Stability – Response to Anne Peters', EJIL:Talk!, 30 May 2019, Passportisation: Risks for International Law and Stability – Response to Anne Peters – EJIL: Talk! (ejiltalk.org).

164 Hodges, T. (1984), 'The Western Sahara File', *Third World Quarterly*, 6(1), 74–116.

165 *Western Sahara, Advisory Opinion,* [1975] ICJ Rep 12, 16 October 1975.

166 UN Mission for the Referendum in Western Sahara (1991).

167 'Human Rights in Western Sahara and in the Tindouf Refugee Camps,' Human Rights Watch, 19 December 2008, Human Rights in Western Sahara and in the Tindouf Refugee Camps | HRW.

168 UNHCR's Refugee Population Statistics Database 2023, UNHCR - Refugee Statistics.

169 Ghaedi M., 'Morocco and Western Sahara: A new conflict brewing?', DW Times, 19 July 2023, https://www.dw.com/en/moroccos-territorial-claims-on-western-sahara-a-new-conflict-brewing/a-66288761.

170 See Non-Self-Governing Territories | The United Nations and Decolonization.

171 *Western Sahara Campaign UK v. Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, Judgment of the Court (Grand Chamber) of 27 February 2018, ECLI:EU:C:2018:118.

In this context, what do we consider to be the nationality of the inhabitants of the territory of Western Sahara, whether originating from within the internationally recognised borders of Morocco or tracing ancestry to Western Saharan territory from before 1975? Should the attribution of Moroccan nationality be recognised?[172]

According to the historical assumptions on the attribution of nationality on succession of states, only those who left the territory would be regarded as having rejected Moroccan nationality. The immediate assumption from the perspective of those calling for non-recognition of citizenship granted in "weaponised" contexts would seem to be that the attribution of Moroccan nationality even to those Sahrawis who remained – and potentially of all those now living in the territory – should also be unrecognised by other states. As stated by the ICJ in its 1971 advisory opinion on the South African administration of Namibia: 'A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence'.[173] However, the ICJ went on to say in the same opinion that some documents should be recognised by other states as valid, even if the status of the authority issuing the document is challenged:

'In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the [League of Nations] Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.' Should this exception also be applied to the recognition of identity documents and passports?

Avoiding unintended consequences

If the Moroccan nationality of those resident in Moroccan-administered Western Sahara and issued Morocco identity documents and passports were not recognised by other states, the consequences for those affected would be severe. Above all, their international freedom of movement would be significantly constrained; but other rights within Morocco might potentially also be affected, should Morocco choose to take punitive action against those seeking alternative travel documents. There is already fluctuating but significant harassment of those supporting independence for the territory[174] – including confiscation of Moroccan passports to prevent international travel.[175]

International denial of the Moroccan nationality of those resident in the territory of Western Sahara would be against their interests. Moroccan passports issued to residents of the territory are indeed recognised by other states, despite the fact that the annexation is in violation of international law. In the case of Ukraine, however, the European Council has followed the lead of the Ukrainian government itself in deciding not to recognize Russian passports issued to Ukrainian nationals.[176]

Eleanor Knott argues that 'the lens of passportisation denies agency to those assumed to have been passportised'.[177] But does non-recognition of Russian passports issued in what is arguably a violation of even the existing principles of international law not inflict further damage on those same individuals, for the purpose of making a point against Russia? Clearly it is in the interests of those affected for Ukraine to continue to consider them to be Ukrainian, disregarding the alleged acquisition of Russian nationality. But the response of other states should consider not only the violation of international law represented by occupation of the territory by Russia, but also the rights of the individuals affected, whether their acceptance of Russian nationality is voluntary or not.

172 Manby, B. (2020), 'Nationality and statelessness among persons of Western Saharan origin', *Tottel's Journal of Immigration, Asylum and Nationality Law*, 34 (1). 9 - 29.

173 *Western Sahara, Advisory Opinion,* [1975] ICJ Rep 12, 16 October 1975.

174 See Human Rights Watch's *Morocco/Western Sahara report,* Morocco/Western Sahara | Country Page | World | Human Rights Watch (hrw.org).

175 'Letter to King Mohammed VI on the Trial of Sahrawi Human Rights Defenders in the Western Sahara', Human Rights Watch, 8 December 2005, Weaponized Citizenship: Should international law restrict oppressive nationality attribution? - Page 2 of 12 - Globalcit (hrw.org).

176 'Council adopts decision not to accept Russian documents issued in Ukraine and Georgia', EU Council Press Release, 8 December 2022, Council adopts decision not to accept Russian documents issued in Ukraine and Georgia - Consilium (europa.eu).

177 Knott 2022.

Paper-sword citizenship

Peter Spiro*

Neha Jain and other contributors to this forum elegantly highlight how the attribution of citizenship can be something other than an unalloyed good.[178] Citizenship can be a burden. That is the key element in defining weaponised citizenship: that it has been imposed without an individual's consent. Consent remains the touchstone in defining the international law parameters of its attribution. How that consent is established emerges as the critical test of legitimacy in particular cases.

But even where we see violations of the consent principle, how much of a weapon is citizenship in the hands of states that would abuse it? In most cases, it will not be an especially powerful one, against either individuals or against other states. Unwanted citizenship is less consequential than one might suppose, imposing few distinctive obligations and (in most cases) not resulting in the dispossession of other national ties. To the extent it does make a difference, other states appear to be pushing back. In the end, perhaps there is not much need for a coordinated international legal response to state attempts to weaponise the institution, which are being adequately addressed through non-formal international legal mechanisms – the horizontal appraisal of and response to state action by other states and other international legal actors that fuels the establishment and maintenance of international norms.

How oppressive can citizenship be?

Citizenship will be oppressive to individuals only where it implicates material costs. In theory, there are a number of ways in which imposed citizenship could harm individuals. In practice, there a few contexts in which such harm results.

Perhaps the greatest historical cost associated with imposed citizenship is now largely a thing of the past. The acquisition of nationality, regardless of its basis, once invariably resulted in the loss of original citizenship. That was a major element in the emergence of the consent norm. Latin American states in the late nineteenth into the twentieth centuries sought to automatically naturalise noncitizens after a certain period of residency. An important motivation for this form of nonvolitional naturalization was to deprive American and European immigrants of the diplomatic protection of their home state's nationality which would have terminated by operation of law upon acquisition of the additional citizenship. In that context, loss of original citizenship would have posed a major cost for the affected individuals.

It remains true today that loss of original citizenship would in many cases pose a major cost along various dimensions. Citizenship may come with domestic and global mobility privileges. It will often have expressive value, reflecting an affective tie with the state. Any imposed citizenship that implicated loss of original citizenship would qualify as oppressive for these reasons.

But that does not appear to be a part of the cases that Jain highlights. Indeed, states that are attempting to weaponise their own citizenship generally will have no control over other states' attribution of citizenship. When Russia imposed citizenship on individuals in the breakaways and elsewhere, it could not dictate loss of original citizenship. Although Ukraine vigilantly enforces a prohibition on dual citizenship, it rejected the legality of Russian naturalization in occupied territories,[179] thus allowing affected individuals to retain Ukrainian nationality. I am not aware of any contemporary case in which imposed citizenship has resulted in involuntary loss of original nationality.

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178 Jain 2022.

179 'Statement of the Ministry of Foreign Affairs of Ukraine on the provocative and unlawful decision by Kremlin to issue Russian passports to Ukrainian citizens in occupied territories', Ministry of Foreign Affairs of Ukraine, 24 April 2019, Statement of the Ministry of Foreign Affairs of Ukraine on the provocative and unlawful decision by Kremlin to issue Russian passports to Ukrainian citizens in occupied territories | Ministry of Foreign Affairs of Ukraine (mfa.gov.ua).

This is in large part a function of a changed landscape in which dual citizenship is widely accepted where it was once aggressively suppressed. Nonconsensual citizenship is a different quantity where it merely adds to one's citizenship of choice. Of course, it can implicate identitarian costs – no one likes to carry the passport of a hated oppressor. In this respect, Lindsey Kingston's description of the identity-destroying imposition of US citizenship on Indigenous Americans is instructive.[180] But as long as one gets to keep one's real citizenship, as it were, that oppression seems somewhat ephemeral.

Imposed citizenship could also be oppressive where it results in unwanted obligations. It is first of all difficult effectively to enforce obligations in the absence of territorial control. Citizenship imposed on individuals beyond territorial control is thus unlikely to be much of a weapon insofar as a state is less likely to be able to enforce any attendant obligations. An interesting outlier case involves the unique U.S. tax regime imposing tax liabilities on external citizens,[181] including those who have the status through accident of birth. Leaving aside questions of jurisdiction, moreover, as citizenship obligations dissipate more generally, the status is less likely to implicate material costs in any context. If citizenship does not demand much of its holders there is a lowered risk that it will oppress.

There may be exceptions. Russia's passportisation policies, which are at the center of this Forum, present an example. Although passportisation prior to occupation poses lower risks to individuals, insofar as acquisition of Russian nationality on an external basis is more likely to be volitional and unlikely to involve the exaction of obligations, the constructive imposition of citizenship after occupation has translated into serious costs for many in the form of military conscription. That surely counts as oppressive citizenship. At the same time, however, the legality of conscripting Crimean residents does not depend on the legality of the citizenship policy. Russian conscription of Crimeans violates the well-established rule of international humanitarian law that occupying forces may not conscript residents of occupied territories.[182] It's not clear what a norm against weaponised citizenship would add to that regime. In any case, the Russian policy appears the only recent example in which the imposition of citizenship has resulted in a direct cost on individual holders.

Finally, there is the anomalous case of the constructive imposition of Comoros citizenship on otherwise stateless *bidoons* in the UAE. There may have been a cost of sorts implicated in this transaction to the extent the gambit succeeded in relieving international pressure to extend Emirati citizenship to this population. That gambit appears to have failed; human rights groups have not relented in their criticism of UAE deprivation of *bidoon* rights,[183] and some states (including the US) have refused to recognize passports issued under the scheme. Kuwait retreated from replicating the UAE policy in the wake of its rejection. In the meantime, the Comoros citizenship itself does not result in any direct burdens on its holders. It may not be oppressive in any real sense, disgraceful though the policy may be (in some cases it might actually benefit the *bidoons*, in the same way that Bronwen Manby describes of the Moroccan nationality attributed to residents of the Western Sahara).[184]

Citizenship (weakly) weaponised

Nor is citizenship much of a weapon as used against other states. States have no doubt come to see citizenship policy as a tool. But instrumental uses of citizenship are typically benign. Where they have been pathological, other states have objected. To the extent that citizenship adds anything to the state's policy armoury, it has been mostly defused.

