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Russia's 'Passportization' and the Pitfalls of 'Personal Annexation' in the Post-Soviet Space: Recasting the Limits of Nationality Attribution in International Law?

Victor S. Mariottini de Oliveira

European University Institute

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Abstract

‘Passportization’ refers to the *en masse* conferral of derivative nationality to the population of a foreign State within a relatively short time span, typically accompanied by the symbolic distribution of passports. The term has been used to single out a systemic policy of extraterritorial naturalizations involving the Russian Federation and its alleged kin minorities resident in the post-Soviet space, especially in the contested regions of Georgia (Abkhazia and South Ossetia), Moldova (Transnistria), and Ukraine (Donetsk, Luhansk, and Crimea). Apart from responding to nationality demands of non-resident populations with close ties to the conferring State, passportization can have a systemic power-enhancing dimension when tailored to create objective criteria for extraterritorial jurisdiction. Although the attribution of nationality has been traditionally considered as part of the *domaine réservé* of States, only modestly limited by international law, the allegedly exorbitant scale, speed, and extraterritorial effects of Russia’s passportization raise questions on its compatibility with the principles of sovereign equality, self-determination, and non-intervention, and others. While passportization can be a maneuver aimed at ‘weaponizing’ citizenship to foster instability and patronage, it can also constitute a legitimate expression of greater integration between the conferring State and its kin minorities in the near abroad. The present paper seeks to investigate what elements shape the limits of nationality attribution and condition the legality of Russia’s passportization in the post-Soviet space, while also identifying grounds of ‘credible’ norm contestation in a trilateral relation involving the interests of the conferring State, the nationality-aspiring population, and the affected State where they reside. The present analysis also pays heed to the ‘civilizational’ dimension of the competing iterations of international law on nationality attribution, which may be currently undergoing a recasting process in the experimental post-Soviet space.

Keywords

Passportization, extraterritorial naturalization, nationality, Russia, post-Soviet space, Eurasia

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1. Introduction

'Passportization' refers to the *en masse* conferral of derivative nationality to the population of a foreign State within a relatively short time span, typically accompanied by the symbolic distribution of passports. The term has been used to single out a systemic policy of extraterritorial naturalizations involving the Russian Federation and its alleged kin minorities resident in the post-Soviet space, especially in the contested regions of Georgia (Abkhazia and South Ossetia), Moldova (Transnistria), and Ukraine (Donetsk, Luhansk, and Crimea).

The origins of such practice can be traced back to the early 1990s,[1] and it has since grown in intensity and scope after the Russo-Georgian War of 2008 and in the period leading to the annexation of Crimea in 2014.[2]

Apart from responding to nationality demands of foreign populations with close ties to the conferring State, passportization can have a systemic power-enhancing dimension when tailored to create objective criteria for extraterritorial governance. More specifically, the conferring State can affirm an interest in exercising prescriptive jurisdiction over its naturalized citizens and in guaranteeing their protection abroad, with potentially destabilizing effects on third States, particularly in their capacity to organize themselves domestically in a free manner, a fundamental aspect of sovereignty.

Although the attribution of nationality has been traditionally considered part of the *domaine réservé* of States, only modestly limited by international law, the allegedly exorbitant scale, speed, and extraterritorial effects of Russia's passportization raise questions concerning its compatibility with the principles of sovereign equality, self-determination, and non-intervention, among others. Passportization may characterize a maneuver aimed at weaponizing citizenship[3] to foster instability and patronage in the post-Soviet space, reminiscent of an imperialistic overstretch.

In fact, it is the very ambiguity of such policy that poses far-reaching problems, as the initiative can be both envisaged as a discretionary humanitarian measure to afford a certain kin war-torn population access to better life conditions, or it may simply be a calculated step towards the 'personal annexation' of individuals residing in a third State, threatening the integrity of the latter in multiple ways. The antagonistic interpretations of passportization in what some consider to be Russia's legitimate *Großraum* or 'greater space' expose a 'civilizational' clash[4] in an otherwise 'universal' international law, where the regional peculiarities of state practice force a reconsideration of the general normative framework.

With this backdrop, the present paper explores the elements that shape the limits of nationality attribution and tentatively condition the legality of Russia's passportization in the post-Soviet space, identifying grounds of 'credible' norm contestation in a trilateral relation involving the interests of the conferring State, the nationality-aspiring population, and the affected State where they reside. Heed is also paid to the 'civilizational' dimension of the competing iterations of international law on nationality attribution, which may be currently undergoing a recasting process in the experimental post-Soviet space.

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[1] Anne Peters, 'Extraterritorial Naturalizations: Between the Human Right to Nationality, State Sovereignty, and Fair Principles of Jurisdiction' (2010) 53 German Yearbook of International Law, 635.

[2] *See* Merle Mairge, 'Crimea – The Achilles Heel of Ukraine' (2008) International Centre for Defence Studies, Estonia; Jakob Hedenskog, 'Crimea after the Georgia Crisis' (2008) Swedish Defence Research Agency, FOI-R--258-SE.

[3] *See* Karin Traunmüller, 'Kin-states and Extraterritorial Naturalisation - Some Reflections under International Law (2016) Austrian Review of International and European Law 18, 99-152*;* Neha Jain, 'Weaponized Citizenship: Should International Law Restrict Oppressive Nationality Attribution?' (*European University Institute Global Citizenship Observatory*, 21 December 2022) <https://globalcit.eu/weaponized-citizenship-should-international-law-restrict-oppressive-nationality-attribution/> accessed 19 January 2023.

[4] Lauri Mälksoo, *Russian Approaches to International Law* (Oxford University Press 2015).

Part two offers an overview of nationality attribution and its consequences in international law. Part three focuses on extraterritorial naturalizations and the different interests that must be considered as part of its performance, setting out the normative confines that have steered the practice of extraterritorial naturalization in international law. Part four provides an outlook of the different instances of passportization promoted by Russia in Crimea, Transnistria, Abkhazia, South Ossetia, and the Donbas, with a reflection on the issue of plain illegality and 'demonstrably rubbish justifications'[5] raised by the latest developments on passportization since the war erupted in Ukraine (2022). Next, Part five explores the notion of abuse of rights as applied to Russia's alleged 'dirty goals' in promoting extraterritorial naturalizations. Part six offers a different perspective on grounds often used to disqualify extraterritorial naturalizations and contends that there is a 'credible' space for norm contestation more in line with a Russian approach to international law. Finally, Part seven promotes reflection on the legal, territorial, and psychological frontier between the 'West' and the *Russkyi mir* which makes the post-Soviet space a region of 'international lawfare' in terms of nationality attribution.

2. Nationality and Naturalization in International Law

Nationality can be understood as the legal and political bond connecting a State to an individual, having as a basis a social fact of attachment.[6] It determines the personal scope of diplomatic protection and constitutes a recognized 'head' for the exercise of extraterritorial jurisdiction. An individual's nationality also determines the applicable regimes of migration, territorial admission, enemy status in wartime, enjoyment of political rights, protection against extradition, access to social security benefits, access to international tribunals,[7] and other rights "inherent in membership in a political community".[8] Nationality can arguably be envisaged as a constituent element of statehood to the extent that there is no statehood without a nation consisting of nationals.[9] Conversely, nationality entails the imposition of certain obligations on the individual which often includes military conscription, jury service, tax liability, and "loyalty and fidelity"[10] to the State.

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[5] Fuad Zarbiyev, 'Of Bullshit, Lies and "Demonstrably Rubbish" Justifications in International Law' [2022] Völkerrechtsblog <https://voelkerrechtsblog.org/of-bullshit-lies-and-demonstrably-rubbish-justifications-in-international-law/> accessed 15 February 2023.

[6] *Nottebohm Case (Liechtenstein v. Guatemala); Second Phase*, International Court of Justice (ICJ), 6 April 1955, 23.

[7] It determines the jurisdiction of the International Centre for Settlement of Investment Disputes pursuant to Article 25 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 18 March of 1965, UNTS 575, 159. The same logic is replicated in most bilateral investment treaties providing national investors of the contracting parties with access to instances of international dispute settlement.

[8] *Case of the Yean and Bosico Children v. The Dominican Republic*, Inter-American Court of Human Rights (IACrtHR), 8 September 2005, para 137.

[9] While Article 1(a) of the 1930 Montevideo Convention on the Rights and Duties of States determines that 'a permanent population' is necessary for the configuration of statehood, it is hardly the case that a political entity could maintain the quality of statehood without having a minimum number of 'nationals' bound to it by duties of fidelity and allegiance as a matter of practice. *See* Jost Delbrück, Rüdiger Wolfrum and Georg Dahm, 'Völkerrecht' (2., völlig neu bearbeitete Aufl, W de Gruyter 1989); Dinh Nguyen Quoc, Patrick Daillier and Alain Pellet, 'Droit International Public' (6e éd. entièrement ref, LGDJ 1999); Andrew Grossman, 'Nationality and the Unrecognised State' (2001) 50 International and Comparative Law Quarterly, 849-876.

[10] *Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, OC-4/84, Inter-American Court of Human Rights (IACrtHR), 19 January 1984, para 35.

