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Putin's Passportization Gambit: Investigating the logic behind Russia's *en masse* naturalization of foreign citizens

[Paszportyzacyjny gambit Putina. Badanie logiki stojącej za rosyjską masową naturalizacją zagranicznych obywateli]

Abstrakt

W dorocznym orędziu o stanie państwa w 2005 roku prezydent Rosji Władimir Putin nazwał rozpad ZSRR „największą geopolityczną katastrofą stulecia”. Od tego czasu wydaje się, że wymyślił on nowy, wyrachowany sposób na zrekonstruowanie i wskrzeszenie tej wańki-wstańki. Za pomocą genialnego fortelu – paszportyzacji – ekspansjonistyczne zakusy Putina wobec swoich sąsiadów zaczęły wychodzić na jaw. Artykuł próbuje wyjaśnić istotę tego nowego podstępu oraz pokazać problemy, jakie powoduje on zarówno dla państw poradzieckich, jak i całej społeczności międzynarodowej.

Słowa kluczowe: Paszportyzacja, przymusowa naturalizacja, naturalizacja obywateli państw trzecich, masowa naturalizacja, paszportyzacja jako *casus belli*.

With the decline of the USSR, the Soviet government – while swaying on its feet, encouraged (or sometimes forced) great numbers of ethnic Russians to relocate from the territory of Russia to other Soviet republics in order to disperse any thought of possible independentism. The rationale behind this policy was simple, yet brilliant. As ethnic Russians were considered both: more reliable and better politically indoctrinated than other ethnic groups throughout the Soviet Empire, it was them, who were to glue the territories into one, once the political power of the Soviet State would diminish. However, with the fall of the USSR in December 1991, this policy resulted in 12 to 15 million ethnic Russians finding themselves outside the borders of their native Russian land.¹ Today, President Putin wants to bring some, if not all of these people back into the Russkiy Mir, by dispensing them Russian passports and clawing back the land they stand on.

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¹ T. Brewis, Turning Ukrainians into Russians, Romanians into Hungarians and Italians into Austrians: The Spread of Passportization across Europe, p. 2.

The Putin's gambit

Passportization is best understood as an *en masse*, fast-tracked extraterritorial naturalization of people residing in the territories of a third country.² Although the practice of passportization is nothing new – Bulgaria and Hungary grant citizenships on proof of origin or ancestry; Romania offers a simplified procedure for people who have lost their citizenship and are residents of Bessarabia and Bucovina; Turkey offers its passports to the residents of the Turkish Republic of Northern Cyprus, and Armenia to the people of the Republic of Artsakh³ – Russian *modus operandi* seems uniquely abusive and invasive. With its unique and nefarious twist on passportization, Russia seems to ‘manufacture’ a population of nationals when and where it’s convenient and where it needs to adopt the argument of ‘defending its own citizens.’ This new foreign policy, supposedly, justifies Moscow in exerting its raw, unchecked power abroad (within its geopolitical neighborhood), as well as in annexing sovereign territories.

While international law does allow states to bestow nationality upon whomever they wish, for it “to be enforceable at the international level a requirement of ‘real and effective’ nationality must be shown i.e. a meaningful connection to the ‘national’ in question.”⁴ Therefore, an unhampered authority of any state to grant its nationality, as a unilateral act to whomever and wherever it sees fit, is, in fact, limited by the rules of international law (both in treaty obligations and customary international law).⁵ Mass naturalization of persons living within the territory of other states must, therefore, consequently be seen as a direct violation of international law i.e. the principle of Good Neighborliness.

The strategy behind Putin's gambit

By abusing the instrument of passportization, on a scale never seen before, “Russia is erecting a new civilization-state, one that transcends the national

² W. Bescotti et al., Passportization: Russia's “humanitarian” tool for foreign policy, extra-territorial governance, and military intervention, Global Citizenship Observatory, March 25, 2022. Web Page. <https://globalcit.eu/passportization-russias-humanitarian-tool-for-foreign-policy-extra-territorial-governance-and-military-intervention/> [accessed: 22.02.2024].

³ Ibid.

⁴ J. A. Green, The Annexation of Crimea: Russia, Passportization and the Protection of Nationals Revisited (Editorial Comment), p. 2.

