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**Passportization Against State Sovereignty - Legal Analysis of Russian Approaches to  
Near Abroad**

Master's Thesis

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*‘...Из века двадцатого  
в век наш пришёл,  
И с каждым всё годом  
ты крепче,  
Ты - паспорт России огромной, большой,  
Нет в мире тебя человечней.  
Я достаю не из штанин,  
И нет дубликата бесценного груза,  
Он в сердце, мой паспорт,  
и я Гражданин  
России с корнями Союза.’*

*‘...From the 20<sup>th</sup> Century  
in our age has come,  
And year by year  
You are stronger,  
You are a Passport of great, and huge -  
Russia,  
Nothing is more humane than your presence.  
I don't take it out of my pockets,  
And there is not any duplicate of this priceless,  
It's in my heart, my passport,  
I am a citizen of Russia with Soviet roots.’*

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## **Introduction**

The Peace of Westphalia launched a new political association – a nation-state, which emerged from the self-identification of a person with other individuals based on the domicile, language, culture, religion, traditions, etc. During the emerging period of classic international law spanning from the late 18th to the early 20th century, nationality was commonly believed to be an innate status bestowed by nature rather than voluntarily acquired upon an individual by their home state.<sup>2</sup> Such understanding of nationality was dictated by virtue of a ‘romantic’ understanding of statehood which lasted until the era of Fascist ideological states where the strong attachment of individuals to the states reached its zenith.

Ultimately, the concept of nationality was largely divorced from ethnic identity in the mid-twentieth century, at the time when the International Court of Justice (ICJ) rendered its prominent decision of *Nottebohm (Lichtenstein v. Guatemala, 1955)*. In *Nottebohm*, the notion of nationality has been revised and reshaped from its former perception, which brought a revolutionary concept of legitimate naturalization under international law, and the test of a

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<sup>1</sup> Popov, M. *Stikhi o Rossiskom pasporte (Стихи о Российском паспорте)*. – *Proza.ru* 2019. Available at: <https://bit.ly/40F4Sxv>. (26.04.2023). *The author responded to eminent Soviet poet Vladimir Mayakovski, who wrote the poem ‘My Soviet Passport’.*

<sup>2</sup> Spiro, J. Peter. *Beyond Citizenship - American Identity After Globalization*. Oxford University Press 2008, p. 6

genuine link between individuals and states emerged from onwards.<sup>3</sup>

The concept of state sovereignty has long been a fundamental principle of international law, granting each state the authority to govern its territory and people without external interference. The population is the essential element of statehood. As a state's population grows, its jurisdiction expands accordingly. As highlighted by the literature, extraterritorial naturalization constitutes a conferral of nationality by one state on individuals residing beyond their jurisdiction in another state. Essentially, it does not merely concern the individual rights, but also the state of residence of persons who acquire a nationality. Ultimately, states are concerned with the naturalization of their citizens as far as the state is constituted by its citizens and it would cease existence as a subject of international law if all its citizens are naturalized elsewhere. Therefore, extraterritorial naturalization leads to the extending *de-jure* jurisdiction. In recent years, there has been growing concern over the actions of the Russian Federation in expanding its influence in near abroad, particularly through the practice of *en masse* extraterritorial naturalization, also known as Russian passportization.

After the dissolution of the Soviet Union, in Russian foreign policy, the former Soviet states were designated as near abroad (*blizhnee zarubezhye*). Inherently, the term 'near abroad' has been used to refer to the countries located in the immediate vicinity of a larger country or power. However, in post-Soviet Russia, this term allegedly originated to set the non-Russian Soviet successor states apart from the rest of the world. Some observers, such as Peter van Ham and Paul Kolstoe, see the term as a derogatory connotation for those states whose sovereignty and independence is not fully acknowledged by the Russian Federation.<sup>4</sup> The term has been used to reflect a sphere of influence of Russia over the post-Soviet countries. Back in 1998, the Russian cooperation minister of the Commonwealth of Independent States (CIS) Anatoly Adamishin urged Russians to stop addressing the CIS and its member states as Russian near abroad.<sup>5</sup> The reason behind that was disrespect and concealed disregard for their sovereignty and independence.

The Russian Federation applied several controversial doctrines and practices in its dealings with near abroad. Passportization, which involves the extraterritorial naturalization of

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<sup>3</sup> ICJ. Nottebohm Case (*Liechtenstein v. Guatemala*) Second Phase, 6 April 1955.

<sup>4</sup> Ham, Peter. Ukraine, Russia and European Security: Implications for Western Policy - Institute for Security Studies, *Chaillot Papers 13*, 1994. At: 18. *See further*: Kolstoe, Paul. Russians in The Former Soviet Republics. London: Hurst & co/Indiana University Press 1995, p. 245.

<sup>5</sup> Good-bye "Near Abroad". (22.01.1998) - The Jamestown Foundation Monitor Vol. 4 Issue 14. Available at: <https://bit.ly/40y5VQ4> (26.04.2023).

individuals in neighboring sovereign countries, has been used by Russia as a means to assert influence and extend its geopolitical reach over certain states near abroad. The policy has expanding political, economic, or military effects over those states. Russia, in particular, has been accused of pursuing such policies towards Georgia, Ukraine, and Moldova – post-Soviet states with ethnic minorities.

A key success of the policy is based on the alleged need to ‘protect the interests’ of the 20-30 million ethnic Russians, so-called compatriots (*sootchestvinniki*) living outside the Russian Federation.<sup>6</sup> However, the definition of Russian compatriot became legally vague and uncertain, since it leaves irrational space for subjective interpretation of the status. It includes even ethnically non-Russian people, mostly former Soviet citizens, and their ancestry, who identify themselves as Russians due to their language, culture, ethnicity, religion, etc. Their presence outside of Russia has been utilized by Moscow as a powerful weapon for the suppression of former Soviet countries aspiring to the EU and the Western world. This research focuses on the Russian policy of *en masse* passportization, one of the pillar instruments of coercion which are legally challenged in international law.

Passportization *en masse* refers to the Russian policy of a large-scale, simplified extraterritorial naturalization conducted predominantly in ethnically diverse, disputed territories. In this study, the author does not claim that a naturalization is an illegal act in international law. Although, throughout the decades, the legality of extraterritorial naturalization was argued by legal critics which eventually remained unresolved. History shows that extraterritorial naturalization may be employed for vicious purposes, especially implemented on a massive scale, such as intimidation of state sovereignty and reinforcement of influence beyond the borders. The issue of extraterritorial naturalization and its legal dimensions once again became a relevant subject for legal scrutiny. In this analysis, the author frequently uses ‘extraterritorial naturalization’ in relation to passportization. Nevertheless, these terms are not used as synonyms, the extraterritorial naturalization is one of the major components of passportization policy.

After the recent full-scale Russian aggression against Ukraine in February 2022, legal and political scholars evoked discussions regarding the ‘weaponized’ Russian passports as a pretext

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<sup>6</sup> Russian international migrant stock - *Statista* 2021. Available at: <https://bit.ly/3nHBZCA> (26.04.2023).

for infringing the territorial sovereignty of Georgia in 2008 and Ukraine in 2014 and 2022.<sup>7</sup> The present work delves into a comprehensive examination of the Russian policy of *en masse* passportization as a pretext for intervention in the light of international law. Moreover, this issue looms large in post-Soviet countries with ethnic minorities, or residents with Russian passports. Given the frequent occurrence of such practices in Georgia and Ukraine, involving the use of force and subsequent occupation of sovereign territories, these concerns are exacerbated.

Russia has been generously conducting passportization policy since 1991 in Georgia, claiming that granting passports has been a purely humanitarian gesture, aimed at aiding those in need. Passportization in Ukraine is a relatively recent and ongoing process, and it shares certain similarities with the previous occurrence. However, it is characterized by the use of rather coercive gestures. The legal analysis presented in this thesis seeks to shed light on the pretext, legality, and implications of the passportization policy in Georgia and Ukraine. A similar policy has been implemented in Moldova. however, Georgia and Ukraine are *sui generis* of Russian approaches to international law, thus facing these sovereign states similar challenges.

The literature has underlined a twofold unresolved challenge for the legal assessment of Russian passportization policy toward Georgia. On the one hand, the status of statelessness of Abkhazians and Ossetians has been called into question when Russia provided them with passports. On the other hand, a frequently debated issue is a genuine link established by the ICJ, between the Russian Federation and passportized individuals, based on their former Soviet citizenship. The first theory underpinning this research is that the claims of a genuine link between Georgian breakaway regions and the Russian Federation based on statelessness and former Soviet citizenship constitute a violation of international law on sovereignty and territorial integrity. Hence, serving as a pretext for the illegal occupation of Georgian territories.

The author examines the correlation between the Russian passportization policy and effective control in Georgian separatist regions. In 2008, Russia declared its intention to protect its citizens residing in those territories from the ‘Georgian genocide’ and to coerce Georgia into

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<sup>7</sup> Bauböck, R. Weapons of Massive Deception: Defusing the Destructive Potential of Citizenship in a New Geopolitical Era. (30.03.2023) - Global Citizenship Observatory. Available at: <https://bit.ly/40ZTIUv> (26.04.2023).

peace.<sup>8</sup> Russia invaded Georgian sovereign territories, resulting in belligerent occupation and recognition of the independence of self-proclaimed regions, and defended its actions, arguing that it has a responsibility to protect Russian nationals and Russian speakers who face discrimination or persecution in other countries.<sup>9</sup> Likewise, in 2014 Russia used armed forces in Eastern Ukraine to protect its nationals from ‘the grave violation of human rights’ and played the same scenario by annexing Crimea and eventually proclaiming two separatist regions - the Luhansk People's Republic (LPR) and Donetsk People's Republic (DPR) as independent states.<sup>10</sup> This thesis elucidates the legal intricacies of Russian passportization in Ukraine since 2014, unpacking the interpretive challenges, and ambiguities, of Russian passportization in occupied and eventually annexed Ukrainian territories conducted under belligerent occupation. The main characteristic of Russian passportization in Ukraine was the fast-track naturalization of Russian speakers following the annexation of Crimea amending its citizenship law several times since 2014, gradually expanding the list of eligible persons in 2019 including all residents of Eastern Ukraine. Following the Russian invasion in 2022, a fast-track passportization process has more intensely occurred via simplified procedures in the southern Ukrainian regions - Zaporizhzhia and Kherson regions.<sup>11</sup> Subsequently, Russia aimed to grant passports to the population of the whole country, regardless of their residence. The conjecture derives from the Russian passportization following the belligerent occupation of Donbas and the illegal annexation of Crimea. The theory highlighted by this research is that the *en masse* passportization policy of the Russian-speaking population of Ukraine, which emerged as a *post-factum* strategy following a belligerent occupation, constitutes compromise of a free individual consent and undermines the concept of extraterritorial naturalization, resulting in severe violations of human rights and international humanitarian law.

Drawing on extensive legal research and analysis, this thesis examines the legal controversies of Russian passportization under international law. Also, the author offers novel insights into the key legal debates in this field, such peculiarities of Russian approaches to Abkhazia and South Ossetia versus Crimea and Eastern Ukraine. Also, the interrelation of passportization

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<sup>8</sup> Allison, R. Russia Resurgent? Moscow's Campaign to 'Coerce' Georgia to Peace. Royal Institute of International Affairs, Vol. 84, No. 6. Oxford University Press 2008, pp 1145–1171.

<sup>9</sup> Statement by President of Russia Dmitry Medvedev. (26.08.2008) – *Kremlin.ru*. Available at: <http://en.kremlin.ru/events/president/transcripts/1222> (26.04.2023)

<sup>10</sup> Burkhardt, F. Russia's "Passportization" of the Donbas. (03.08.2020) - German Institute for International and Security Affairs. Available at: <https://bit.ly/38A5HSP> (26.04.2023)

<sup>11</sup> Putin extends a fast-track Russian citizenship process to all Ukrainians. (11.07.2022) - *The New York Times*. Available at: <https://nyti.ms/3KyKl0L> (26.04.2023)

and the state's right to protect their nationals abroad under international law. Inherently, a state takes responsibility to guarantee the safety and security of its nationals. The ongoing debates by prominent scholars, which come later in this thesis, concern whether the state's right to protect its nationals abroad is justified under international law and if so, what is a connection between the doctrine of protection of nationals abroad and Russian passportization. The proposition introduced by the author is that the emergence of a new Russian doctrine of protecting Russian nationals in the near abroad, influenced by contemporary Russian legal and political theories, is distinct from the traditional doctrine of protection of nationals abroad in international law and is strongly dependent on illegal passportization.

The objective of this study is to demonstrate Russian *sui generis* approaches to international law against former Soviet states, also referred to as near abroad. This thesis endeavours to enhance the comprehension of the legal implications of Russian passportization, especially amid the Russian invasion of Ukraine in 2022 where nationality has played a crucial role. In pursuit of the research objective, the following research questions will be formulated to comprehensively examine and analyse the subject matter:

1. How the theory of genuine link established in the ICJ's *Nottebohm* case addresses contemporary challenges of collective extraterritorial naturalization?
2. What was the status of Abkhazian and South Ossetian residents after Georgian independence – citizens or stateless people?
3. Does the concept of genuine link pertain to the Soviet Union citizenship and the Russian Federation?
4. En masse passportization conducted against a sovereign state, derogation from customary international law, or violation of the doctrine of abuse of rights?
5. What are the implications of passportization for Ukrainian nationals under belligerent occupation?
6. How do the passportization policies in Georgia and Ukraine compare and contrast in terms of their similarities and differences?
7. To what extent does the Russian interpretation of nationality infringe the sovereignty of states near abroad?
8. What is the impact of illegal passportization on the doctrine of Protection of Nationals Abroad?

In order to achieve the objective of this work and answer these research questions, the author aims to explore and support the arguments through legal research and critical analysis of relevant legal frameworks, case studies, and scholarly literature, followed by a rigorous examination and interpretation of the findings. For this study, a mixed-methods approach will be utilized, incorporating the analytical method, legal doctrinal research, legal empirical research, and case study methods. These methods will be employed to comprehensively analyze the legal implications of passportization policy and the contemporary challenges of former Soviet states. The analytical method will involve an inclusive review and analysis of conventions and treaties in international law regulating nationality and extraterritorial naturalization.

In addition, relevant legal literature and critiques of prominent scholars will be analyzed to scrutinize legal grounds of *en masse* extraterritorial naturalization, a theory of genuine link, and subsequently, passportization policy in contemporary legal theory. These legal sources will be sourced from libraries, academic journals, reputable databases, and official government websites. Domestic laws, regulations, and official statements will be examined related to Russian passportization for a better grasp of the correlation between Russian passportization in separatist regions and military occupation. The legal case study method will involve conducting an in-depth case study of the ICJ ruling in the *Nottebohm* case. This method also includes analyzing the cases of the European Court of Human Rights (ECtHR) rendered in the last decade regarding the Russian effective control in Georgian sovereign territories. The legal empirical research will involve collecting and analyzing empirical data on reports of international organizations, fact-finding missions, and other empirical sources that provide insights into Russia's legal and military actions towards Ukraine and Georgia. The legal doctrinal research will involve an in-depth analysis of legal doctrines, principles, and concepts relevant to Russian approaches to its near abroad. For instance, the theory of state continuity and succession in the post-Soviet world and its relation to Soviet citizenship. Moreover, this method covers scrutiny of the doctrine of protection of nationals abroad, and other relevant theories of Russian approaches to nationality, state sovereignty, and other issues of international law.

The thesis is divided into four main chapters. The first chapter of the thesis delves into the theoretical and legal analysis of international legal acts, conventions, and soft law, such as recommendations, and human rights principles regarding extraterritorial naturalization, the

doctrine of genuine link, and state sovereignty. and the legal analysis of the most prominent ruling of the ICJ, the Nottebohm case rendered in 1955 which addresses the test of genuine link as a mandatory prerequisite for naturalization. The landmark Nottebohm case of the ICJ rendered in 1955 is critically analyzed in the context of the theory of genuine link, which is often invoked in cases of extraterritorial naturalization.

The second chapter covers the outset of the Russian passportization policy, including the first amendments to Russian domestic law regarding the separatist regions of Georgia. Also, the chapter deals with a brief historical overview of Georgian independence and the passage of nationality law and analysis the legal implications of state succession and prevention of statelessness along with the former Soviet citizenship paradigm in Abkhazia and South Ossetia. Finally, the chapter addresses interchangeable concepts of legal succession or continuity of Soviet nationality after the dissolution of the USSR.

The third chapter of the thesis explores the expansion of legal and political control through Russian passports in the annexed Crimean Peninsula and the fast-track passportization of Donbas. the chapter analysis contemporary issues of the ongoing Russian-Ukrainian conflict. The legal consequences of forceful passportization for protected persons under international humanitarian law are examined, along with the issue of the status of protected persons under occupation and the weaponization of passports by forcing Ukrainian conscripts into the Russian army.

The fourth section delves into the Russian revisionist approaches to international law concerning the protection of its nationals abroad. While contemporary international law defines nationality based on citizenship, this chapter analysis a comprehensive definition of Russian nationals, including compatriots, citizens, and Russian speakers. Consequently, the chapter brings together two contentious legal issues by examining the relationship between Russia's passportization policy and the application of the doctrine of protection of Russian nationals abroad in Georgia and Ukraine.

**Keywords:** Near abroad; Illegal passportization; Russian occupation; Nationals abroad

# 1. Extraterritorial Naturalization, State Sovereignty, and the Theory of Genuine Link

## 1.1 International Nationality Law and State Sovereignty

Individuals receive nationality either by birth originally or via naturalization. By virtue of naturalization, a state confers its nationality upon a person voluntarily after birth.<sup>12</sup> Predominant modes of acquisition of nationality are based on *jus soli* or *jus sanguinis* criteria. Individuals may receive their nationality based on the territory where they are born, also known as the principle of '*jus soli*' (law of the soil). Or they may receive the nationality based on descent from one of its nationals, also known as the principle of '*jus sanguinis*' (law of the blood).<sup>13</sup> Nowadays, most countries construct their law of nationality on the principle of *jus sanguinis*, while others exceptionally rely on the *jus soli* criteria.

In 1930 the League of Nations adopted the Hague Convention on Certain Questions Relating to the Conflict of Nationality Law, referring to the right of each state to determine under its own law who its nationals are.<sup>14</sup> Moreover, the law of the state on nationality should be recognized by other states unless it is incontinent with international agreements, customary law, and the generally recognized principles of nationality. Following the Convention adopted by the League of Nations, in 1997, the Council of Europe (CoE) adopted the European Convention on Nationality. Echoing the general principles enshrined in the Convention of the League of Nations, the European convention recognizes a state's right to determine its nationality law. According to Article 15 of the European Convention on Nationality, the state party has the right to determine in its internal law whether its nationals who acquire or possess the nationality of another State retain their nationality or lose it.<sup>15</sup> As a result, international law does not obligate a state to tolerate dual nationality. The naturalization of its citizens abroad has an impact on the state's identity.

One of the most comprehensive legal documents in soft law of international nationality law is the Recommendations on National Minorities in Inter-State relations.<sup>16</sup> This document

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<sup>12</sup> Harvard Draft Convention on Nationality. - The American Journal of International Law Vol. 23, No. 2. Cambridge University Press, 1929. Article 3.

<sup>13</sup> Scott, B. James. Nationality: Jus Soli or Jus Sanguinis. - The American Journal of International Law, Vol. 24, No. 1. Cambridge University Press 1930, pp. 58-64.

<sup>14</sup> Hague Convention on Certain Questions Relating to the Conflict of Nationality Law No. 4137 13 April 1930. Adopted by the League of Nations, Treaty Series, vol. 179, p. 89.

<sup>15</sup> European Convention on Nationality, Strasbourg, 6. November 1997. Adopted by the Council of Europe, ETS 166. Article 15.

<sup>16</sup> The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations. OSCE High Commissioner on National Minorities. The Hague, 2008.

recalls states to maintain unwavering good neighborly relations and possibly reduce disputes involving national minorities. Primarily, according to the recommendations, states are expected to abstain from exercising jurisdiction over the population of another country without its consent.<sup>17</sup>

The general principle declares that a state may have an interest and responsibility to support persons residing in other States based on ethnic, cultural, or any other ties, recognizing limited jurisdiction over the citizens residing abroad. At the same time, it is strictly condemned to exercise jurisdiction over the persons residing abroad which undermines the principles of territorial integrity of the host state.<sup>18</sup> Moreover, the general principles include the general right to confer citizenship on individuals abroad, nevertheless, strictly limited to the principles of friendly and good neighbourly relations and territorial sovereignty. The document directly precludes an *en masse* conferral of citizenship.<sup>19</sup> The United Nations Charter (UN Charter) preamble and Article 74 declare the principle of good neighbourhood. Members of the UN also agree on the general principle of good neighbourliness.<sup>20</sup> This principle is strengthened by the Friendly Relations Declaration of 1970, reaffirming the obligation to respect international law and not to implement policies against the interests of neighbouring countries.<sup>21</sup>

However, in regard to the nationals abroad, international law does not prohibit economic, social, or political incentives provided by the granting state. Anne Peters calls this naturalization caused by soft power, constituting a voluntary act of an individual, therefore, conforming to international law.<sup>22</sup> In some cases, acts exceeding the limits of a state under international law may nonetheless be approved by the concerned/injured state by virtue of valid consent. Article 20 of the UN Draft Articles on Responsibility of states for Internationally Wrongful Acts declares that the breach of an international obligation by a state invokes its international responsibility.<sup>23</sup> Valid consent by a state precludes the wrongfulness of that act unless the act remains within the limits of that consent. The illegality of state actions

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<sup>17</sup> Ibid., Article 1.

<sup>18</sup> Ibid., Article 4.

<sup>19</sup> Ibid., Article 11.

<sup>20</sup> Charter of the United Nations, San Francisco, 24 October 1945. Article 74.

<sup>21</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. UN General Assembly A/RES/2625(XXV), 1970.