Individuals acquire nationality by either 'original' or 'derivative' means.[11] 'Original' nationality refers to the automatic acquisition by birth, following the traditional criteria or *jus soli* or *jus sanguinis*, or a combination of both, depending on the requirements outlined in domestic legislation. 'Derivative' nationality, in turn, refers to a nationality that is obtained at a later stage in an individual's life, usually acquired on a voluntary basis via a request or application to the competent State authorities, who grant it upon the fulfillment of pertinent requirements oftentimes based on residence, biological descent, language proficiency, ethnic ties, or a given combination of these elements. The 'derivative' attribution of nationality, performed upon stateless or foreign individual is referred to as *naturalization*, the term of choice throughout this study. It is important to distinguish, from the outset, individual naturalizations from collective naturalizations, as the latter imply changes in nationality operated by law (*ipso jure*) upon a designated group of individuals, as opposed to a model based on voluntary applications. This is a somewhat rare instance of change in nationality historically associated with scenarios of state succession.[12]

The present paper is concerned with problems of derivative nationality, more specifically with *en masse* individual naturalizations which may amount to a *de facto* collective naturalization.[13] Naturalization "is not a matter to be taken lightly"[14] as it causes the interruption of bonds of allegiance and the subsequent formation of new ones, which may turn out to be a multilayered and impactful phenomenon for both involved States and the individual herself. The consequences arising from nationality that are particularly concerning in the context of passportization include, but are not limited to, the exercise of prescriptive jurisdiction on grounds of active or passive personality, entailing the extraterritorial application of domestic laws, and the right of States to protect their nationals abroad, which may imply the use of forcible means in certain circumstances.[15]

Early in the 20th century, nationality questions were situated "principally within a State's domestic jurisdiction",[16] being only marginally limited by international law in the form of treaty obligations.[17] The voluntarist approach formulated by the Permanent Court of International Justice (PCIJ) held discretion in nationality conferral to be unbound in the absence of concrete rules to the contrary, with no limitations to be found in general international law. However, as conflicts of allegiance related to military service obligations of dual nationals grew in relevance, along with instances of forced conferral and arbitrary loss of nationality, new ideas aimed at

[11] Paul Weis, *Nationality and Statelessness in International Law* (2d ed, Sijthoff & Noordhoff 1979).

[12] The compatibility of *ex lege* naturalizations with international law is subject to the existence of an appropriate connection and the requirement of consent, which may be satisfied with a statutory right of refusal within a certain time period. Ruth Donner, *The Regulation of Nationality in International Law* (2nd ed, Transnational Publishers 1994). *See* generally International Law Commission, 'Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries)', 3 April 1999, Supplement No. 10 (A/54/10).

[13] Anne Peters (n 1), 698-699. Further discussed in Part 3.

[14] *Nottebohm Case* (n 6), 24; *Salem Case* (Egypt, U.S.A.), Award, 8 June 19322 RIAA 1161.

[15] Tom Ruys, 'The "Protection of Nationals" Doctrine Revisited' (2008) 13 Journal of Conflict and Security Law 233, 236-237; Natalino Ronzitti, 'Rescuing Nationals Abroad Trough Military Coercion and Intervention on the Grounds of Humanity' (Nijhoff 1985); Thomas C Wingfield, 'Forcible Protection of Nationals Abroad' (2000) 104 Dickinson Law Review 439.

[16] *Nationality Decrees Issued in Tunis and Morocco*, *Advisory Opinion*, 1923 P.C.I.J. No. 4 (Feb. 7), 24.

[17] *Acquisition of Polish Nationality*, *Advisory Opinion*, 1923 P.C.I.J. (ser. B) No. 7 (Sept. 15), 16.

reaching a fair repartition of jurisdiction over the individual were proposed. One eye-catching innovation was introduced in Article 1 of the 1930 Hague Convention on Certain Question Relating to the Conflict of Nationality Law, which expanded the array of international legal sources imposing limitations on nationality:

> [i]t is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.[18]

With the consolidation of similar formulas in more recent instruments,[19] it became clear that although a State is exclusively competent to determine its nationals, the opposability of such nationality depends on general international law. This means third States are under no obligation to recognize nationality when it defies established normative boundaries, which at the time were rather exceptional.[20] This issue came before the International Court of Justice in the revered *Nottebohm* case in the context of diplomatic protection exercised on behalf of a national whose bond of nationality with the applicant was deemed not to be based on "a genuine connection of existence, interests and sentiment",[21] being instead vitiated by abuse of law and fraud. The often misinterpreted judgement[22] does not address the validity of a nationality conferral *per se* under international law or its compatibility with Liechtenstein's municipal law, but rather the opposability of nationality in a fraudulent context, which secures the option of non-recognition for third States.[23] In any case, the judgement consolidated the maxim that nationality must, to a certain extent, be a "translation into juridical terms of the individual's connection with the State which has made him its national".[24] The so-called 'genuine link' criterion adopted by the Court has since reverberated extensively on the literature of nationality in international law, having undergone a transformation from "dictum to dogma".[25]

Nevertheless, the status and extent of the 'genuine link' requirement remains contentious. While factors such as center of economic interest, habitual residence, and family ties are relevant, the acceptability of linguistic, religious, ethnic, and cultural ties in the absence of a direct physical element (such as residence) is disputed. Otherwise, the nature of the criterion itself is variably described as a rule of customary law, general principle, or an expedient political guideline to foster self-restraint in States as they design and implement their municipal laws on nationality. Professor Sloane argues that the 'genuine link', as a "self-conscious, meticulous

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[18] Hague Convention on Certain Questions Relating to the Conflict of Nationality Law (adopted 12 April 1930, entered into force 1 July 1937) 179 UNTS 89 (HCNL).

[19] Article 3(1), European Convention on Nationality (European Treaty Series, No. 166).

[20] Hersch Lauterpacht (ed) Oppenheim's International Law: Volume 1 Peace (6th edn., Longmans 1947), 580.

[21] *Nottebohm Case* (n 6), 23.

[22] Rayner Thwaites, 'The Life and Times of the Genuine Link' (2018) 49 Victoria University of Wellington Law Review 645.

[23] *Nottebohm Case* (n 6), 23.

[24] *Ibid.*, 23.

[25] Robert Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 Harvard International Law Journal 1, 24-29.

effort" of the Court,[26] is better understood as a judicial parameter for dispute resolution – a time-bound and context-specific way out, mainly applicable to disputes involving dual nationality, whereby the functional or predominant one can be more easily unveiled. Although appropriateness is required from the social attachment underpinning nationality, the concept of 'genuine link' has a "dubious pedigree".[27]

This paper submits that nationality attribution remains in State discretion, being modestly limited by treaty, customary law, and general principles of international law. Rather than imposing a strict framework for nationality attribution based on the strength of a link between the individual and the State, international law is concerned with achieving a stable repartition of power between States that might 'compete' for an individual, paying close attention to the purposes of nationality and the underlying context in which it is granted. Such parameters are of fundamental importance to ascertain whether a given nationality is exorbitant, and hence unopposable, in the international plane.[28]

3. The Normative Confines of Extraterritorial Naturalization

Unlike original acquisitions of nationality, extraterritorial naturalizations involve a "triangle of actors"[29] with their respective interests that oftentimes clash, especially in the context of passportization: the conferring State, the nationality-aspiring population, and the affected State where they reside (*i.e.*, the former State of nationality) which either loses a citizen or chooses to tolerate dual nationality. As such, international law must strike a fair balance between an individual's aspirations, on the one hand, and the repartition of sovereign competences between the involved States, on the other, bearing in mind their legitimate interests in terms of jurisdictional reach. Arguably, international law should also consider the stability of the international community in striking such balance,[30] although nationality concerns primarily bonds between individuals and States. Extraterritorial naturalizations are constrained by the requirement of individual consent, the prohibition of discrimination, the obligation to prevent statelessness, and the prohibition of collective extraterritorial naturalizations, which are guided by the principles of non-intervention and sovereign equality.[31]

3.1. Consent

Individual consent is a requirement for the naturalization of persons of full age who are nationals of another State.[32] The requirement originated from a reaction to imposed nationality

[26] *Ibid.*, 17-24.
[27] *Ibid.* An alternative to the 'genuine link' is formulated in terms of *appropriateness*, further explored in items 3.5 and 6.2.
[28] For a discussion on the 'genuine link' requirement for nationality of ships *see* B.H. Oxman and V. Bantz, 'The M/V 'Saiga' (No.2) (St. Vincent and the Grenadines v Guinea), Judgement (ITLOS Case No.2)' (2000) 94 American Journal of International Law 149.
[29] Peters (n 1), 657.
[30] *Ibid.*, 673-674.
[31] Costica Dumbrava, Nationality, Citizenship and Ethno-Cultural Belonging – preferential Membership Policies in Europe (Palgrave Macmillan 2014), 32.
[32] Article 15, Harvard Draft Convention on Nationality; also iterated as a facet of the self-determination principle according to Badinter Commission Opinion No. 2, 183-184. However, instances of state succession and modification of state boundaries may constitute an exception is to the volitional change of nationality allowing for collective naturalizations, so long as the right of option is present.