180 Kingston 2022.
181 Spiro 2017.
182 'Crimea: Conscription Violates International Law', Human Rights Watch, 1 November 2019, Crimea: Conscription Violates International Law | Human Rights Watch (hrw.org).
183 *Bidoons in the United Arab Emirates,* Geneva Council for Rights and Liberties, September 2019.
184 Manby B. (2023), 'Weaponisation of citizenship: two wrongs won't make a right (or respect rights)', GLOBALCIT, https://globalcit.eu/weaponized-citizenship-should-international-law-restrict-oppressive-nationality-attribution/7/ (hereinafter 'Manby 2023').

Many states have moved in recent years to expand access to citizenship on the basis of descent or ethnic affinity. In most cases these initiatives have hardly been worthy of note, at least not from a global perspective. They are in any case almost always uncontested, from both a policy and legal perspective. If states want to make citizenship more widely available, that is generally seen as a good thing. Extraterritorial attribution of citizenship based on descent satisfies the *Nottebohm* judgment's "genuine links" test (insofar as that test continues to have traction in the first place).[185] Affinity regimes have also been accepted as consistent with international norms; to the extent that they are being questioned, it is not on behalf of those to whom citizenship is extended but rather those who are excluded from the citizenship grant. That Spain, for example, shortens its naturalization residency requirement for nationals of Latin states is a boon for those who secure citizenship under the scheme. It is problematic because it discriminates against those who do not.

The interests of other states are generally unaffected by these policies, all of which are premised on the consensual acquisition of citizenship. A notable exception was Viktor Orban's move to extend citizenship to Hungarian ethnics as "near kin" in neighbouring states. While the policy does not appear to be oppressive to individuals who have secured citizenship under the policy, it triggered protests from some neighbouring states, as Jain and others have noted.[186] As Szabolcs Pogonyi points out, the Orban policy was clearly instrumental, not so much for sovereign but rather political interests (this population votes overwhelmingly for Orban's Fidesz party).[187]

But it is not clear how those state interests are diminished in this or other cases so long as other international legal constraints are respected. States that perceive a threat in such actions remain able to prohibit dual citizenship consistent with international law, in which case the acceptance of the external citizenship comes at a high cost. Slovakia, notably, continues to bar resident Slovakians from also holding Hungarian citizenship. Otherwise, the Orban policy has stuck. For most states, as Jelena Džankić suggests, it would be difficult to police against such uses of citizenship without casting doubt on the now-broad recognition of ancestral citizenship and the dual nationality that comes with it.[188] Many people who hold the citizenships of their grandparents may not have much connection to that homeland, but that is not doing anyone any harm. Citizenship in this guise is not so much "zombie" as it is phantom.

Russia's passportisation again presents a contrast to the extent that it has been put to work as a pretext for other acts inconsistent with international law, under the guise of protecting its new nationals. That justification has fooled no one. No state has accepted the protection of putative nationals as legitimising the military action. Passportisation has not advanced Russia's efforts to secure international acceptance of expansionist policies. In other words, it has not been much of a weapon.

Back to consent

Russia's practice also goes to the consent questions. The naturalisation of Ukrainians in Crimea has been contested on this score. Crimean residents were extended Russian citizenship by operation of law; although an opt-out procedure was made available, some have argued it was constrained to the point that the automatic naturalization was constructively non-consensual.[189]

185 Macklin, A. (2017), ' Is it time to retire Nottebohm?', *AJIL Unbound*, 111, 492-497.
186 Bauböck 2010.
187 Pogonyi S. (2017), *Extra-Territorial Ethnic Politics, Discourses and Identities in Hungary*, Springer Link.
188 Džankić 2022.
189 *Human Rights in the Context of Automatic Naturalization in Crimea*, Open Society Justice Initiative, June 2018, report-osji-crimea-20180601.pdf (justiceinitiative.org).

The allocation of Comoros citizenship to stateless *bidoons* has drawn similar fire. Although nominally volitional, *bidoons* were reportedly pressured into accepting Comoros citizenship through ruses. For example, authorities created the impression that only by accepting Comoros citizenship would individuals be eligible for citizenship in the UAE. UAE authorities also reportedly made eligibility for basic social services contingent on taking the Comoros passport (see Noora Lori's book '*Offshore Citizens*' for a definitive account).[190]

Whether or not these actions violate international law implicates factual questions – empirical, in Eleanor Knott's formulation.[191] To the extent that naturalization is nonconsensual, it is inconsistent with international law. That norm is clear, one of the few hard constraints under international law on state nationality practice. Whether the Russian and UAE actions violate this norm is a question that is being hashed out through the standard machinations of international law – a kind of act-and-response dynamic in which an array of international legal actors judge the legality of state conduct. Consent remains the touchstone, a standard we're now looking to refine through practice.

Through this lens, Russia's passportisation in Crimea (at least following the occupation) and the UAE's Comoros action appear inconsistent with the volitional naturalisation norm and international law. To the extent there is a problem here we already have the answer. That may not stop other countries from putting citizenship to ill use of course. No law enjoys perfect compliance, international law less than others, to be sure, given its horizontal structure. But these and other recent examples of putatively weaponised citizenship will supply no validation for bad behaviour in the future.

190 Lori 2019.
191 Knott 2022.

Weapons of Massive Deception: Defusing the Destructive Potential of Citizenship in a New Geopolitical Era

Rainer Bauböck*

In an idealised version of the state-based international order, citizenship laws serve two purposes: domestically they determine the composition of the people whom governments represent and to whom they are accountable, and internationally they sort out which individual belongs to which state and thus which state has special responsibilities for protecting that individual's rights. When citizenship is weaponised, both of these purposes are perverted. The bestowal of American citizenship on indigenous people (discussed by Lindsey Kingston in this forum),[192] or of French citizenship on Algerians between 1946 and 1962 consolidated their subjection in a quasi-colonial relation. And the long-standing Russian policy of passportising territorial conflicts in its neighbourhood exemplifies how the attribution of citizenship can be used to destabilise other states and eventually threaten their territorial integrity.

Neha Jain's opening essay asks what resources are available in international law for opposing and maybe sanctioning such abuses of citizenship by states.[193] Practically all contributors to our debate remain sceptical. Jelena Džankić considers opportunities for state abuse of citizenship to be an inherent feature of the international system and calls for bottom-up resistance by citizens educated about their role.[194] Others plead for more nuance on *what* should count as illegitimate weaponisation (Ramesh Ganohariti)[195] and *when* (Eleonor Knott).[196] Timothy Jacob-Owens objects that general norms designed to censure the weaponisation of citizenship could also apply to benign forms of reparative citizenship offered to extraterritorial populations who have been historically wronged.[197] Bronwen Manby argues that international non-recognition of wrongfully attributed citizenships may hurt the individuals concerned by denying them important rights and opportunities, such as those of international travel.[198] Finally, Peter Spiro adopts a more sanguine view about the ineffectiveness of citizenship as a weapon in most cases and suggests that existing international norms may suffice to condemn the worst cases.[199]

I would like to toss the ball that Jain has thrown in the air in the opposite direction.[200] We should think about the destructive potential of weaponised citizenship in the context of a new geopolitical era in which two global powers – the United States and China – are locked in a rivalry that is rapidly expanding from the economic to the security terrain; in which regional powers like Russia, Iran, Israel, India, Pakistan or Turkey – depending on the nature of their internal political regime – are more likely to act aggressively towards other states; and in which deep interdependencies generated by globalisation since the 1990s make countries also more vulnerable to the hostile acts of other states. In such contexts, even "paper swords" (Spiro) may inflict harmful wounds.[201]

The bestowal of citizenship to extraterritorial groups can become an important tool for states claiming influence over other countries' populations and ultimately also their territories. Domestically it may boost expansionist nationalist ideologies and abroad it can foster disloyalty among ethnic kin minorities towards their countries of residence – or at least create a perception of disloyalty among majority populations there. When assessing weaponised policies, we should not only consider their

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192 Kingston 2022.
193 Jain 2022.
194 Džankić 2022.
195 Ganohariti 2022.
196 Knott 2022.
197 Jacob-Owens T. (2022), 'Imperial citizenship and the weaponisation of international law', GLOBALCIT, Weaponized Citizenship: Should international law restrict oppressive nationality attribution? - Page 6 of 12 - Globalcit (hereinafter 'Jacob-Owens 2022').
198 Manby 2023.
199 Spiro P. (2023), 'Paper-sword citizenship', GLOBALCIT, Weaponized Citizenship: Should international law restrict oppressive nationality attribution? - Page 8 of 12 - Globalcit (hereinafter 'Spiro 2023').
200 Jain 2022.
201 Spiro 2023.

direct legal consequences, but also how they aim to force other states to react in a way that will escalate a conflict at the expense of vulnerable groups. This applies to the recent weaponisation of migration by regimes in Turkey, Morocco and Belarus as much as to the weaponisation of citizenship.[202] The citizenship policies of Russia[203] but also of the United Arab Emirates and other cases discussed in this forum are weapons that inflict harm through massive deception rather than mass destruction.[204] They promote misleading claims about belonging and state responsibilities and fake solutions to the plight of minorities lacking effective citizenship rights. This does not make them innocuous.

Exploring and strengthening the capacities of international law to censure policies of weaponising citizenship seems therefore an important task within the broader agenda of preserving and strengthening a rules-based international order, at the heart of which are the principles of equal sovereignty of states and universal human rights. Even if the sceptics are correct that current international citizenship law is weak and riddled with contradictions, this is no good reason for abandoning efforts of thinking through how international law should and could be developed further to prevent abusive state policies.