<sup>22</sup> Peters, A. Passportization: Risks for international law and stability – Part II. (10.05.2019) - *EJIL: Talks!* Available at: <https://bit.ly/2vVvuhi> (26.04.2023).

<sup>23</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, International Law Commission Supplement No. 10 (A/56/10) A/56/10, 2001. Article 20.

is excluded if another state permits such actions. The substantial relevance of these norms is proven in extraterritorial naturalization when a state confers its citizenship to individuals residing in another state after the latter grants authorization.

## **1.2 Collective Extraterritorial Naturalization and the State Practice**

International law acknowledges two forms of extraterritorial naturalization – individual and collective. Individual naturalization includes a singular application of an individual, administrative procedure, and overall, more thorough examination. On the contrary, collective extraterritorial naturalization is generalized rules and procedures which is frequently challenged in international law.<sup>24</sup>

Historically, states had always expressed concerns regarding the extraterritorial naturalization of their nationals, primarily, due to foreseen threats to state sovereignty and its personal jurisdiction over individuals. In light of Britain's war with France, at the end of the 18<sup>th</sup> Century, British soldiers found a solution to dodge conscription in the British navy by emigrating to the United States and receiving US nationality.<sup>25</sup> As a response, the UK responded by inspecting the US ships on the high seas and impressing all natural born British seamen into the Royal Navy disregarding their American citizenship. The issue of nationality became a reason for the war between the US and the UK in 1812. This historical event was a turning point in the history of naturalization as a part of human rights. In 1870 Britain finally passed legislation making an individual's naturalization in a foreign state ground for a loss of the link between the individual and British nationality, ending the abuse of the right to naturalization and particularly, the legitimate right of those willing to abandon their initial nationality.

In 1889, Brazil issued a decree declaring that all foreigners domiciled in Brazil would be considered Brazilians unless they made a contrary declaration within six months after the application of legal amendments.<sup>26</sup> The majority of European states and the US contested this decree since a mere residence of an individual in a foreign country could not be regarded as

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<sup>24</sup> Peters, A. Extraterritorial Naturalizations: Between the Human Rights to Nationality, State Sovereignty and Fair Principles of Jurisdiction. - German Yearbook of International Law Vol.53. Berlin: Duncken & Humblot 2010, pp. 628.

<sup>25</sup> Cockburn, A.J.E, Nationality: Or the Law Relating to Subjects and Aliens, Considered with a View to Future Legislation. London: William Ridgway, 169, Piccadilly, W. 1869, p.70.

<sup>26</sup> Weis, P. Nationality and Statelessness in International Law, California: Stevens 1956, p. 106.

conclusive evidence of the desire to become a citizen of the state.

Noteworthy, back in the 19th century, individuals were not considered to be under the protection of international law, and this was due to the fact that international law was primarily concerned with protecting the interests of states rather than the rights of individuals. Naturalization was understood as an act of deprivation of nationals from their home state, which also meant that their home country would no longer have personal jurisdiction over them.<sup>27</sup> Some experts believe, a citizen who obtained a nationality by naturalization, remains in relatively vulnerable conditions, due to the state's right to terminate and deprive citizenship based on several occasions, including but not limited to the fraudulent acquisition of nationality, actions against sovereign interests of a state, etc.<sup>28</sup>

Disputes around the legality of extraterritorial naturalization had been extremely topical among the current European Union (EU) member states, however, the enlargement of the EU to Eastern Europe consequently resolved this issue under the common approach of the member states.<sup>29</sup> Contrary to the EU, Benedikt Harzl has raised doubts about the legal certainty of extraterritorial naturalization among former-Soviet states. He recalls the example of CIS as a rival union to the EU, attempting to introduce a shared citizenship policy that has failed due to the willingness of post-Soviet countries to detach from the Russian orbit.<sup>30</sup> To shed the light on the issue from the EU perspective, the Hungarian case of extraterritorial naturalization will be further discussed. Hungary is a state with one of the largest groups of kin nationals abroad. Hungarian extraterritorial naturalization constituted a process whereby people with Hungarian roots who reside outside of Hungary were able to acquire or reacquire Hungarian citizenship without having to physically reside in Hungary or meet other traditional requirements for naturalization.<sup>31</sup> The foundational legislation for granting passports was the Hungarian Act of 1993 on Nationality.<sup>32</sup> Primarily, the government introduced the Hungarian cards presenting benefits in social, cultural, and economic matters to those who lived abroad and claimed to be of Hungarian ancestry.<sup>33</sup>

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<sup>27</sup> Ibid., p. 116.

<sup>28</sup> Heater, D. *Citizenship: The Civic Ideal in World History, Politics and Education*. Manchester University Press 2004, p. 254.

<sup>29</sup> Harzl C.B., Petrov, R. (eds.) *Unrecognized Entities Perspectives in International, European and Constitutional Law*, Leiden, The Netherlands: Brill | Nijhoff 2021, p. 61.

<sup>30</sup> Ibid., 62.

<sup>31</sup> Ibid., Peters (Supra 24) p. 645.

<sup>32</sup> Hungarian Citizenship Law, Act LV of 1993, 1 October 1993. Available at: <https://bit.ly/3HcbBHI> (26.04.2023)

<sup>33</sup> Act LXII on Hungarians Living in Neighboring Countries (HUN-2001-L-61867), Act N.62 of Hungarian Parliament, 19 June 2001. Available at: <https://bit.ly/3HcTqSk> (26.04.2023).

The legality of this policy was questioned by Slovakia and Romania, eventually referring the case to the European Commission for Democracy through Law (Venice Commission) and presenting legal arguments against the law.<sup>34</sup> The Hungarian card which presented benefits in terms of social, cultural, and economic support, such as social allowance, pension benefits, railway discounts, scholarships, etc. was subjected to heavy legal criticism from the Venice Commission, The Parliamentary Assembly of the CoE, and those countries who were potentially targeted by this law.<sup>35</sup>

In the committee's opinion, Romania and Slovakia welcomed the support of nationals abroad, however, urged all unilateral or extraterritorial action to be ruled out without prior agreements.<sup>36</sup> The Venice Commission reinforced criticism toward the Hungarian Law and stated that the legality of extraterritorial naturalization is conditional and relies on the respect of the principles of territorial sovereignty, *pacta sunt servanda*, friendly relations amongst states, and respect for human rights and fundamental freedoms.<sup>37</sup> Thus, the states should refrain from taking unilateral measures expanding beyond the jurisdiction.

The Venice Commission in its opinion addressed the principle of territorial sovereignty. As state sovereignty is a cornerstone of international relations, it is plausible to give priority to the home state's interests before the naturalization of persons residing on its territory. Regarding the Hungarian card the commission stated, the legitimacy of law does not work by default when it may affect the state sovereignty. Therefore, the violation of sovereignty is an internationally wrongful act that can be precluded by the affected state explicitly consents to it. The Hungarian extraterritorial naturalization was respectively denounced unless the affected states' explicit consent would be received. Despite the criticism, Hungary introduced the amendments in 2010, allowing people of Hungarian descent to obtain Hungarian citizenship and receive political rights, such as voting without having to reside in Hungary.<sup>38</sup> Between 2010 and 2018 over one

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<sup>34</sup> Tomius, Eugen. Hungary: Status Law Causing Dispute with Neighbors (04.10.2001) - *Radio Liberty*. Available at: <https://bit.ly/3FqpVM2> (26.04.2023).

<sup>35</sup> Ibid., Peters (Supra 24) p. 646.

<sup>36</sup> Preferential Treatment of National Minorities by the Kinstate: The Case of the Hungarian law of 19 June 2001 on Hungarians living in neighboring countries ("Magyars"), 25 June 2003. Council of Europe (CoE) Parliamentary Assembly, Res. 1335. *See further*: Albertie, J. Christin, The Act of Hungarians Living Abroad: A Misguided Approach to Minority Protection. - Michigan Journal of International Law, Vol. 24, Issue 3 2003, p. 972.

<sup>37</sup> Legislation on Kin-Minorities – Hungary, European Commission - European Commission for Democracy Through Law (Venice Commission), Opinion N168/2001, 30 May 2002. Available at: <https://bit.ly/3oLrChh> (26.04.2023).

<sup>38</sup> Act XLIV Amending Act LV of 1993 on the Hungarian Nationality, Act No. 64 of Hungarian Parliament, 26 May 2010. Available at: <https://bit.ly/3AoK02l> (26.04.2023).

million Hungarians, mainly in Romania, Serbia, and Ukraine received Hungarian citizenship.<sup>39</sup> Szabolcs Pogonyi noted that the initial objective for expanding the citizenry through extraterritorial naturalization was enhancing the link between a diaspora and the country. However, the 2010 amendments aimed at creating a pool of voters loyal to the party that granted them political rights abroad.<sup>40</sup> Nevertheless, the states avoid escalation due to two major factors. First, a common integration in the EU reduced the tensions between the states. Second, other countries, including Romania, observed the Hungarian amendments and adopted similar legislation, which minimized pressure on Hungary from the international community.

### **1.3 Legality of Extraterritorial Naturalization – The Scope of Human Rights**

A state's decision to grant nationality to individuals falls under several branches of international law. Contemporary human rights law endorsed the individual right to change one's nationality based on certain preconditions. Article 15 of the Universal Declaration of Human Rights (UDHR) stipulates the right to nationality and the right to change nationality through naturalization.<sup>41</sup> Everyone has the right to nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. According to this clause, the UDHR denotes changing one's nationality as a part of human rights law. Additionally, Article 20 of the American Convention on Human Rights is an almost identical provision.<sup>42</sup> The clause constrained the arbitrary deprivation of an individual's nationality or the right to change it. Extraterritorial naturalization affects states' interests regarding their sovereignty, as well as individual interests in receiving citizenship of another state. Affected parties include a granting state, the individual applying for naturalization, and a former state of nationality. Consequently, there is a triangle of actors, each with its objectives.<sup>43</sup> International law seeks a fair balance between the interests of each party.

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<sup>39</sup> Brewis, Th. Turning Ukrainians into Russians, Romanians into Hungarians, and Italians into Austrians: The Spread of Passportization across Europe (*sine anno*). – Oxford University Consortium. Available at: <https://bit.ly/3TsjiOU> (26.04.2023).

<sup>40</sup> Pogonyi, S. The Passport as Means of Identity Management: Making and Unmaking Ethnic Boundaries Through Citizenship. - Journal of Ethnic and Migration Studies, Vol. 45 Issue 6 2019, pp.975–993.

<sup>41</sup> Universal Declaration on Human Rights (UDHR), Paris, 10 December 1948. Article 15.

<sup>42</sup> American Convention on Human Rights 'Pact of San José, Costa Rica', 22 November 1969. LNTS 1144, adopted by the Organization of American States. Article 20.

<sup>43</sup> Peters, A. Passportization: Risks for international law and stability – Part I. (09.05.2019) - - *EJIL: Talks!* Available at: <https://bit.ly/2Ydtf4M> (26.04.2023).

First of all, individual consent is a requirement deriving from human rights law. Harvard Draft Convention on Nationality of 1929 articulates that a state may not naturalize a person who is a national of another state without the consent of such person.<sup>44</sup> However, the commentators described the pillar idea of this article as referring to the consent of an individual to the rights and obligations obtained from the state. Peters explains this article as a pre-human rights norm intending to safeguard state interests through individual consent.<sup>45</sup> Individualized naturalizations are unlawful under international law if the consent of such affected individuals is not free and so invalid, i.e., legally non-existent. Nevertheless, in contemporary international law individual consent is essential, but not satisfactory for the legality of naturalization.<sup>46</sup> This is the issue where international law prevails over human rights matters. Hence, the right to nationality is limited by certain international legal conditions. According to the Montevideo Convention, which is part of customary international law, the population is one of the essential elements of the sovereign state.<sup>47</sup> Therefore, the legal existence of a state is heavily dependent on residents possessing the state's nationality. This is the scope of extraterritorial naturalization, which is not a simple bilateral agreement between two parties – a state and an individual but rather clashes the interests of at least three parties concerned.

One of the major objectives of international nationality law is the reduction of statelessness. In 1950, the UN International Law Commission (ILC) set an ambitious objective to codify international law in the field of nationality, including the prevention of statelessness.<sup>48</sup> A special Rapporteur on the issue of nationality and statelessness was appointed to prepare a work prior to the adoption of the convention on the reduction of statelessness. In 1952, the ILC released the Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur.<sup>49</sup> This report is one of the first legal documents in the UN, addressing the issue of nationality and naturalization. As stated in the report, for naturalization the following

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<sup>44</sup> Ibid., Harvard Draft Convention on Nationality (Supra 12) Article 15.

<sup>45</sup> Ibid., Peters (Supra 43).

<sup>46</sup> Ibid., Peters (Supra 24) p. 668.

<sup>47</sup> Convention on Rights and Duties of States, Montevideo, 26 December 1933. LNTS 165, Adopted by the Seventh International Conference of American States, Article 1.

<sup>48</sup> Economic and Social Council resolution 319 B III (XI) of 11 August 1950 requesting the International Law Commission to prepare the necessary draft international convention or conventions for the elimination of statelessness, International Law Commission, 1950.

<sup>49</sup> Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur (A/CN.4/50). UN International Law Commission. of the International Law Commission, Vol. II. 1952.

requirements must be met. a) An explicit voluntary act of the individual or a person acting on his behalf. b) Habitual residence of the individual in the territory of the naturalizing state.<sup>50</sup>

#### **1.4 Nottebohm Case - Key Ruling of the International Court of Justice**

The inception of the theory of a genuine link between a state and individuals takes place from the Nottebohm case of the ICJ, which was brought by Liechtenstein against Guatemala. By virtue of this pivotal ruling, the ICJ examined the concept of nationality and dispersed its functions under domestic and international law.<sup>51</sup> Nottebohm was born in Hamburg, in 1881. He was initially a German citizen and still held that citizenship when he applied for naturalization in Liechtenstein in October 1939.<sup>52</sup>

At first, in the year 1905, he traveled to Guatemala. He established a permanent residence there and made that nation the headquarters of his expanding and thriving commercial interests. Although he had lived in Guatemala for several decades, he did not become a citizen of that country and instead retained his German citizenship. Also, he maintained his business connections in Germany. He went to see his brother, who had been living in Liechtenstein since 1931, on a few occasions. In 1939, as the Second World War was looming, he became a Liechtenstein citizen. He changed his nationality to that of Liechtenstein, which meant that he no longer held German citizenship after going through naturalization procedures. Although Nottebohm's brother lived in Liechtenstein, Nottebohm himself had never resided there. The law of Liechtenstein specified the mandatory prerequisites to obtain citizenship, including a three-year residency requirement that could be waived in extraordinary circumstances. The statute moreover mandated the payment of a fixed fee in addition to an annual tax. In addition, the law gave the government the discretion to revoke a person's naturalization if the naturalization was fraudulently received.<sup>53</sup>

Nottebohm was exempted from the normal three-year residency requirement since he paid a naturalization fee and promised to pay Liechtenstein's annual tax. In 1943, after declaring war on Germany, Guatemala considered Nottebohm an unfriendly alien and took possession of his properties, refusing to acknowledge the legitimacy of the naturalization. To further protect one of its citizens, Liechtenstein subsequently requested diplomatic protection. Nottebohm

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<sup>50</sup> Ibid., p. 8.

<sup>51</sup> Ibid., Nottebohm Case (Supra 3).

<sup>52</sup> Ibid., p. 13.

<sup>53</sup> Ibid., p. 14.

protested that he was no longer a German citizen, by presenting his Liechtenstein passport. Liechtenstein brought a claim for diplomatic protection to the ICJ, arguing that the Guatemalan government's treatment of the person and property of Nottebohm was contrary to international law in the following respects. When the Government of Liechtenstein filed its application with the Court on December 17th, 1951, it alleged that the Government of Guatemala had acted towards the person and property of Mr. Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law, and therefore sought restitution and compensation. The substantive claim pursued through diplomatic protection was compensation from Guatemala for actions that took place in 1943 and following, including 'unjustified detention, internment, expulsion, and subsequent exclusion, from Guatemala ... and by the sequestration and confiscation of his property'.<sup>54</sup>

The Court concluded that in order for a state to exercise diplomatic protection on behalf of a national, the bond of nationality between the state and the individual must be founded on a genuine connection: '...nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties.'<sup>55</sup> In the Court's view, Nottebohm failed the test as 'his actual connections with Liechtenstein being extremely tenuous and his naturalisation had the sole aim of [...] coming within the protection of Liechtenstein but not of becoming wedded to its traditions, its interests, [or] its way of life'.<sup>56</sup> It lacked the genuineness that should accompany a deed of this magnitude in both regards. Neither Guatemala nor any other party had previously advanced this 'link theory' of nationality to the Court. However, Guatemala claimed that Nottebohm had fraudulently received his Liechtenstein citizenship. It said that this was merely a maneuver on Nottebohm's part to avoid the consequences of German citizenship in favor of Liechtenstein's, which, in Guatemala's view, was arbitrarily granted.<sup>57</sup>

The Court recognised that the state's sovereignty on nationality law is not unlimited. The Hague Convention was once more cited by the Court, and it was noted correctly that national laws pertaining to the attribution of nationality 'shall be recognized by other states insofar as they are consistent with international conventions, international custom, and the principles of

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<sup>54</sup> Ibid., p. 7.

<sup>55</sup> Ibid., p. 23.

<sup>56</sup> Ibid., p. 24.

<sup>57</sup> Ibid., p. 11.

law generally recognized concerning nationality'.<sup>58</sup>

The majority of the judges made a point of saying that it was not questioning the lawfulness of Liechtenstein's decision to grant Nottebohm citizenship under its domestic law. The Court narrowed the focus of its inquiry to the issue of to what extent third states must recognize the nationality of foreigners in order to provide diplomatic protection. The Court concluded that Nottebohm's naturalization was not based on 'any bond of attachment between Nottebohm and Liechtenstein' and his nationality lacked 'in genuineness requisite of an act of such importance'.<sup>59</sup> The underlying motivation for the naturalization, according to the Court, was to substitute for his status as a national of a belligerent state that of a national of a neutral state. Thus, the claim by Liechtenstein was deemed inadmissible, and Guatemala was under no duty to acknowledge Nottebohm's nationality.<sup>60</sup> The principle of genuine link first recognized in the field of diplomatic protection by the ICJ has been extended to other aspects of nationality and become a core principle of international law.

### **1.5 Critical Analysis of the Theory of Genuine Link**

A genuine link elaborated in the prominent Nottebohm case is referred to as a principle, doctrine, or test of international nationality law. The presence of a genuine link between a state and a person has become a core indicator of the lawfulness of conferring nationality on individuals.<sup>61</sup>

As explained in the previous paragraph, the Nottebohm case focuses on the diplomatic protection of a citizen by the state and in particular, by Liechtenstein against Guatemala with respect to the deprivation of property and rights of Mr. Nottebohm in Guatemala. The significance of the judgment lies in the twofold criteria that the Court established for a state to bring a claim based on diplomatic protection in international law. First, the Court determined that the individual was a national of the applicant state. Second, the Court observed whether an individual had a genuine connection with a patron state. The first criterion, the acquisition of nationality by the individual, is subjected to domestic law.<sup>62</sup> The second criterion pertains to the recognition of citizenship granted by a state as a matter of international law. Thus, the issue

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<sup>58</sup> Ibid., p. 23.

<sup>59</sup> Ibid., p. 26.

<sup>60</sup> Ibid.

<sup>61</sup> Thwaites, R. The Life and Times of the Genuine Link. - Sydney Law School Research Paper No. 19/18. 2018, pp. 645-670. At: 645.

<sup>62</sup> Ibid., Nottebohm Case (Supra 3) p. 20.

of nationality was divided into two components separately falling under domestic and international law. In the *Nottebohm* case, the Court did not argue the legality of domestic law and thus, the right of each state to determine domestically who are its nationals. This approach was treated as customary international law by the majority of judges.

Noteworthy, in international law *Nottebohm's* case constructed a pillar standard for proving an individual's affiliation with a state, and how strong is the connection. The critics address the *Nottebohm* case due to an unnecessary burden of proof of the link between the individuals and the state concerned. Such link comprises family ties, emotional connection, participation in public life, etc.<sup>63</sup> Rayner Thwaites in his criticism of the *Nottebohm* judgment states that a genuine link is a doctrine that threatens a person's ability to exercise his or her nationality.<sup>64</sup> Regarding diplomatic protection, Thwaites is more critical and further explains that the exercise of diplomatic protection is manifested in a person's nationality. However, the *Nottebohm* case conditioned this crucial legal concept through the assessment of 'social facts' disclosing the presence or absence of a genuine link with the relevant state.<sup>65</sup> Thwaites brings the dissenting opinion of Judge Read in *Nottebohm* and further reinforces his criticism toward the doctrine of genuine link. He states that the application of the theory of genuine link in practice will detach the expatriate citizens from the population resulting in undermining rights and protections provided by citizenship status.<sup>66</sup> Therefore, Thwaites find a theory of genuine link prejudicial to individual interests and human rights.

The ICJ in the *Nottebohm* Case constructed a theory of nationality as a predominant form of socio-political connection between individuals and collectives. The Court described the legal concept of naturalization by stating: 'individual upon whom [nationality] is conferred ... is, in fact, more closely connected with the population of the state conferring nationality than with that of any other state'.<sup>67</sup> The Court describes a significant context of naturalization for individuals by stating that naturalization does not happen frequently in a human n being's life, and it brings breaking bonds of loyalty and establishment of a new bond of allegiance.<sup>68</sup> Robert

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<sup>63</sup> *Ibid.*, p. 22.

<sup>64</sup> Thwaites (*Supra* 62) p: 655.

<sup>65</sup> *Ibid.*, p. 656.

<sup>66</sup> *Ibid.*, p. 662.

<sup>67</sup> *Ibid.*, *Nottebohm* Case (*Supra* 3) p. 23.

<sup>68</sup> *Ibid.*, p. 24.