by Latin American States in the 19th century on grounds of residence or acquisition of real estate, so as to prevent the original State of nationality from exercising diplomatic protection in the New World.[33] While the original focus was to safeguard the interest of States in preserving their nationals, the requirement of consent gradually acquired a human rights dimension, being envisaged as a protection of individual liberty in the Universal Declaration of Human Rights (UDHR). Article 15 states "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".[34] Consequently, if consent is absent or not manifested freely, the naturalization in question is contrary to international law. While threat, force, or pressure certainly vitiate consent, a more nuance situation arises from misrepresentation or promised advantages. According to Peters, a 'soft' imposition of nationality is not proscribed by international law as it stands, even if it could be argued that a 'bought' consent is not free as a matter of principle.[35] Therefore, the promise of social benefits including pensions or other privileges connected to a nationality that might play a fundamental role is an individual's decision to apply for a nationality does not vitiate consent *per se*, so long as the conferring State does not make active publicity for its nationality.[36]

However, it is submitted that the individual liberty of choice that individuals enjoy in choosing their nationality is limited.[37] There may be contextual limitations to the right of choice when certain countervailing governmental interests come into play, such as the self-preservation of statehood for the affected State and the unimpeded exercise of territorial jurisdiction over its population. In this sense, unbound 'forum shopping' for nationality is not protected by international law.[38] Conversely, as the right of an individual to change her nationality is an aspect of human dignity[39], arbitrary refusals to release a national are incompatible with Articles 15(2) of the Universal Declaration of Human Rights and 20(3) of the American Convention on Human Rights in scenarios where dual nationality is not tolerated by the involved States.[40]

3.2. Prohibition of Discrimination

Nationality attribution is also limited by a general prohibition of discrimination arising from multiple international human rights instruments. Article 26 of the International Covenant on

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[33] *See* Weis (n 11), 106. For example, the Brazilian Nationality Decree of 15 November 1899 determined that all foreigners domiciled in Brazil would be considered Brazilian unless they made a declaration to the contrary in six months counting from publication of the Decree.

[34] Similar provisions found in the Article 20 of the American Convention on Human Rights; Article 7 of the Convention on the Rights of the Child, and Article 29 of the Arab Charter of Human Rights.

[35] Peters (n 1), 668

[36] *Ibid.*

[37] José Francisco Rezek, 'Le droit international et la nationalité' (1986-III) Collected Courses of the Hague Academy of International Law, Brill, 361.

[38] International Law Commission. Draft Articles Nationality in Relation to Succession of States, Comments and Observations from Government, 11.

[39] Johannes M. Chen 'The Right to Nationality as a Human Right' (1991) 12 Human Rights Law Journal, 13.

[40] *See* Peters (n 1), 663 for the controversy on the most appropriate textual interpretation of such articles, which involves the reach of the term reach of the term *arbitrarily*. For a contrary view; Eric Fripp. 'Passportisation: Risks for International Law and Stability – Response to Anne Peters' (2019) EJIL:Talk!, available at: <https://www.ejiltalk.org/passportisation-risks-for-international-law-and-stability-response-to-anne-peters/>.

Civil and Political Rights establishes that the law "shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, political or other opinion, national or social origin, property, birth or other status".[41] In a similar vein, Article 1(3) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that "[n]othing in the Convention may be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate any particular nationality".[42] Similarly, Article 5(1) of the European Convention on Nationality determines that "[t]he rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, color or national or ethnic origin".[43] Finally, in the context of statelessness prevention and loss of nationality, Article 9 of the Convention on the Reduction of Statelessness determines that "[a] Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds".[44]

The common thread of the prohibition in such instruments is that States should abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups.[45] However, as a matter of State practice, elements of cultural, linguistic, religious, and ethnic character can be found in domestic laws on nationality as reasons for a preferential naturalization of individuals. Intangible links such as the aforementioned could be stronger and more meaningful than residence, especially if one resides in the close vicinities of the naturalizing State which are historically inhabited by a kin minority – a situation that is relevant in the context of Russia's passportization. Therefore, it is not always easy to distinguish between purely discriminatory norms of naturalization, or norms that have discriminatory effects, and ones that epitomize a legitimate fact of social attachment. Conversely, there is no such 'grey zone' for different treatment based on purely biological features, such as gender or race, which are outright discriminatory at this stage.[46]

3.3. Obligation to Prevent Statelessness

The requirement of consent is not absolute becuase it must be balanced against a conferring State's international commitments like the obligation to prevent statelessness. In other words, States may override the consent of individuals in certain situations to prevent or revert situations of statelessness.[47] Pursuant to Article 1 of the Convention on the Reduction of Statelessness, States are only obliged to grant their nationality to individuals who are born in the territory of a State party to the Convention or are born to parents that hold the nationality of such states.[48] The obligation manifests itself in three dimensions. Firstly, States must refrain from withdrawing the nationality of individuals who would otherwise become stateless.

[41] Article 26, International Covenant on Civil and Political Rights.
[42] Article 1(3), International Convention on the Elimination of All Forms of Racial Discrimination.
[43] Article 5(1), European Convention on Nationality
[44] Article 9, Convention on the Reduction of Statelessness
[45] *Case of the Yean and Bosico Children* (n 8), para141.
[46] Dumbrava (n 31), 79.
[47] The obligation to prevent statelessness has arguably achieve customary *status* according to the Council of Europe's Explanatory Report to the European Convention on Nationality, para 33.
[48] Articles 1 and 4, Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

Secondly, States must facilitate the acquisition of nationality by stateless individuals. Thirdly, States who refuse to let go of a national based on a reasonable fear of that action resulting in statelessness cannot be accused on acting arbitrarily.[49]

The multiplication of grounds for nationality conferral in contexts of *en masse* extraterritorial naturalizations may, according to the peculiarities of the targeted population, constitute compliance with the obligation to facilitate nationality rather than an infringement on the prohibition of imposed naturalization. While the proposition might seem straightforward, the controversial issue of *de facto* statelessness poses greater uncertainties than *de jure* statelessness as far as extraterritorial naturalizations are concerned.[50] *De facto* statelessness might allow for the conferral of nationality to individuals who are unable or unwilling, for valid reasons, to enjoy the benefits of an original nationality; or are unable to avail themselves of the protection of the original-nationality State for reasons related to conflict and lack of effectiveness. This active ground of norm contestation is further developed in Part six of this paper.

3.4. Prohibition of Collective Extraterritorial Naturalizations

Collective naturalizations, which operate *ex lege* and not on the basis of individual applications, and commonly draw on criteria as residence, land ownership, or marriage with a native,[51] are only acceptable in international law if they reflect a sufficient connection with the naturalizing State and are not performed against an individual's will.[52] Since nationality in this case is granted in the form of a tentative imposition, domestic legislation envisioning collective naturalizations must provide some mechanism for individuals to opt out or decline the naturalization. This idea was originally born out of a preoccupation with States' interests rather than individuals' freedom and dignity, considering that a State could not be unwillingly divested of its nationals by the actions of another equally sovereign State.[53]

Doctrine suggests that a minimal factual relationship is lacking when the individual subject to naturalization is not a resident of the naturalizing State, especially if he or she is resident in their State of original nationality,[54] which would make collective extraterritorial naturalizations illegal by default under international law. For example, a maneuver of collective naturalization encompassing the entire population of a foreign State would represent a flagrant intervention in the domestic affairs of the latter because it would deprive the State of its entire population

[49] Peters (n 1), 638-640.

[50] United Nations High Commissioner for Refugees, 'UNHCR and *De Facto* Statelessness' (2010) Legal and Protection Policy Research Series (LPPR/2010/01), available at: <https://www.unhcr.org/4bc2ddeb9.pdf>.

[51] Peters (n 1), 692.

[52] Weis (n 11), 110.

[53] As discussed above, the scenario of State succession does not require such consent-based 'opt out' mechanism. Otherwise, there is no obligation to tolerate dual citizenship – many domestic laws provide for automatic loss of citizenship upon the acquisition of a new one.

[54] Peters (n 1), 689; Article 14, Harvard Draft Convention: "a state may not naturalize an alien who has his habitual residence within the territory of another State". Paragraph 51 of general comments to the Draft Convention includes the following statement: "[i]n general, it may be said that a proper regard for other states makes it unreasonable for any state to attempt to extend the operation of its naturalization laws so as to change the nationality of persons at tine resident in other states."

and have its statehood diminished, threatening its ability to exercise unimpeded territorial jurisdiction over the resident (and now likely foreign) population.

Peters contends that the *en masse* conferral of nationality to individuals that reside abroad, even if carried out as a response to freely made applications, can have the practical effect of a prohibited extraterritorial naturalization depending on its reach, scale, and effects.[55] Therefore, passportization policies depends on the actual circumstances, constitute a *de facto* extraterritorial collective naturalization in violation of international law. Further implications of the principles of non-intervention and sovereign equality are analyzed under the response framework of the abuse of rights doctrine in Part six.