⁵ A. Peters, Passportisation: Risks for international law and stability – Part 1, Blog of the European Journal of International Law, May 9, 2019. Web Page. <https://www.ejiltalk.org/passportisation-risks-for-international-law-and-stability-part-one/> [accessed: 19.02.2024].

borders and is predominantly built for all Russian speakers. Like a phoenix, regenerated from the remains of the USSR, it is reborn to oppose the moral decay of the West. Russkiy Mir is both a political as well as a cultural concept set to attract all with soft-power instruments but one that will not shy away from force if need be. According to Russia, its 'near abroad' corresponds to all post-Soviet states and is the territory where Russia has its 'privileged interests'.⁶ Also, unbridled passportization equips Russia with important (even if highly misguided and counter-factual) leverage – produces a deceptive *casus belli* for instigating future unrests and conflicts, disguising them, within the international forum, as legal action to protect its 'own' citizens. Russia's passportization gambit (from the very start, when it was first dress-rehearsed in the Russian-Georgian war) was so suspect and transparent that just a few weeks after the war had begun⁷, in September 2008, Rein Mullerson had "argued that Russia's novel legal argument would 'stoke up unrest in pro-Russian parts of the Ukraine... [notably] the Crimean peninsula and especially Sevastopol."⁸

While it could be argued that the "pre-UN Charter, international law recognized the use of force in the context of protection of nationals, it is open to considerable doubt whether that rather broadly based right was carried over into the Charter era."⁹ Claiming self-defense as a pretext, to protect one's nationals abroad, has been previously used in the past – most notably by the United States in both Grenada and Panama in the 1980s – but it has been met with a broadly negative reaction from the international community as a whole. Yet, today, Russia still claims, that it has both duty and obligation towards its 'newly-minted' citizens residing throughout the lands of the former 'Soviet Union'.

The Russian Federation grounds this duty and obligation on its: constitutional obligation to "guarantee its citizens protection and patronage abroad" (Russian Federation Constitution, Article 61[2]); as well as on its Federal Law 'On Defense', which "authorizes the President to send troops abroad to protect Russian citizens from an armed attack. Russia has used this legislation to justify military intervention in Georgia in 2008 and Ukraine in 2014."¹⁰ During the Georgian invasion, the Russia's then-president Dmitry Medvedev emphasized the "duty to protect the lives and dignity of Russian citizens wher-

⁶ A. Kotyashko et al., Normative resistance to responsibility to protect in times of emerging multipolarity: the cases of Brazil and Russia, "Revista Brasileira de Politica Internacional" 2018, 61, 1, e001, p. 9.

⁷ August 1st 2008.

⁸ J. A. Green, The Annexation..., p. 4

⁹ T. D. Gill, Remarks on the Law Relating to the Use of Force in the Ukraine Conflict, Lieber Institute West Point, March 9, 2022. Web Page. <https://www.ejiltalk.org/passportisation-risks-for-international-law-and-stability-part-one/> [accessed: 19.02.2024].

¹⁰ F. Burkhardt, et al., What Makes a Citizen? Russia's Passportization of the Donbas, "Russian Analytical Digest", 23 February 2022, 277, p. 2.

ever they may be”¹¹ presenting an ideological argument for Russia’s military interventionism for the first time, for the world to hear. Therefore, today, we may safely claim, that Russia introduced a new and deliberate foreign policy practice, where passportization has been “weaponized in Russia’s war on its ‘near abroad’.”¹²

Recently, addressing the international community, the Russian Federation claimed that “there is a high demand for Russian citizenship among people from south-eastern Ukraine whose living conditions Kyiv has made intolerable. In other words, Russia’s legislative initiative is a response to the aspirations of many thousands of people. It is not we who are forcing them to become Russian citizens but rather they themselves who desire it. We are simply providing them with an opportunity and significantly simplifying the process (...) The conflict in Donbas has been going on for five years. For five years, the inhabitants of Donbas have been deprived of the ability to exercise their human rights and freedoms in Ukraine. They were denied the right to vote in the recent presidential elections (...) The residents of Donetsk and Luhansk (...) have been deprived of income sources, pensions, and benefits that other Ukrainian citizens are entitled to. They would not have survived without Russia (...) They are getting none of that from the Ukrainian Government, and we therefore felt compelled to offer them assistance.”¹³

The gambit’s weakness

Whatever lofty and made-up justifications the Russian Federation does and will come up with in the future (while trying to annex more foreign citizens and more land with them), it is important to declare that Russia’s passportization campaign violates international law in various ways:

1. Under the Fourth Geneva Convention and the First Additional Protocol to the Geneva Conventions, occupying power is prohibited from engaging in “adverse distinction in the application of international humanitarian law.”¹⁴
2. Under the Hague Convention of 1907, it is forbidden for the occupying power to compel “the inhabitants of occupied territory to swear allegiance to the hostile Power.”¹⁵

¹¹ Forced Passportization in Russia-Occupied Areas of Ukraine, A Conflict Observatory Report, Yale School of Public Health, 2 August 2023, p. 6.