D. Sloane criticizes the judgment of the Court for dramatically picturing bonds between individuals and the state.<sup>69</sup>

When it comes to the conferral of nationality, the Court is more critical toward naturalization than the acquisition of nationality by birth. Nevertheless, both ways lead to the acquisition of nationality. Sloane brings the example of *jus soli* and *jus sanguinis* as a pretext for attribution of nationality which casts doubt on the genuine link theory.<sup>70</sup> He examines the traditional grounds for the acquisition of citizenship which he deems as a matter of accident or luck. ‘A child may have no specific link at all with the country in which it has been born’ – he writes. The court did not explain when it comes to the acquisition of nationality, why the traditional *jus soli* and *jus sanguinis* criteria should be sufficient without proof of genuine links.<sup>71</sup> Neither *jus soli*, nor *jus sanguinis* necessarily denote a genuine connection of existence, interests, and sentiments. Thus, Sloane adduces the countless persons holding one nationality based on a doctrine of *jus soli* or *jus sanguinis*, and residing, socializing, and connecting to another state.<sup>72</sup> At this point, the critics conclude that if the genuine link doctrine was questionable in 1955, it is far more dubious nowadays, due to globalization which blurred an actual genuine link between individuals and states.

Mervyn Jones was one of the first scholars who critically analyzed the Nottebohm case and its findings.<sup>73</sup> The argument of Guatemala was based on the theory that a state is guilty of an abuse of rights if it derogates from the principle of genuine link ensuring a connection between a state and an individual. First, he suggested an examination of the frequency of naturalization and the legal presence of interests of Guatemala.<sup>74</sup> Jones challenges this approach by stating that an abuse of rights does not pertain to individual cases, it takes place when the granting naturalization is conducted not exceptionally but habitually (*en masse*) in many cases and the concerned state demonstrates that the application of naturalization undermined its interests. Another question raised by Jones is whether a stricter rule shall be applied to the acquisition of nationality through naturalization than to nationality acquired by birth?<sup>75</sup> It does not appear from the judgment that the Court intended to make such a distinction.

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<sup>69</sup> Sloane, D.R. Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality. - Harvard International Law Journal Vol.50 Issue 1 2009, p. 30

<sup>70</sup> Ibid., p. 18

<sup>71</sup> Ibid., p. 21.

<sup>72</sup> Ibid., p. 31.

<sup>73</sup> Jones, J.M. The Nottebohm Case. - The International and Comparative Law Quarterly Vol. 5 No. 2 1956, pp. 230-244.

<sup>74</sup> Ibid., p. 237

<sup>75</sup> Ibid., p. 239.

In the dissenting opinions, Judge Klaested, Read, and *ad hoc* Judge Guggenheim methodically identified the defects of the legal approaches in the Nottebohm case.<sup>76</sup> The dissenting judges first addressed the rights of the vulnerable groups affected by the genuine link theory. The implications of the genuine link test for millions of *jus sanguinis* ex-pats who had never resided in their country of nationality would destabilize the diplomatic protection regime, critics say.<sup>77</sup> Additionally, they collided with the genuine link theory from the perspective of dual citizenship.

The Court concluded that an individual has to have a closer connection with the population of the state conferring nationality than with that of any other state.<sup>78</sup> The implication of this stipulation is that a person could only ever possess a genuine link to a single country, thus, undermining the inherent concept of dual citizenship. The major distrust pertains to the state's immense power of discretion towards the assessment of the genuine link between a state and individuals. Namely, a state might be tempted to invalidate the nationality of individuals by prescribing a negative assessment of the genuine link of individuals to that state. Besides, Macklin expressed his skepticism toward the legal uncertainty of the 'genuine link' theory, as long as international law leaves it to each state to decide its rules on nationality and the presence of a 'genuine link' can never confer nationality, yet its absence can negate it.<sup>79</sup>

The prominent critics of the Nottebohm case suggested different angles of the judgment to be revised. For instance, Sloane suggests that the 'abuse of rights principle would be more reasonable and effective than the genuine link theory to regulate nationality in one contemporary context for preventing individuals from evading the negative implications of the law of war, as Nottebohm succeeded during the Second World War.<sup>80</sup>

The principle of abuse of rights denotes a violation of the core principle of good faith. It requires every right to be exercised honestly and loyally in international law. Hence, the exercise of the right for evading either a rule of law or a legal obligation will not be tolerated.<sup>81</sup> This is almost a precise description of Nottebohm's conduct. He exercised his right to acquire Liechtenstein's nationality to evade the rule of the law of war. The latest edition of Oppenheim

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<sup>76</sup> Macklin, A. Is it time to retire Nottebohm? - American Journal of International Law Vol. 111 2018, pp. 492-497. At: 493.

<sup>77</sup> Ibid., p. 494.

<sup>78</sup> Ibid., Nottebohm Case (Supra 3) p. 23.

<sup>79</sup> Ibid., Macklin (Supra 77) p. 495.

<sup>80</sup> Ibid., Sloane (Supra 70) p. 5.

<sup>81</sup> Cheng, B. General Principles of Law as Applied by International Courts and Tribunals, Cambridge University Press 1953, p. 121.

explains that ‘an abuse of rights occurs when a state avails itself of its right in an arbitrary manner in such a way as to inflict upon another state an injury which cannot be justified by a legitimate consideration of its own advantage’.<sup>82</sup>

Dissenting Judge Read and others argued that the principle of abuse of rights requires injury to the litigant claiming such abuse. In the case of Guatemala, Read and others were convinced that Lichtenstein did not cause any damage and thus, the doctrine of abuse of rights would not apply. However, they erred. Sloane reinforces this finding by asserting that, Nottebohm was an enemy alien and in case the nationality was retained, manipulation of his nationality would have deprived Guatemala of a means of self-defence authorized by international law and Guatemala would remain powerless which is a clear case of legal injury and thus, the result of abuse of rights.<sup>83</sup>

The Court stated that subsequent residence in the country of naturalization is not proof of a genuine link. There are other factors such as the centre of his interests, his family ties, his participation in social and public, etc. Josef L. Kunz calls the doctrine of genuine link vague and subjective criteria replacing the objective criteria of nationality which leads to legal uncertainty.<sup>84</sup> Additionally, Kunz invokes the Dissenting opinion of Judge Read and summarizes, there must be objective tests, readily established, for the existence and recognition of the nationality. Similarly, *ad hoc* Judge Guggenheim attacks the replacement of objective criteria by subjective considerations and eventually cautions that such vague principles will open the Pandora box leading to the arbitrary decisions and manipulations of states.<sup>85</sup>

Despite the criticism of the theory of genuine link, scholars agree that contemporary international law should reshape regulations forming the notion of nationality. Nottebohm still remains the only case where the court embraced the opportunity to dictate the scope of nationality and its implications in international law. Nowadays, the theory of genuine link is widely invoked in investor-state arbitrations, international humanitarian law, human rights law, etc. The critiques against Nottebohm's judgment target the doctrine of genuine link as an apprehension for depriving a person of the protections of citizenship status when his/her connections to the state did not meet the established standard of genuine link. Analysis shows that the scholars' predominant concern was the implications of ‘evaluative genuine link’

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<sup>82</sup> Brownlie, I. *Principles of Public International Law* (6th Ed.), Oxford University Press 2003, p. 407.

<sup>83</sup> *Ibid.*, Sloane (Supra 70) p. 23.

<sup>84</sup> Kunz, J.L. *The Nottebohm Judgment*. - *The American Journal of International Law*, vol. 54, no. 3, 1960, pp. 536–571. At: 554.

<sup>85</sup> *Ibid.*, p. 555.

undermining legal certainty and so legal protections of the people who might be left beyond protection. It is crucial to deter the perversion and misinterpretation of genuine links by establishing common legal approaches to the theory of genuine links. The law of nationality encapsulates trilateral consent for legal naturalization. Thus, the theory of genuine link shall not be limited to the individual interests for exercising human rights but also should focus on a sovereign state and its primary interests.

## 2. Russian *en masse* Passportization in Separatist Regions - Pretext for Intervention of Georgia

### 2.1 Georgian Independence and the Passage of Nationality Law

After 70 years of Soviet rule, on 31<sup>st</sup> March 1991 the Georgian society overwhelmingly backed the restoration of the republic's independent statehood in the nationwide referendum with 90.53% of the 3.4 million Georgian voters participating.<sup>86</sup> The referendum was held throughout the country. Amid the boycott of ethnic minorities, majority population, including ethnic Georgians in Abkhazia and South Ossetia voted for Georgia's independence.<sup>87</sup> The first nationality law in Georgia stated that to receive Georgian citizenship automatically, a person must meet the following requirements:<sup>88</sup>

- a) Permanent residence in Georgia at least for 5 years.
- b) Residence in Georgia by the date of entry into force of this law.
- c) The citizenship becomes valid unless a person declares refusal to be a Georgian citizen in writing form within six months.<sup>89</sup>

Ethnic Abkhazians and Ossetians declined to take part in the political process driving toward state independence. Instead, they chose to abstain from participating in the 1991 referendum and opted to break away from the newly established independent state. After the dissolution of the Soviet Union in December 1991, the majority of Abkhazia and South Ossetia remained with Soviet passports due to the rejection of Georgian citizenship.<sup>90</sup> When the law was enacted in 1993, Georgia had mostly lost control over separatist Abkhazia and South Ossetia. Therefore, the automatic conferral of citizenship in the post-conflict aftermath might be questioned by critics. Independent International Fact-Finding Mission on the conflict in Georgia (Tagliavini's report) highlighted an ambiguous aspect of the citizenship policy toward separatist regions. The nationality law set forth a conditional written form to renounce Georgian citizenship, nevertheless, the exchange of written documents was a difficult task if

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<sup>86</sup> Parks, M. 98% of Georgians Vote to Declare Republic Independent: Soviet Union: The question now is how to restore the statehood lost 70 years ago, lawmakers say. The Kremlin threatens a state of emergency. (02.04.1991) - *Los Angeles Times*. Available at: <https://lat.ms/3Mb092h> (26.04.2023).

<sup>87</sup> Constitution of Georgia, Parliament of the Republic of Georgia 24/08/1995. Article 1.

<sup>88</sup> Organic Law of the Republic of Georgia 'Georgian Law on Nationality', N.193, Parliament of the Republic of Georgia 25/03/1993. Article 3.

<sup>89</sup> Adopted law was shortly amended in 1993. The amendments dismissed the initial requirement to confirm the Georgian citizenship within 4 months. Additionally, the time limit to formally decline the citizenship in written form expanded for 6 months. (Amended on 24/06/1993. In Georgian: <https://bit.ly/3zxHA0P>).

<sup>90</sup> Nagashima, T. Russia's Passportization Policy Toward Unrecognized Republics. - *Problems of Post-Communism* Vol.66 no. 3 2019, p. 188.

not unfeasible.<sup>91</sup> Thus, according to the Georgian nationality law, the residents of Abkhazia and South Ossetia who had not objected to Georgian citizenship in written form before December 1993, in pursuance of Georgian nationality law were considered as their citizens.<sup>92</sup> However, Georgia by the automatic acquisition of its nationality adhered to customary international law obliging successor states to confer its nationality to all residents. The Tagliavini's report concluded that the Georgian nationality law entailing automatic naturalization has not constituted *sui generis*, especially among the former Soviet countries, indicating that the Georgian nationality law cannot be recounted as exceptional legislation from a general state practice.<sup>93</sup> Moreover, nationality law respected the citizens of third states. The individuals who already possessed the nationality of another state did not acquire Georgian citizenship.<sup>94</sup> The creation of citizenry via automatic naturalization after state succession is allowed by customary international law. Further confirming the consistency of Georgian nationality law with international standards.

As previously noted, in accordance with international law, explicit individual consent is a strict requirement for the conferral of nationality. However, by virtue of customary rules, state succession does not require the consent of individuals inhabited in the transferred territory. The relevant state practice was demonstrated after the dissolution of Yugoslavia and the Soviet Union where the nationality of inhabitants of a particular territory followed sovereignty, and therefore changed automatically.<sup>95</sup>

## **2.2 State Succession and Prevention of Statelessness in International Law**

The concept of citizenship is connected to the international recognition of a state. According to customary international law, citizenship can only be granted by sovereign states. Therefore, people of *de facto* nations are regarded as stateless under international law unless they hold citizenship of a patron state that is internationally recognized, which makes international recognition of their individual status much easier.<sup>96</sup> Declaration on the Consequences of state Succession for the Nationality of Natural Persons is a core legal document of the CoE adopted

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<sup>91</sup> Independent International Fact-Finding Mission on the Conflict in Georgia, Report, Volume II. European Union: Council of the European Union, Council Decision 2008/901/CFSP of 2 December 2008 concerning an independent international fact-finding mission on the conflict in Georgia. 2008 p. 151

<sup>92</sup> Ibid., p. 152

<sup>93</sup> Ibid., p. 148

<sup>94</sup> Ibid., p. 153

<sup>95</sup> Ibid., p. 154

<sup>96</sup> Grossman, A. Nationality and the Unrecognized State. - The International and Comparative Law Quarterly, Vol. 50 No. 4 2001, pp. 849-876. At: 874

in 1996.<sup>97</sup> The declaration interpreted ‘state succession’ as the replacement of one state by another in its responsibility for the territory. It comprises annexation, union, dissolution, and separation.<sup>98</sup> The issue of nationality is a fundamental challenge for newly established states. Aside from existing states, new states must govern how they constitute the attribution of nationality to population. Commonly, new states and in particular successor states grant nationality to the population of the territory they have acquired with the exclusion of nationals of third countries. This approach is based on the state’s assertion of its authority over a certain territory.<sup>99</sup> Moreover, all habitual residents must be eligible to receive the citizenship of a successor state due to their connection to the territory. According to customary international law, the incorporation of the population into a newly succeeded state takes place based on the genuine link between the population and the territory acquired by this state.<sup>100</sup>

Harvard Draft Convention on Nationality of 1929 is based on state practice and most of the norms constitute customary international law regulating state succession and acquisition of nationality. Article 18(b) states that, when a part of the territory of a state becomes the territory of a new state, habitual residents in such territory lose the nationality of that state and become nationals of the successor state, unless, in accordance with the law of the successor state, they decline the nationality.<sup>101</sup> Prominent legal scholars, including L. Oppenheimer and H. Lauterpacht, considered that the nationality of the successor state should be automatically granted to the residents of its territory.<sup>102</sup> Territorial changes fall under a legally justified collective naturalization in order to guarantee that regardless of the nature of legislative acts issued by the successor state, inhabitants of the territory acquire nationality by virtue of customary international law. The adoption of legislative acts for granting citizenship is a binding obligation of successor states. Therefore, reluctance to grant citizenship to all residents results in failure to comply with international law and subsequently, may lead to the violation of fundamental human rights law. One of the evident cases was the Federal Republic of Yugoslavia’s (FRY) successor state Serbia. After the disintegration of the FRY in 1992, brutal ethnic conflicts erupted. Following a succession from the federation, other states

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<sup>97</sup> Declaration on the Consequences of State Succession for the Nationality of Natural Persons CDL-NAT (1996) 007 Rev-e. Council of Europe, Venice, 1996.

<sup>98</sup> *Ibid.*, Article 1.

<sup>99</sup> Brubaker, R. Citizenship Struggles in Soviet Successor States. - *International Migration Review*, No. 98 Vol. 26 1992, pp. 269-91. At: 277.

<sup>100</sup> Donner, R. *The Regulation of Nationality in International Law* (2d Ed.). Leiden, The Netherlands: Brill | Nijhoff. 1994 p. 310.

<sup>101</sup> *Ibid.*, Harvard Draft Convention on Nationality (Supra 12) Article 18(b).

<sup>102</sup> Oppenheim, L., and Lauterpacht, H. *International Law: A Treatise*. Vol. 1 Peace (8th ed.) London: Longmans Green. p. 571.

adopted legal acts to regulate nationality.<sup>103</sup> However, Serbia deliberately postponed the adoption of the new citizenship act until 1996. Therefore, such delay encouraged Serbia to conscript refugees from Bosnia and Herzegovina for military conflicts, considering they were holding the nationality of the FRY which legally seized existence beforehand. The former Yugoslavia and the former Soviet Union state practice ascertained the application of customary international norms. Incorporation of the population with the territory and subsequent conferment of successor state citizenship is a common state practice under customary international law.<sup>104</sup>

Brubaker articulates the three most common scenarios when the initial citizenry is formed in a state.<sup>105</sup> The first and the most common is the creation of a new state. The citizenry is based on a territorial principle that is in accordance with customary international law. Brubaker points out, even if the state builds its nationality law on the principle of *jus sanguinis*, this principle comes into force after the inclusion of all factual inhabitants over the territory. This scenario is the challenge of statelessness by encompassing all concerned individuals into the citizenry. The second scenario delivered by Brubaker is the restored-state model. It pertains to those states who were illegally occupied or annexed and eventually reacquired their sovereignty after *de-facto* deprivation of statehood. By restoring sovereignty, a state restores its citizenry which excludes the obligation to grant citizenship to all inhabitants. In this matter, international law is less rigorous, due to the link of a new state with its descendant one. Therefore, all other residents are considered aliens eligible for the acquisition of citizenship through naturalization. The third and final scenario, suggested by Brubaker, is the combined model of the citizenry. When an emerging state has no sufficient connection to its descendants, its core citizenry will be formed with other groups' voluntary incorporation. Ultimately, successor states must consider four major factors to formulate the initial body of citizens: genuine link, habitual residence, territorial origin, and the will of the individual.

### **2.3 Setback in Russian Nationality Law – Implications of 2002 Amendments**

The Russian Federation commenced the open-door policy and subsequent passportization

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<sup>103</sup> Džankić, J. Regulation against weaponization: a double-edged sword? (30.03.2023) - Global Citizenship Observatory. Available at: <https://bit.ly/3MHQKQh> (26.04.2023).

<sup>104</sup> UNHCR and Issues Related to Nationality, UN High Commissioner for Refugees (UNHCR). - Refugee Survey Quarterly, Vol. 14, No. 3 1995, pp. 91-112.

<sup>105</sup> Ibid., Brubaker, (Supra 100) p. 279.

campaign, just before the turn of the century, after Vladimir Putin's election to president in 2000. Russian domestic law was changed as a result of the country's assertive foreign policy and ambitions to maintain political influence over nearby countries, notably regarding stateless people.<sup>106</sup> Some scholars believe the novelty of Russian passports in Georgian-Russian relations was shaped by various factors. Tracey German believes the passports were used as leverage to put pressure on the Georgian government to allow Russian anti-terrorist operations in Georgia's northern mountains.<sup>107</sup> Therefore, the passports served the purpose of 'stick and carrots' in Georgian-Russian relations, which ultimately served as a cover for hostile actions. In the Russian Federation, the current Law of Nationality dates back to 2002.<sup>108</sup> New regulations embodied simplified procedures targeting the separatist regions of the former Soviet countries. The law granted passports to those who had Soviet citizenship but remained stateless after the fall of the Soviet Union due to failure to receive citizenship of any former Soviet state where they resided. By virtue of new legislation, the residents of Abkhazia and South Ossetia who did not relocate to the Russian Federation became eligible to receive Russian citizenship.

From 1<sup>st</sup> June to 1<sup>st</sup> July 2002, the Congress of Russian Communities of Abkhazia commenced the collection of Soviet-era travel documents, and after due checking procedures up to 200,000 residents received Russian passports.<sup>109</sup> This was the first official procedure of Russian passportization in Georgian breakaway region, which encouraged the separatists to repel the negotiations with Tbilisi. The *de facto* prime minister of Abkhazia meanwhile declared: 'The more Russian citizens live in Abkhazia, the greater the guarantee that Georgia will not begin a new war. Every great power is duly bound to defend its citizens, wherever they live'.<sup>110</sup> Georgian officials have been warning about the continual passportization policy that has interfered with Georgian sovereignty and internal affairs since 2003.<sup>111</sup> Russia's passportization commenced in 2002 and accelerated following the 2003 Rose Revolution in

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<sup>106</sup> Ziemele, I., *State Continuity and Nationality: The Baltic States and Russia, Past, Present and Future as Defined by International Law. Chapter VIII - The Regulation of Nationality in the Russian Federation*. Leiden, The Netherlands: Brill | Nijhoff 2005, p. 179.

<sup>107</sup> German, T.C. The Pankisi Gorge: Georgia's Achilles' heel in its relations with Russia? - *Central Asian Survey*, Vol. 23, No. 1 2004, p. 27.

<sup>108</sup> Federal Law on Citizenship of The Russian Federation N62-FZ, 15.05.2002, Russian State Duma. Available at: <https://bit.ly/3JXdBoX> (26.04.2023)

<sup>109</sup> Khashig, I. Abkhaz Rush for Russian Passports, Tbilisi's relations with Moscow Worsen as Hundreds of Thousands of Abkhazians Take Up Russian Citizenship. (27.06.2002) - Institute for War & Peace Reporting. Available at: <https://bit.ly/3TtSfCQ> (26.04.2023).

<sup>110</sup> Ibid.

<sup>111</sup> Secretary-General's Report Submitted to the UN Security Council on the Situation in Abkhazia, Georgia, UN Doc. S/2003/39, 13 January 2003, § 4.

Georgia.<sup>112</sup> The fundamental reason was that President Mikheil Saakashvili made the restoration of Georgia's territorial integrity one of his top priorities.

After Putin's foreign policy demonstrated that Russia seized being a 'caring parent' who generously granted its nationality to all former USSR citizens and became a loophole for separatist entities short of statehood.<sup>113</sup> For instance, following the adoption of new procedures for granting citizenship to secessionist entities, the number of Russian passports drastically enhanced in breakaway regions. By 2005, over 80% of Abkhazians and 95% of Ossetian residents were holding Russian passports.<sup>114</sup> Over and above, the de-facto president of Abkhazia back then advised all reluctant residents who refused to receive Russian passports to leave Abkhazia and move to Georgian-controlled territory.<sup>115</sup> Abkhazian Scholar Inal Khashig upholds the Russian passportization in Abkhazia by criticizing the failure of the UN to provide similar documents to 'Nansen passports' i.e., temporary documents for stateless refugees to Abkhazian residents.<sup>116</sup> Hence, Khashig argued that Abkhazian appeal for Russian passports was the chance to receive legal status. However, Khashig ignores the fact that under international law Abkhazian and South Ossetian, residents never have been considered stateless refugees due to the *de-jure* application of Georgian sovereignty over the conflict territories.