3.5. Towards an 'Appropriate' Connection Requirement?

Article 11(2), 24 and 25(2) of the ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States suggest there must be an *appropriate connection*[56] between the individual and the naturalizing state in the application of a right of option. This is a more forgiving standard compared to the traditional idea of 'genuine link' put forward in the context of active legitimacy to exercise diplomatic protection. If this requirement is accepted as limiting the naturalization powers of States by binding the opposability of nationality to the existence of a *sufficient* rather than a 'genuine' connection on personal or territorial grounds, only arbitrary or exorbitant conferrals of nationality would ultimately be proscribed in international law. One could similarly argue, however, that this concept postpones a necessary confrontation with the same problem posed by the 'genuine link.' This is the case because what constitutes an appropriate ground for naturalization beyond the generally agreed upon residence may very well be in the eyes of the beholder or may require an analysis of the greater political background of the measure for one to assess whether the legislative choice is legitimate, or rather pursues suspicious political goals. For Peters, "the larger the groups of persons naturalized are, and the more mass naturalizations upon request resemble formally collective (*ex lege*) naturalizations, the closer links between the persons and the naturalizing State must be".[57]

4. An Overview of Russia's 'Passportization' in the Post-Soviet Space

The foundations of passportization on a domestic level can be found in Federal Law No. 62-FZ of 31 May 2002 'On Citizenship of the Russian Federation', specifically in Article 14 which provides for a simplified naturalization procedure exempt of residence requirements for (a) foreign nationals or stateless individuals having at least one parent who is a Russian citizen and resides in the territory of the Russian Federation; (b) former citizens of the USSR that were not able to acquire the nationality of successor states, and (c) foreign nationals or stateless persons having received education in the Russian Federation after July 1, 2002.[58] The normative framework of fast-track procedures was later complemented by the Executive

[55] Peters (n 1), 698-699.
[56] International Law Commission. Draft Articles on Nationality of Natural Persons in relation to the Succession of States, available at <https://www.refworld.org/pdfid/4512b6dd4.pdf>.
[57] Peters (n 1), 688.
[58] Federal Law N 62-FZ 'On Citizenship of the Russian Federation' of May 31, 2002, available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5a9d48314>.

Orders of the President of the Russian Federation No. 183 of April 24, 2019 'On the Definition of Categories of Persons Entitled to Apply for Citizenship of the Russian Federation under a Simplified Procedure for Humanitarian Purposes' and No. 187 of April 29, 2019 'On Certain Categories of Foreign Citizens and Stateless Persons who Have the Right to Apply for Citizenship of the Russian Federation under a Simplified Procedure', targeting mostly the resident population of Donetsk and Luhansk Oblasts.[59] After the Russian aggression on Ukraine, however, the scope of the concessions widened quickly – on May 25, 2022 the accelerated procedure of nationality acquisition was extended by Presidential Decree to the entire population of occupied Kherson and Zaporizhia Oblasts, and on July 11, 2022, to all the citizens of Ukraine.[60]

4.1. Crimea

A proper understanding of the Crimea case requires empirical nuance since the conditions under which Russian nationality was arguably 'weaponized' vary across time. For Knott, whether Crimea's residents were granted facilitated citizenship *before, after*, or *as a precursor* to the 2014 annexation is a key question.[61] Peters suggests Crimea has been the target of passportization since 1991, but the *en masse* character of the policy at that time is not a point of scholarly consensus.[62] While Kuzio suggests that 100,000 Crimean residents had Russian citizenship as of 2008, such numbers are not easily attributable to passportization policies. The peninsula counted thousands of Russian citizens as permanent residents since before the end of the USSR – a population of active and retired military personnel whose presence in Crimea is connected with the military bases located there.[63] Knott's empirical study conducted in 2012 and 2013 shows that most interviewed residents did not want Russian nationality and saw it as illegitimate, and that only a minority saw the acquisition of Russian nationality as a point of strategic leverage to obtain greater protection within Ukraine.[64] Rather than a preparatory act that would provide a "*post factum* justification"[65] for the annexation, the conferral of nationality in Crimea only gained the *en masse* dimension typical of passportization after the annexation.[66] Remaining a Ukrainian resident in Crimea instead of yielding to facilitated Russian nationality acquisition was an experience marked by discrimination, particularly in the

[59] President of Russia, 'List of persons entitled to apply for Russian citizenship under simplified procedure expanded', available at <http://en.kremlin.ru/acts/news/68853>.

[60] Reuters, 'Putin decree gives all Ukrainians path to Russian citizenship' (July 11, 2022), available at <https://www.reuters.com/world/europe/putin-decree-gives-all-ukrainians-path-russian-citizenship-2022-07-11/>.

[61] Eleanor Knott, 'The Weaponization of More than Citizenship' (*European University Institute Global Citizenship Observatory*, 21 December 2022) <https://globalcit.eu/weaponized-citizenship-should-international-law-restrict-oppressive-nationality-attribution/> accessed 19 January 2023.

[62] Merle Mairge, 'Crimea – The Achilles Heel of Ukraine' (2008) International Centre for Defence Studies, Estonia.

[63] Taras Kuzio, 'Russian Passports as Moscow's Geopolitical Tool'(2008) Eurasia Daily Monitor Volume: 5 Issue: 176, Jamestown Foundation, available at <https://jamestown.org/program/russian-passports-as-moscows-geopolitical-tool/>.

[64] Eleanor Knott, 'Kin Majorities: Identity and Citizenship in Crimea and Moldova' (2022) McGill Queen's University Press.

[65] Charles King 'Crimea: the Tinderbox' (2014, New York Times), available at <https://www.nytimes.com/2014/03/03/opinion/crimea-the-tinderbox.html

[66] Sam Wrighton, 'Authoritarian Regime Stabilization through Legitimation, Popular Co-Optation, and Exclusion: Russian Pasportizatsiya Strategies in Crimea' (2018) 15 Globalizations 283.

form of difficulties in retaining property, finding work, accessing healthcare, and exercising civil rights. Such coercive environment made surrendering Ukrainian nationality in favor of the Russian a necessity for many. Blackmailing and selective law-enforcement against recalcitrant Ukrainian passport holders has also been reported.[67] Therefore, the structural constraints imposed by the occupying authorities made genuine consent in nationality acquisition since the annexation questionable.

4.2. Transnistria

A separatist entity located on the left bank of the Dniester River, the Pridnestrovian Moldavian Republic, Transnistria, consists of a population of roughly half a million compared to Moldavia's total 2.6 million.[68] Transnistrian nationality is not recognized abroad, and this situation has led *de facto* authorities to accept the dual nationality of its citizens since 1995.[69] Over 90% of Transnistrians are thought to hold a second passport.[70] Since 2006, Moldova offers a facilitated process for Transnistrian residents to confirm their Moldovan nationality in special offices so they can obtain the Moldovan passport.[71] While only 28% of the population is of Russian speakers,[72] over 200,000 Transnistrians are now thought to hold Russian passports.[73] Citizenship applications peaked in the period immediately after the annexation of Crimea, which spurred local initiatives on uniting Transnistria with Russia.[74] Such developments were made possible by the 2002 Russian citizenship law and amending decrees in subsequent years which facilitated access to citizenship to stateless individuals who were previously citizens of the USSR and individuals who speak Russian and had at least one ancestor living in the territory of the former USSR.[75]

4.3. Abhkazia and South Ossetia

The long-lasting tensions between Russia and Georgia involving the so-called separatist republics of Abkhazia and South Ossetia are underpinned by a nationality conferral policy that caused nearly the entire resident population of the contested territories to now hold Russian passports. Artman submits that such policy effectively transformed Abkhazia and South Ossetia into Russian spaces inside *de jure* Georgian territory long before fighting broke out in the Russo-Georgian War of 2008.[76] Ongoing passportization has given Russia "a discursive claim to the populations of South Ossetia and Abkhazia by constructing them as part of the

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[67] Marlies Glasius, 'Extraterritorial authoritarian practices: A framework' (2018) Globalizations, 15(2): 179-197.

[68] Andrei Crivenco; Sabine von Löwis,'Shrinking Transnistria. Trends and Effects of Demographic Decline in a De Facto State' (2022) *Comparative Southeast European Studies*, vol. 70, no. 1, 47-79.

[69] Special Committee on European Affairs, '*Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova: A Report from the Association of the Bar of the City of New York'* (2006), 61(2), 89.

[70] *Ibid.*

[71] Moldovan President's Decree Regarding the Procedure Initiated for the Population Located in Transnistria to Get Moldovan Citizenship and a Moldovan Passport Free of Charge (2006) (MDA100828.E), available at <https://www.refworld.org/docid/45f1477611.html>.

[72] Nicu Popescu, 'The EU in Moldova-Settling Conflicts in the Neighborhood' (2005) The European Union Institute for Security Studies, n.60, 3.

[73] CBAP, 'Passportisation in Transnistria' (2021), available at <https://cbap.cz/archiv/4657#_ftn25>.

[74] *Ibid.*, Peters (n 1) 644-645.

[75] Article 14, Federal Law N 62-FZ 'On Citizenship of the Russian Federation' of May 31, 2002 (n 56).

[76] Vincent M Artman, 'Documenting Territory: Passportisation, Territory, and Exception in Abkhazia and South Ossetia' (2013) 18 Geopolitics 682, 683–684.