International law has only weak enforcement powers to back it up. International organisations and courts do not have their own weapons to fight against the weaponisation of citizenship. They depend on states' willingness to do so. But a progressive evolution of international law could at least remove the veneer of legality from aggressive and oppressive citizenship policies and thus provide a mandate for other states to sanction transgressions.

A sliding scale of international norms

As Neha Jain and Peter Spiro point out,[205] there are already a host of principles in international law that could be invoked in attempts to outlaw the weaponisation of citizenship. The problem is that these principles are often in tension with each other and how one evaluates individual cases depends on how much weight is given to each. The two most important principles at stake are both derived from the basic norm of equal sovereignty: States must respect the territorial integrity of other states and they have the right to determine under their own law who are their nationals. The solution to the apparent conflict is that the former aspect of state sovereignty ought to be clearly ranked above the latter.

Such a ranking of principles should put to rest the worries of Džankić and Jacob-Owens that it is not possible to distinguish in this regard between extraterritorial naturalisations carried out in contested territories;[206] the granting of citizenship to ethnic kin minorities in neighbouring states; remedial naturalisation of descendants of minorities that have suffered historic injustices; or the effects of unlimited *ius sanguinis* transmissions that create large numbers of citizens in destination countries of historic emigration waves.

Where passportisation is used as a pretext for infringing on the territorial sovereignty of another country – as in the Russian military intervention in Georgia in 2008 and the invasions of Ukraine in 2014 and 2022 – it seems clear enough that international law condemns such aggression. This verdict should be extended to cases where claiming citizens in another country has – for the time being – primarily a destabilising effect, by creating client territories and de facto states that are dependent on, or controlled by the citizenship granting state, as is arguably the case in Transnistria. In such cases, territorial integrity is infringed not through overt military intervention, but through depriving a state of sovereignty over a part of its territory through sponsoring irredentist forces.

202 Miholjcic N. (2022), *Migration as an Instrument of Modern Political Warfare: Cases of Turkey, Morocco and Belarus*, Jean Monnet Network on EU Law Enforcement Working Paper 12/22.
203 Salenko A. (2012), *Country report: Russia*, EUDO Citizenship Observatory, Country Reports, 2012/01.
204 Alsabeehg Z. and Kuzmova Y. (2022), *Report on citizenship law : United Arab Emirates*, GLOBALCIT, Country Report, 2022/07.
205 Jain 2022; Spiro 2023.
206 Džankić 2022; Jacob-Owens 2022.

What about naturalising ethnic kin groups in neighbouring states without claiming or controlling their territory? The best-known case is Viktor Orbán's policy of turning ethnic Hungarians in the neighbourhood into citizens.[207] The policy had two intended effects: rejecting symbolically the 1920 Trianon Peace Treaty in which Hungary lost territories with ethnic Hungarian majority populations and creating loyal voters for his FIDESZ party in Hungarian elections. In one of the affected countries (Slovakia), the policy also upset the internal recognition of ethnic Hungarians as an ethnic minority through triggering a law depriving them of their Slovak citizenship if they chose the Hungarian one.[208] A similar policy envisaged by the 2017 Austrian government towards German speaking South Tyrolians was fortunately scrapped after strong protests by Italy and the implosion of the Austrian government coalition in 2019.[209] In most cases it would be an exaggeration to say that citizenship was used as a weapon against another state. But there is still a potential for destabilisation – not of a target country's territory, but of its internal recognition and accommodation of ethnic minorities. This should be enough to create a concern for international law, which has so far been addressed through soft law norms like the 2001 Venice Commission Report[210] and the Bolzano recommendations of the OSCE High Commissioner on National Minorities[211] mentioned by Jain.[212] Bulgaria's policy of first offering North Macedonians EU citizenship[213] via a Bulgarian passport and then blocking the start of EU accession negotiations for North Macedonia in November 2020 illustrates how co-ethnic citizenship policies may eventually also affect another country's external sovereignty.[214]

Finally, consider states that massively inflate the numbers of their citizens abroad through unlimited transmission of nationality *iure sanguinis* across generations combined with acceptance of dual citizenship.[215] In these cases, the main concern is about the effect of such policies on electoral outcomes and the meaning of citizenship in the country that hands out the passports. There is no weaponisation involved since citizenship policies do not target and destabilise other countries. However, they still interfere with domestic equality of citizenship by selectively bestowing the advantages of a second nationality on another country's citizens.[216] If this happens on a massive scale, it could justify complaints towards the citizenship-granting state and might become an issue for soft international norms articulated as recommendations.

Instead of throwing up our hands in despair at the conflict of norms at the heart of international law, one could thus build a sliding scale of cases, with hard international law norms kicking in at one end of the spectrum and soft ones at the other. In fleshing out such a scale, the principles of genuine link and voluntary naturalisation should play a subsidiary role. A proof of genuine link or consent in extraterritorial naturalisations is never sufficient to justify violations of the territorial integrity of another state. Where extraterritorial naturalisations have the intent or effect of territorially destabilising another state, it does not matter much whether the populations concerned regard themselves as having a genuine connection to the country that offers its citizenship and whether they genuinely consent to their naturalisation (as Ganohariti says they did in Abkhasia, South Ossetia and Transnistria) or are forced to choose an external citizenship under threats of discrimination if they don't (as Knott argues was the case in Crimea).[217] If international law did not rule out claims to

207 Pogonyi 2017.
208 Bauböck 2010.
209 Bauböck R. and Haller M. (2021), *Dual Citizenship and Naturalisation: Global, Comparative and Austrian Perspectives*, Austrian Academy of Sciences Press.
210 'Report on the Preferential Treatment of National Minorities by their Kin-State, adopted by the Venice Commission at its 48th Plenary Meeting', Council of Europe, Doc. 168/2001.
211 'Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations', Organization for Security and Co-operation in Europe (2008).
212 Jain 2022.
213 '10,720 persons get Bulgarian citizenship in 2015', GLOBALCIT, 16 February 2016, 10,720 persons get Bulgarian citizenship in 2015 - Globalcit.
214 Barigazzi J., 'Bulgaria blocks EU membership talks for North Macedonia', Politico, 17 November 2020, Bulgaria blocks EU membership talks for North Macedonia – POLITICO.
215 Dumbrava C. and Bauböck R. (2015), *Bloodlines and belonging: Time to abandon ius sanguinis*, Robert Schuman Centre for Advanced Studies and EUDO Citizenship Observatory, RSCAS 2015/80.
216 Harpaz Y. (2019), *Citizenship 2.0: Dual Nationality as a Global Asset*, Princeton University Press.
217 Ganohariti 2022; Knott 2022.

the territory of other states on grounds of ties and consent of co-ethnic groups living there, it would open the pandora's box of irredentist secessions sponsored by militarily more powerful neighbours, which would also fatally undermine the domestic accommodation of such minorities through cultural recognition or territorial autonomy.

The genuine link doctrine will still play an important role in countering instances of oppressive attribution and deprivation of nationality. The doctrine has fallen into disrepute among many international lawyers. Some have suggested that its positive conception of nationality as grounded in effective ties between states and individuals should be replaced by a mere negative prohibition of attribution of a nationality for the sake of exercising the right of diplomatic protection.[218] Yet abandoning a genuine link principle means giving up on the promise of a universal human right to a nationality made in Art. 15 of the Universal Declaration of Human Rights.[219] How else should one determine which state is responsible for offering citizenship to stateless persons if not based on genuine connections? On what other grounds could the UAE be held responsible for circumventing their duty to turn *bidoons* into citizens by purchasing them the nationality of the Comoros?[220] As I have argued elsewhere, a positive version of a genuine link principle would primarily serve as a normative guideline for citizenship laws in democratic states.[221] It would go beyond a criterion of habitual residence by covering also first generations of emigrants and their offspring whose lives remain entangled with their country of origin. By contrast, unlimited transmission of citizenship *iure sanguinis* or selling passports to investors would fall foul of a genuine link requirement. Giving a positive but limited version of genuine links a more prominent role also in international law would strengthen individual rights of access to citizenship as well as mutual recognition of nationality among states, which is hollowed out by state practices of oppressive imposition as well as by offering citizenships-of-convenience to individuals on purely instrumental grounds.

Such hard and soft barriers to extraterritorial naturalisations do not entail that kin states should refrain from protecting their co-ethnic minorities abroad. Where such minorities are oppressed and discriminated against, they may need a kin state either as external support for their claims to minority rights or as a safe haven that keeps its borders open for those who have no other option but to leave. Kin states may thus act as external protectors and guarantors of minority rights and autonomy agreements (as Austria did with regard to the German speaking population of South Tyrol in 1946) or they may grant citizenship to expellees (as Germany did for co-ethnic minorities in communist Central and Eastern Europe until the end of the Cold War). Neither of these cases involved extraterritorial naturalisations, which were deemed ineffective, unnecessary, or counterproductive.

Limits of territorial integrity

The right of sovereign states to territorial integrity may be the core norm of international law that can be applied against weaponisation of citizenship, but this right is not absolute. When a regime commits genocide or crimes against humanity, it is morally legitimate for other states to intervene on humanitarian grounds of a right to protect, even if doing so is legal only if there is an authorisation from the United Nations. The international community should have intervened to stop the genocide in Rwanda in 1994. NATO invoked a plausible threat of genocide in its intervention in Kosovo in 1999, although the legality of the latter remains disputed. The more difficult cases discussed in this forum concern contested territories or de facto states that are neither under the effective sovereignty of a parent state nor internationally recognised as independent states or as another state's territory.

218 Sloane R. (2009), 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality', 50 *Harvard International Law Journal* 1; Thwaites R. (2018), 'The Life and Times of the Genuine Link', *Victoria University of Wellington Law Review* 49(4), 645-670.

219 The Universal Declaration of Human Rights, United Nations, 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights.

220 Lori 2019.

221 Bauböck, R. (Eds.). (2018), *Democratic inclusion*, Manchester University Press.

These cases highlight a major gap in international law that lacks a clear norm for resolving such territorial disputes. The two principles that are in tension here are those of effective sovereignty over a territory and those of recognition of a territory's international status by other states. De facto states are those where the parent state does not exercise effective sovereignty but where international recognition is not sufficiently broad to settle the issue in favour of legitimising a territorial break-away. International law currently lacks the normative sources for clearly distinguishing cases of legitimate self-determination claims of such territories from illegitimate violations of the parent state's claim to territorial integrity.