Russian passports were deemed invalid due to the *de-jure* Georgian citizenship of all residents, including separatist regions.<sup>117</sup> By virtue of *jus soli* residents born on Georgia's sovereign territory have been regarded as Georgian nationals under customary rules of international nationality law. By the application of *en masse* passportization in Abkhazia and South Ossetia the Russian Federation took advantage and established personal jurisdiction and overall effective control which is confirmed by the ruling of the ECtHR. One of the remarkable cases addressing effective control through passportization is the ECtHR case *Mamasakhlisi and Others v. Georgia and Russia* rendered in March 2023.<sup>118</sup>

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<sup>112</sup> Bescotti, E. *et al.* Passportization Russia's "humanitarian" tool for foreign policy, extra-territorial governance, and military intervention. (23.03.2022) Verfassungsblog Available at: <https://bit.ly/3oEFdHf> (26.04.2023).

<sup>113</sup> Henderson, C., and Green, A.J. The Jus Ad Bellum and Entities Short of Statehood in the Report on the Conflict in Georgia. - The International and Comparative Law Quarterly Vol. 59, No. 1 2010, pp. 129-139.

<sup>114</sup> German, T.C. Abkhazia and South Ossetia: Collision of Georgian and Russian Interests. - Institut Français des Relations Internationales, 2006, p. 8 <https://shorturl.at/aetU9> (26.04.2023).

<sup>115</sup> *Ibid.*, p. 9.

<sup>116</sup> Khashig, I. Lesson to the West: Abkhazian Independence is a Fact. 28.08.2008 - Open Democracy. Available at: <https://shorturl.at/biCZ4> (26.04.2023).

<sup>117</sup> Littlefield, S. Citizenship, Identity and Foreign Policy: The Contradictions and Consequences of Russia's Passport Distribution in the Separatist Regions of Georgia. - Europe-Asia Studies. Vol. 61. No 8 2009, pp. 1461-1482. At: 1473.

<sup>118</sup> ECtHR, Application N 29999/04 and 41424/04, *Mamasakhlisi and Others v. Georgia and Russia*, 07.03.2023.

## 2.4 Russian Passports in Georgia - Tool for Effective Control and Illegal Intervention

The issue of effective control over the territory has been confirmed by the ECtHR in numerous cases, such as *Georgia v. Russia II; Mamasakhlisi, and others v. Georgia and Russia; etc.* Reports from various international organizations, such as Tagliavini's report in 2008 observed the connection between Russian passportization and its effective control. The ECtHR handed down its ruling in *Mamasakhlisi and Others v. Georgia and Russia* in March 2023, which dealt with the circumstances leading up to the 2008 Russo-Georgian conflict. This case is crucially important for the Court establishing the Russian effective control over Abkhazia from 2001 to 2007, before the Russo-Georgian war. The Court discussed the problem of Russian passports in this ruling, as well as the Russian state's accountability for international wrongdoing and a violation of Georgian sovereignty. According to the case, Mr. Mamasakhlisi and Mr. Nanava were arrested in 2001 and 2003 respectively, subjected to alleged ill-treatment, conviction, and continued detention by the *de facto* Abkhaz authorities, they brought the case to the ECtHR in 2006. The ECtHR's objective was to determine who was accountable for the alleged violations taking place during the disputed time, between August 2001 and July 2007, and which state effectively controlled an area.<sup>119</sup> On the basis of military involvement, monetary support, and political backing, the Court made further assessments.<sup>120</sup> The Court found that, while Georgia had exercised no control over Abkhaz territory at the time, it had jurisdiction on its territory recognised under international law. Regarding Russia, the Court concluded that, due to its sustained and substantial political and economic support for Abkhazia and military involvement, Russia had exercised effective control and decisive influence over the area and thus had jurisdiction in respect of the violation of human rights.<sup>121</sup>

Abkhazia's high dependency on Russian support during the examined period allowed the Court to conclude that Russia exercised effective control and decisive influence over Abkhaz territory. The Russian passportization further reinforced the Court's position on the matter of responsibility. The Court abstained from drawing a conclusion on the Abkhaz authorities' effective control over the territory and its residents because the majority had acquired Russian citizenship and were under the personal jurisdiction of the Russian Federation. The Court

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<sup>119</sup> Ibid., para 313.

<sup>120</sup> Ibid., para 320.

<sup>121</sup> Ibid., para 330.

quoted: ‘Practically all the inhabitants of Abkhazia are at the same time citizens of the Russian Federation.’<sup>122</sup> The Court referred to the 2009 report assessment of the extensive conferral of Russian nationality by Tagliavini’s report. The court concluded that it was the act of deprivation of Georgia of its jurisdiction over persons, which despoiled Georgia of personal jurisdiction and subjected it to the threat of military intervention. The ECtHR, previously, in the case of *Georgia v. Russia II* referenced Tagliavini's report and acknowledged Russia’s policy of integrating Georgian separatist entities into its own legal jurisdiction by virtue of Russian passports.<sup>123</sup>

Tagliavini's report confirmed a significant number of Russian citizens in the public administration of Abkhazia and South Ossetia.<sup>124</sup> The report concluded that, since the majority of people living in Abkhazia and South Ossetia have acquired Russian citizenship, Russia could claim personal jurisdiction over them. The report outlines the setback of established Russia’s *de-facto* control which reportedly appeared since 2004. Moscow reached a dramatic degree of control through passports. Practically the effectiveness of *de-facto* governance was heavily dependent on Russian passportization. In November 2003, Igor Ivanov, the foreign minister of Russia, promised to support its nationals in Abkhazia to the fullest extent feasible and would not let their rights be violated.<sup>125</sup> The *de facto* leader of Abkhazia declared during a visit in August 2005 that 70% of the military members were Russian citizens, confirming the Russian military control over the separatist Georgian region.<sup>126</sup>

Russia invoked Article 51 of the UN Charter and its obligation to protect Russian citizens in Abkhazia and South Ossetia from the ‘genocide’ committed by the Georgian government in 2008 when Georgia entered by military force in the region to regain control and establish a constitutional order.<sup>127</sup> Russian passportization in Georgia can be divided into two phases. The first is before the invasion in Georgia in August 2008. The passportization policy was assertive but less forceful before the invasion, mostly justified by humanitarian reasons.<sup>128</sup> However, the pattern of passportization has apparently changed after August 2008, indicating

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<sup>122</sup> Ibid., para 148.

<sup>123</sup> ECtHR, Application no. 38263/08, *Georgia v. Russia (II)*, 21.01.2021. Para. 156.

<sup>124</sup> Ibid., Tagliavini’s Report (Supra 92) p. 132.

<sup>125</sup> Ibid., p. 126.

<sup>126</sup> Ibid., p. 157.

<sup>127</sup> Allison, R. The Russian case for military intervention in Georgia: International law, Norms and Political Calculation. - Journal of European Security, Vol 18. 2009, pp. 173-200.

<sup>128</sup> Ibid., Bescotti (Supra 113).

a more aggressive strategy. The Georgian government in the request for provisional measures in 2008 before the ICJ asserted the expanding dissemination of Russian passports among Georgian citizens beyond the territory of South Ossetia.<sup>129</sup> Furthermore, 45,000 ethnic Georgians remained in Abkhazian territory prior to the 2008 war. They were under pressure to accept Russian passports amidst the pressure and human rights violations.<sup>130</sup> South Ossetia commenced enforcing its coercive policy on the largely Georgian-populated Akhagori district. Additionally, Russian assistance helped local Abkhazian authorities led to the exertion of pressure on non-Russian citizens, the majority of whom were identified as Georgian nationals, to obtain Abkhazian passports. On the other hand, the Abkhazian passports served as *quasi* Russian passports by virtue of Russian recognition of Abkhazian citizenship, as such.<sup>131</sup>

Abuse of rights has been reported in both separatist regions toward Georgian nationals. Russian-backed separatists in Abkhazia refuse to residents of Gali (a Georgian only district of Abkhazia) to use Georgian passports as an official documents and they are refused to receive a local Abkhazian passport, either. Therefore, the temporary residence permit is the only option for them to stay and access basic and limited services.<sup>132</sup> Remaining ethnic Georgians in Gali district constantly face with increasing pressure from de-facto authorities. Organization for Security and Co-operation in Europe (OSCE) High Commissioner on Nationality Minorities observed and reported compulsory passportization and forced conscription of Georgian nationals into the Abkhaz military forces.<sup>133</sup> Another reported abuse of rights in South Ossetia has been confirmed toward the Georgian villages of the Tkhinvali region (Capital of South Ossetia). The territories of South Ossetia dramatically expanded as a result of the Russo-Georgian War. After the war, Human Rights Watch reported that for Georgian residents to cross administrative borders between South Ossetian and Georgian

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<sup>129</sup> ICJ, *Georgia v. Russian Federation*, Application of the International Convention on the Elimination of All Forms of Racial Discrimination. 25.08.2008. Amended request for the indication of provisional measures of protection submitted by the Government of Georgia, Request to the ICJ, p. 2.

<sup>130</sup> *Ibid.*, p. 3.

<sup>131</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, OSCE. Warsaw, 27 November 2008, p. 68. Available at: <https://bit.ly/3m7Svew> (26.04.2023)

<sup>132</sup> Consolidated report on the Conflict in Georgia, (April – October 2022), SG/Inf (2022) 38. Council of Europe, 3 November 2022 p. 9 Available at: <https://bit.ly/3nFpMOt> (26.04.2023)

<sup>133</sup> Report by the OSCE High Commissioner on National Minorities to the Permanent Council. Statement by Knut to the 765th Plenary Meeting of the OSCE Permanent Council. Vienna, Austria. 18 June 2009. At: <https://bit.ly/3N3kNC1> (26.04.2023).

controlled territories, they have been forced to accept Russian passports.<sup>134</sup>

## 2.5 Former Soviet Citizenship Paradigm in Abkhazia and South Ossetia

After the collapse of the Soviet Union in 1991, republics that were part of the Soviet Union became independent countries. 12 republics became sovereign states by virtue of the right to self-determination and further proclamation of independence, whilst three Baltic states restored their statehood after Soviet occupation by virtue of state continuity (See chapter 2.6). In international law, the relationship between successor states and predecessor states is a challenging issue. A successor state is a new state that is created after the dissolution of an existing state when a predecessor state dissolves. The successor state inherits some of the rights and obligations, while others may be divided or transferred to other states.

The principle of *Uti Possidetis* refers to the idea that following federal states dissolution, the former internal administrative borders must transform into the borders of the newly independent states.<sup>135</sup> This concept has been a crucial principle in history, nevertheless, not being a part of codified or recognized as customary international law. Tagliavini's report invoked this principle and assessed state succession in line with state nationality issues. The report argued that, although *Uti Possidetis* is not considered a customary international law, it was employed in practice by the former Soviet states in 1990s.<sup>136</sup> In addition, Lauri Mälksoo analyzed the application of *Uti Possidetis* and argued selective approach of post-Soviet Russia to this principle.<sup>137</sup> This approach was manifested in Russian practice toward the post-Soviet space, as if *Uti Possidetis* was not legally binding.<sup>138</sup> Notwithstanding the Russian exceptional approaches, Tagliavini's report acknowledged a connection between the principle of *Uti Possidetis* and Russian passportization in Georgia, and thus declared: "...If the population of the territorial sub-unit had the right to collectively refuse the new citizenship, the pacifying effect of the *Uti Possidetis* principle would be undermined."<sup>139</sup>

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<sup>134</sup> Up In Flames - Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia. Report of Human Rights Watch, 2009 p. 150.

<sup>135</sup> Mälksoo, L. Post-Soviet Eurasia, *Uti Possidetis* and the Clash between Universal and Russian-Led Regional Understandings of International Law - New York University Journal of International Law and Politics, Vol. 53, No. 3, 2021, p. 787-822. At: 807.

<sup>136</sup> *Ibid.*, Tagliavini's Report (Supra 92) p. 143.

<sup>137</sup> *Ibid.*, Mälksoo (Supra 138) p. 813.

<sup>138</sup> *Ibid.*, p. 820.

<sup>139</sup> *Ibid.*, Tagliavini's Report (Supra 92), p. 154.

Once a successor state acquires a territory, it is obliged under international law to respect the population residing on that territory because a bond between individuals and their domicile territory lasts after the state succession.<sup>140</sup> Hence, international law tolerates neither arbitrary treatment of the population inhabited on the state's territory, nor treatment like stateless individuals. In the current research, the main focus is on the legal status of the population in Abkhazia and South Ossetia. It is important to clear up the confusion among academics on whether the people of South Ossetia and Abkhazia were considered Georgian citizens or did they remain stateless due to the ethnic conflict, and renouncement of Georgia's independence. In 1991-1992, conflict broke out in South Ossetia, a separatist territory of Georgia. Through the conclusion of a Russian-Georgian deal that brought about a truce, the first conflict in South Ossetia resulted in the region's *de facto* separation from Georgia in 1992.<sup>141</sup> In 1993, another Russian-Georgian deal brought an end to the ethnic war between Georgians and Abkhazians, effectively removing the region from Georgia's sphere of influence.<sup>142</sup>

The Declaration on the Consequences of State Succession for the Nationality of Natural Persons stipulates rules for granting citizenship to all residents of the territory. According to Article 10, the successor State shall grant its nationality to permanent residents of the transferred territory who become stateless as a result of the succession.<sup>143</sup> It can be argued that the Declaration may be employed as a pretext for separatism from the successor state. According to Article 13, when two or more States succeed to a predecessor State which ceases to exist, each of the successor States shall grant the right of option in favor of the nationality of the other successor States.<sup>144</sup> Based on this provision, one can claim that the residents of Abkhazia and South Ossetia had a rightful privilege to receive Russian passports by virtue of the dissolution of the Soviet Union and the creation of independent states, including the Russian Federation.

The exercise of the right of the option depends on certain preconditions. First, the successor state enjoys the discretion to make the right of option available pursuant to the principle of genuine link based on ethnic, linguistic, or religious grounds.<sup>145</sup> Second, the right of option

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<sup>140</sup> Ibid., Brownlie (Supra 83) p. 665.

<sup>141</sup> Agreement on the Principles of Settlement of the Georgian-Ossetian Conflict, Sochi, Russia. June 24, 1992. Available at: <https://bit.ly/434IKPQ> (26.04.2023).

<sup>142</sup> Agreement on a Cease-fire in Abkhazia and Arrangements to Monitor its Observance, Sochi, Russia. 27 July 1993. available at: <https://bit.ly/3lZ9z6y> (26.04.2023).

<sup>143</sup> Declaration on the Consequences of State Succession for the Nationality of Natural Persons CDL-NAT (1996) 007rev-e, Council of Europe. Venice, 14 September 1996. Article 10(a).

<sup>144</sup> Ibid., Article 13(b).

<sup>145</sup> Ibid., Article 14.

should be exercised within a reasonable time from the date of succession.<sup>146</sup> In order to challenge the claims of the statelessness of Abkhazian and the South Ossetian population, the grounds for the right of option should be exercised. In international law, the test of the genuine link is crucial between a state and individuals considering naturalization. The *Nottebohm* case set preconditions deriving from social and personal connections. However, the aforementioned declaration sets the ethnic, linguistic, and religious grounds for establishing a sufficient genuine link. Neither of the three conditions can be attributed between the separatist regions and the Russian Federation.

Noteworthy, Abkhazians are distinct from the Georgian ethnicity as well. By recognizing Abkhazians as indigenous and acknowledging their principal distinction, Georgia retained Abkhazian autonomous political status.<sup>147</sup> Georgian authorities neither intimidated nor imposed any prejudicial consequences on Abkhazian and South Ossetians to prevent them from naturalization. Instead in the 1990s, residents reluctant to accept Georgian passports could not aspire to receive Russian passports due to the obstructive policy of Russia toward separatist regions. After the end of the Georgian-Abkhaz ethnic war, Abkhazia was subjected to a severe economic and political blockade from the Russian Federation.<sup>148</sup> Thus, a genuine link could not be established between the Russian Federation and Georgian separatist regions amid the hostile approaches in the 1990s.

Another crucial precondition is that the right of option should be exercised within a reasonable time from the date of succession. Putin's coercive passportization policy commenced in 2002, after 11 years of Georgian independence. Thus, the threshold of reasonable time for naturalization in the Russian Federation cannot be passed. A key conclusion made by Tagliavini's report suggests that only a few post-Soviet countries granted a right of option in domestic law, such as Ukraine, Moldova, Russia, Turkmenistan, and Uzbekistan.<sup>149</sup> In the absence of longstanding common state practice, no provision under customary international law grants individuals a right of option to decline the nationality of the new territorial state while remaining in that new state. The Report of the ILC stated that statelessness rarely results from the renunciation of nationality.<sup>150</sup> Notwithstanding a lack of special rules in international

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<sup>146</sup> *Ibid.*, Article 15.

<sup>147</sup> Ennals, D. *et al.* Report of a UNPO Mission to Abkhazia, Georgia, and the Northern Caucasus. - Central Asian Survey Vol. 12, Issue 3 1992, pp 325-345. At: 341.

<sup>148</sup> The Blockade of Abkhazia. (20.07.2020) - *Abkhaz World*. Available at: <https://bit.ly/3oaWtna> (26.04.2023).

<sup>149</sup> *Ibid.*, Tagliavini's Report (Supra 92) p. 153.

<sup>150</sup> *Ibid.*, Report on Nationality (Supra 50) p. 21.

law, it is not recommended to bind the individual irreversibly to a state which they severed connections with. Whereas discussing the reduction of subsequent statelessness as a result of voluntary action by the national, the Report recalls the Hague Convention on Certain Questions relating to the Conflicts of Nationality Laws which stipulates the rule of expatriation. The recalled rule set forth in Article 7 of the Convention, specifies the issue of an expatriation permit which allows people to relocate from the discorded state to another territory.<sup>151</sup> However, this rule has never been discussed in relation to Abkhazia and South Ossetia due to their aspiration for independence from Georgia, violating the territorial integrity of a sovereign state.

One of the most crucial aspects of post-conflict Abkhazia and South Ossetia is the demographic picture of the local population. Primarily in Abkhazia, a total of 45% of the population consisted of ethnic Georgians, whereas the Abkhazians were 17% of the population.<sup>152</sup> Hostilities in two regions shrank the population by half and radically changed the ethnic representation of the Georgian community. The Georgian ethnic cleansing of Abkhazia and South Ossetia led to devastating consequences for the human rights of internally displaced people and Georgian sovereignty. This leads to the conclusion that the critical part of habitual residents in Abkhazia and South Ossetia became internally displaced people who eventually received Georgian citizenship. The absence of ethnic Georgians in disputed territories refutes the political and legal aspirations of *de facto* proclaimed states.

## **2.6 Russia's Interchangeable Approach to Citizenship – Continuity or Succession**

The dawn of illegal passportization goes beyond a mere political concept of Putin's Russia. Conferral of Russian citizenship begins with the 1991 citizenship law of the Russian Soviet Federative Socialist Republic (RSFSR).<sup>153</sup> Harzl argues that the 1991 law was inspired by the concept of Russia as legal successor (*pravopriyomnik*), as well as continuator (*prodolzhatel*) of the USSR which later appeared in the Russian constitution following recent amendments.<sup>154</sup> Mälksoo in his analysis of the Russian Constitutional amendments of 2020, addresses the state

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<sup>151</sup> Convention on Certain Questions Relating to the Conflict of Nationality Law (Supra 14) Article 7.

<sup>152</sup> Naselenie Abkhazii 1989 (Население Абхазии 1989). – *Ethno-kavkaz.narod.ru*. <https://bit.ly/3A1SBrA> (26.04.2023).

<sup>153</sup> Rossiskaya Sovetskaya Federativnaya Sotsialicheskaya Respublika Zakon (RSFSR) ot 28 noyabrya 1991 goda N1948-1 (Российская Советская Федеративная Социалическая Республика Закон (РСФСР) от 28 ноября 1991 года N1948-1). Available at: <https://bit.ly/3KMY8sd> (26.04.2023).

<sup>154</sup> Ibid., Harzl and Petrov, (Supra 29) p. 64.

succession and continuity which are claimed by Russia interchangeably. He stresses that the biggest ambiguity of the dual reference to these concepts is that, in international law, their difference is fully determined, and thus, merging these concepts in Russia is a legal paradox.<sup>155</sup> Russian Federal law of 1999 ‘On the state policy of the Russian Federation in the relations with compatriots overseas’ reaffirmed a legal nexus between Russia and Soviet citizenship based on the dual concept of state continuity.<sup>156</sup>

James Crawford analyses the core differences between state continuity and succession. State continuity constitutes a consistency of pre-existing states with the same essential elements – territory, population, and government. Whereas the state succession forms a new state replacing the previous one in a certain territory.<sup>157</sup> Apparently, Russia utilizes these two opposite concepts simultaneously and manipulates them accordingly. If Russia needs to deny past obligations assigned by the USSR, then Moscow can argue for discontinuity of those obligations. However, when Moscow deems it necessary, Russia will assert a continuation of the USSR.<sup>158</sup> One of the examples of exercising the dual concept of state succession is extraterritorial naturalization, which allowed Russia to target former Soviet republics and their former citizens, for whom Russia claimed to be a paternal state.

In respect of state practice in post-Soviet countries, Baltic states are placed in a different position from other Soviet successor states due to their existing *de-jure* statehood during the Soviet occupation since 1940. In this matter, they are successors not to the Soviet Union but to the republics which continued a legal existence despite their *de-facto* occupation. In the 1990s Baltic states restored their citizenry based on the principle of state continuity. Thus, the population belonging to such citizenry received pre-existing national passports. However, all other Soviet time settlers were denied becoming citizens automatically. Nevertheless, they became eligible for citizenship through naturalization. The decision of Baltic states to exclude from citizenry the Soviet period settlers was criticized by the officials of the Russian Federation arguing that all permanent residents of the Baltic states should have been granted nationalities

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<sup>155</sup> Mälksoo, L. International Law and the 2020 Amendments to the Russian Constitution. *American Journal of International Law*, Vol. 115 No. 1 2021, pp. 78–93. At: 83.