Russian political community".[77] As the Georgian civil war began to stabilize in 1994 with the central authorities losing control of the rebellious provinces under a ceasefire arrangement guaranteed by Russian peacekeeping forces, Russia intensified its military and administrative presence in the South Caucasus with a view to maintaining its sphere of influence in the near-abroad. Especially after the Rose Revolution of 2003 and the rise of Saakashvili, which renewed the desire in Georgia of bringing Abkhazia and South Ossetia 'back into the fold', Russia accelerated the systematic collection of Soviet-era documents from the respective resident populations of the contested territories, returning them with a new page inserted certifying Russian citizenship.[78] By 2008, virtually the entire population of the separatist entities had become nationals of Russia.[79] While there are unconfirmed reports of coercion in the acceptance of the new nationality, the targeted populations were eager to have greater freedom of movement, improved access to jobs, and Russian state pensions, benefits that far outperformed those stemming from their unrecognized nationalities.[80]

4.4. Donbas

By virtue of Presidential Decrees 183 and 187 of April 2019, the residents of the People's Republics of Luhansk and Donetsk were granted access to the simplified procedure to acquire Russian nationality. It is estimated that by 2021, around 530,000 individuals had been passportized in the two separatist entities.[81] Russia has justified its policy in the region on the basis of a humanitarian emergency affecting its kin minority, since Ukraine has neither funded or provided government services, nor made pension payments in the region since November 2014.[82] An economic blockade imposed by Kyiv in 2019 and the Covid-19 pandemic in 2020 further exacerbated such limitations, as crossing the contact line between the separatist entities and the rest of Ukraine to seek healthcare and other basic necessities became nearly impossible. As of November 2021, over 700,000 individuals had been internally displaced and the lives of 1.6 million had been disrupted by the conflict according to the UNHCR.[83] In this scenario, Russian nationality came as a welcome tool for the affected populations, who could then have access to social benefits and healthcare facilities by crossing the border with Russia.

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[77] *Ibid.*

[78] Inal Khashig, 'Abkhaz Rush for Russian Passports', *Institute for War & Peace Reporting* (2002), available at <http://iwpr.net/report-news/abkhaz-rush-russian-passports>, accessed 13 Aug. 2012.

[79] Artman (n 74), 690; Council of the European Union, 'Report of the Independent International Fact-Finding Mission on the Conflict in Georgia' (IIFFMCG), Vol. 3 (2009), 412.

[80] Artman (n 74), *Ibid*.

[81] *See* generally Fabiana Burkhardt et al., 'Passportization, Diminished Citizenship Rights, and the Donbas Vote in Russia's 2021 Duma Elections', Temerty Contemporary Ukraine Program, Harvard University (2022) <https://huri.harvard.edu/files/huri/files/idp_report_3_burkhardt_et_al.pdf?m=1642520438>, Timothy Jacob-Owens, 'Passportization: Russia's "Humanitarian" Tool for Foreign Policy, Extra-Territorial Governance, and Military Intervention' (*Globalcit*, 25 March 2022) <https://globalcit.eu/passportization-russias-humanitarian-tool-for-foreign-policy-extra-territorial-governance-and-military-intervention/> accessed 30 September 2022.

[82] 'Ukraine's MPs Leave Donbas Pensioners to Keep Dying for Their Pensions' (*Human Rights in Ukraine*) <https://khpg.org//en/1580942061> accessed 8 April 2023; 'Pablo Mateu: Ukrainians in Donbas Are Entitled to Their Pensions' (*UNHCR Ukraine*) <https://www.unhcr.org/ua/en/22229-pablo-mateu-ukrainians-in-donbas-are-entitled-to-their-pensions.html> accessed 8 April 2023.

[83] United Nations High Commissioner for Refugees, 'Operational Update on Ukraine, November 2021', available at <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2022/01/2021-11-UNHCR-Ukraine-Operational-Update-FINAL.pdf.>.

However, such policy was quickly fed into the overall narrative of the Kremlin supporting external intervention in case Russia's nationals were threatened by 'genocide' in Donbas,[84] which soon after materialized with the recognition of both separatist entities as States and the military aggression on Ukraine.

4.5. Latest Developments – War in Ukraine

On July 11, 2022, President Putin issued Executive Order 440 extending the fast-track procedure for Russian nationality to all citizens of Ukraine and stateless individuals residing therein. The measure came as a sequel to the orders of May 25 and May 30 which simplified the acquisition procedure for the residents of occupied Zaporizhian and Kherson. No requirements of residency in Russia, for any period, are prescribed in these instruments.[85] Ukrainian officials affirmed they would consider null and void any Russian passports issued in Ukraine under the circumstances of occupation or armed conflict, as such measures would amount to an unfettered interference in Ukraine's domestic affairs.[86] Meanwhile, the European Union High Representative for Foreign Affairs and Security Policy pledged not to recognize any attempt to forcibly change the status of subjects on Ukrainian territory.[87] On April 27, 2023, President Putin signed a decree imposing Russian nationality on all the residents of the then occupied territories of Donetsk, Luhansk, Kherson, and Zaporizhia.[88] The decree requires the targeted population to the take on the citizenship of the Russian Federation by July 1, 2024,2 and subjects recalcitrant individuals to deportation.[89]

5. Abuse of Rights and the 'Dirty Goals'?

The concept of abuse of rights in international law refers to the exercise by a State of its rights in a way that prevents third States from enjoying their own rights, or to the exercise of a right for a different end from that for which it was conceived, causing injury to a third State.[90] Consequently, States are required to exercise their rights guided by considerations of good faith and non-arbitrariness under international law. As such, the concept of abuse of rights does not inquire directly on the legality of a State's actions in terms of violation of another State's rights in the sphere of responsibility, but rather "interrogates the purpose for which that

[84] Интерфакс**, '**Козак допустил, что Россию вынудят защищать ее граждан в Донбассе', available at <https://www.interfax.ru/russia/760214>.

[85]'Putin Expands Fast-Track Russian Citizenship to All of Ukraine | Russia-Ukraine War News | Al Jazeera' <https://www.aljazeera.com/news/2022/7/11/putin-expands-fast-track-russian-citizenship-to-all-of-ukraine> accessed 8 April 2023.

[86] Patricio Barbirotto,'The Russian Citizenship Law in Ukraine and International Law', Opinio Juris, available at <http://opiniojuris.org/2022/10/06/the-russian-citizenship-law-in-ukraine-and-international-law/> accessed 8 April 2023.

[87] 'Ukraine: Declaration by the High Representative on behalf of the EU on attempts of the Russian Federation to forcefully integrate parts of Ukrainian territory', available at <https://www.consilium.europa.eu/de/press/press-releases/2022/06/03/ukraine-declaration-by-the-high-representative-on-behalf-of-the-eu-on-attempts-of-the-russian-federation-to-forcefully-integrate-parts-of-ukrainian-territory/> accessed 8 April 2023.

[88] Указ Президента Российской Федерации от 27.04.2023 No 307. Официальное опубликование правовых актов, официальный интернет-портал правовой информации (2023) <http://publication.pravo.gov.ru/Document/View/0001202304270013.> accessed 25 May 2023.

[89] *Ibid*., para 14.

[90] Michael Byers, 'Abuse of Rights: An Old Principle, a New Age' (2002) 47 *McGill Law Journal,* 389-434.

right has been conferred or recognized by law".[91] Kiss provides a tripartite doctrinal categorization that facilitates the identification of abuse of rights scenarios: (a) where one state exercises its rights in a way that hinder the exercise of another state's rights, to the injury of that state; (b) where a right is exercised intentionally for an end which is different than which the right has been created and in cases where (c) the arbitrary exercise of a right results in injury to another state.[92] In a similar vein, the Explanatory Note on Point 11 of OSCE's Bolzano Recommendations on National Minorities in Inter-State Relations stresses that:

> Even though States have the right to freely determine who their citizens are, they should not abuse this right by violating the principles of sovereignty and friendly, including good neighbourly, relations. Full consideration should be given to the consequences of bestowing citizenship on the mere basis of ethnic, national, linguistic, cultural or religious ties, especially if conferred on residents of a neighbouring State.

As denoted by the recommendation, the idea of abuse of rights can be useful in analyzing whether certain factual links selected by the naturalizing State to welcome a willing foreign national are sufficient to eliminate the risk of arbitrariness and injury against third States. The naturalization of individuals in the absence of sufficient factual links must not be tolerated irrespective of consent,[93] because "every right is the legal protection of a legitimate interest" and "an alleged exercise of a right not in furtherance of such interest, but with the malicious purpose of injuring others can no longer claim the protection of the law".[94]
In the Russian practice, each scenario where passportization takes place is marked by a specific combination of ethnic, historical, religious, and family that cannot be outrightly dismissed as arbitrary, although the dimensions of the policy may certainly jeopardize the strength of the affected State's nationality and the integrity of its population in terms of statehood configuration. For Peters, "the larger the groups of persons naturalized are, and the more mass naturalizations upon request resemble formally collective naturalizations, the closer the links between the persons and the naturalizing State must be".[95]

An abuse of rights perspective on extraterritorial naturalizations would require parsimony in assessing whether any legitimate goals are pursued with the massive acquisition of nationality by foreign nationals, even if it is carried out consensually and with sufficient factual links.

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[91] Sloane (n 24), 20.

[92] 'Abuse of Rights' (*Oxford Public International Law*), available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1371> accessed 8 April 2023.

[93] OSCE High Commissioner on National Minorities, 'The Bolzano/Bozen Recommendations on National Minorties in Inter-State Relations & Explanatory Note' (2008), 19, available at <www.osce.org/hcnm/bolzano-bozen-recommendations?download=true>; "[t]he conferral of citizenship is generally considered to fall under the exclusive domestic jurisdiction of each individual State and may be based on preferred linguistic competencies as well as on cultural, historical or familial ties. When this involves persons residing abroad, however, it can be a highly sensitive issue. (...) This is particularly likely to happen when citizenship is conferred en masse, i.e. to a specified group of individuals or in substantial numbers relative to the size of the population of the State of residence or one of its territorial subdivisions." *in* Francesco Palermo and Natalie Sabanadze (eds), Appendix, 'National Minorities in Inter-State Relations' (2011) Brill-Nijhoff.