Yet it is not impossible to develop such criteria, as a vigorous debate about secession among political theorists has shown. In this dispute, I generally side with Allen Buchanan who has argued that secession needs to be justified on remedial grounds,[222] as a last resort in response to persistent denial of a group's fundamental rights – and, as I would add, specifically of its persistent desire for self-government within the parent state's territory. Instead of just asking whether a territorial claim to independence is recognised by a large enough number of other states, international law should ask whether it is worthy of recognition by both the parent state and the international community on such remedial grounds.[223]

Such a normative distinction would also allow for different international law responses to citizenship in de facto states. Suppose that the independence of Kosovo or Taiwan can be justified in this way although it is not sufficiently widely recognised. The implication would still be that recognising states could and should accept passports issued by these countries as fully equivalent to nationality documents. Doing so sends a strong message to (former) parent states and helps to protect individuals abroad. For example, most states seem to recognise the Taiwanese national identity card[224] for the purposes of visa free travel, but this has not been enough to protect Taiwanese citizens from being deported to Beijing instead of Taipei.[225]

Yet how should states deal with individuals from de facto states whose independence should *not* be internationally recognised? Ganohariti points out that denying recognition of citizenship documents issued by local authorities in territories supported by Russia pushes up demand for Russian citizenship.[226] This alone is not a sufficient reason for accepting the citizenship of a territory that the international community does not wish to recognise as independent for good reasons. Both Ganohariti and Spiro point out that wide-spread acceptance of multiple nationality may help to alleviate the problem if people have access to either the citizenship of the parent state or a third country.[227] The problem is, however, that recognising a citizenship attributed by a state that sponsors illegitimate irredentism should still be avoided, as it would mean giving in to the weaponisation of citizenship.

Resistance risks, however, leaving many individuals of de facto states without those rights that are connected to an internationally recognised citizenship. Manby's question about the rights of Sahrawis in Western Sahara (whose international status has not been settled because the required referendum has never been held) is important.[228] She suggests that other states could recognise passports issued by authorities governing non-recognised territories as valid travel documents, just as they do with personal identity documents such as birth, marriage or death certificates. The problem is, however, that there is a much stronger link between nationality and passports. Should the EU really recognise Russian passports issued in Donbas and Crimea or Abkhazian and South Ossetian identity documents as valid for international travel without the consent of Ukraine and Georgia?

222 Buchanan A. (2007), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford University Press.
223 Bauböck R. (2019), 'A Multilevel Theory of Democratic Secession', *Ethnopolitics,* 18:3, 227-246.
224 See Taiwan passport - Wikipedia.
225 'Hundreds of Taiwanese extradited to China, says report', BBC News, 1 December 2021, Hundreds of Taiwanese extradited to China, says report - BBC News.
226 Ganohariti 2022.
227 Spiro 2023.
228 Manby 2023.

Maybe the better solution for this dilemma is one that was discussed in an earlier GLOBALCIT forum debate: new types of international travel documents similar to those for stateless persons or the Nansen passports for refugees in the interwar period of the 20th century.[229]

Conclusion: Strengthening, not weakening equal sovereignty

In this short intervention I have endorsed the following proposals for a stronger response by international law to weaponised and oppressive uses of citizenship laws: (1) Citizenship attributions that have the intention and effect of undermining the territorial integrity and stability of other states should be considered illegal. (2) They should be distinguished from other practices of extraterritorial mass naturalisations that are worthy of critique if they violate the genuine link principle or the requirement of individual consent but should not trigger international non-recognition of such statuses. (3) International law should develop further to distinguish more clearly between territorial claims that are worthy of recognition and those that ought to be rejected. In the latter case, the rights of individuals from such territories without another recognised nationality should be protected through international travel documents and substitutes for diplomatic protection.

Such responses to weaponised citizenship would not "storm the last bastion" of sovereignty; they would merely curb the power of states to attribute their nationality in aggressive, oppressive, and arbitrary ways – for the sake of defending the integrity of the affected states' territory and citizenship. Ultimately, such a progressive evolution of international law would serve to strengthen the legal fiction that all states are equal as the makers of international law – a fiction that we need to uphold against a looming degeneration of the international order into new forms of anarchy and great power confrontation.

229 'Mobility without membership: Do we need special passports for vulnerable groups?', GLOBALCIT Forum Debate, Mobility without membership: Do we need special passports for vulnerable groups? - Globalcit.

Beyond Law: Alternative Mechanisms for Reigning in Weaponised Citizenship

Noora Lori*

In her opening essay, Neha Jain eloquently outlines the problem of weaponised citizenship and poses the question of whether (and how) international law might be used to restrict oppressive nationality attribution.[230] I first briefly reiterate the political and normative stakes of this important debate to explain why states weaponise nationality, emphasising the strategic advantages this tactic provides to political elites across world regions and regime-types. In response to previous responses that question whether international law is indeed the most fitting mechanism for reigning in oppressive nationality attribution, I consider alternative ways how states can be incentivized or coerced into modifying their behaviour in realms that are considered key domains of sovereignty. I take the baton from Bauböck and heed his warning about the destructive potential of weaponised citizenship in the context of new geopolitical arrangements and deepening global interdependencies.[231] I suggest that asymmetrical power arrangements and global interdependence are precisely what can be leveraged to reign in cases of weaponised citizenship.

The Problem of Weaponised Citizenship

The weaponisation of citizenship occurs when states strategically use forced nationality attributions to control access to membership and mobility rights. As Jain explains, this oppressive tactic occurs on both the individual and collective levels—states can weaponise citizenship to 'denude an individual of rights they would have enjoyed' as well as 'threaten or destabilise vital interests of other states.'[232] To illustrate how forced nationality attribution operates as a form of inter-state coercion, Knott carefully explains how Russia's extraterritorial passporitisation techniques were used to justify annexation and conflict by claiming to protect co-ethnic communities 'whether or not such external co-ethnic communities view themselves as needing, or consenting to, protection.'[233] While Spiro argues that the consent of the individuals whose citizenship status is being changed is the key factor for determining whether a case of nationality attribution is weaponised, the forum also discusses how apparently voluntary extraterritorial naturalizations (*e.g.* in Transnistria, Abkhasia, South Ossetia) are instances of weaponisation because of their destabilising impact across borders.[234] Since the previous responses discuss extra-territorial naturalization practices to illustrate how citizenship is weaponised across borders, it is worth discussing how these practices also factor into domestic politics. To do so, I expand the focus of this forum on forced nationality attributions and include a brief discussion of the related phenomenon of denaturalization, drawing a link between this debate and insights from a previous forum to make two points about the domestic implications of weaponised citizenship.[235]

First, access to citizenship is weaponised by political elites to fulfil their own political or economic domestic interests. Second, this tactic has been used by states to disproportionately target minority groups within their territories, typically by associating those groups with security threats. In the example of what Jain calls "zombie citizenship,"[236] the federal government of the United Arab Emirates attained passports from the Union of Comoros for ethnic minorities in the UAE. This outsourcing agreement—which I have previously referred to as "offshore citizenship"—does not provide the passport recipients

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230 Jain 2022.

231 Bauböck R. (2023), 'Weapons of Massive Deception: Defusing the Destructive Potential of Citizenship in a New Geopolitical Era', GLOBALCIT, Weaponized Citizenship: Should international law restrict oppressive nationality attribution? - Page 9 of 12 - Globalcit (hereinafter 'Bauböck 2023').

232 Jain 2022.

233 Knott 2022.

234 Spiro 2023.

235 Macklin A. and Bauböck R. (eds.), *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?.* EUI Working Paper RSCAS 2015/14.

236 Jain 2022.

with any meaningful membership rights in any state.[237] They are allowed to continue residing in the UAE, but as "foreign residents," and they do not have membership or residency rights in the Comoros Islands. The passport recipients were informed that these documents were issued as a temporary step in their regularization process as they continued to undergo security vetting as naturalization applicants.[238] Likewise, Beaugrand's work on stateless populations in Kuwait shows a similar dynamic,[239] with indigenous minorities forced to obtain passports from other states (like Iraq) in order to continue residing in Kuwait, or risk being criminalized as "illegal" migrants. In both cases, the forced attribution of foreign citizenship enables political elites to prevent targeted individuals from enjoying the robust welfare services with which these oil-rich states provide their citizenries. On the flip side, all of the Gulf monarchies have used the forced withdrawal of citizenship (through denaturalization, passport revocation, and travel bans) to quell dissent and punish political activists.[240]

It may be tempting to equate coercive citizenship practices with authoritarian states, but Kingston reminds us that liberal democracies are also 'guilty of using and benefitting from oppressive nationality.'[241] While Kingston's contribution focuses on how liberal democracies can "game the system" and circumvent their own commitments to international human rights frameworks, we might also draw upon a larger literature on denaturalization that identifies how advanced liberal democracies have strategically weaponised citizenship to withhold membership rights from specific groups. As Weil's work on the United States in the early Twentieth century has documented,[242] denaturalization—often couched in terms of national security—has been strategically used by political elites to sway election outcomes, police ethno-national boundaries and entrench racial hierarchies, and criminalise the activities of opposition groups (especially anarchists and socialists). Gibney's work on more recent denaturalization cases in the United States and United Kingdom shows how liberal states continue to use forced nationality withdrawals to target groups that are considered security threats (especially Islamists).[243] Another example of how elites justify forced withdrawal of nationality on the basis of perceived security threats is Israel's sweeping 2008 law that sanctions the withdrawal of citizenship from anyone who commits an act that constitutes a 'breach of loyalty to the State of Israel.'[244] Critics have pointed out that this law[245] (and more recent expansions of it[246]) have not be used against Jewish Israelis who committed violent crimes and are instead being used to pave the path for denaturalisations of Arab Israelis as a form of collective punishment and demographic engineering. Studies on statelessness in the Dominican Republic[247] and Myanmar[248] are helpful for underscoring the fact that the pattern of who is targeted in cases of weaponised citizenship is not only deeply racialized but also highly gendered. As Hackl points out, such tactics are 'modes of controlling and rank-ordering minorities' that render citizenship "conditional" rather than inalienable for specific groups in ways that cannot be reconciled with liberal principles of equality and inclusion.[249] Moreover, almost every one of these examples has ramifications on other states. Extraterritorial withdrawal of nationality burdens other states by either creating stateless people there or by shifting responsibility (also for terrorists and criminals) towards them often based on a merely putative or secondary citizenship.