<sup>156</sup> Federalni zakon o gosudarstvennoi politike Rossikoi Federatsii v otnosheniyax sootchestvennikom za Rubezhom. (“Федеральный закон О государственной политике Российской Федерации в отношении соотечественников за рубежом”) Moscow, 19 March 1999. Available at: <https://bit.ly/3KL49o1> (26.04.2023).

<sup>157</sup> Crawford, J. *The Creation of States in International Law*. Oxford: Clarendon Press 1979, p. 400.

<sup>158</sup> *Ibid.*, Mälksoo (Supra 156) p. 84.

automatically.<sup>159</sup> Mälksoo commented on that by recalling the international recognition of the state continuity principle regarding the Baltic states.<sup>160</sup> By virtue of this principle applied to the Baltic nationalities under international law, the exclusion of Soviet settlers from citizenry has not been seen as discriminatory. This example demonstrates that the Russian claim for the genuine link between the former Soviet citizens of Baltic states and the Russian Federation differs from the other former Soviet countries which established new citizenship concepts after legal succession from the Soviet Union. The passportization of the Baltic States was conducted after the Soviet occupation in 1940. The USSR adopted the legislation for the provision of Soviet nationality to nationals of Estonia, Latvia, and Lithuania.<sup>161</sup> However, the principle of state continuity of the Baltic states preserved the continuity of nationalities. Therefore, in case of occupation, annexation, or other violations of international law, passports of occupying power are not legitimized by using them as valid documents under illegal circumstances. The Russian Federation, on the one hand, criticized Baltic states for excluding the Soviet settlers from the citizenry, dictating rules for consolidating society in Baltics. Meanwhile, endorsed separatism in Abkhazia and South Ossetia by treating them as state population regardless of their residence in Georgian sovereign territories. This example shows the Russian ambiguous, inconsistent approaches toward state sovereignty of the former Soviet states.

In regard to the separatist regions of Georgia, the Russian legislation encompassed a former Soviet nationality and a temporary residence permit as prerequisites for Russian passports. Before controversial amendments, the foundation of Russian naturalization law was a territorial principle. A person's residence in Russia was a sufficient factual connection to grant Russian citizenship.<sup>162</sup> In the course of launched passportization policy toward Abkhazia and South Ossetia, Russian Citizenship has amended the way that residence in the Russian Federation was not required anymore.<sup>163</sup> The amendments applied in 2002, allowing persons formerly holding Soviet citizenship to get Russian citizenship through simplified procedures. Considering this approach, the genuine link between the former Soviet citizens and the Russian Federation has been highly doubtful and unlawful.

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<sup>159</sup> Mälksoo, L. *Illegal annexation And State Continuity: The Case of The Incorporation of The Baltic States by the USSR*. Leiden, The Netherlands: Brill | Nijhoff, 2003, p. 229.

<sup>160</sup> *Ibid.*, 230.

<sup>161</sup> *Ibid.*, Report on Nationality (Supra 50) p. 9.

<sup>162</sup> Federal Law on Citizenship of The Russian Federation N 62-FZ. Approved by the Council of the Russian Federation on May 15, 2002. Article 14.

<sup>163</sup> *Ibid.*, Tagliavini's Report (Supra 92) p. 168.

Overall, Russian legislation against statelessness in the post-Soviet world, particularly, in relation to Abkhazia and South Ossetia has been a contentious issue. Georgian sovereignty over Abkhazia and South Ossetia was unanimously recognized by the international community in the UN, including the Russian Federation. In 1992, the self-declared Republic of South Ossetia requested the Russian government to grant Russian citizenship to its residents.<sup>164</sup> However, the Russian government refused this request and instead recognized the territorial integrity of Georgia when it joined the CIS and took responsibility to secure the return of the ethnic Georgian refugees to breakaway regions.<sup>165</sup> Notwithstanding the shortfall of this task, Russia *de-jure* acknowledged Georgia as a sovereign state with territorial integrity. Thus, the attempt to establish a genuine link between former citizens of the Soviet Union and the Russian Federation is unsubstantiated. The dissolution of the Soviet Union seized the legal existence the Soviet citizenship. The Russian Federation in its letter of December 1991 acknowledged the UN Secretary General about the membership of the USSR continued by the Russian Federation.<sup>166</sup> Although, Russia continuing international legal rights and obligations of the Soviet Union do not amount to the continuity of Soviet citizenship.

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<sup>164</sup> Mühlfried, F. Citizenship at War Passports and Nationality in the 2008 Russian-Georgian Conflict. *Anthropology Today* Vol 26 No 2, APRIL 2010, p. 9.

<sup>165</sup> Kocaman, Ö. Russia's Relations with Georgia within the Context of The Russian National Interests Towards the South Caucasus in The Post-Soviet Era: 1992-2005. *USAK Yearbook of Politics and International Relations*, Issue 1 2008, pp. 347-373, at: 361

<sup>166</sup> Mullerson, R. *The International and Comparative Law Quarterly*, Vol. 42, No. 3 1993, pp. 473-493, at: 477.

## *Interim Conclusion*

Customary international law enacts the right for each State to determine under domestic law who are its nationals. However, the legitimacy of domestic regulations is contingent upon the recognition by other states as long as they comply with international regulations and the legal principles widely accepted in international law. International nationality law established a two-fold assessment of the legality of extraterritorial naturalization under international law. First, a precise and free individual consent, and second, a factual connection between a state and a naturalized individual. By that time, in the mutual interrelation, the concept of state sovereignty prevailed. The nationality law of one state can potentially challenge another state's sovereignty when it affects the rights and status of individuals who are not physically present within the former's territory. The analysis of the Hungarian case reinforces the theory of effective control in extraterritorial naturalization. In other words, the more effective control achieved through extraterritorial naturalization, the higher risk is posed to state sovereignty. It is hard to imagine how the rights and obligations create legal implications in the absence of effective control by the state. Citizenship imposed on individuals beyond the effective control of a state would unlikely be a weapon against the sovereignty of another state due to a lack of measures for exercising personal jurisdiction. Therefore, analyzing the legality of extraterritorial naturalization, it is crucial to examine the degree of effective control and personal jurisdiction that one state has over another state's territory.

Through the analysis of the ICJ's pillar judgment in the *Nottebohm Case* and considering various critiques, it is evident that the concept of a genuine link is a crucial legal test when it comes to conferring nationality on individuals. The critics of the judgement do not undermine the genuine link theory, although, they suggest more precise grounds and effective leverages to assess the individual and state liability in international law. Whether the naturalization results in infringement of sovereignty or merely abuse of rights varies on a case-by-case basis. The concerns expressed by scholars are shaped by modern globalization and open-borders policies which lead to the movement of nationals and their exposure to different legal jurisdictions. In order to prevent further misinterpretation and misuse of the doctrine, legal experts have proposed a more objective and individual-focused principle of genuine link. The test of genuine link has become increasingly important in contemporary international relations, particularly in light of Russian approaches to former Soviet countries where the concept of

nationality is ambiguously interpreted. The subsequent chapter of the thesis thoroughly examines the legality of this issue.

The study shows that the collective naturalization of the population by a successor state of the territory is not merely permitted but required under customary international law. The obligation to prevent statelessness by the creation of citizenry rests with the successor state. In cases of state succession, successors must take into account four different factors in defining their initial citizenry: genuine link, habitual residence, territorial origin, and the will of the individual. Discussing each factor in the case of Abkhazia and South Ossetia, Georgia partly, and Russia completely lacked at least the following factors: A genuine link between the Russian Federation and the *de jure* habitants of Abkhazia and South Ossetia, including the Georgian ethnic group. Habitual residence for the population remained in Georgian territories recognized by the international community. Residents of Abkhazia and South Ossetia inhabited the territory falling under Georgian sovereignty by virtue of territorial transfer after state succession. The last contingent element is the will of the individuals. The research indicated that the expulsion of a significant number of Georgian ethnic groups from the disputed territories and never allowing them to return undermined the legal stance of Abkhazians and South Ossetians' aspirations.

For instance, according to the Soviet official statistics, out of a total of 525,000 inhabitants in the Abkhazian Autonomous Republic, 45% consisted of Georgian ethnicity, while Abkhazians consisted of 17.8%.<sup>167</sup> Around 250,000 ethnically Georgians fled separatist regions after the war and became internally displaced people. Thus, the majority of the population left the disputed territories and consequently, accepted Georgian passports by settling in the Georgian controlled territories. Therefore, in light of the aforementioned factors, ethnic cleansing and illegally ousted Georgian citizens from separatist regions made the passportization of separatist regions based on statelessness utterly unlawful.

Regaining independence sparked Georgian attempts to consolidate a civic national identity over its territory, encompassing all residents and nationals under Georgian sovereignty. By the application of *en masse* passportization in these territories the Russian Federation took advantage and established personal jurisdiction and overall effective control which is confirmed by the ruling of the ECtHR. Overall, the Russian Federation perverted international

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<sup>167</sup> Dale, C. The Dynamics and Challenges of Ethnic Cleansing: The Georgia–Abkhazia Case. - Refugee Survey Quarterly, Volume 16, Issue 3 1997, p 77.

law against Georgia on several occasions. Foremost, Russia treated Abkhazians and South Ossetians as stateless people by conferring nationality on them. Second, the Russian passportization policy disregarded Georgian sovereignty and undermined customary international law by depriving of personal jurisdiction over the residents in Georgian *de-jure* territories. Third, by disguising this approach as a humanitarian measure, the Russian Federation undertook effective control over the sovereign territory of Georgia. Finally, the debate whether the Georgian case falls under a mere abuse of rights by the state or a derogation from the customary international law seems to be based on a misjudgment of the preclusive characteristic of passportization. It might be prompted by a narrow assessment of the Russo-Georgian war pretexts. The Russian aggression toward Ukraine shed the light on Russian systematic infringement of general principles of international law against state sovereignty near abroad.

### 3. Passportization Under Occupation - Russian Contemporary Policy in Ukraine

#### 3.1 Annexation Fallout: Examining the Passportization of Crimea

The ethnic, cultural, and linguistic conflict in Crimea has occurred since the early 1990s.<sup>168</sup> Historically, Crimea and Abkhazia shared similarities in separatist aspirations against their home states. In 1992, the Crimean parliament declared independence from Ukraine, ruled for a constitution, and allowed dual citizenship with Russia for the Crimean population.<sup>169</sup> Eventually, by certain concessions, Kyiv maintained Crimea as the Autonomous Republic. The Russian intervention in Georgia, unveiled potential threats for Ukraine in Crimea. Right after the Russo-Georgian war, Ukrainian foreign minister, Volodymyr Ohryzko raised concerns about the viable threats from Russia's attempt to seize Crimea by employing the same methods, including passportization.<sup>170</sup> Ohryzko underscored the methods of Russian passports conveyed in Georgia and expressed concerns due to the reportedly multiplying Russian passports in Crimea.<sup>171</sup> In the wake of the Euromaidan revolution in Ukraine in February 2014, the Supreme Council of Crimea amid the presence of pro-Russian paramilitary forces held a referendum over the reunification of Crimea with Russia.<sup>172</sup> In due course, the United Nations General Assembly (UNGA) affirmed its commitment to the sovereignty, political independence, unity, and territorial integrity of Ukraine within its internationally recognized borders and condemned the illegal annexation of Crimea.<sup>173</sup>

The issue of Crimean passportization is controversial among legal and political scholars. Peters argues that active Russian passportization had been pursued since 1991 until the annexation of Crimea.<sup>174</sup> In light of the Russian military occupation of Georgian territories, Ukrainian authorities raised concerns due to the lack of control over the distribution of Russian passports in Crimea. In 2014, Despite the misleading assurances from Russian officials on non-

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<sup>168</sup> Bebler, A. The Russian-Ukrainian Conflict over Crimea. - International institute Middle East and Balkan Studies, 2015. Available at: <https://bit.ly/3o9li2T> (26.04.2023).

<sup>169</sup> Zaborsky, V. Crimea and the Black Sea Fleet in Russian- Ukrainian Relations. - Center for Science and International Affairs (CSIA), Discussion Paper 95-11, 1995. Available at: <https://bit.ly/43Fp3gH> (26.04.2023).

<sup>170</sup> Artman, V.M. Annexation by passport. Opinion (14.03.2014) - *Aljazeera America*. Available at: <https://bit.ly/3KztzG7> (26.04.2023).

<sup>171</sup> Goble, A.P. Russian 'Passportization. (09.09.2008) - *New York Times*. Available at: <https://nyti.ms/3U9Pzuk> (26.04.2023).

<sup>172</sup> Harding, L. and Walker, Sh. Crimea Votes to Secede from Ukraine in 'illegal' poll. (16.03.2014) - *The Guardian*. Available at: <https://bit.ly/3GP38tZ> (26.04.2023).

<sup>173</sup> Territorial integrity of Ukraine, Resolution A/RES/68/262 Adopted by the UN General Assembly on 27 March 2014.

<sup>174</sup> Ibid., Peters (Supra 43).

intervention in Crimea, Vladimir Putin requested permission from the Russian Duma to use force within Crimea on 1 March.<sup>175</sup> The Russian *en masse* passportization of Crimea commenced on 18 March reaching over a million Crimean residents transformed into Russian citizens.<sup>176</sup> From the outset, the passports were distributed through simplified procedures which turned into coercive measures.<sup>177</sup>

Overall, the gradual passportization reportedly occurred after the annexation of Crimea into the Russian Federation. As a result, those who were unwilling to receive passports were threatened to become stateless individuals. First, Russia made it impossible to get medical care and education for those without a Russian passport in Crimea.<sup>178</sup> In 2020, Russia banned non-Russians from owning property in most of Crimea.<sup>179</sup> Ultimately, it was impossible to cross the borderline between the peninsula and the Ukrainian mainland without a Russian passport, in return, confiscating or damaging Ukrainian documents.<sup>180</sup>

Discussions are still underway regarding the policy of passportization in Ukraine as a precursor or result of illegal annexation under international law. In Georgian territories, rampant passportization was prior to the intervention of 2008. Nonetheless, in theory, the question of before or after creates substantial alterations in the legal implications of passportization policy. The observation of passportization in Crimea may lead to contrasting differences for residents of the annexed Peninsula. As previously stated, scholars such as Peters and Hedenskog claimed that Russian passportization in Crimea occurred since 1991. Hedenskog reinforced this statement with Kyiv's accusations and closing the Russian Consulate in Simferopol due to the alleged conferral of citizenship to residents in 1990s.<sup>181</sup> E. Knott suggests that the lens of passportization before 2014 was focused on empirical perception after the intervention of Georgia, that Russia's violent roadmap might have come to the Ukrainian territories.<sup>182</sup> Knot

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<sup>175</sup> Vladimir Putin Submitted Appeal to the Federation Council. (01.03.2014) – *Kremlin.ru*. Available at: [en.kremlin.ru/events/president/news/20353](https://en.kremlin.ru/events/president/news/20353) (26.04.2023).

<sup>176</sup> Wrighton, S. Authoritarian Regime Stabilization Through Legitimation, Popular Co-optation and Exclusion: Russian Passportization Strategies in Crimea. - *Globalizations* Vol. 15 Issue 2 2018, p. 284.

<sup>177</sup> Rights in Retreat Abuses in Crimea. (17.11.2014) - *Human Rights Watch*. Available at: <https://bit.ly/3Mg1vZN> (26.04.2023).

<sup>178</sup> Bal, B.A. Why Russian oppression of Crimean Tatars Should've Concerned Ukraine, Allies. (05.01.2023) - *Daily Sabah*. Available at: <https://bit.ly/3zzwwjN> (26.04.2023).

<sup>179</sup> Sauer P. New Crimean Land Law Banning Foreign Ownership Comes into Force. (01.04.2021) - *The Moscow Times*. Available at: <https://bit.ly/3Gjj6MK> (26.04.2023).

<sup>180</sup> Russian Saboteur Reconnaissance Groups Using Passports Confiscated from Ukrainian Citizens. (21.02.2023) - *The New Voice of Ukraine*. Available at: <https://bit.ly/3m9DoRU> (26.04.2023).

<sup>181</sup> Hedenskog, J. Crimea After the Georgian Crisis. - Swedish Defense Research Agency 2008, p. 34 <https://bit.ly/41BFSHX> (26.04.2023).

<sup>182</sup> Knott, E. Weaponized Citizenship: Should international law restrict oppressive nationality attribution? - Global Citizenship Observatory. Available at: <https://bit.ly/3KJnZQu> (26.04.2023).

further criticized the scholars who acknowledged the support of Crimea's residents toward the Russian annexation simply because they held Russian citizenship. Knott deduced that Russian citizens were not ordinary residents of Crimea, but predominantly associations of Russian military forces in Crimea.<sup>183</sup>

After the revolution in 2014, international observers and media outlets reported the passports initially received the members of dismantled Berkut - Former Special Police Forces of Ukraine.<sup>184</sup> Experts highlight that one of the fatal mistakes of the post-revolution government was disbanding and sending the Berkut forces to Crimea, where they were greeted as heroes and granted Russian passports.<sup>185</sup> As some scholars suggest, the number of Russian passports in Crimea from 1991 to 2014 varied between 6,000 and 100,000.<sup>186</sup>

Theoretically, even if 100,000 passports were issued in Crimea, it may not be a critical number considering the overall population of 1.9 million in the region before the Russian annexation.<sup>187</sup> No one can assert certainly that there is no link between passportization before the military actions in 2014 and illegal annexation, however, this paper argues that *en masse* passportization appeared after the annexation of Crimea. Before the military actions in 2014, former security servers and military personnel solely came across as the most susceptible community where the Russian passportization was successfully accomplished. Drawing from the analysis, this work advances with the hypothesis that Russian passportization in Ukraine emerged as a *post-factum* strategy of illegal annexation.

### **3.2 Russian *Modus Operandi* – Fast-track Passportization in Donbas**

Besides coercive passportization in Crimea, Russia seized the Donbas region, including Donetsk and Luhansk Oblasts, integral territories of Ukraine. In 2018, the Kremlin issued migration policy guidelines for 2019-2025 aiming at the conditions for acquiring Russian passports to be simplified.<sup>188</sup> By virtue of Presidential Decrees N183 and N187, Ukrainians

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<sup>183</sup> Ibid.

<sup>184</sup> Ukraine's Berkut Police: What Makes Them Special? (26.02.2014) - *BBC*. Available at: <https://bbc.in/2SYk3zy> (26.04.2023).

<sup>185</sup> Kofman, M. *et al.* Lessons from Russia's Operations in Crimea and Eastern Ukraine. Santa Monica, California: Rand Corporation 2017, p. 21

<sup>186</sup> Kuzio, T. Russian Passports as Moscow's Geopolitical Tool. - *Eurasia Daily Monitor*, Volume: 5 Issue: 176 2008. Available at: <https://bit.ly/41ddo7x> (26.04.2023).

<sup>187</sup> Population: SF: Republic of Crimea. - *CEIC Data*. 2002. Available at: <https://bit.ly/41yGa1Z> (26.04.2023).

<sup>188</sup> Executive Order on Russia's state migration policy concept for 2019–2025. (31.10.2018) – *Kremlin.ru*. Available at: <http://en.kremlin.ru/events/president/news/58986> (26.04.2023)

were offered fast-track Russian passports since 2019.<sup>189</sup> The simplified procedure to obtain Russian citizenship provides that applicants follow a fast-track scheme, which only requires filling in the application at the local office of the Ministry of Internal Affairs. A significant feature of the Russian practice in Ukraine has been the over-simplification of procedures for naturalization. In July 2019, the fast-track procedure was extended to residents of the Donbas territories controlled by the Ukrainian government. Additionally, President Putin signed a law passed by Russian lawmakers in April 2020, amending the Russian Nationality law.<sup>190</sup> By the amendments, potentially, up to 10 million Russian people from the former Soviet republics were accorded the right to obtain Russian passports without renouncing the previous one. Moreover, these amendments made it easier for applicants from Belarus, Moldova, Kazakhstan, and Ukraine in particular to apply for citizenship.

By mid-August 2021, in the light of fast-track procedures, the approximate number of naturalized Donbas residents consisted of approximately 530,000 persons.<sup>191</sup> About half a million Ukrainians from the desperately impoverished, internationally unrecognized republics took the passports, which allowed them to work and study in neighboring Russia. Following the introduced Russian 2019 amendments, Ukraine's President Volodymyr Zelensky has ordered an overhaul of the process of granting Ukrainian citizenship, in response to a Russian decree expanding the number of Ukrainians who can apply for fast-track Russian passports.<sup>192</sup> The procedure pattern in Ukraine resembles a well-experienced scheme carried out in Abkhazia. The Russian officials queued busses for the residents of Donbas to bring them to Russian cities for receiving passports. According to official statistics, the Rostov region alone issued over 160,000 passports in 2019.<sup>193</sup> Consequently, In Donbas Region, 635,000 residents

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<sup>189</sup> Ukaz Prezidenta Rossiskoi Federatsii Ot 24.04.2019 G. N183 Ob Opredelenii v Gumanitarnix Tselyax Kategorii Lits, Imeyushix Parvo Obratitsya s Zayavleniyami o Priyome v Grazhdanstvo Rossiskoi Federatsii v Uprashonnom Poryadke. (Указ Президента Российской Федерации От 24.04.2019 Г. № 183 Об Определении в Гуманитарных Целях Категорий Лиц, Имеющих Право Обратиться с Заявлениями о Приеме в Гражданство Российской Федерации в Упрощенном Порядке). N183, Moscow 24 April 2019. Available at: <http://www.kremlin.ru/acts/bank/44190> (26.04.2023); See further: Ukaz Prezidenta Rossiskoi Federatsii ot 29.04.2019 N187 Ob Otdelnix kategoryax Innostrannix Grazhdan I Lits Bez Grazhdanstva, Imeyushix Pravo Obratitsya s Zayavleniyami o Priyome v Grazhdanstvo Rossiskoi Federatsii v Uprashyonnom Poryadke (Указ Президента Российской Федерации от 29.04.2019 № 187 Об отдельных категориях иностранных граждан и лиц без гражданства, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке) N187, Moscow 29 April 2019. Available at: <https://bit.ly/415sE5V> (26.04.2023).