[94] Bin Cheng,'General Principles of Law as Applied by International Courts and Tribunals' (1953), Stevens, 121.

[95] Peters (n 1), 688.

Hence, the following subsections explore common criticism behind Russia's passportization with a view to shedding light on the 'dirty goals' supposedly pursued in deviation of a good faith exercise of the right to naturalize extraterritorially.

5.1. Forcible Protection of Nationals Abroad

A mass conferral of nationality to residents of a third State may serve as a pretext for the use of force in their defense. While the traditional rules on forcible action to guarantee the protection of nationals abroad have been largely replaced by Articles 2(4) and 51 of the UN Charter, current discussions are centered on the possible emergence of customary law to that effect in the post-1945 period.[96] The idea behind the protection of nationals abroad is usually framed as an iteration of the right to self-defense, meaning that nationals of a State would be covered as targets of an armed attack in the sense of Article 51 of the UN Charter.[97] Naturally, the doctrine is controversial and has a propensity for misuse, as any hostile State could implant or fabricate nationals in a third State with a view to legitimizing intervention, incurring in an archetypal abuse of rights situation. However, Greenwood contends that:

> an attack of sufficient violence upon a substantial number of a State's nationals, especially where those nationals are selected as victims *on account of their nationality* and, in particular, where they are attacked in order to harm, or put pressure upon, their State of nationality, is a more serious assault upon the State than some forms of attack upon its territory. Thus the rescue of nationals abroad may well fall within the ambit of the right of self-defence, where the territorial State itself is unable or unwilling to act.[98]

As such, any justifications under Article 51 based on said doctrine would have to involve an armed attack on individuals as a proxy for States, in the sense that they are targeted strictly on account of their nationality. While some tolerance might be expected from specific uses of force in the form of small-scale incursions to dismantle terrorist activities or hostage situations of imminent danger where the targeted individuals are symbolic of an attack on a State, large-scale interventions justified based on a general persecution against that nationality are beyond the scope of the doctrine.[99] Natoli rightly argues:

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[96] Natalino Ronzitti, 'Rescuing Nationals Abroad Trough Military Coercion and Intervention on the Grounds of Humanity' (1985) Nijhoff, 26-62; Tom Ruys, 'The "Protection of Nationals" Doctrine Revisited' (2008) 13 Journal of Conflict and Security Law 233, 236-237. The doctrine has been defended on the grounds that (a) it does not constitute a use of force in the sense of Article 2(4) of the UN Charter; (b) it expresses a customary rule which did not cease to exist after the adoption of the UN Charter; (c) it is an exception based on a 'state of necessity'; (d) it is an expression of a broader notion of humanitarian intervention and (e) it constitutes an autonomous, customary exception to Article 2(4), UN Charter separate from Article 51.

[97] Yoram Dinstein, 'War, Agression and Self Defence' (2011) Cambridge University Press (5th edn.), 259.

[98] Christopher Greenwood, 'Self-Defence' (2011) Max Planck Encyclopedias of International Law, available at < https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e401>.

[99] Ruys (n 92), 270.

> That one state can confer its nationality *en masse* on the population of another state and thereby claim a right to protect that population against the state in which that population is physically located is unsettling.[100]

However, as illustrated by the overview section on Russia's passportization practices, the idea that Russia systematically fabricates nationals with a view to potentially legitimizing intervention is more nuanced and contextual than one might assume. Elements such as the moment of operationalization of the policy, factual links required by Russian domestic law at a given moment, the conflictive background with a neighboring State, and the historic or ethno-linguistic degree of kinship with the targeted population all contribute to making each case unique. Therefore, claims of fabrication of nationals should be taken with a grain of salt. Although the invasion of Ukraine admittedly narrowed the space of credibility for Russia's initiatives of passportization, as discussed in Part six, contentions that Russia intentionally exercises its nationality-conferral competences for purposes other than those for which nationality rights are meant, or that it exercises such competences arbitrarily, must be addressed in a context-specific fashion.

5.2. 'Personal Annexation'– Individuals as a Proxy for Territory

If nationality symbolizes an individual's formal belonging to a nation-State, it also reifies the relationships between population, polity, and territory, inscribing them into the sovereign realm of a particular state. The territorial effects of passportization manifest this connection. When Russia issues passports to individuals residing abroad, the relationship it establishes is extended to the land upon which they live. It is often submitted that Russia exploits the conferral of its nationality in an instrumental manner to justify territorial claims.[101] Artman submits that passportization plays a decisive role in the discursive production of territory, constituting not only the stage of conflict but the very object of struggle.[102]

The possession of a Russian passport in neighboring contested territories "reinforces the idea that the bearer is located in a particular territory, ideational and spatial, that belongs to the Russian Federation".[103] Hence, by conferring nationality *en masse*, Russia discursively extends its sovereignty into other States' territories. In the context of the passportization policy carried out in South Ossetia and Abkhazia leading, to the escalation and full-fledged war between Russia and Georgia in 2008, Artman contends that:

> a Russian passport was an unambiguous sign that Moscow's writ – and its military might – extended at least as far as to the soil upon which its bearer stood. This revolutionary discursive shift could not have been effected by the mere presence of

[100] Kristopher Natoli, 'Weaponizing Nationality: An Analysis of Russia's Passport Policy in Georgia' (2010) 28 Boston University International Law Journal, 413.
[101] Florian Mühlfried, 'Citizenship at War: Passports and Nationality in the 2008 Russian-Georgian Conflict' (2010) Anthropology Today, 26/2, 8–13.
[102] Artman (n 74) 692.
[103] *Ibid.*, 693.

> peacekeepers, or even by the Kremlin's oftentimes heavy-handed meddling in the political affairs of kin separatist regimes.[104]

The construction of such zones as Russian spaces with the use of bodies to secure control over territory,[105] given the factual background of the conflict, can only with difficulty be construed as the regular exercise of a right to grant nationality extraterritorially. One is quick to find the interventionist notes that the maneuver could have and the risks associated with depriving the targeted State of one of its traditional constitutive elements – a population – the bulk of which is normally composed of nationals not conflicted by foreign allegiance issues. As such, the idea of abuse of rights seems to inform a reaction in terms of non-recognition of such nationalities, as the specific case may require.

6. Regional Developments: the 'Credible' Space of Norm Contestation

Justifications for passportization drawing from cognizable international law language have a marked importance when it comes to soothing concerns of veiled imperialism, since the extraterritorial grant of nationality necessarily expands the jurisdictional reach of the conferring State beyond its borders. As famously stated in the *Nicaragua case*,[106] the appeal to exceptions and justifications that bring an otherwise suspicious practice in line with the dictates international law, has the effect of confirming rather than weakening the applicable norms. But such justifications undeniably fall into a spectrum of credibility, and this paper does not purport give a platform for justifications of extraterritorial naturalization that patently have no concern with plausibility.

Zarbiyev, commenting on Russia's attempted justification of the aggression on Ukraine, contends that there is a fundamental difference between the 'liar' and the 'bullshitter'.[107] Following Harry Frankfurt's nomenclature, he contends that the 'bullshitter' does not display any concern with an appearance of 'truth'. In this sense, the latter is prepared to make any assertion that might advance his interests, as he pays no attention to the idea of truth at all. In other words, the bullshitter is the greatest enemy of international law, as he refuses to participate in the adversarial argumentative game in which credibility and persuasion are a valuable currency.

The present author submits that one should readily dismiss, as lacking plausibility, Russian passportization initiatives carried out in different regions of Ukraine after the invasion and occupation, even if domestically supported by Presidential Executive Order 440 of July 11, 2022 and subsequent amendments, because they amount to *de facto* collective naturalizations and seek to consolidate annexation.[108] Passportization of occupied territories followed by a

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[104] Nico Popescu, 'Outsourcing De Facto Statehood: Russia and the Secessionist Entities in Georgia and Moldova' (2006) CEPS Policy Brief 109.
[105] Artman (n 74), 695.
[106] *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*; Merits, International Court of Justice, 27 June 1986, para 186.
[107] Fuad Zarbiyev*, '*Of Bullshit, Lies and "Demonstrably Rubbish" Justifications in International Law' (2022) Völkerrechtsblo*g,* available at <https://voelkerrechtsblog.org/of-bullshit-lies-and-demonstrably-rubbish-justifications-in-international-law/>.
[108] Peters (n 1), 698-699.

general offer of nationality to all residents of an invaded State is an attitude for which no plausible justification is available in the international legal discourse, and any such attempt would epitomize the unacceptable 'bulshitter' posture. Although it may be tempting to cast a judgment in hindsight on such policies as being *preparatory* for what was to come in Crimea, Georgia, or Ukraine, each mentioned context in this paper deserves a separate scrutiny, in both spatial and chronological terms, if one is interested in assessing competing and minimally plausible alternatives to 'Western' limits on nationality attribution that might engender 'credible' norm contestation and turn the post-Soviet space into a testing site.