237 Lori 2019.
238 *Id.*
239 Beaugrand C. (2017), *Stateless in the Gulf: Migration, Nationality and Society in Kuwait*, Bloomsbury.
240 Babar, Z. (2017), 'The "Enemy Within": Citizenship-Stripping in the Post–Arab Spring GCC', *Middle East Journal*, 71(4), 525–543.
241 Kingston 2022.
242 Weil P. (2013), *The Sovereign Citizen – Denaturalization and the Origins of the American Republic*, University of Pennsylvania Press.
243 Gibney M. (2013), 'Should Citizenship Be Conditional? The Ethics of Denationalization', *Journal of Politics* 75:3, 646-658.
244 Levush, R. (2008), *Israel: Revocation of Citizenship*, Library of Congress, https://www.loc.gov/item/global-legal-monitor/2008-09-08/israel-revocation-of-citizenship/.
245 Bossow A. and Zeltouni S., 'Israel's New Citizenship Deprivation-Deportation Pipeline', Verfassungsblog, 21 February 2023, Israel's New Citizenship Deprivation-Deportation Pipeline – Verfassungsblog.
246 McKernan B., 'Israel votes to strip citizenship from Arabs convicted of terrorism', The Guardian, 16 February 2023, Israel votes to strip citizenship from Arabs convicted of terrorism | Israel | The Guardian.
247 Petrozziello, A.J. (2019), '('Re)producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic', *Int Migr,* 57: 213-228.
248 McAuliffe, E. (2023), "The Ancestral Line is through the Father": The Gendered Production of Statelessness in Rural Myanmar', *Law & Social Inquiry*, 1-31.
249 Hackl, A. (2022), 'Good immigrants, permitted outsiders: conditional inclusion and citizenship in comparison', *Ethnic and Racial Studies,* 45:6, 989-1010.

These works help illustrate how citizenship is used as a weapon, especially in the context of the "war on terror," in ways that combine the domestic interests and foreign policy goals of states in two key domains of sovereignty — the monopolization over the legitimate use of violence (à la Weber, see Anter[250]) and the discretionary power to determine authorized residency and membership rights (Torpey).[251] It is difficult to reign in weaponised citizenship when both national security and citizenship are key domains of discretionary or plenary power, even in advanced liberal democracies.[252] Herein lies the central tension in the weaponised citizenship debate — it is difficult to determine what even constitutes "lawful" or "unlawful" practices in domains that are protected arenas of state sovereignty.

The Opportunities and Costs of Leveraging International Law in the Domain of Citizenship

The previous responses have explored *whether* there is a basis for regulating nationality under international law, and if so, *how* international law can be leveraged to contain oppressive nationality attribution. Knott cautions against creating blanket rules about what constitutes weaponised citizenship, calling for the need to identify the precise sequencing and timing of nationality attributions before determining whether that instance can be classified as oppressive.[253] In response, Ganohariti provides strict criteria for determining whether a case qualifies as weaponised citizenship,[254] focusing on three conditions: 1) whether the nationality attribution was conducted by a state to target people outside its *de iure* territory; 2) whether citizenship was attributed collectively and forcefully; and 3) whether the weaponisation occurred simultaneously with the attribution of citizenship. Other contributors express scepticism about whether the law is indeed the most fitting tool for reigning in weaponised citizenship practices because, as Džankić points out,[255] in many cases the actions are 'perfectly lawful' under international law and, as Jacob-Owens cautions, codifying strict restrictions on this practice might curtail the ability of formerly colonized groups to advocate for reparative citizenship.[256]

Leverage and Power Politics: Alternative Mechanisms for Reigning in Weaponised Citizenship

If not through that mantle of law, then what are additional ways for reigning in oppressive nationality practices? Existing studies in the field of International Relations may be instructive for identifying alternative avenues through which states, supranational, and inter-governmental entities have successfully changed the behaviour of other states (either by coercion or enticement), in realms that are considered protected domains of sovereign discretionary power.

One possibility that has not been explored in previous submissions is whether regional mobility agreements and legal frameworks could be harnessed to reign in oppressive nationality practices. The literature on the European Union has documented a range of examples of how convergence criteria for entry into the union influenced the behaviour of prospective member-states, not only their economic policies,[257] but also their commitment to fundamental human rights and the protection of minorities from discrimination.[258] While citizenship matters fall under the domain of member-states, the Court of Justice of the European Union (CJEU) took steps to constrain arbitrary denaturalization in its 2010 Rottmann ruling.[259] Aggressive extraterritorial citizenship policies like those of Hungary or Bulgaria have not yet been addressed at the EU-level. However, by asserting its jurisdiction in

250 Anter, A. (2019), 'The Modern State and Its Monopoly on Violence', in Hanke E., Scaff L., and Whimster S. (eds), *The Oxford Handbook of Max Weber*, Oxford University Press.
251 Torpey, J. (1999), *The Invention of the Passport: Surveillance, Citizenship and the State*, Cambridge University Press.
252 Johnson K. (1993), 'Judicial Acquiescence to the Executive Branch's Pursuit of Foreign Policy and Domestic Agendas in Immigration Matters: The Case of the Haitian Asylum-Seekers', *Geo. Immigr. L.J.* 7, 1.
253 Knott 2022.
254 Ganohariti 2022.
255 Džankić 2022.
256 Jacob-Owens 2022.
257 Afxentiou, P. C. (2000), 'Convergence, the Maastricht criteria, and their benefits', *Brown Journal of World Affairs*, 7(1), 245-[ii].
258 Arnold R. (2016), *The Convergence of the Fundamental Rights Protection in Europe*, Springer Link.
259 Shaw J. (2011), *The Convergence of the Fundamental Rights Protection in Europe*, EUI Working Paper RSCAS 2011/62.

denaturalization, the CJEU may have created an opening for bringing cases of forced attribution of nationality to regional courts. Moreover, the EU commission has already challenged the discretion that member-states have when it comes to attributing nationality under citizenship by investment programmes, referring Malta to the CJEU[260] and calling upon all member-states to halt their programs in the wake of the Russian invasion of Ukraine.[261]

Outside of the EU, Susan Akram's clinical human rights work currently maps regional instruments for combating statelessness across the Middle East and North Africa,[262] with the aim of identifying specific clauses within regional legal instruments that can hold states accountable for rendering minority groups stateless. Acosta's ongoing research on regional mobility frameworks in South America also provides insights on how regional instruments might be leveraged to reign in weaponised citizenship,[263] since the proliferation of regional processes of integration coupled with the expansion of human rights law 'are two of the most important phenomena that have limited the state's capacity to restrict the entry of foreigners and their rights.'[264] In short, while regional mobility agreements have not yet been deployed in cases of weaponised citizenship, they might provide us with a promising avenue for introducing higher standards of protections in the absence of a global legal framework due to the more limited number of actors involved in negotiations.

The robust literature on inter-state negotiations and power politics might also be instructive, as scholars have identified a range of extra-legal ways that states can be coerced or incentivized into modifying their behaviour based on the pressures exerted by other states or international entities, especially when different issue areas are interlinked in negotiations. For example, in the realm of economic negotiations and trade agreements, Farrell and Newman develop the concept of "weaponised interdependence" to capture how states weaponise asymmetrical access to global networks of informational and financial exchange for strategic advantage.[265] States that have a structural advantage in the system can leverage that advantage for coercive ends through a "panopticon effect" (granting network access to gather strategically valuable information) or conversely a "chokepoint effect" (denying network access to adversaries). Scholars like Greenhill,[266] Tsourapas,[267] and Adamson[268] have documented a similar dynamic in the realm of negotiations over cross-border flows, developing concepts like "migration interdependence" to explain how labour migrants or asylum-seekers are used as pawns when states strategically instigate or interdict human flows to gain leverage over other states.[269] The desire to contain migration can make more developed states in the Global North vulnerable, because migrant-sending and transit states strategically use migration flows to increase their bargaining power and induce political, military or economic concessions. This can have the effect of giving weaker, less militarily powerful states leverage over states that have superior economic or military capabilities. Even non-state actors like NGOs may have some leverage of this kind. Eilstrup-Sangiovanni and Sharman's research shows that NGOs do not only lobby for changes to international law but also act as enforcers on issues of human rights, the environment, and corruption by acting as private police, prosecutors, and intelligence agencies in enforcing international laws and norms.[270]

260 'Investor citizenship scheme: Commission refers MALTA to the Court of Justice', EU Commission Press release, 29 September 2022, Commission refers MALTA to the Court of Justice (europa.eu).

261 'Commission urges Member States to act on 'golden passports' and 'golden residence permits' schemes, and to take immediate steps in the context of the Russian invasion of Ukraine', EU Commission Press release, 28 March 2022, Commission urges Member States to act on 'golden passports' (europa.eu).

262 Beyer R., 'Confronting the Problem of Statelessness', The Record, 6 November 2020, Confronting the Problem of Statelessness | School of Law (bu.edu).

263 Acosta, D. (2017), 'Global Migration Law and Regional Free Movement: Compliance and Adjudication – The Case of South America', *AJIL Unbound*, 111, 159-164.

264 *Id.*

265 Farrell H. and Newman A. (2019), 'Weaponized Interdependence: How Global Economic Networks Shape State Coercion', *International Security* 44 (1): 42–79.

266 Greenhill K. (2016), *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, Cornell University Press.

267 Tsourapas G. (2018), 'Labor Migrants as Political Leverage: Migration Interdependence and Coercion in the Mediterranean', *International Studies Quarterly* 62(2) 383–395.

268 Adamson F. and Tsourapas G. (2018), 'Migration Diplomacy in World Politics', *International Studies Perspectives* 0, 1–16.

269 Tsourapas G. (2018), 'Labor Migrants as Political Leverage: Migration Interdependence and Coercion in the Mediterranean', *International Studies Quarterly* 62(2) 383–395.