<sup>190</sup> Lyubimov, A. Russia Passes Dual Citizenship Law, Hoping to Add 10M Citizens. (17.04.2020) – *The Moscow Times*. Available at: <https://bit.ly/3yQhGVG> (26.04.2023).

<sup>191</sup> Ibid., Bescotti (Supra 113).

<sup>192</sup> Kharchenko, S. Ukraine Announces Fast-Track Passports After Putin's Russian Citizenship Offer. (18.07.2019) – *The Moscow Times*. Available at: <https://bit.ly/40ni5e8> (26.04.2023).

<sup>193</sup> Ibid., Burkhardt (Supra 10).

received Russian passports by the end of January 2022, consisting of 35 percent of the local population.<sup>194</sup> After starting the Russian-Ukrainian war of 2022, President Putin ordered the procedure for residents of the southern Ukrainian regions of Zaporizhzhia and Kherson to provide a fast-tracked Russian passport, similar to the previously implemented policy in Donetsk and Luhansk.<sup>195</sup> In May 2022, passportization was introduced in newly occupied territories in southern Ukraine including Kherson and Mariupol Oblasts. Although uptake has reportedly been minimal, Russia has applied pressure such as tying humanitarian aid or keeping a job in the health or education sectors to having a Russian passport.

Amid the ongoing war, Russian officials declared after the annexation of new territories of Ukraine, Russia issued more than 80,000 Russian passports to residents of four Ukrainian territories and the numbers keep increasing.<sup>196</sup> On 11<sup>th</sup> July 2022, President Putin signed the Order N440 amending previous Executive Orders of 2019, concerning the simplified procedures for obtaining Russian citizenship for the residents of Ukrainian occupied territories.<sup>197</sup> The order pertaining to the residents of occupied Donetsk and Luhansk Oblasts covered the residents of Zaporizhzhia and Kherson Oblast by the extension conducted in May 2022. However, the latest amendments extended the simplified procedures for acquiring Russian citizenship not only for the aforementioned regions but for all applicants from Ukraine.<sup>198</sup> What is different this time is that Russian extraterritorial naturalization potentially targets all citizens of a sovereign state, even though their residence area is beyond the Russian military occupation. The Minister for Foreign Affairs of Ukraine Dmytro Kuleba announced the extension of fast-track procedures to the whole Ukrainian nation calling it ‘the forced

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<sup>194</sup> Burkhardt, F. Passports as Pretext: How Russia's Invasion of Ukraine Could Start. (17.02.2022) – War on Rocks. available at: <https://bit.ly/3z5Mcwj> (26.04.2023).

<sup>195</sup> Ukraine calls Putin's passport plan 'criminal'. (25.05.2022) – DW. Available at: <https://bit.ly/42tJpJc> (26.04.2023).

<sup>196</sup> Over 80K Russian Passports Issued in 'Annexed' Ukraine – Moscow. (24.11.2022) - *The Moscow Times*. Available at: <https://bit.ly/3MmAO5B> (26.04.2023).

<sup>197</sup> Ukaz Prezidenta Rossiskoi Federatsii O vnesenii izmenenii v Ukaz Prezidenta Rossiskoi Federatsii ot 24 Aprelya 2019 g. N 183 “ob opredelenii v gumanitarnix tselax kategorii lits, imeyushix parvo obratitsya s zavavleniyami o priyome v grazhdanstvo Rossiskoi Federatsii v uproshonnom poriyadke” (Указ Президента Российской Федерации О внесении изменений в Указ Президента Российской Федерации от 24 апреля 2019. г N 183 "Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке"). N440, Moscow 11 July 2022. Available at: <https://bit.ly/3L4KU93> (26.04.2023).

<sup>198</sup> Barbarotto, P. The Russian Citizenship Law in Ukraine and International Law. (06.10.2022) – *Opinio Juris*. Available at: <https://bit.ly/3Z4dXP0> (26.04.2023).

assimilation of the Ukrainian nation' and calling the passportization of Ukrainian citizens legally null and void.<sup>199</sup>

Recently, Russian officials announced that the respective offices granting passports are going to be increased in numbers across the areas under Russian military occupation. However, it is vague how those offices are going to register Ukrainian applicants from the Ukrainian controlled territories. A large-scale naturalization campaign addressed to all Ukrainian citizens is functional for the legitimation of the current occupation of Ukrainian lands and later as a reason to further extend the conflict, virtually to the whole Ukrainian territory. In addition to this, a large-scale naturalization campaign from the Russian side would deprive Ukraine of the jurisdiction over its own citizens. Recently seized Ukrainian lands demonstrate a slow pace of passportization and reluctance to accept Russian passports, resulting in the postponement of so-called elections in September 2023.<sup>200</sup> People who do not accept Russian passports are threatened with expulsion.<sup>201</sup>

Some legal scholars discussed the anticipated threats to Ukrainian sovereignty in advance of occupation and subsequent passportization. For instance, Müllerson in 2008 and Green in 2010 analyzed the pretext of the Russo-Georgian war of August 2008.<sup>202</sup> Hence, claiming that those novel arguments preceding the Russian invasion of Georgia would create grounds for threats of Russian use of force in Crimea, as well. These predictions ensued from the passportization of Crimea since 1991 and the fast-track naturalization of Donbas since 2014, culminating with the recent full-scale invasion of Ukraine in 2022.

Another discussion among scholars is whether the Russian passportization of Ukraine is an abuse of rights or a grave violation of international law. Peters qualifies the Russian passportization in Ukraine as an abuse of rights by recalling the characteristics of the policy.<sup>203</sup> A massive scale of the policy, ongoing military conflict, and implementation of the policy amid the political transition of Ukraine, the Russian Federation abused its right to grant its nationality

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<sup>199</sup> Statement of the MFA of Ukraine on the Decree of the President of the Russian Federation on a Simplified Procedure for Granting the Russian Citizenship for Citizens of Ukraine. (11.07.2022) - Ministry of Foreign Affairs of Ukraine. Available at: <https://bit.ly/3nHN5Hz> (26.04.2023).

<sup>200</sup> Slow Pace of Passportization in Occupied Territories Prevents Invaders from Preparing Sham Elections (01.04.2023) - Ukrainska Pravda. Available at: <https://bit.ly/3KAXPk7> (26.04.2023).

<sup>201</sup> Russia Imposes Forced Passportization of Ukrainians in the Temporarily Occupied Territories of the Donetsk Region, 21.02.2023 – Svidomi. Available at: <https://bit.ly/3zA1qbO> (26.04.2023).

<sup>202</sup> Green, A.J. Editorial Comment – The Annexation of Crimea: Russia, Passportization and the Protection of Nationals Revisited. *Journal on the Use of Force and International Law* Vol.1 No 3. 2014.

<sup>203</sup> *Ibid.*, Peters (Supra 24).

to Ukrainian residents by virtue of simplified procedures, argues Peters.<sup>204</sup> Discussing the Russian practice of passportization in Ukraine, S. Talmon argues that this practice does not constitute an abuse of rights.<sup>205</sup> Reminding that the concept of abuse of rights derives from the legitimate rights which are improperly exercised. However, Russia does not have the right to extraterritorial naturalization of residents of any of the former Soviet republics, especially, when it occurs in fast-track methods and massive, indifferent patterns. The absence of such rights precludes the invocation of the doctrine of abuse of rights, leaving Russia in front of the derogation of norms of customary international law.

### **3.3 Forceful Passportization and Legal Consequences for Protected Persons**

IV Geneva Convention requires implementation of its provisions in all cases of armed conflicts, as well as peacetime. Additionally, the Convention applies to all cases of occupation of the territory. Disregarding the Convention from the states is not allowed even if one of them does not recognize the existence of such conditions or there is no armed resistance.<sup>206</sup> During his speech in March 2014, President Putin denied the violation of international law by the incorporation of the Crimean Peninsula into the Russian Federation.<sup>207</sup> Elaborating on the right to self-determination of separatist regions, from the Russian viewpoint, the law of occupation and its complementary legal regime does not apply to disputed territories. However, as discussed above, the application of the law of occupation does not depend on recognition from the occupying power.

The naturalization of individuals accepting the nationality of the occupying power may bring diverse consequences for those individuals. From the humanitarian standpoint, international law presents a category of persons who receive protection under the occupation regime. The first objective is the characterization of residents of disputed territories, especially, Ukrainian citizens falling under Russian effective control and accepting Russian passports against their will. The significance of this issue is of utmost relevance amid the reports of assertive passportization in the occupied territories of Ukraine. The occupying power is bound to protect

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<sup>204</sup> Ibid.

<sup>205</sup> Talmon, S. and Lobo, M. The Russian policy of “passportization” in Ukraine’s Donetsk and Lugansk regions as a violation of the sovereignty of Ukraine. (09.07.2020) - GPIL – German Practice in International Law. Available at: <https://bit.ly/3zzpiw4> (26.04.2023).

<sup>206</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention), 12 August 1949, 75 UNTS 28. International Committee of the Red Cross (ICRC), Geneva, 12.08.1949. Article 2.

<sup>207</sup> Address by President of the Russian Federation. (18.03.2014) – *Kremlin.ru* Available at: <https://shorturl.at/mW247> (26.04.2023)

the local population and prevent violation of their fundamental rights. IV Geneva Convention establishes a status of ‘protected persons’ to comprehend the application of IV Geneva Convention toward a local population, it is crucial to ascertain whether the recipients of Russian passports fall under the status of protected persons. IV Geneva Convention grants the status of ‘protected persons’ to those, who find themselves in the hands occupying Power of which they are not nationals.<sup>208</sup> Thus, excluding nationals of occupying power from its protection. Dinstein accosts this provision as a part of the outdated principle that international law does not interfere in a state’s relations with its own nationals.<sup>209</sup> Such loopholes left by the law of occupation are filled by extensive human rights law increasing implementation of international law during armed conflicts. Humanization of international law brought the solution for discriminative approaches of Geneva Conventions toward some residents of occupied territories. Thus, contemporary international law delivers the status of protected persons to respective residents regardless of their nationality.<sup>210</sup>

The International Criminal Tribunal for Former Yugoslavia (ICTY) discussed a dimension of nationality during armed conflicts.<sup>211</sup> In the following cases: *Prosecutor v. Delalić*, *Prosecutor v. Aleksovski*, and *Prosecutor v. Tadić*, the Court challenged whether the victims of the alleged offenses were ‘protected persons’ pursuant to the IV Geneva Convention. The complexity of this issue was raised due to the variety of nationalities of victims. Uncommonly, perpetrators and victims were representing the nationality of a belligerent power. In this case, the Court recalled Article 4 of Geneva Convention IV as applicable. The Convention inherently protects nationals of a territorial state, citizens of third parties, and stateless persons. Nevertheless, the Court quoted the Convention largely extending the application of Article 4 to persons holding a nationality of a belligerent power, but being expelled, fled abroad, or becoming refugees. If such persons find themselves in the hands of the occupying power, they retain the status of ‘protected persons’ despite the fact that they are nationals of occupying state.<sup>212</sup> The ICTY acknowledged that when it comes to occupation and application of the Geneva Conventions, nationality should be interpreted in favor of victims under international humanitarian law. The Court accorded the status of ‘protected persons’ to Yugoslavs who did not owe allegiance to

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<sup>208</sup> IV Geneva Convention. Article 4(1).

<sup>209</sup> Dinstein, Y. *The International Law of Belligerent Occupation* (2nd ed.). Cambridge, UK: Cambridge University Press, 2019 p. 69.

<sup>210</sup> *Ibid.*, p. 94.

<sup>211</sup> ICTY, Judgment No. IT-96-21 *Prosecutor v. Delalic* 20.02.2001. Para. 56–84; *See further*: Judgement No. IT-95-14/1 *Prosecutor v. Aleksovski*, 24.03.2000. Para. 151–52; *See further*: Judgement No. IT-94-1 *Prosecutor v. Tadic*, 15.07.1999. Para. 163–69.

<sup>212</sup> Final Record of the Diplomatic Conference of Geneva of 1949, vol. II 1949, p. 561.

their state committing war crimes. By conceptualizing allegiance between a national and a state, the Court brought to attention the genuine bond of nationality. The Court confirmed the predominance of genuine allegiance of individuals to a state rather than a formal link of nationality between a state and a person.<sup>213</sup> ICTY extended protection to those civilians who were de facto members of another party to the conflict even though they formally shared the same nationality as the occupying power. The ruling of ICTY precisely pertains to the implications of legally challenged, large-scale passportization of Ukrainians conducted under Russian occupation.

From the initial phase of escalation, one of the most evident cases of unwilling passportization under occupation was the Crimean Peninsula after Russia took control of the territory. Before subsequent annexation, new authorities conferred Russian passports on the local population indiscriminately without chances to appeal.<sup>214</sup> For the preservation of Ukrainian citizenship, authorities opened offices where people had to write a waiver for a Russian passport. Thus, the Russian passports were granted by default and the whole population was deemed as Russian citizens until proven otherwise. Authorities from Kherson Oblast announced that the Ukrainian children born under the Russian occupation are considered Russian nationals.<sup>215</sup> Granting nationality automatically to a person born in the occupied region indicates a purported annexation by application of the principle of *jus soli* in temporarily occupied territories. The Ukrainian officials constantly urge the population living under Russian occupation to avoid passports which might result in unpleasant and dangerous consequences for them.<sup>216</sup> However, due to various reasons hundreds of thousands of Ukrainians did not leave and remained under occupation.

Based on international humanitarian law, the status of Ukrainians who received Russian passports against their will is exclusively protected. On the one hand, those passports are illegal and void under the Ukrainian nationality law, which considers forcefully naturalized persons as Ukrainian citizens. On the other hand, international humanitarian law grants a special status of ‘protected persons’ and privileges for deprived Ukrainian citizenship for those who had to accept Russian passports under the belligerent occupation. Summarizing legal analysis of case law and the IV Geneva Convention the author argues that, notwithstanding the Russian

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<sup>213</sup> Ibid., *Prosecutor v. Tadic* (Supra 212) para. 165.

<sup>214</sup> Oprishchenko, A. A Russian Passport in Crimea and Donbas is Both a Punishment and a Right to a Normal Life. (20.06.2022) - *Zaborona*. Available at: <https://bit.ly/413K2b4> (26.04.2023)

<sup>215</sup> Ibid.

<sup>216</sup> Lister, T. and Fylyppov, S. Traitor or hero? Ukraine finds it tough to identify Russian collaborators. (09.06.2022) - CNN. Available at: <https://cnn.it/3maEbC5> (26.04.2023)

passportization, the Ukrainians benefit from IV Geneva Convention granting a status of 'protected persons' despite their unlawful passportization.

In the 1952 Report to the ILC, the special rapporteur presented suggestions to codify the issue of nationality under international law. In the report, the commission denounced the mass imposition of German nationality on nationals of territories occupied by Germany during WWII.<sup>217</sup> Calling the regime *occupatio bellica*, the ICL acknowledged the conferral of nationality under belligerent occupation as an inconsistent act with international law. Thus, the naturalization of the population by the occupying power in the occupied territories is an inherently illegal act under international law. Comparing Georgia and Ukraine, persuading Abkhazians to receive Russian passports in 2002 was not difficult due to the collateral effects of ethnic conflicts and substantial reluctance to accept Georgian citizenship. By contrast, Crimea and Donbas have been home to Ukrainians, Crimean Tatars, and ethnic Russians, holding Ukrainian passports in the majority. Incentives to achieve the same degree of passportization in Ukraine as it was in Georgian breakaway regions were unrealistic. For that reason, the passportization policy utilized under belligerent occupation makes this issue flagrantly illegal, where the seek for a genuine link is unnecessary due to the Russian policy kickoff under illegal circumstances.

### **3.4 Ukrainian Conscripts in the Russian Army and Weaponization of Passports**

Amid the Ukrainian-Russian war, a new legal, as well as moral dilemma, aroused for Ukrainian men holding Russian passports. Ukrainian separatist regions, so called Lugansk and Donetsk republics, announced general mobilization on 19th February 2022.<sup>218</sup> In September 2022, President Putin announced a partial mobilization in Russia, including men residing in annexed territories of Ukraine.<sup>219</sup> The number of conscripts commensurate with each region is not public. Nevertheless, the Office of the United Nations High Commissioner for Human Rights (OHCHR) report includes the number of sanctioned persons in Crimea, a total of 84 men evading the Russian military service since the occupation of Crimea.<sup>220</sup> Men unwilling to be

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<sup>217</sup> Ibid., Report on Nationality (Supra 50) p. 8.

<sup>218</sup> Ukaz Glavii Donetskoi Narodnoi Respubliki № 29 o provedenii vseobschei mobilizacii (Указ Главы Донецкой Народной Республики № 29 о проведении всеобщей мобилизации. 19.02.2022.). Donetsk, 19 February 2022. Available at: <https://bit.ly/3zJNRGO> (26.04.2023).

<sup>219</sup> McCarthy, Simone and Picheta R. Russia Announces Immediate 'Partial Mobilization' of Citizens, Escalating its Invasion of Ukraine. (21.09.2022) – CNN. Available at: <https://cnn.it/3ZR2EdI> (26.04.2023).

<sup>220</sup> Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/52/62, UN Human Rights Council, 15.03.2023. para. 72. Available at: <https://bit.ly/3MoOAob> (26.04.2023)

drafted into the Russian army might have included Crimean Tatars, Ukrainians, and other nationalities. As earlier discussed, due to the indiscriminate policy of passportization, the population of Crimea was inevitably naturalized, obliging them to be drafted into the Russian army. According to reports from human rights organizations and media outlets, there have been cases of forced conscription of Ukrainian citizens by Russian authorities. Such issue emerged specifically among Crimeans who decided to stay in their homes after the Russian annexation. Additionally, men in the occupied territories who had accepted Russian passports under simplified procedure were receiving conscription notices.<sup>221</sup> Various sources have been reporting about the forced mobilization in occupied Kherson and Zaporizhzhia regions.<sup>222</sup> Alleging a new wave of mobilization in Donbas is highly expected, Ukrainian officials say.<sup>223</sup>

Ukrainian nationals subjected to forced mobilization are victims of war crimes. Basically, they face twofold hardship. While mandatory conscripting in the Russian army has appeared inescapable for many Ukrainians, a conviction for state treason is inevitable by Ukrainian courts after becoming a prisoner of war (POW).<sup>224</sup> Amid the ongoing war, international organizations report a wide range of war crimes committed in Ukraine. On 15<sup>th</sup> March 2023, the OHCHR published the report of the Independent International Commission of Inquiry on Ukraine, accusing Russian war crimes and grave violations of international law.<sup>225</sup> Violation of international humanitarian law includes but is not limited to a forcible change in allegiance to the armed forces of the occupying power. Russia's conscription of the Ukrainian population against their own country is another blatant violation of human rights and international humanitarian law.

OHCHR expressed concerns due to the conviction of Prisoners of War (POWs) for state treason based on a dual legal argument. First, sentencing the POWs for mere participation in the hostilities is prohibited under III Geneva Convention.<sup>226</sup> Second, an *intent* in committing state treason is an essential element of the crime, thus forced conscription in Russian-affiliated armed groups was disregarded by Ukrainian courts, making Ukrainians more vulnerable

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<sup>221</sup> Russia is Forcing Ukrainian Conscripts into Battle. (11.08.2022). - *The Economist*. Available at: <https://econ.st/40B9qFa> (26.04.2023).

<sup>222</sup> Occupiers are Carrying out Forced 'Mobilization' In the Occupied Kherson and Zaporizhzhia Regions. (01.10.2022) - National Resistance Center. Available at: <https://bit.ly/3nXoQ8s> (26.04.2023).

<sup>223</sup> Enemy Prepares a New Mobilization Wave in Donbas. (09.03.2023) - National Resistance Center, Available at: <https://bit.ly/3mrd85o> (26.04.2023).

<sup>224</sup> Kurennaya, D. Ukrainsi v armii Rossyii: Kak sdatsya v plen i ne poluchit srok? (Украинцы в армии России: как сдать в плен и не получить срок?) (27.06.2022) - *Radio Liberty*. Available at: <https://bit.ly/41aoutw> (26.04.2023).

<sup>225</sup> Ibid., UNHRC Report (Supra 221) para. 116.

<sup>226</sup> Ibid.

against forced passportization and subsequent conscription. After the announcement of the partial mobilization, President Zelenskyy called on Ukrainians to flee occupied territories to avoid conscription into the Russian army.<sup>227</sup> The previous chapter reviewed the status of the Ukrainian population falling under the Russian occupation in Donbas and Crimea, binding Russia as an occupying power with international humanitarian legal obligations. Based on the finding, it is crucial to explain how international humanitarian law handles the Russian conscription of forcefully naturalized Ukrainians.