According to Wiener, distinguishing between 'local' and 'global' remains key to understanding the dynamics of international relations, and the idea of *norm contestation*

> operates with an understanding of local-global co-constitution of norm(ative) change. Theoretically, this involves distinguishing 'normative opportunity structures' that set the rules of engagement for local orders on site on the one hand, and intangible 'normative structure of meaning-in-use' that reflect the accumulated socio-cultural background experiences spanning the globe on the other.[109]

In this sense, the 'credible' space of norm contestation[110] where Russia choses to engage meaningfully with the discursive game of international law, proactively or reactively, is restricted to the remaining contexts (spatial and chronological) where one can indeed ascertain the existence of interpretive 'grey zones' concerning the limits of international law on nationality and its capacity to tame initiatives of extraterritorial naturalization. Hence, in light of the possibly decreasing relevance of the residence requirement when confronted with ethnic, historical, cultural, and linguistic ties, the present section explores the ideas of *de facto* statelessness and 'humanitarian' grants of nationality as a manifestation of the obligation to prevent statelessness. This exercise reveals the contours of the battleground over what currently constitutes an 'appropriate link' in the post-Soviet space and how neighboring States could negotiate the meaning of non-discrimination in nationality attribution.

6.1. De Facto Statelessness and Extraterritorial Naturalizations

De facto statelessness is by no means an uncontroversial expression in international law, and despite not being uniformly accepted as a term of art, has attracted attention in scenarios of humanitarian strain. The expression conveys the idea that some individuals, despite formally having a nationality, find themselves in situations where such status is 'functionally ineffective',[111] as they are prevented from enjoying the rights and benefits that derive from it. In this sense, de jure and de facto statelessness entail similar material difficulties for the affected individuals, even though their status under international law, particularly under

[109] Atnje Wiener, 'The concept of contestation of norms – An interview' *in* Michael R., *et al*. (eds) Yearbook on Practical Philosophy in a Global Perspective (2020) (4th edn), No. 4, Munich: Karl Alber Publishing, 200.

[110] On norm contestation *see* Antje Wiener, 'Contestation and constitution of norms in global international relations' (2018) Cambridge University Press; Antje Wiener, 'Contested Compliance: Interventions on the Normative Structure of World Politics (2004) European Journal of International Relations 10:2, 189–234; Antje Wiener, 'A Theory of Contestation' (2014). Berlin: Springer.

[111] Wiener (n 105), 199.

international conventions on statelessness, may not the same. According to the United Nations High Commissioner for Refugees (UNHCR) Report on the topic:

> De facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Persons who have more than one nationality are de facto stateless only if they are outside all the countries of their nationality and are unable, or for valid reasons, are unwilling to avail themselves of the protection of any of those countries.[112]

This definition has been criticized for excluding individuals who are inside their country of nationality but are not treated as such, which is a matter of concern.[113] The scope of *de facto* statelessness could be enlarged to cover "those who have been deprived of effective nationality and state protection by administrative mistake, to those targeted for discrimination, persecution and abuse by the state" as well as "those within their home countries who face undue administrative and bureaucratic indifference" and "those who are nationals of a 'collapsed' or 'failing' state",[114] situations in which the State has lost the ability to operate and fulfill obligations to its citizens that are connected to their nationality.

Although nationality and the rights arising therefrom admittedly function on a spectrum of effectiveness,[115] a nationality that nears absolute non-effectivity is of little practical value. Not having a nationality by law and not having a nationality in effect are both manifestations of statelessness. However, distinguishing between the two categories in a way that leads to the protection of only one group of individuals can be unequal and discriminatory.[116] A more protective approach would be to address the needs of each category based on equality of substantive rights. Therefore, one could argue that "all persons who suffer from ineffective nationality (whether they have a legal nationality or not) should be regarded as stateless".[117] In this vein, the Committee of Ministers of the Council of Europe adopted Recommendation 13 on the Nationality of Children on 9 December 2009, which recommends Member States of the Council of Europe to:

> 7. treat children who are factually (*de facto*) stateless, as far as possible, as legally stateless (*de* jure) with respect to the acquisition of nationality;
> 8. register children as being of unknown or undetermined nationality or classify children's nationality as being 'under investigation' only for as short a period as possible.[118]

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[112] United Nations High Commissioner for Refugees (n 48), 61.
[113] Equal Rights Trust, 'Critiquing the Categorization of Stateless' (2010) 64, available at <https://www.equalrightstrust.org/ertdocumentbank/chapter%202.pdf>.
[114] *Ibid.,*65.
[115] *Ibid.*, 78.
[116] *Case of the Yean and Bosico Children* (n 8), para 142.
[117] Equal Rights Trust (n 109), 80.
[118] Council of Europe. Recommendation CM/Rec(2009)13 of the Committee of Ministers to member states
on the Nationality of Children (Adopted by the Committee of Ministers on 9 December 2009 at the 1073rd meeting of the Ministers' Deputie*s)*, available at <https://www.refworld.org/pdfid/4b83a76d2.pdf>.

Principle 7 of the Explanatory Memorandum to the Recommendation provides the rationale for the proposed approach:

> 19. The application of any rules avoiding statelessness depends on the definition of statelessness itself. As already mentioned above a person is regarded to be legally (*de jure*) stateless, 'who is not considered as a national by any State under the operation of its law.' In addition to cases of *de jure* statelessness, states also may be confronted with cases where persons do possess a certain nationality, *but where either the state involved refuses to give the rights related to it, or the persons involved cannot be reasonably asked to make use of that nationality*. In both cases the persons involved do not benefit of an effective nationality and are in fact stateless. (emphasis added)
> 20. According to Resolution I of the Final Act of the 1961 Statelessness Convention, persons, who are stateless *de facto, should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality. This is repeated in this principle.* (emphasis added)[119]

There remains a danger in automatically placing unprotected persons under such heading as it could stretch the meaning of the term 'stateless' to nationals whose rights are generally violated by State or non-State actors on the territory of the State of their nationality. Thus, the UNHCR Report shares the view that the non-enjoyment of rights attached to nationality does not constitute *de facto* statelessness unless such rights can be directly connected to this status, such as the non-enjoyment of diplomatic protection.[120] Which rights attaching to nationality are relevant to the determination of *de facto* statelessness as well as the criteria establishing to what extent such rights have to be violated before the individual qualifies as *de facto* stateless are not, however, clearly stated for the purposes of determining how 'effective' a given individual's nationality truly is.

As discussed in Part three, the obligation to prevent statelessness is one of the guiding principles applicable to extraterritorial naturalizations. If *de jure* and *de facto* statelessness should be treated substantively in the same manner because of the similar hardship they generate, the multiplication of grounds to confer nationality in contexts of *en masse* extraterritorial naturalizations could be organized discursively to constitute, according to the peculiarities of the targeted population, an instance of compliance with the obligation to facilitate the acquisition of nationality,[121] rather than an infringement on the prohibition of exorbitant naturalizations. This reasoning would theoretically open an avenue for Russia to offer its nationality to kin populations in the near abroad who find themselves in situations of strain amounting to *de facto* statelessness – the populations of post-Soviet separatist *de facto* regimes – especially the so-called Donetsk and Luhansk People's Republics (2014-2022), South Ossetia, Abkhazia, and Transnistria – over which the mother-State has no effective control, and who have strong ties with Russia, seem to be fitting candidates for this proposition.

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[119] Council of Europe, 'Position Paper of the Bureau of the European Committee on Legal Cooperation on the Draft Recommendation on the Nationality of Children' (2009) CDCJ-BU 8, 4.
[120] United Nations High Commissioner for Refugees (n 48), 40.
[121] Article 1, 1961 Convention on the Reduction of Statelessness, available at <https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf>.

The perspective of compliance with an international obligation would then dispel concerns with an abuse of rights in the performance of extraterritorial naturalizations, as the objectives pursued would be legitimate by definition, and not structured around 'dirty goals'.

However, Peters argues that South Ossetians and Abkhazians, despite being materially prevented from accessing most nationality-based rights in the context of their respective *de facto* regimes, do not possess an 'ineffective' Georgian nationality and are not stateless in the sense described above, apart from their own 'ineffective' South Ossetian and Abkhazian "nationalities", which are largely unrecognized and thus unopposable.[122] Only the residents of Abkhazia and South Ossetia who explicitly refused Georgian nationality in 1993 became and remained, in legal terms, stateless.[123] Consequently, she argues that Russia could not identify such populations generally as *de facto* stateless and offer them the possibility of extraterritorial naturalization in accordance with international law. Such reasoning seems to imply a hierarchy in that the interests of the State of residence take precedence over the will of a kin population to belong to another national community, even in territories where the former already lacks effective control and where the population may already suffer from 'ineffective nationality', which constitutes a rhetorical 'grey zone' that admits counternarratives.

6.2. A Western and a Russian Approach to the 'Appropriate Connection' Requirement?

The idea that an appropriate factual link must exist between the individual and the conferring State is intrinsically connected with the prohibition of arbitrariness and artificiality in the establishment of such bond. The nature of such factual link must be of a territorial or personal nature, or as is often the case, a combination of both. Although such propositions pose virtually no disagreement, the degree of intensity of such links is a bone of contention, as is the default pride of place of territorial over personal attributes. As discussed previously, while an 'appropriate connection' exists between the individual and the State when the former has residence or family relationships in the latter, or served it in governmental positions, it does not follow automatically that permanently non-resident individuals cannot establish meaningful and sufficient connections with the naturalizing State through other means. While residence remains mandatory for collective naturalizations,[124] other factors may play a determining role in individual naturalizations granted based on voluntary applications.