270 Eilstrup-Sangiovanni M. and Sharman J. (2022), *Vigilantes beyond Borders: NGOs as Enforcers of International Law*, Princeton University Press.

To be clear, inter-state leverage and power politics are in no way a substitute for creating robust protections for minority and stateless populations in international law. I differ from Spiro who argues that 'to the extent that citizenship adds anything to the state's policy armoury, it has been mostly defused,'[271] implying that we may not need to turn to international law to curtail weaponised citizenship because states already sanction each other. While I agree that states respond to each other's behaviours when it comes to issuing passports, they currently do so unevenly and in ways that may reward oppressive nationality attributions. For example, after the UAE outsourced passports from the Union of Comoros, the rankings of the Comoros passport declined because other states considered the Comoros passport security to be compromised, which also instigated internal investigations of former President Ahmed Abdallah Mohamed Sambi.[272] Meanwhile, the UAE passport ranking soared, largely due to the fact that it had successfully signed a Schengen visa-waiver with the EU in 2015.[273] This example may suggest that depending upon inter-state leverage will inevitably lead to greater weaponisation because citizenship matters would depend upon the willingness of weaker states to expend political capital on taking up the cause of granting citizenship to minorities in powerful states. However, the EU's role and its impact on the UAE passport ranking complicates this picture. Had the EU actually addressed the UAE's oppressive nationality practices when negotiating the visa-waiver, it could have asserted considerable leverage. The system will not self-correct in ways that align with human rights, but lobbying efforts can redirect pressures towards greater protections in a structurally interdependent system. States, regional, and international entities can be lobbied to take oppressive nationality practices into account when negotiating visa-waivers and mobility agreements, or build in clauses in agreements that withhold certain benefits (i.e. market access, development aid, weapon sales) from states that practice weaponised citizenship. Such efforts would not replace but rather supplement attempts to use international law and norms to constrain weaponised citizenship practices.

271 Spiro 2023.

272 Lewis D. and Ahmed A., 'Exclusive: Comoros passport scheme was unlawful, abused by 'mafia' networks – report', Reuters, 23 March 2018, Exclusive: Comoros passport scheme was unlawful, abused by 'mafia' networks - report | Reuters.

273 Agreement between the European Union and the United Arab Emirates on the short-stay visa waiver, 6 May 2015, Doc. 22015A0521(01).

What (Exactly) is Wrong with Weaponising Citizenship?

Lior Erez*

Neha Jain's opening essay,[274] as well as the subsequent contributions to this forum, highlight the multiple ways in which citizenship can be oppressively and aggressively used by states to advance their interests, often by "gaming the system".[275] As these contributions demonstrate, a political and legal response to the threat of citizenship weaponisation must be attuned to the nuance of the particular case and broader context,[276] and cautious of unintended side-effects and spill-overs.[277] Realistically, it will depend on more than the letter of international law, by expanding the scope of its existing norms,[278] appealing to extra-legal resources such as power politics,[279] and supported by the resistance of engaged citizens.[280] Given these requirements, combatting citizenship weaponisation is certainly an uphill battle, although one we must attend to given the current political landscape.

As Džankić forcefully puts it in her contribution, the question surrounding the morality and legitimacy of these practices will not be adequately resolved by evaluating their present legality.[281] In this response, therefore, I would like to take a step back from the legal question to comment on the foundational normative assumptions at the heart of this debate. In brief, I will suggest that with regards to citizenship laws, problems of under-inclusion and over-inclusion are not symmetric from a normative perspective: the factors that account for the wrongness of under-inclusion do not clearly explain the wrongness of over-inclusion. As such, our evaluation of the weaponisation of citizenship must clearly distinguish between cases of oppressive attribution or "sticky citizenship", which are aimed at facilitating rights violation and exclusion and therefore straightforwardly objectionable, and cases of 'long distance nationality' which are less decidedly so.[282] If this analysis is correct, it provides additional support to the problem identified by Jacobs-Owens about the difficulty to 'capture every relevant instance of "oppressive" nationality attribution without simultaneously creating a barrier to legitimate forms of facilitated, extra-territorial naturalization',[283] and casts some further doubts over the feasibility of Jain's proposal for a "New New Law of Nationality" as a way to address the risk of weaponisation.[284]

Genuine Links and Harms to Individuals

A primary contribution of Jain's essay lies in her challenge of the implicit assumption in international law that 'the problem to be addressed is not the attribution of citizenship but rather its absence'.[285] This implicit assumption is, interestingly, shared by most of normative political theory, which is focused on the limits of the state's right to exclude, expel, or expatriate. As Manby insightfully suggests, in turning to the question of unjust inclusion,[286] Jain – 'in some ways' – returns to an earlier framework of international law, more concerned with wrongful nationality attribution than the deprivation of it.[287] The qualifier is important here; the old normative landscape depended on views and values we now reject (as Peter Spiro argues elsewhere).[288] To defend the idea of "unjust inclusion" in the era of human rights, one must provide an alternative justification for it. In other words, if citizenship is now a 'sword to harm and oppress', who, exactly, is harmed by unjust inclusion, and how?

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274 Jain 2022.
275 Kingston 2022.
276 Knott 2022.
277 Manby 2023; Jacob-Owens 2023.
278 Bauböck 2023.
279 Lori N. (2023), 'Beyond Law: Alternative Mechanisms for Reigning in Weaponized Citizenship', GLOBALCIT, Weaponized Citizenship: Should international law restrict oppressive nationality attribution? - Page 10 of 12 - Globalcit (hereinafter 'Lori 2023').
280 Džankić 2022.
281 *Id.*
282 Howard-Hassmann and Walton-Roberts 2015.
283 Jacob-Owens 2022.
284 Jain 2022.
285 *Id.*
286 Manby 2023.
287 Jain 2022.
288 Spiro 2011.

One possible answer proposed by Jain is that unjust inclusion incurs 'negative consequences for purported beneficiaries'. On the face of it this claim seems puzzling – how can inclusion be harmful? Here, normative political theory offers some useful insights as to the harms causes to individuals by unjust citizenship laws. On similar lines to Bauböck's support of a positive version of the principle of genuine link,[289] most normative theorists argue that the legal status of citizenship must follow some factual connection to the state, conceptualized as social membership[290] or *jus nexi*.[291] The individual's "genuine link" to the state imposes a duty on the state to offer a pathway to citizenship. The state's failure to do so explains the injustice of, among others, permanent alienage[292] or arbitrary expatriation.[293] This may also motivate arguments against making citizenship conditional, for example in by imposing citizenship tests[294] or financial burdens on naturalization.[295] The normative role of the genuine link, on these accounts, is as a sufficient condition for grounding the individual's right to citizenship (and the correlative state's duty to offer it).

The upshot of this understanding of the normative role of the genuine link is that it is sufficient for explaining the injustice in the cases noted by Jain and the other contributors, without the need to appeal to the notion of unjust inclusion. For example, in the case of "offshore citizenship" offered to the *Bidoons* in the UAE (Lori),[296] it seems reasonable to suggest that the wrong committed was, originally, not providing a pathway to citizenship in the state where the *Bidoon* had social membership, and the conceit that membership is fungible and can be substituted by another state's citizenship. Similarly, in case of "sticky citizenship", as described by Macklin,[297] the wrong committed is not the over-inclusion, but the use of foreign citizenship as a way to deprive individuals of citizenship in a state that owes it to them. If we add to that the presumption against the coercive imposition of citizenship, evident in both of these cases as well as, arguably, in the case of Russian "passportisation" that is the major focus of this debate, these carry much of the weight of the harm taking place.

The notion of *unjust voluntary inclusion* arises only if we interpret the genuine link, as Bauböck explicitly does, as a sufficient *and necessary* condition for the allocation of citizenship.[298] Admittedly, Bauböck extends the concept beyond habitual residence to cover 'also first generations of emigrants and their offspring whose lives remain entangled with their country of origin'. This rules out, he argues, 'unlimited transmission of citizenship *iure sanguinis* or selling passports to investors'. Yet I remain unpersuaded that this interpretation is justified. In brief, I share Jacobs-Owens' intuition that 'states may have good reason to offer targeted routes to citizenship acquisition for groups outside their territories',[299] including reparative and honorific conferment of citizenship. Citizenship laws need not be uniform between states, and – within limits – could allow for extra-territorial naturalizations for a variety of reasons. I also agree with Spiro that acquiring citizenship voluntarily is rarely, in itself, harmful to the individual in question, excluding particular cases were deception was involved.[300] What is needed here, in other words, is some alternative explanation for the wrongness of such policies.

289 Bauböck 2023.
290 Carens J. (2013), *The Ethics of Immigration*, Oxford University Press.
291 Shachar, A. (2011), 'Earned Citizenship: Property Lessons for Immigration Reform', *Yale Journal of Law & the Humanities* 23, 110–158.
292 Oberman, K. (2017), Immigration, Citizenship, and Consent: What is Wrong with Permanent Alienage?. *Journal of Political Philosophy*, 25: 91-107.
293 Lenard, P. (2018), 'Democratic Citizenship and Denationalization', *American Political Science Review*, 112(1), 99-111.
294 Sharp D. (2022), 'Why citizenship tests are necessarily illiberal: a reply to Blake', *Ethics & Global Politics,* 15:1,
295 Lim, D. (2018), 'Migration, Entry Fees, and Stakeholdership', *Analyse & Kritik,* 40(2) 243-260.
296 Lori 2023.
297 Howard-Hassmann and Walton-Roberts 2015.
298 Bauböck 2023.
299 Jacob-Owens 2022.
300 Spiro 2023.