The Hague Convention of 1899, which is the customary international law, stipulates regulation of military conscription under occupation. Article 44 prohibits any compulsion of the population of occupied territory to take part in military operations against its own nation.<sup>228</sup> The rules delivered by the Hague Conventions have been multiple times broken during and before the WWII and it appeared necessary to reiterate them in the Geneva Conventions. The conscription of Baltic men into the Soviet occupation army is one of the most frequently discussed issues in academia when it comes to the application of the Geneva Conventions to the war crimes committed by the USSR in WWII.<sup>229</sup> Mälksoo reviewed the adoption of the 1949 Geneva Conventions and their application to *ex post facto* situations. Further stating that the Geneva rules of occupation reinforced the fundamental rules already existing under the 1907 Hague Convention. The Hague rules of 1907 went beyond mere conscription of civilians and forbade the occupying power from the compulsion of nationals for military service against their own country even if they were in the service of occupying power before the war.<sup>230</sup>

Article 51 of IV Geneva Convention states that the occupying power cannot compel protected persons to serve in the armed forces.<sup>231</sup> This principle is absolute, and no derogation is allowed. Its object is to protect persons from attempts to discredit their allegiance to their own country.<sup>232</sup> Forceful conscription of protected persons is listed among the grave breaches of the Geneva Conventions, setting increased importance of such prohibitions amounting to war crimes.<sup>233</sup>

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<sup>227</sup> Kuznetsov, S. Zelenskyy says Moscow Targeting Ukrainians in Occupied Areas in Mobilization. (24.09.2022) – Politico. Available at: <https://politi.co/43gISL4> (26.04.2023).

<sup>228</sup> The Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899. Article 44.

<sup>229</sup> Mälksoo, (Supra 160) p. 190.

<sup>230</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Article 23.

<sup>231</sup> IV Geneva Convention. Article 51(1).

<sup>232</sup> Commentary of 1958 to the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Article 51.

<sup>233</sup> IV Geneva Convention. Article 147.

Forced conscription of passportized Ukrainians in the Russian army amounts to war crimes. It proves a grave violation of international humanitarian law by disregarding the status of protected persons stipulated in the IV Geneva Convention. The principle in international law 'illegal acts do not create law' (*Ex injuria jus non oritur*) pertains to the illegal conscription policy deriving from illegal occupation. In the context of international law Ukrainian territories are illegally occupied and subsequently annexed by Russia, ultimately forbidding Russian forceful conscription in those territories. The Russian practice devoid of *de-jure* personal and territorial jurisdictions including forceful conscription, constitutes another harsh implication of the illegal passportization policy in Ukraine.

Overall, Russian-Ukrainian war brought severe ramifications for Ukrainians living under Occupation and Russian passportization. At the end of 2022, the Council of EU endorsed the international rejection of passports issued by Russia in the occupied regions of Ukraine and Georgia by adopting decision 2022/2512.<sup>234</sup> The EU member states, Iceland, Norway, Switzerland, and Liechtenstein once again condemned the infringement of international law, sovereignty, and independence of Ukraine and Georgia. By the decision of the Council of EU, the member states invalidated Russian passports and other traveling documents issued in the occupied territories of Ukraine and Georgia. Derogations are allowed if a person was a minor or legally incapacitated person at the time of the issuance of such travel document. This reservation allows making exceptions for the Ukrainian residents falling under the compelling passportization in the occupied territories.

The recent amendments to the criminal code of Ukraine aim to punish collaborators and those responsible for Russian passportization. In March 2022, the lawmakers adopted an updated criminal code with the liability for collaborative activities with Russian authorities.<sup>235</sup> In September 2022, complementary draft law criminalized Russian passportization by the Ukrainian government's unanimous decision.<sup>236</sup> The amendments target civil servants with Russian passports and those who contribute to Russian passportization. Liability is excluded if the passport serves the aim of entering the legitimate, free territory of Ukraine.<sup>237</sup> OHCHR

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<sup>234</sup> Decision (EU) 2022/2512 on the Non-acceptance of Travel Documents of the Russian Federation issued in Ukraine and Georgia. The European Parliament and the Council of the EU. Strasburg, 21.12.2022. Available at: <https://bit.ly/419pm1q> (26.04.2023).

<sup>235</sup> Ukraine's Plan to Prosecute Collaborators. (06.09.2022) - Institute for War & Peace Reporting, Available at: <https://bit.ly/3GShMAF> (26.04.2023).

<sup>236</sup> The Government has Approved a Draft Law that provides for Criminal Liability for Obtaining a Russian Passport. - *Ukraine Today* (16.09.2022). Available at: <https://bit.ly/3UKMiSt> (26.04.2023).

<sup>237</sup> Ukraine: Draft Law Introducing Criminal Liability for Forced Russian 'Passportization' in Temporarily Occupied Territories Approved. (16.09.2022). Available at: <https://bit.ly/3L4FIDk> (26.04.2023).

expressed concerns due to the envisaged implications for civilians and namely, Ukrainian individuals working and living under the occupying authorities who potentially meet the criteria to be prosecuted.<sup>238</sup> OHCHR reported 4,291 criminal proceedings by January 2022 launched by the Prosecutor Office of Ukraine for the crime of collaboration with the Russian Federation. The criminalization of civilians who opted for Russian citizenship does not meet the standards of international human rights and international humanitarian law.<sup>239</sup> Acknowledged oppressive policy in occupied territories rigorously contests the free will of individuals accepting Russian passports. Those passports may be a last resort to obtain essential needs such as healthcare and education. Nevertheless, the adopted amendments target the civil servants and perpetrators in charge of passportization, fair balance needs to be struck to respect the state sovereignty and at the same time, uphold the human rights of protected persons under belligerent occupation.

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<sup>238</sup> Ibid., UNHRC Report (Supra 221) para. 35.

<sup>239</sup> Ibid.

## 4. Protection of Nationals Abroad – Russian Revisionism in International Law

### 4.1 Russian Nationals in Contemporary Legal and Political Theories

After one year of the USSR dissolution, President Yeltsin in his address to the Russian people aspired for a commitment to close cooperation with the states of the CIS, the Baltic states, and Georgia.<sup>240</sup> He also emphasised Russia's right and responsibility to protect millions of Russians living in these states. In addition, he declared that the imperial era in Russia's history has come to an end and never again violence or subordination between these countries would recur. Mälksoo argues that the Russian contemporary theory of international law remains heavily influenced by the concept of great power which entails a power nation (*Velikaya derzhava*) with historical spheres of influence and less significant states falling under this influence.<sup>241</sup> Brubaker in his work explored the Soviet system of the nation-state. Despite the Russians holding significant power in Soviet state institutions, he contradicts the Soviet Union as a Russian nation-state.<sup>242</sup> Instead, characterizes the Soviet system as ethno-territorial federalism with the Russian language *lingua franca* in this system. Ultimately, ethnoterritorial federalism failed after constant state-sponsored migrations due to industrialization and other Soviet policies. Soviet demographic studies reported over 73 million Soviet citizens lived outside the territory of their own national group.<sup>243</sup> For instance, around 25 million Russians, comprising 17 % of the entire Russian population, resided outside the Russian territory. Russian legal theory grapples with the complexity of the issue of defining who can be considered a Russian national. Brubaker introduced an exhaustive description of five Russian identities eligible for Russian homeland claims and *quid pro quo*, Russia taking advantage of their protection.<sup>244</sup>

Russians (*Ruskiye*) Ethno-cultural nationality residing in the Russian Federation is a titular nation forming a majority of the population;

Russians – (*Rossiiane*) Political connection with the Russian territory, embodying a territorial nationality of different ethnic groups;

Russian speakers – (*Russkoyazichnye*) incorporates people creating a peculiar Russian

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<sup>240</sup>Ibid., Ham (Supra 4) p. 18.

<sup>241</sup> Mälksoo, L. The Annexation of Crimea and Balance of Power in International Law. The European Journal of International Law Vol. 30 No. 1, pp. 303-319. At: 318.

<sup>242</sup> Brubaker, R. Nationalism Reframed: Nationhood and the National Question in the New Europe. Cambridge, UK: Cambridge University Press 1996, p. 29.

<sup>243</sup> Ibid., p. 36.

<sup>244</sup> Ibid., p. 142.

identity with other primary Russian speakers beyond the homeland.

Compatriots – (*Sootechestvenniki*) former subjects of the Russian Empire or the USSR, mostly living in the near vicinity and belonging to one of the ethnic groups of Russia and tied spiritually, culturally, or ethnically to it. In 1995 the Russian Duma approved the Declaration on Support of Russian Diaspora and Protection of Russian Compatriots.<sup>245</sup> The Declaration defined the compatriot as a person living on the territory of the former USSR, regardless of the national, ethnic, and other peculiarities, recognizing their spiritual, cultural, or other connection with Russia.

Citizens – (*Grazhdane*), is a term with controversial connotations in Russian political and legal documents.<sup>246</sup> The term is used as a rough synonym of compatriots, and it is distinct from homeland nationalism. The term is metaphorically used in connection with Russian self-proclaimed responsibility for all former Soviet citizens. Brubaker expressed concerns back in 1995, due to the threats imposed by the passports to the sovereign states of near abroad by enlarging Russia's jurisdictional claims and exploiting them for foreseeable intervention.<sup>247</sup> The concept of introducing Russia as human rights defender was inspired by the influential figure in Russia, Sergey Karaganov who served as a presidential advisor in the Kremlin both under Boris Yeltsin and Vladimir Putin.<sup>248</sup> In 1992, Karaganov conceptualized a set of foreign policy principles suggesting utilizing the ethnic Russians and Russian-speaking population as a tool for retaining Moscow's influence over its neighbors, including Georgia, Ukraine, and the Baltic States.<sup>249</sup> Due to his influence and views on Russian foreign policy, his concept was called the 'Karaganov Doctrine'. After coming to power, President Putin implemented the doctrine which eventually became a milestone principle of Russian foreign policy towards the post-soviet states.

In 1994, post-Soviet Russia adopted the fundamental guidelines of Russian policy *vis-à-vis* its compatriots in the near abroad.<sup>250</sup> The document describing the dissolution of the Soviet

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<sup>245</sup> Postanavlениye o Deklaratsii o podderzhke Rossiskoi diaspori i pokrovitelstve Russiskim sootechestvennikam – Gosudarstvennaya Duma Federalnogo Sobraniya Rossiskoi Federatsii (Постановление О Декларации о поддержке российской диаспоры и о покровительстве российским соотечественникам. - Государственная Дума Федерального Собрания Российской Федерации). N 1476-1ГД, Moscow, December 8 1995. Available at: <https://bit.ly/41HxPK2> (26.04.2023).

<sup>246</sup> Ibid., Brubaker (Supra 243) p. 143.

<sup>247</sup> Ibid., p. 145.

<sup>248</sup> Mackinnon, M. Sergey Karaganov: The Man Behind Putin's Pugnacity. (30.03.2014) - *The Globe and Mail*. Available at: <https://tgam.ca/41AeLNd> (26.04.2023).

<sup>249</sup> Smith J.D. *et al.* The Baltic States: Estonia, Latvia and Lithuania. London, UK: Routledge 2002 p. 161.

<sup>250</sup> Osnovnye Napravleniia Gosudarstvennoi Politiki Rossiiskoi Federatsii v Otnoshenii Sootechestvennikov, Prozhivaiushchikh za Rubezhom; ot 31 Avgusta 1994 g. N1064 (Основные Направления Государственной

Union as a ‘tragic historical event’, acknowledged millions of Russians found themselves in vulnerable circumstances scattered around post-Soviet states. Compared with other legal documents, it was based on mutual understanding, considering diplomatic relations and principles of international law.<sup>251</sup> The measures for the protection of compatriots abroad differed from the rising issue of their rights on an international and regional level.<sup>252</sup> Measures included facilitation through the UN institutions and OSCE. In case of grave violation of the rights of compatriots, measures contained economic sanctions and trading restrictions.<sup>253</sup>

Russian Federal law of 1999 ‘On the state policy of the Russian Federation in the relations with compatriots overseas’ approved a preexisting notion of compatriots by defining it as Russian citizens permanently residing abroad.<sup>254</sup> In addition, citizens of former Soviet states and stateless people resided in their territories. Article 11 avowed simplified procedures for compatriots abroad to receive Russian citizenship.<sup>255</sup> One of the primary objectives of the law became the reduction of statelessness among compatriots abroad.<sup>256</sup>

The current Russian Military Doctrine adopted in 2014 states that in order to uphold the interests of the Russian Federation and its citizens, the Russian Federation Armed Forces (RFAF) may be employed in military operations abroad in accordance with customary norms and principles of international law.<sup>257</sup> One of the primary responsibilities of the RFAF is to ensure the protection of Russian Federation citizens abroad from hostile threats.<sup>258</sup> Russian General of RFAF, Valery Gerasimov, 2014 described a new operational concept based on the Estonian and Georgian conflicts with Russia.<sup>259</sup> The concept, also known as ‘Gerasimov doctrine’, encapsulates effective ways of achieving the objectives of Russian near abroad policy by predominantly nonmilitary means.<sup>260</sup>

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Политики Российской Федерации В Отношении Соотечественников, Проживающих За Рубежом; от 31 августа 1994 г. N 1064). Moscow, 31 August 1994. Available at: <https://bit.ly/40BfwEN> (26.04.2023).

<sup>251</sup> Ibid., Article 5.

<sup>252</sup> Ibid., Article 7.

<sup>253</sup> Ibid., Article 23.

<sup>254</sup> Ibid., Federalni Zakon (Supra 156) Article 1.

<sup>255</sup> Ibid., Article 11(1).

<sup>256</sup> Ibid., Article 11(2).

<sup>257</sup> Voennaya Doktrina Rossiskoi Federatsii. Prezidetrn Rossiskoi Federatsii (Военная доктрина Российской Федерации. Президент Российской Федерации), No. Pr.-2976. Moscow, 25 December 2014. Article 31 Available at: <https://shorturl.at/cfzNR> (26.04.2023)

<sup>258</sup> Ibid., Article 32(k).

<sup>259</sup> Selhorst, A.J.C. Russia’s Perception Warfare: The Development of Gerasimov’s Doctrine in Estonia and Georgia and Its Application in Ukraine. - Militaire Spectator, Vol. 185 No. 4 2016, p. 148.

<sup>260</sup> Malyarenko, T. and Kormych, B. The Barbarism of Hybrid Warfare. (17.03.2022) - Wilson Center. Available at: <https://bit.ly/3LbIAyI> (26.04.2023).

The examination of Russian doctrines and foreign policy concepts *prima-facie* demonstrates an abuse of rights and infringement of international law, including fundamental principles and international norms prohibiting the use of force, specifically, in the post-Soviet space. Nevertheless, Russian claims for the protection of those people who fell under the passportization policy require thorough examination through the lens of the legal doctrine of protecting nationals abroad.

## 4.2 International Doctrine of Protection of Nationals Abroad

The doctrine of Protection of Nationals Abroad (PNA) was exercised in different forms throughout history and was widely accepted before World War I. At the beginning of the 20th Century and especially after World War I, a ban on war was worldwide achieved.<sup>261</sup> The dialogue commenced at The Hague Peace Conferences, followed by the Briand-Kellogg Pact, the Saavedra Lamas Treaty, the League of Nations Covenant, and finally, the Charter of the UN has gradually led to the subsequent developments in international law to prohibit the use of force. Additionally, the Declaration Concerning Friendly Relations reasserted the prohibition of the use of force against sovereign states, and the ICJ as customary international law affirmed the illegality of the use of force and intervention in another state.<sup>262</sup> However, the doctrine of protecting nationals abroad remained a largely discussed topic and interpreted in a wide manner.<sup>263</sup>

One state's citizens residing abroad might be subjected to suppression or violations of their rights. For this instance, the protection of nationals abroad is the doctrine enclosed in international law which justifies intervention in another state's sovereignty.<sup>264</sup> According to the doctrine, the state's decision to militarily protect the citizens abroad might be legally justified, however, without infringement of specific legal prerequisites.<sup>265</sup> The Permanent Court of International Justice (PCIJ) declared that a state is entitled to protect its subjects when a host state commits acts contrary to international law.<sup>266</sup> However, the PCIJ adds that

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<sup>261</sup> Ibid., Brownlie (Supra 83) p. 698.

<sup>262</sup> ICJ, Case Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States of America*); Merits, ICJ Reports, 26 November 1986.

<sup>263</sup> Paulussen, Ch. *et al.* (eds) Fundamental Rights in International and European Law: Public and Private Law Perspectives. The Hague, The Netherlands: T.M.C. Asser Press the Hague. 2015, p. 49.

<sup>264</sup> Ruys, T. The Protection of Nationals' Doctrine Revisited. Oxford Journal of Conflict & Security Law Vol. 13 No.2 2008, p. 233.

<sup>265</sup> Ibid., 234.

<sup>266</sup> PCIJ, Mavromattes Palestine Concessions (*Greece v. U.K.*). Judgment, PCIJ Series A No 2, ICGJ 236. 30 August 1924.

a state must ensure all necessary conditions for a person in case it is impossible to obtain satisfaction through ordinary ways.

First, the doctrine is defined as the use of force by a state to protect its nationals residing abroad in case of an attack or such threats. According to the doctrine, the state takes forceful measures outside its territory, without the consent of the host state or without the authorization of the United Nations Security Council (UNSC) which is a controversial act in international law, however, a few exclusions still apply.<sup>267</sup> After the adoption of the UN Charter in 1945, a new international legal regime commenced. However, the doctrine of PNA has not been either mentioned in the UN Charter or discussed for further implementation. Article 2(4) declares that ‘...[T]he Members shall refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’.<sup>268</sup> As a part of customary international law, Article 2(4) prohibits the use of force concerning all kinds of intervention by one state in another, including, those based on the protection of nationals abroad. This is the subject of discussions and scrutiny among legal scholars. The UN Charter refers to the inherent right to self-defense which by many prominent scholars has been deemed a legal ground to justify the doctrine of PNA.

State practice of the 20<sup>th</sup> century and the legal theory of PNA led to the comprehension of the doctrine in the realm of international law. There are two legal alternatives considering the application of PNA. The first affirms that such actions do not fall under prohibition by Article 2(4) of the UN Charter and the other legal standing claims the PNA is a part of the state’s inherent right to self-defense.<sup>269</sup> In legal theory, some scholars claim that the protection of nationals abroad employing armed forces is not a violation of Article 2(4), since the protection of nationals does not aspire for changing territorial boundaries or undermining the political sovereignty of the host state.<sup>270</sup> However, Article 2(4) of the UN Charter is not limited to the territorial boundaries or political sovereignty and goes beyond the limited list of illegal actions and prohibits any derogation from the purposes of the United Nations. Grimal and Melling

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<sup>267</sup> Deeks, A.S. Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense. *Virginia Journal of International Law* Vol. 52, N3 2012, p. 483, at: 492.

<sup>268</sup> UN Charter 4(2).

<sup>269</sup> Zedalis, R. Protection of Nationals Abroad: Is Consent the Basis of Legal Obligation. *Texas International Law Journal (TILJ)* Vol. 25 1990, p. 209, at 221.

<sup>270</sup> *Ibid.*

concluded that the doctrine of PNA is *prima facie* in breach of the prohibition of the use of force under Article 2(4).<sup>271</sup>

According to the argument in favor of the doctrine of PNA, the UN Charter authorizes the right to self-defense when an armed attack occurs against a state's nationals abroad, as much as against a state itself.<sup>272</sup> According to Article 51 of the UN Charter, "...Nothing shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations".<sup>273</sup> The Charter declares that the right to self-defense can be invoked if a state suffers from an armed attack. To initiate measures for self-defense it is necessary to interpret the armed attack itself. Despite the absence of a definition of the term in the UN Charter, the ICJ established the definition for the armed attack in the '*Military and Paramilitary Activities in and Against Nicaragua*' ruling, where the court referred to the armed attack as 'grave forms of use of force'.<sup>274</sup> After the state is subjected to armed attack, according to customary international law, specific types of actions can be taken in response. The standard three inquiry elements regarding whether the use of force is acceptable under self-defense include a) the necessity to use forces b) Proportional measures to the attack and c) Whether the response will be taken close to the moment of immediate attack.<sup>275</sup> Whether the PNA is compatible with UN Charter principles is one of the most hotly debated issues among international legal scholars. The legality of both justifications is strongly challenged.<sup>276</sup> The practice of states supports the hypothesis of doctrine as a manifestation of the inherent right to self-defense under Article 51 of the UN Charter.<sup>277</sup> Despite the controversy of the doctrine of PNA, states, and scholars tend to define PNA from the stance of three conditions suggested by British jurist Sir Humphrey Waldock:<sup>278</sup>

- (1) An imminent threat of injury should take place for state nationals residing abroad.
- (2) A host state is unable or unwilling to protect them and

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<sup>271</sup> Grimal, F. and Melling, G. The Protection of Nationals Abroad: Lawfulness or Toleration? A Commentary, *Journal of Conflict & Security Law*, Vol. 16, 2012, p. 546.

<sup>272</sup> *Ibid.*, Zedalis (Supra 270) p. 222.

<sup>273</sup> UN Charter, Article 51.

<sup>274</sup> *Ibid.*, Nicaragua Case (Supra 263) Para: 191.

<sup>275</sup> *Ibid.*, para 194.

<sup>276</sup> *Ibid.*, Ruys, (Supra 265) p. 256.

<sup>277</sup> *Ibid.*, Grimal and Melling (Supra 272) p. 543.

<sup>278</sup> Waldock, M.H. The Regulation of the Use of Force by Individual States in International Law. *Recueil des Cours* Vol. 81, 1952, p. 455, at: 467.

- (3) Measures of protection are strictly and proportionally limited to the object of protecting them against injury.

There is no consensus on whether PNA is a part of customary international law. Nevertheless, prevailing legal theory and state practice acknowledge that if the doctrine of PNA exists, then Waldock criteria inevitably apply.<sup>279</sup>

### 4.3 State Practice and Lack of Consensus

In the last decades, the world witnessed a number of conflicts erupting around the globe. In several cases, the states invoked the doctrine of PNA predominantly to evacuate their nationals from the conflict regions. For instance, in 2011 violent conflict broke out in Libya threatening foreign nationals, including the nationals of the UK. Amid the increasing tensions, without the consent of the Libyan government, the British Special Forces set out a special military operation to rescue the nationals from the country to ensure their safety.<sup>280</sup> The Special Forces successfully carry out the mission causing no casualties during the operation. Noteworthy, the UK has not received criticism from the international community or Libya.<sup>281</sup> In 2015, India evacuated more than 4,640 Indian citizens and over 1000 other foreigners from Yemen under operation Raahat.<sup>282</sup> In this case, India evacuated its nationals and the citizens of the third countries when the conflict in Yemen erupted. Interestingly, the legality of such action was not challenged by the states. when it comes to the evacuation or extraction of the nationals, there are many examples when the state protected not only its nationals but other nationalities as well, furnishing this doctrine with moral justifications. In April 2023, due to erupted conflict in Sudan the foreign states rescued their nations along with thousands of other foreign nationals through evacuation missions.<sup>283</sup> The legality of the conducted operations for nationals abroad has been ambiguously accepted throughout the decades.