The individual aspiration of joining a community through the nationality bond, especially in a region of shared Soviet historical background, could trump the interests (jusrisdictional and otherwise) of the State of residence in holding a national. According to Peters, the prevailing solution to this tension depends on "the priorities assigned to these conflicting goods in international law".[125] Russia has insisted in securing a connection with its kin populations in the near abroad, with a remarkable degree of reciprocity with the targeted groups, on the basis of shared historical, ethnic, cultural, and linguistic elements, which are generally seen with

[122] Peters (n 1), 638-641.
[123] Peters (n 1), 640.
[124] *Ibid.*, 693.
[125] *Ibid.*, 698.

suspicion in the West for being highly malleable.[126] The departure from the residence requirement and mixed alternatives in favor of purely intangible (and sometimes ideational) ways of linking States to individuals could be framed as Russia's attempt to revise and recast the meaning of appropriateness when it comes to the quality of State-individual connections.

However, the generally accepted prohibition of discrimination poses its own challenges if one is to consider the possibility above. As discussed in Part three, most international instruments regulating issues of nationality contain at least some provision proscribing discriminatory practices in nationality attribution, such as Article 5(1) of the 1997 European Convention on Nationality, Article 4 of the 2006 Convention on the Avoidance of Statelessness, Article 9 of the 1961 European Convention on the Reduction of Statelessness, and specifically in the context of naturalizations Article 1(3) of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination. If States have a duty to abstain from producing regulations that are discriminatory or risk producing discriminatory outcomes,[127] many of the preferred links in the context of Russian passportization that are based on historical, ethnic, cultural, or linguistic elements might be of questionable legality, at least if one has Western spectacles on.

Conversely, States have traditionally enjoyed a large discretion in selecting the categories of contemplated individuals according to their nationality policy priorities. The obligation to avoid discriminatory treatment could be interpreted as applying in respect of individuals afforded different treatment despite complying with the same 'appropriate connection' element chosen by the naturalizing State. In any event, there is a fine line between a legitimate choice of relevant factors that accounts for ethnicity, language, and culture, and a choice that disguises discrimination based on biological features, which is certainly proscribed in international law. Each concrete instance of passportization practiced by Russia must be analyzed separately on accounts of legality, having in consideration the characteristics of the targeted population, even if the same accelerated regime of naturalization is applicable. Hence, it is submitted that this 'grey zone' of contestation could be 'credibly' exploited by Russia in a discursive scenario, despite Western protests.

7. When Two Civilizations Collide: *Russkyi Mir* and the 'West'

The idea that international law is different in different places has circulated in academia for decades, and the quest for universality seems to be rather a project than a current reality, especially when one comes across the amount of variation that the same law, common to all peoples, accumulates in practice.[128] The otherness in international law has sparked fears of fragmentation and utter relativity, as non-European polities have operated their respective interpretations of the abstract commonality on a regional level, establishing parallel workings of a traditionally imagined (or fantasized) universal order.

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[126] Council of Europe, 'Report on the Preferential Treatment of National Minorities by their Kin-State, adopted by the Venice Commission at its 48th Plenary Meeting' (Venice, 19-20 October 2001), 22-23, available at <https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(2001)019-e>.

[127] P *Case of the Yean and Bosico Children* (n 8), para 141.

[128] Mälksoo (n 4), 12.

Although 'civilization' can be an ambiguous term in this context, it retains a certain utility as a point of reference in explaining the cultural variation found in the different iterations of international law and its realm of application.[129] In fact, it serves the purpose of highlighting the disagreement on the tentative universality of specific regimes, as different civilizations might have competing understandings of what is the 'true' version of international law in a given instance, or at least on the acceptability of exceptions to the universal in producing regionalized norms. According to Mälksoo, international law is as 'civilizational affair' in Russia,[130] as it often epitomizes the identity crisis of being split between belonging to the joint commitment of the European family of nations, and the complete departure therefrom in pursuit of a genuinely Russian civilizational project.[131]

To the extent that contemporary Russia seeks recognition as a unique civilization that is "not a perennially flawed part of Europe",[132] it lays claim to an accompanying regional-historical 'greater space' or *Großraum* whose borders are fluidly framed, and where Russia could challenge notions of sovereignty and territorial integrity of neighboring States with substantial ethnic Russian minorities.[133] However, the prevailing Western discourse of international law is not keen to accept or engage with arguments of religious or civilizational nature, dismissing them as being of little relevance before the universality of the order. Still, it is important to stress that even foundational concepts of international law such as territorial integrity and state sovereignty "may have different aspects of sanctity attached to it in different regions and religions of the world",[134] and that non-Western cultures tend to see as Western what the West sees as universal.

Mälksoo also warns that "presuming universality where it does not exist may lead to naive diagnoses of the legal-political situation and, consequently, bad policies regarding international law and institutions".[135] In the context of extraterritorial naturalizations, the Petrine idea of 'civilizing or 'Europeanizing' Russia to the standards set out in multiple Western-born instruments advocating for self-restraint in nationality attribution may have been a dangerous delusion.[136] The use of international law as a language in which one can lie, as it is not one's mother tongue, has been a well-documented phenomenon in Russian foreign policy formulations with their notoriously apologetic notes. However, as was discussed throughout this study, international law on nationality still admits 'credible' contestation in its 'grey zones', and Russia has explored these spaces creatively to advance a special iteration of the law applicable to itself and its close vicinities – in a historical, cultural, and ethnic sense – the *Russkyi Mir*.

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[129] *Ibid*., 15.
[130] Mälksoo (n 4), 18.
[131] "l'Europe captivait et effrayait tout à la fois, ensorcelait et engendrait la méfiance, était sources de lumière et royaume des ténèbres. La Russie avait envie d'assimiler ses sucs nourriciers mais aussi de se protéger de son influence délétère; de devenir un membre à part entière de la famille des peuples européens et, en même temps, de s'en tenir à l'écart; de jouir de leur bienveillance et même de leur amour, mais aussi de les faire frémir, voire trembler" *in* Vladimir Baranovksy, 'La Russie et la sécurité européenne' Politique étrangère (1) 1995, 33.
[132] Mälksoo (n 4), 141.
[133] *Ibid.*, 103.
[134] *Ibid.*, 146.
[135] *Ibid.*, 18.
[136] *Ibid.*, 195.

As was seen, in the field of nationality attribution, Russia has exacerbated all limits imposed by international law in domestic acts adopted post-February 2022 in Ukraine, providing justifications that are "completely bereft of any plausibility" and fail to overcome even the lowest of thresholds, being thus "demonstrably rubbish" and "a mockery of international law despite their legal dressing".[137] However, in other spatial and historical contexts over a 30 year timeframe, passportization practices in Abkhazia, South Ossetia, pre-war Donbas and pre-annexation Crimea demand a more nuanced and chronology-friendly approach, and cannot be summarily dismissed. The abusive character of extraterritorial naturalizations is faced with fundamental disagreements on what limits are regionally imposed and count as a matter of law. Russian approaches to international law on nationality pushes for the tolerance of broader kinship standards with foreign populations in its alleged *Großraum*; and a tentative departure from the residence requirement; the rejection of a purported *jus publicum europaeum* that would include hard self-restraint parameters in extraterritorial naturalization as set out in the Venice Commission's Report on the Preferential Treatment of National Minorites by their Kin-State, the European Convention on Nationality, and the Bolzano Regulations, indicate the emergence of a competing post-Soviet perspective when it comes to the legal boundaries of nationality attribution.

8. Conclusion

This paper sought to provide insights on Russia's engagement in *en masse* extraterritorial naturalizations throughout the post-Soviet space, against the backdrop of a complex triangular relationship involving the interests of the nationality-aspiring population, the conferring State, and the affected State. The potentially destabilizing effects of so-called 'passportizations' have been explored, as well as the dubious character of the policy in terms of power enhancement. Divergent understandings of the animus behind passportization in what some consider to be Russia's legitimate *Großraum* expose a 'civilizational' clash in an otherwise 'universal' international law, where the regional peculiarities of state practice force a reconsideration of the general normative framework on nationality. It was stressed that while passportization causes negative impressions in Western audiences, it is important to contextualize such policy in spatial and chronological terms to avoid undue generalizations. Instead of taking a hard stance on the different scenarios where passportization is developed, and how each one plays out against the abstract requirements conditioning the legality extraterritorial naturalizations, the paper sought to identify grounds of 'credible' norm contestation that derive from practical developments in the post-Soviet space, while dismissing completely unplausible justifications for passportization carried out in scenarios of patent aggression or annexation. The 'international lawfare' between the West and Russia centers on what truly constitutes abusive conduct when it comes to extraterritorial naturalizations, bearing in mind the Russian 'push' for the acceptance of broader kinship standards with foreign populations in its alleged *Großraum* and the dismissal of the traditional residence requirement in the region, along with increasing levels of action in the field of 'humanitarian' conferrals of nationality to d*e facto* stateless populations.

[137] Zarbiyev (n 103).