Harmful Intentions and Negative Effects for States

Such a justification is provided by Jain's second line of argument, in which the harm of unjust inclusion is not to the individuals in question but to the interests of the "parent state". This is a version of the principles prevailing in the old international system, although importantly state interests now should be balanced against individual right claims. Jain[301] relies on Anne Peters to argue that 'mass naturalisations, in particular of individuals who do not have strong links to the state of naturalisation, may thus infringe upon the sovereignty of the parent state'.[302] Bauböck, similarly, places the use of passportisation as a pretext for military intervention at the most severe end of his sliding scale. As a general principle, he proposes that '[c]itizenship attributions that have the intention and effect of undermining the territorial integrity and stability of other states should be considered illegal'.[303]

The Russian passportisation policy and the blatant violation of international law in its war of aggression against Ukraine clearly motivate this line of argument, as they should. As several contributors note, the wrongness of the case remains evident even if naturalizations were voluntary and there is a genuine connection between the naturalising state and the individuals in question. My concern about it, however, stems from the sense that the wrongness of the Russian case is overdetermined. Even if accepting as a matter of fact that mass naturalizations occurred as a pretext for military occupation (but see Knott's argument against this view),[304] the case is so extreme that it provides a shaky foundation for a general principle. As I will try to briefly demonstrate, applying the line of argument to less blatant cases prove to be much more ambiguous, and arguably over-extends its usefulness.

It seems, first, that identifying an intention of undermining territorial integrity and stability would be a much harder task in most cases. The Russian case aside, states rarely advance weaponised citizenship policies while exclaiming that these are intended to be used as weapons. Indeed, they have the interest of disguising their true intentions by providing more benign justifications for potentially controversial citizenship laws, appealing in diaspora connections, human rights, or historical injustice. As I argued above, if we accept a pluralist justification for inclusive citizenship policies, some of these justifications would be legitimate, and we can fully expect states to game the system to achieve the appearance of legitimacy.[305] If our task here is to find a way in which international law norms allow for providing such retrospective evaluation (Jain),[306] it is hard to see how this kind of intent could be identified. As Ramesh Ganohariti persuasively argues, even in the Russian case its actions in Abkhazia and South Ossetia – and the intentions behind them – could not be definitively determined to be criminal.[307]

Turning instead to the effects of such policies on the affected state seems like a more promising route, especially if intent can be interpreted obliquely, in light of foreseeable consequences of one's actions. Jain is right to point out that for extra-territorial naturalizations – where the question of unjust inclusion might arise – we should reject the *Nottebohm* assumption that 'nationality has its most immediate, its most far-reaching and, for most people, its only effects within the legal system of the State conferring it'.[308] Of course citizenship laws have affects beyond the boundaries of the state. Again, the Russian case provides a stark example of such egregious effects, with passportisation facilitating territorial invasion.

301 Peters 2010.
302 Jain 2022.
303 Bauböck 2023.
304 Knott 2022.
305 Kingston 2022.
306 Jain 2022.
307 Ganohariti 2022.
308 Jain 2022.

Yet when we extend this line of argument to other kinds of negative effects, it becomes less persuasive. I agree with Bauböck that 'when assessing weaponised policies, we should not only consider their direct legal consequences, but also how they aim to force other states to react in a way that will escalate a conflict at the expense of vulnerable groups'.[309] For example, he suggests extending the negative effects to include destabilising the target country's internal recognition and accommodation of ethnic minorities (e.g. in the case of Hungary and Slovakia). However, even if as a matter of prudent politics these policies should not be pursued, on the normative level the worry over backlash seems to wrongly locate the culprits. Even *prima facie* extra-territorial citizenship regimes – tracing the genuine link of emigrants and their direct descendants – can and do trigger perceptions of disloyalty. Such effects could exist without the intention of the naturalising state. Moreover, often the formal act of naturalization is not even required for the negative effects to take place. As Ilan Zvi Baron argues, the mere existence of the state of Israel provides an excuse to accuse Jewish citizens of dual loyalty.[310]

Further scepticism arises regarding other potential negative effects suggested by the contributors. Džankić presents the interesting case of Bulgaria and North Macedonia, where extending Bulgarian citizenship had the effect of limiting North Macedonia's ability to enact external sovereignty.[311] Bauböck offers the example of cases where conferring citizenship undermines domestic equality, when only some subset of the population has access to the advantages of a second nationality (as is the case of European Jews in Israel).[312] But pursuing this line of argument to its logical conclusion creates new problems. Again, these kind of effects will likely be generated even by *prima facie* legitimate citizenship laws. Restricting them on these grounds seems at best unjustified, or worse resulting in unnecessary harm to individual rights (as persuasively argued by Manby and Jacobs-Owens on Western Sahara and the Chagos Islands, respectively).[313] And there is a broader point here: given the complexity and interconnectedness of international politics, any number of the state's supposedly domestic laws – from its tax policies to its religious establishment – could have negative effects on other states.

Why Clarity is Important

Hopefully the above analysis does not strike readers as the pedantic over-indulgence of the philosopher. As I wrote at the beginning of the response, I share the view of most contributors to this forum that the instrumental and cynical use of citizenship laws at the hand of aggressive states – not least in the Russian war of aggression in Ukraine – is a danger deserving our scholarly and political attention. Real politics requires difficult decisions under conditions of urgency and uncertainty, so the kind of rigor in identifying the precise source of wrongness I advocate here might not always be called for. But even conceding this point, I still wish to argue that our responses to the threat should maintain clarity as to (a) the agents and actions responsible for the wrong and (b) the implications of the response. Failing that, the response will not address the underlying causes of injustice and might even prove to generate new wrongs.

309 Bauböck 2023.
310 Baron, I. (2009), 'The Problem of Dual Loyalty', *Canadian Journal of Political Science/Revue Canadienne De Science Politique*, 42(4), 1025-1044.
311 Džankić 2022.
312 Harpaz Y. (2019), *Citizenship 2.0: Dual Nationality as a Global Asset*, Princeton University Press; Bauböck 2023.
313 Manby 2023; Jacob-Owens 2023.

The thousand paper cuts of oppressive nationality – a rejoinder

Neha Jain*

One of the many attractive features of a forum debate is that the responses are not merely in dialogue with the lead author, but also with each other. The concept of oppressive nationality, as the range and depth of contributions highlight, is contestable and contested by empiricists, theorists, country experts, and lawyers. It is also, as the contributions by Jelena Džankić and Lindsey Kingston highlight so beautifully, intensely personal, touching upon issues that are central to identity and that continue to be transmitted through generations.[314] If there is a tentative common ground in the contributions, it is the acknowledgement that citizenship can be as much a burden as a boon — though here too, Peter Spiro's striking metaphor of the paper sword of citizenship queries whether these costs are sufficiently material to warrant concern by international lawyers.

Rather than attempting the impossible task of doing justice to these rich responses in a brief rejoinder, I take up their invitation to deepen and clarify the original insight on oppressive citizenship and to think through three main issues that would be implicated in any efforts at the international juridification of the problem: 1) What is the exact harm of oppressive nationality; 2) Who can respond to this harm; and 3) Will a response rooted in an international legal norm generate even greater harms?

Is weaponisation a problem and for whom?

In his characteristically elegant response, Peter Spiro,[315] who finds a sympathetic listener in Lior Erez,[316] argues that while oppressive nationality may be problematic, it is only so at the margins. For Spiro, barring rare instances where individuals stand to lose their original nationality due to the unwanted acquisition of a second nationality, the material costs of unwanted nationality are either minimal or difficult to enforce.[317] In cases where they do have bite — for example, the Russian conscription of Crimean residents — the imposition is already in violation of another international law norm. And Spiro argues that in still other situations, such as the attribution of Comorian citizenship to stateless *bidoons*, the citizenship may even prove beneficial.[318]

In canvassing a variety of circumstances that result in unasked for citizenship obligations, Spiro himself weakens the force of his claim. While it is true that each of these cases of unwanted nationality is factually distinct rather than part a broader global pattern, together, they point to the different ways in which states inclined to do so can manipulate citizenship to impose direct and indirect costs on individuals and groups. The *bidoons*, as Noora Lori reminds us,[319] may be Comorian, but only in name, having no right to even reside in their "home" country, much less to ask for its diplomatic protection. Instead, as Lori emphasizes.[320] Comorian citizenship has prolonged their limbo status as de facto stateless minority residents in the UAE. Conscription too, does not always categorically violate a non-nationality related international legal rule, as Jelena Džankić shows in her poignant example of refugees from Bosnia and Herzegovina being turned into flesh and blood weapons to fight as "citizens" of the Federal Republic of Yugoslavia.[321] And—turning our attention to involuntary citizenship attached to residents *within* sovereign territorial boundaries— Ramesh Ganohariti[322] and Lindsey Kingston[323] force us to reckon with the use of citizenship as an assimilationist weapon deployed by

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314 Kingston 2022; Džankić 2022.

315 Spiro 2023.

316 Erez L. (2023), 'What (Exactly) is Wrong with Weaponising Citizenship?', GLOBALCIT, Weaponised Citizenship: Should international law restrict oppressive nationality attribution? - Page 11 of 12 - Globalcit (hereinafter 'Erez 2023').

317 Spiro 2023.

318 *Id*.

319 Lori 2023.

320 Lori 2019.

321 Džankić 2022.

322 Ganohariti 2022.

323 Kingston 2022.

authoritarian states as well as liberal democracies. Indeed, as I highlighted in the original essay,[324] and in contrast to Lior Erez's interpretation of this practice as relating to citizenship *deprivation* rather than *imputation*, it is liberal states such as Canada and Australia that have attached zombie Israeli citizenship to asylum seekers to prevent them from acquiring refugee status in those countries.[325]

The harm of oppressive citizenship, then, as Rainer Bauböck captures in his wide-ranging contribution, both on individuals as well as states, is neither always immediately apparent, nor always an obvious violation of an international legal norm.[326] A pathological use of weaponised citizenship, as Peter Spiro puts it, such as the pretext for an outright invasion is indeed rare and typically generates swift condemnation by the international community.[327] More commonly, however, as Rainer Bauböck argues, the negative effects of oppressive nationality are much more insidious, working to destabilise other nations, raising suspicions about the place of individuals in polities where they are minorities, and turning vulnerable groups into casualties of geopolitical wars waged on other fronts.[328] The paper cuts inflicted by these paper swords may be subtle and seem too minor for international law to take seriously, but that does not make them less painful for the individuals or states that are their recipients. Unlike the clean slice of a metal blade, the shallow cut of a paper sword saws and shreds in chaotic ways,[329] producing a wound that leaves the surface perilously exposed to future harm.