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<sup>279</sup> Thomson, W.R.A. Doctrine of the Protection of Nationals Abroad: Rise of the Non-Combatant Evacuation Operation Washington University Global Studies Law Review Vol. 11, Issue 3 2012, p. 632.

<sup>280</sup> Libya unrest: British evacuation. (28.02.2011) – *BBC*. Available at: <https://bbc.in/3HffOu2> (26.04.2023).

<sup>281</sup> *Ibid.*, Grimal and Melling (Supra 272) p. 545.

<sup>282</sup> The Great Yemen Escape: Operation Rahat by Numbers. (10.04.2015) – *The Hindu*. Available at: <https://bit.ly/3Nd4kv2> (26.04.2023)

<sup>283</sup> Mackintosh, E. Foreign Powers Rescue Nationals While Sudanese Must Fend for Themselves. (24.04.2023) - CNN. Available at: <https://cnn.it/443ESy3> (26.04.2023)

One of the most evident examples of proportional engagement is the UK's operation in Libya which included a mere evacuation operation of nationals residing in the conflict region and consequently, the legality of this operation was never called into question.<sup>284</sup> Some scholars remain antagonistic toward the doctrine, recalling the UNGA resolution 2131 of 'Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty'.<sup>285</sup> The resolution states that armed intervention is similar to aggression violating the UN Charter. Thus, according to this resolution no justification exists for intervention in the internal or external affairs of another state, including for the protection of foreign nationals. One of the most prominent cases when the UN members condemned the application but not the doctrine itself, was the Israelian intervention in 1976 into Ugandan territory to rescue its nationals from the terrorists who took hostages and specifically Israeli citizens.<sup>286</sup> Notably, the Ugandan government failed due to unwillingness to rescue Israeli hostages, and consequently, Israeli strictly limited its intervention to the rescue operation without violation of the Ugandan sovereignty and territorial integrity.<sup>287</sup>

Throughout the last decades, various states' actions were purely inconsistent with Article 2(4) as these actions were neither authorized by the UNSC nor conducted based on the right to self-defense, however, these actions were tolerated by other states. Megret refers to the doctrine of PNA as a result of a neoliberal emphasis on human rights, making states responsible for their citizens internally and abroad as well. However, the dark side of this approach is that the protection of nationals abroad might restore imperial patterns leading to tensions between states.<sup>288</sup> The historical overview clearly shows a tendency of Western states to resort to the doctrine of PNA, whilst the USSR used to condemn the doctrine and sought to include the prohibition of the PNA under the UNGA resolution for the definition of aggression.<sup>289</sup>

#### **4.4 Russian Practice of PNA in Georgia and Ukraine**

In the previous chapter, the author concluded that the USSR clearly condemned the practice

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<sup>284</sup> Grimal, F. and Melling, G. British Action in Libya 2011: The Lawful Protection of Nationals Abroad? *Denning Law Journal* Vol 23, p. 165, at 177.

<sup>285</sup> UNGA Res. 2131 (XX), 21.12.1965.

<sup>286</sup> UN Doc. S/PV.1939. 09.07.1976.

<sup>287</sup> UN Doc. S/PV.1943. 14.07.1976.

<sup>288</sup> Megret, F. The Changing Face of Protection of the State's Nationals Abroad. *Melbourne Journal of International Law* Vol. 21 2020, p. 468.

<sup>289</sup> UN Doc. A/C.1/608. The Union of Soviet Socialist Republics: Draft Resolution on the Definition of Aggression. 04.11.1950.

of the PNA exercised by the Western states. The post-Soviet Russian Federation evidently adhered to the practice of PNA. The Russian Federation after the intervention of Georgia acknowledged the UNSC with a letter of 11 August 2008, that, ‘the Russian side had no choice but to use its inherent right to self-defense enshrined in Article 51 of the Charter of the United Nations’.<sup>290</sup> Initially, discussion about unilateral humanitarian intervention was invoked among some experts. However humanitarian intervention inherently aims to protect the territorial state's population against grave human rights violations, while PNA is triggered by the safety issues of the intervening state's citizens.<sup>291</sup> Therefore, Russia utilized the doctrine of PNA built upon the accusations of Georgian armed forces committing ‘genocide’ against Russian citizens.<sup>292</sup> Russian conceptualization of the PNA was assessed as broad and illusive according to Tagliavini’s Report.<sup>293</sup> The report highlights the course of action of the Russian Federation, which started with the PNA and turned into retaliation and revenge resulting in bombarding cities and villages. Tagliavini's report concluded that Russia violated Article 2(4) of the UN Charter as soon as a rescue operation exceeded a minimum intensity.<sup>294</sup> This excessive use of force, which is not justified by any legal grounds, is also inconsistent with the criteria set forth by Waldock criteria, due to disproportional measures and belligerent occupation of the Georgian sovereign territories.

Regarding the passportization policy, the Report distinguished Russian nationals who possessed citizenship for a long time and those who acquired nationality in the course of passportization.<sup>295</sup> The policy undermining a concept of genuine link does not meet requirements to invoke the doctrine of PNA in action. The Russian Federation invoked the doctrine of PNA against Ukraine twice. On March 1, 2014, the President of the Russian Federation requested the Council of the Federation to use Russian armed forces in the territory of Ukraine. Consequently, the council granted permission to use force due to the interest of protecting the lives of citizens of the Russian Federation, compatriots, and military personnel of the armed forces stationed in the Ukrainian territory.<sup>296</sup> The message box of Russian officials has been focused on the protection of Russian nationals in Ukraine already since

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<sup>290</sup> UNSC, S/2008/545. 11.08.2008.

<sup>291</sup> Ruys (Supra 265) p. 235.

<sup>292</sup> Ibid., Allison (Supra 128).

<sup>293</sup> Ibid., Tagliavini’s Report (Supra 92) p. 285.

<sup>294</sup> Ibid., 286.

<sup>295</sup> Ibid., 288

<sup>296</sup> Postonovleniye N48-SF ob Ispolzovanii Vooruzhonnix Sil Rossiskoi Federatsii na Teritorii Ukraini. Sovet Federatsii Federalnogo Sobraniya Rossiskoi Federatsii (Постановление № 48-СФ об использовании Вооруженных Сил Российской Федерации на территории Украины. Совет Федерации Федерального Собрания Российской Федерации). Moscow, 1 March 2014. Available at: <https://bit.ly/4213ANY> (26.04.2023)

2021, accusing Ukraine of genocide and ‘massacres like in Srebrenica’.<sup>297</sup>

After the Russian invasion of Ukraine in February 2022, President Putin gave a speech about the reasons and grounds for the invasion. Putin has sought to ‘demilitarize’ and ‘denazify’ Ukraine, and also to bring to trial those who perpetrated ‘bloody crimes’ against Russian-speaking civilians and citizens of the Russian Federation.<sup>298</sup> The key aspect of justification was the duty to protect not only Russian citizens living in Ukraine but generally, the Russian-speaking population residing in Eastern Ukraine which paradoxically included Ukrainian citizens, as well. Moreover, Russia reacted beyond the UNSC permission and justified its intervention based on the moral duty to support its nationals which goes against international law. Recently, Green and other legal scholars analyzed the application of the doctrine of PNA against Ukraine and criticized a questionable *en masse* passportization preceding a recent invasion.<sup>299</sup> Besides failing Russia to demonstrate imminent threats to its nationals and credible evidence of grave human rights violations, it failed to comply with the proportionality principle of the PNA.<sup>300</sup> The absence of evident reports from international organizations or from Russia, about imminent grave violations of the human rights of the Russian speaking population makes it questionable. Additionally, similar to the Georgian intervention, Russia expanded the invasion to the whole territory of Ukraine. Turning the doctrine of PNA into retaliation and ‘denazification’, which is ultimately incompatible with the prerequisites of the doctrine.

In April 2023, the Foreign Policy Concept (FPC) of the Russian Federation, the first concept after 2016 entered into force.<sup>301</sup> Article 25 of the FPC reaffirmed that the Russian Federation adheres to the generally recognized principles and norms of international law and retains a privilege to use armed forces based on Article 51 of the UN Charter to protect its citizens abroad.<sup>302</sup>

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<sup>297</sup> Kozak Dopustil, Chto Rossiyu Vinudyat Zashishat ee Grazhdan v Donbasse, (Козак допустил, что Россию вынудят защищать ее граждан в Донбассе). (08.04.2021) – *Interfax*. Available at: <https://bit.ly/3zwLiHQ> (26.04.2023)

<sup>298</sup> Full Text of Vladimir Putin’s Speech Announcing ‘Special Military Operation’ in Ukraine. (24.02.2022) – *The Print*. Available at: <https://bit.ly/3Ash4Gq> (26.04.2023).

<sup>299</sup> Green, A.J. Henderson, C. Ruys, T. Russia’s Attack on Ukraine and the Jus Ad Bellum. *Journal on the Use of Force and International Law*. Vol. 9 No. 1 2022, pp. 4-30, at: 14.

<sup>300</sup> *Ibid.*, p. 16.

<sup>301</sup> Russia’s New Foreign Policy Concept: What This Means for The West. (05.04.2023) – *Russia Briefing*. Available at: <https://bit.ly/40o6pYb> (26.04.2023)

<sup>302</sup> Ukaz N229 Prezidenta Rossiskoi Federatsii ob Utverzhdenii Kontseptsii Vneshnei Politiki Rosskiskoi Federatsii (Указ № 229 Президента Российской Федерации Об утверждении Концепции внешней политики Российской Федерации). N229, Moscow 31.03.2023. Article 25. Available at: <https://shorturl.at/kvDR2> (26.04.2023).

Grimal and Melling summarized the test for determining the lawfulness of PNA in two-fold criteria.<sup>303</sup> The first encloses determining whether the nationals of a state have suffered an armed attack or have been threatened with such actions. If the answer is affirmative, the second criterion refers to the assessment of the necessity and proportionality of the actions. However, the scholars argue the Russian intervention in Georgia constituted an abuse of doctrine, rather than a disproportional response.<sup>304</sup> The doctrine of abuse of rights has been recognized as a part of customary international law due to the widespread application of the doctrine in the courts, arbitrations, and the national legal system.<sup>305</sup> In other words, states are engaging the right to PNA in actions which is a legal right of a state and obligation toward its nationals under international law. However, inconsistent engagement of the right to PNA leads to a violation of customary international law, as it proved the Russian practice during the last decades. Scholars do not universally agree on a common consensus regarding the Russian application of the PNA against Georgia and Ukraine. Nevertheless, the population obtaining Russian nationality as a matter of illegal passportization cannot set in motion the application of other doctrines in international law. Peters highlights a direct link between the abuse of the doctrine of PNA and the legal implications of illegal passportization.<sup>306</sup> The scholar portrays large-scale naturalization in relation to the deprivation of personal jurisdiction. The more individuals are deprived from the state, the more plausible the qualification of actions as an abuse of rights.<sup>307</sup> Thus, besides assessment of Waldock criteria and legal preconditions for the PNA in international law, it is crucial to consider the Russian selective approaches to near abroad, which turned doctrine of protection of nationals abroad into selective doctrine of protection of Russian nationals in near abroad.

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<sup>303</sup> Ibid., Grimal and Melling (Supra 272) p. 550.

<sup>304</sup> Ibid., p. 551 *See further*: Nußberger A. The War between Russia and Georgia – Consequences and Unresolved Questions. *Göttingen Journal of International Law* Vol. 1 No. 2 2009, p. 341.

<sup>305</sup> Byers, M. Abuse of Rights: An Old Principle, A New Age. *McGill Law Journal* Vol.47 2002, pp. 389 – 431, at: 397.

<sup>306</sup> Ibid., Peters (Supra 24) p. 671.

<sup>307</sup> Ibid., Peters (Supra 24) p. 672.

## Conclusion

In conclusion, this thesis has examined the issue of passportization against state sovereignty through a legal analysis of Russian systematic approaches to its near abroad, focusing on Georgia and Ukraine. Initially, the thesis has explored the right to nationality from the angle of international law and human rights, as well as the principle of genuine link, and critically analysed the concept of collective extraterritorial naturalization in the context of state sovereignty. The right to naturalization has been recognized in international law as a fundamental right of individuals *vis-à-vis* state sovereignty. The states are restricted for compulsory naturalization and violation of principles of good faith, fairness, and equity. The theory of genuine link established by the ICJ in the *Nottebohm* case is a crucial element of extraterritorial naturalization. Based on the ruling, the state sovereignty on nationality law is not absolute, but rather limited. The limitation is based on the rationale of preventing the misuse of nationality by one state in order to assert extraterritorial jurisdiction over the population of another state. The findings of this research imply that arbitrary *en masse* extraterritorial naturalization can lead to one state's effective control over the territory of another state.

The analysis conducted in this thesis demonstrated the Russian *sui generis* approaches to international law against former Soviet states by disregarding crucial principles of state sovereignty, non-intervention, respect for territorial integrity, and the doctrine of *Uti Possidetis*.

Based on the analysis, the first theory that claims of a genuine link between Georgian breakaway regions and the Russian Federation based on statelessness and former Soviet citizenship constitute a violation of international law on sovereignty and territorial integrity has been supported. The thesis argued that such claims served—a mere guise for military intervention to justify the protection of those who have obtained Russian nationality in separatist regions of Georgia. First, the author has discussed the collective naturalization of the population after state succession which is not merely permitted but required under customary international law. Therefore, after the recognition of Abkhazia and South Ossetia as sovereign parts of Georgia by the international community, the habitual residents of these regions fell under Georgian sovereignty by virtue of territorial transfer after succession from the Soviet Union. Furthermore, the study highlights the ethnic cleansing of Georgians, who constituted the majority of the disputed territories and never allowed them to return,

undermining the legal stance of Abkhazians' and South Ossetians' aspirations. The author discussed the continuity of Soviet citizenship in the former Soviet countries and disputed a lack of a genuine link between Soviet citizenship and the residents of Abkhazia and South Ossetia.

In essence, this thesis has advanced the understanding of effective control in the light of Russian passportization policy. The ECtHR concluded that Russian passportization is the act of deprivation of state jurisdiction over persons and increased threats of military intervention. Besides, the author analyzed the conclusions of Tagliavini's report which argued that since the majority of people living in Abkhazia and South Ossetia acquired Russian citizenship, Russia could claim personal jurisdiction over them.

Drawing from the analysis, this work supported the argument that the *en masse* passportization policy of the Russian-speaking population of Ukraine, which emerged as a *post-factum* strategy following a belligerent occupation, constitutes a compromise of free individual consent and undermines the concept of extraterritorial naturalization, resulting in severe violations of human rights and international humanitarian law. The author has refuted a genuine link of the Russian Federation with the Russian-speaking population in Eastern Ukraine merely based on linguistic commonalities. Despite the potential establishment of a genuine link, the Russian passportization policy constituted a *prima-facie* illegal act due to the belligerent occupation of those territories. The ILC based on customary international law acknowledged the conferral of nationality under belligerent occupation as an inconsistent act with international law.

Analyzing the implications of forceful passportization, the author recalled the Geneva Conventions and the ICTY practice and further discussed the status of those who forcefully received Russian passports under occupation. Despite Russian citizenship, those who forcefully obtained passports, receive the status of protected persons under international humanitarian law and retain a factual connection to Ukraine, due to the theory of predominance of their genuine allegiance to Ukraine, rather than a formal link of nationality with the Russian Federation. Russian practice devoid of *de-jure* personal and territorial jurisdictions exacerbates the current challenges of human rights amid the Russian-Ukrainian war. The author has highlighted a coerced conscription of Ukrainians who have been subjected to passportization into the Russian army, which constitutes war crimes. The analysis shows how the Russian nationality is weaponized against Ukraine, by forcing individuals to

fight their own nation.

Overall, the result of this research suggests that the passportization policies applied in Ukraine and Georgia, share similarities but also exhibit some differences. First, a concerning aspect of these policies is the lack of a sufficient factual link between the Russian Federation and the targeted population. Second, passportization is conducted on a large scale, and in a simplified gesture. Additionally, passportization occurs in vulnerable territories populated by minorities. Based on these findings, the concern is not with extraterritorial naturalization itself in international law, but with the pattern of *en masse*, simplified passportization, which may lead to the deployment of armed forces by Russia on the sovereign territory of other states in near abroad.

The conclusive theory introduced by the author is that the emergence of a new Russian doctrine of protecting Russian nationals in near abroad, influenced by contemporary Russian legal and political theories, is distinct from the traditional doctrine of PNA in international law and is strongly dependent on illegal passportization. The ongoing debates on the doctrine of PNA and its connection with Russian passportization have been analyzed, shedding light on the legal debates in this field.

Overall, Russia's justifications for protecting its nationals abroad are heavily reliant on a broad interpretation of the nationality concept, which is firmly tied to the concept of Soviet citizenship and Russia's imperialistic perception of superiority among post-Soviet countries. Established pattern in Ukraine and Georgia of Russian passportization policy shows a significant link between illegal passportization and disproportional protection of Russian nationals abroad. Both legal doctrines derive from the concepts recognized in international law – extraterritorial naturalization and protection of nationals abroad, respectively. Thus, Russian revisionism in international law manifests deviation from existing legal concepts and *opinio juris*. Analysis of the military interventions of 2008 in Georgia and the full-scale Russian invasion of Ukraine in 2022 of Ukraine from the angle of *en masse* Russian passportization, has introduced a new legal doctrine: Protection of Russian nationals near abroad.

The rationale behind the duty to protect nationals is not only based on Russian citizens living abroad but generally, the Russian-speaking population. This interpretation exposes a multifaceted system of Russian dominance in post-Soviet space which turns passports into a weapon against state sovereignty. In light of the research conducted, it is evident that Russian

approaches to Georgia and Ukraine also raise concerns for other former Soviet states where Russian nationals are represented as minorities in the local population. The findings of this research have contributed to the understanding of the legal intricacies of Russian passportization and its implications for state sovereignty, territorial integrity, and the protection of human rights.

## **Passportiseerimine riigi suveräänsuse vastu - õiguslik analüüs puutuvalt Venemaa käsitusi lähivälismaa suhtes - Resüme**

Käesolev magistr töö käsitleb Venemaa Föderatsiooni poolt toimepandavat massilist riigivälisist isikute naturalisatsiooni endistes Nõukogude Liidu riikides, magistr töös nimetatud ka kui „passportiseerimine“. Magistr töö laiem eesmärk on demonstreerida Venemaa Föderatsiooni omalaadseid lähenemisi läbi rahvusvahelise õiguse Nõukogude Liidu riikide suhtes (eelkõige Gruusia ja Ukraina). Eelnimetatud riigid on käsitletud magistr töös ka kui Venemaa 'lähivälismaa'.

Venemaa 'lähivälismaa' mõiste hõlmab endas riike ja alasid, mis varasemalt kuulusid Nõukogude Liidu koosseisu või mida peetakse olevat Venemaa Föderatsiooni mõjuvõimu all. Passportiseerimise poliitikat peetakse tihti peale Venemaa Föderatsiooni strateegiaks, mille lõppeesmärk on laiendada Venemaa Föderatsiooni poliitilist mõjuvõimu eelnimetatud riikides.

Magistr töö eesmärkideks on uurida tänapäevaseid probleeme seondult Venemaa Föderatsiooni poolt toimepandava riigivälise naturalisatsiooniga (sh kiirendatud naturalisatsiooni protsesse) ning massilist rahvusvahelise õiguse rikkumist seondult riikide suveräänsusega ja terviklikkuse põhimõtetega.

Rahvusvaheline Kriminaalkohus on 1955. aastal selgitanud, et isikul oleva kodakondsuse ja kodakondusriigi vahel peab eksisteerima nn „ehtne seos“, st kodakondsuse olemasolul peab isikul olema legitiimne side kodakondusriigiga (nt sünd). Tulenevalt sellest on samuti magistr töö üks eesmärkidest uurida, kas passportiseeritud isikutel esineb eelnimetatud legitiimne side nende ja Venemaa Föderatsiooni vahel.

Magistr töö uurib Venemaa Föderatsiooni massilist passportiseerimise protseduuri Gruusia separatistlikes piirkondades. Nimetatud lähenemist on minevikus kasutatud Gruusia suhtes sõjalise sissetungi ning järgnevalt maa-ala okupeerimise ettekäändeks. Järgnevalt keskendub magistr töö õiguslikele aspektidele seondult tänapäevase Venemaa Föderatsiooni poolt toimepandava passportiseerimise poliitikaga okupeeritud aladel Ukrainas, täpsemini Donbassi piirkonnas ning Krimmi poolsaarel.

Magistr töö juhib tähelepanu probleemidele ning keerukustele seondult kirjeldatud teemaga ja seda just õiguslikust vaatevinklist. Autor käsitleb tänapäeva arusaama Venemaa Föderatsiooni kodanikest ja Venemaa Föderatsiooni poolt Venemaa 'lähivälismaal' elavatele isikutele kodakondsuse omistamist relvana suveräänsete riikide vastu.

Autor on magistritöös toetunud analüütilistele, õigusdoktriinilistele, õigusempiirilistele ning juhtumipõhiste meetoditele, mistõttu koosneb magistritöö ulatuslikust analüüsist seonduvalt valitud teemaga.

Magistritöös sisalduv analüüs põhineb Venemaa Föderatsiooni teistsugusel lähenemisel rahvusvahelise õiguse suhtes ning annab lugejale ülevaate Venemaa 'lähivälismaal' elavate Venemaa Föderatsiooni kodanike kaitse doktriinist. Nimetatud doktriin on ühtlasi ka ebaseadusliku passportiseerimise üks peamisi tugisambaid.

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