It is true that some of these paper cuts may not be unique to the weaponisation of citizenship, *strictu sensu*. As some of the responses highlight, quasi-citizenship statuses too can be weaponised in similar ways: Eleanor Knott refers to Russia's weaponisation of ethno-nationalist claims[330] whereas Ramesh Ganohariti highlights practices of passportisation by contested territories such as Abkhazia and South Ossetia.[331] These examples raise broader questions on the international legal recognition of statehood and whether the law's assumption of citizenship as an on-off status may need to be revisited to acknowledge the reality of citizenship on a sliding scale.

Who should respond to this weaponisation?

Though the responses indicate broad agreement that oppressive nationality can be deeply problematic, they are also largely sceptical that the response to it lies in enhanced international legal regulation. Here, again, the responses range from a bleak assessment of international law's real-world impact to the claim that international law is already doing the work that it can be expected to do. Jelena Džankić and Lindsey Kingston despair of international law's capacity to police states on matters such as citizenship that are central to state sovereignty, arguing that the legal framework that permits states to wield citizenship as a weapon is not an oversight but by design.[332] Once again, it is not only smaller authoritarian states like Hungary or global autocrats such as Russia that have gamed the system, but liberal states such as the United States are equally complicit in its perpetuation. Rather than pinning their hopes on international law, both Džankić and Kingston see the best defense against weaponised citizenship to be an educated and engaged public that recognizes what it means to be a member of a political community.[333] Timothy Jacob-Owens sounds a different note of caution, warning of the perils of putting too much faith in international law's championing of progressive claims given its historical complicity in the legitimation of imperialist policies and practices.[334] And Peter Spiro argues that there is little that a new rule would add to the informal state and non-state reactions that are already in evidence in the pushback against weaponised citizenship.[335]

324 Jain 2022.
325 Erez 2023.
326 Bauböck 2023.
327 Spiro 2023.
328 Bauböck 2023.
329 Goldman J., 'Why paper cuts hurt so much', BBC Future, 5 September 2016, Why paper cuts hurt so much - BBC Future.
330 Knott 2022.
331 Ganohariti 2022.
332 Džankić 2022; Kingston 2022.
333 *Id.*
334 Jacob-Owens 2022.
335 Spiro 2023.

Not all contributors are equally down on international law, however. Rainer Bauböck and Ramesh Ganohariti both see merit in a robust international legal norm that prohibits citizenship weaponisation and put forward specific principles that should guide the development of this norm,[336] whereas Noora Lori urges exploring the potential of inter-state leverage and regional mobility agreements as legal and non-legal avenues that could complement any emerging global norms to rein in weaponisation.[337]

The differences in views amongst the contributors reveal fundamental tensions in the concept of citizenship on the one hand, and the legitimacy of international law on the other. Džankić and Kingston's response touches on one of the core questions, not just in law, but in political theory on why we value citizenship in the first place and whether it is best conceived as a state of being—or a practice that is lived and enacted. Jacob-Owens' important intervention on the compromised character of international law implicates age-old questions on whether the master's house can be dismantled using the master's tools. The debate between Spiro, Ganohariti, Bauböck**,** and Lori mirrors the ones that international lawyers have had for decades on the efficacy of soft law versus hard law and whether one is necessarily superior to the other. [338] To try and tackle these issues with the seriousness they deserve would be an ambitious undertaking even for a book project, let alone a rejoinder.

While I am sympathetic to Džankić and Kingston's republican view of citizenship that foregrounds political education and agency,[339] my more immediate concern is how the law should evolve in the here and now which is marked by its relative absence. Likewise, I heed Jacob-Owens' call to be ever-vigilant towards a seemingly progressive international legal norm being misused for ends that hurt rather than help vulnerable individuals as well as collectives.[340] I nonetheless remain cautiously optimistic about the ability of a precisely crafted international legal rule to play an important role in curtailing weaponised citizenship. Not because any such norm will automatically invite compliance—which legal norm, domestic or international, can claim perfect compliance anyway?—but because it may be the thumb that helps tip the measuring scale that a state uses in calculating the risks versus rewards of implementing measures such as passportisation in the direction of non-weaponisation. This does not mean that the additional factors that Spiro and Lori emphasize,[341] such as regional legal instruments, horizontal counter-inter-state responses and leverage, or condemnation by international NGOs, will be irrelevant. To the contrary, they will be important additional counter-weights in tilting the scale away from weaponisation. But precisely because horizontal non-legal measures are reliant on the good will and self-interest of states and other entities, they will be prone to selective outrage and ad hocism, similar to the differential treatment one witnesses in another equally important domain of sovereignty — border control — where we have seen the exceptionally progressive treatment of Ukrainian asylum seekers versus refugees from other parts of the world.[342]

Will an international legal rule make the problem worse?

Even some of the contributors who may be positively disposed to international law share some common ground with the international law sceptics in having reasons to be concerned about the collateral effects of an international legal rule regulating oppressive nationality. Some of these relate to the feasibility of devising a rule that will be sufficiently precise to fully account for ground realities, as Eleanor Knott**,** Lior Erez**,** and Timothy Jacob-Owens highlight.[343] The worry is that no rule would be able to neutralise the methods through which states wield weaponised citizenship without simultaneously inflicting damage on some of the vulnerable or minority populations that deserve international protection.

336 Ganohariti 2022; Bauböck 2023.
337 Lori 2023.
338 Spiro 2023; Ganohariti 2022; Bauböck 2023; and Lori 2023.
339 Džankić 2022; Kingston 2022.
340 Jacoh-Owens 2022.
341 Spiro 2023; Lori 2023.
342 Ramji-Nogales, J. (2022), 'Ukrainians in Flight: Politics, Race, and Regional Solutions', *AJIL Unbound,* 116, 150-154.
343 Knott 2022; Erez 2023; Jacob-Owens 2022.

As Jelena Džankić argues,[344] in many cases, states would not be able to weaponise citizenship if they were not helped along by individuals who were minded, persuaded or compelled to make the strategic choice to accept the nationality on offer. Would an international law rule targeting state abuse then also end up targeting individual choice? Timothy Jacob-Owens raises a different, but no less serious, concern with respect to the potential impact of an international law of nationality on individual choice: [345]states standing the concept of weaponised citizenship on its head to *deny* nationality rights to those who would have otherwise have legitimate claims to citizenship acquisition on remedial grounds. For Jacob-Owens, it would be virtually impossible for international law to be able to meaningfully distinguish between weaponised citizenship and reparative citizenship, inadvertently strengthening the hands of imperial states such as the United Kingdom that seek to delegitimise demands for remedial citizenship by formerly colonized groups such as the Chagos Islanders. Finally, Bronwen Manby and Ramesh Ganohariti highlight the risk that an international law of nationality that sanctions oppressive nationality would not only penalise the state responsible for the oppression but also those whom it oppresses.[346] Pointing to measures such as the ban on dual citizenship and the non-recognition of passports and travel documents issued by the state weaponising citizenship, Ganohariti and Manby draw attention to the plight of the bearers of these documents who as a consequence find themselves with reduced rights to mobility and social welfare.[347]

I am grateful to these responses for foregrounding a vital issue that any international law of nationality must grapple with: how do we hold accountable the agent responsible for citizenship weaponisation rather than its recipients who may face constrained choices and compromised agency? One could argue that designing a sufficiently precise legal rule that is neither under-inclusive nor over-inclusive, to borrow Lior Erez's terminology, is exactly what lawyers try to do all the time.[348] No master drafter will be able to come up with an international rule that never fails to capture any instances that it should, or conversely, that never over-reaches in its zeal to be as comprehensive as possible. Like the rules of grammar, it is in the nature of legal rules to be fuzzy around the core with boundaries that may need to expand or contract through exceptions, and exceptions to exceptions, that are revealed only in the application of the rule to concrete cases.

One can imagine approaching the development of an international law of nationality in one of two ways: as open-ended international law standards revolving around core questions of consent, sovereignty, human rights impacts, reparations, etc. that subsequently undergo rulification — this would make my proposal for appropriate fora for adjudication all the more salient. Or one could have the bulk of the substantive choices on the balance to be struck between these concepts determined by drafters, such as treaty negotiators, with the adjudicator entrusted with interpretative freedom at the margins and in relation to the individual facts in issue. It is in the latter spirit that I read Ganohoriti's three conditions for when international law should restrict oppressive nationality attribution[349] and Bauböck's proposal for a hierarchy of rules prioritising the territorial integrity and stability of a state over both the state's prerogative to designate its nationals and individual consent to citizenship acquisition.[350] Another possible option is to take a cue from international and regional human rights instruments that often have a broadly formulated right, e.g., the right to free speech, that is then subject to a series of exceptions, for example, the restrictions in the interests of public order, democratic values and so on. Which model would make sense for the international law of nationality would need to be worked out not just on the basis of abstract principles but also the resources that would be required for its practical implementation.

344 Džankić 2022.
345 Jacob-Owens 2022.
346 Manby 2023; Ganohariti 2022.
347 Id.
348 Erez 2023.
349 Ganohariti 2022.
350 Bauböck 2023.

Conclusion

At the time the opening essay in this forum was published, Russian passportisation efforts in Ukraine were steadily being expanded. Recent reports indicate an escalation in terror tactics being applied in Russian occupied territories such as Kherson and Zaporizhzhia, with Ukrainian citizens being confronted with the impossible options of either accepting Russian citizenship or having their property confiscated and facing forcible deportation.[351] These individuals are unlikely to find much comfort in the snippets of official advice on what they should do: 'If it is possible not to take a Russian passport, then try not to take one. But if you have to take a Russian passport to avoid oppression and torture, then take one.'

As this forum illuminates, the circumstances in which individuals come to acquire weaponised citizenship rarely present in such binary ways. While for some such a passport may be the only way to escape torture, for others, it represents the prospect—even if one seldom realized—of liberation from second-class status in the country of original nationality. An international law of nationality that fails to engage with empathy with the many reasons why citizenship comes to be invested with so much meaning, both positive and negative, will be a poor bulwark against weaponised citizenship.

351 Rzheutska L. and Sokolova H., 'Russia forces occupied Ukrainians to change citizenship', DW, 5 May 2023, Russia forces occupied Ukrainians to change citizenship – DW – 05/05/2023.

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