¹² L. Hyde, *Forced to fight your own people: How Russia is weaponizing passports*, “Politico”, January 1, 2023. Web Page. <https://www.politico.eu/article/ukraine-citizenship-war-russia-weaponize-passport-passportization-mobilization-draft/> [accessed: 25.02.2024].

¹³ V. A. Nebenzia, Security Council 8516th meeting, Verbatim Record, UN Doc S/PV.8516, pp. 15–16/22.

¹⁴ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, Rule 88.

¹⁵ International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, Article 45.

3. Under the Fourth Geneva Convention, it is forbidden to coerce or discriminate against public officials in occupied territories (including compelling them to swear said allegiance to the temporary occupying power).¹⁶
4. In accordance with the International Convention on Economic, Social and Cultural Rights (ICESCR) occupying power cannot deny residents the right to legal and national identity as well as core social services, free movement of persons, education, and work.

Also, as mass naturalization of persons can, and in the case of Russia is directly meant to interfere with the sovereignty of Ukraine, international law forbids any conferment without consent or under duress. Because citizenship confers a set of variable rights and obligations between a state and an individual, passportization deeply impacts the state to which an individual was formerly a citizen, especially when, as in the case of Eastern and Southern Ukraine, citizens are required to pay taxes or enlist in the military of 'their new country' – Russia, and are unable to do the same for their 'old' – Ukraine. By forcing residents of occupied areas to accept Russian citizenship, Russia is consolidating its authority in Luhansk, Donetsk, Kherson, and Zaporizhzhia oblasts through threats and intimidation. Moreover, Russia blatantly restricts any access to humanitarian aid, medical care, municipal services, and social services on occupied territories and makes them accessible only to its citizens. Non-citizens are being intimidated by possible detentions and/or deportations. These acts are a blatant violation of both the Hague Convention and the Geneva Convention (forcing people to declare allegiance to an occupying power and/or discrimination against people living under occupation based on nationality). Today, on all occupied territories, residents who do not accept Russian citizenship:

- ◆ must register as foreign residents;
- ◆ as of July 2024 can be detained and/or removed to other areas of Russia;
- ◆ face restrictions on employment, school enrollment, healthcare, and access to mortgages or municipal job offers.

Due to these facts, applying for Russian citizenship today on annexed territories in Ukraine or Georgia does not always (or seldomly does) imply political intent as it should, according to international law. Instead, the applicant's principal motivation is driven by fear or necessity, to "qualify for a Russian old-age pension because Ukraine cannot provide state services in Russian-occupied zones. Other reasons to obtain a Russian passport are finding a job in Russia, having higher salaries, studying in Russia, pursuing business opportunities, and, for many of those implicated in war crimes, ensuring impunity."¹⁷ Although Russia persists in claiming that the naturalization process

¹⁶ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, Article 54.

¹⁷ M. Gabbat, Passportization (Ukraine, Moldova, and Georgia), Global Informality Project, Web Page. [https://www.in-formality.com/wiki/index.php?title=Passportization_\(Ukraine,_Moldova,_and_Georgia\)](https://www.in-formality.com/wiki/index.php?title=Passportization_(Ukraine,_Moldova,_and_Georgia)) [accessed: 27.02.2024].

is strictly voluntary, by forcing new laws designed to compel individuals to apply for a Russian passport is contrary to international law.

For all the reasons stated above, it must be said that “illegal passportization in Kherson and Zaporizhzhia, as well as in Crimea and the temporarily occupied part of Donetsk and Luhansk oblasts, is a gross violation of Ukraine’s sovereignty and territorial integrity, norms, and principles of international humanitarian law, as well as obligations of the Russian Federation as an occupying power, in accordance with Article 45 of the Hague Convention of 1907 and Article 47 of the Convention for the Protection of Civilian Persons in Time of War of 1949.”¹⁸ “Forced passportization of Ukrainians in Kherson and Zaporizhzhia is yet one more evidence of the criminal goal of Russia’s war against Ukraine – the conquest of Ukrainian territories for their further occupation and integration into Russia’s legal, political and economic space.”¹⁹ According to the Ministry of Foreign Affairs of Ukraine, “the illegal introduction of [Russian] passports in Kherson and Zaporizhzhia, as well as in Crimea and the temporarily occupied part of Donetsk and Luhansk Oblast, is a gross violation of Ukraine’s sovereignty and territorial integrity and the norms and principles of international humanitarian law. The Russian president’s decree is legally null and void and will have no legal consequences.”²⁰

Responding to the gambit

As a countermeasure, on September 16th, 2022 the Cabinet of Ministers of Ukraine approved a draft law that:

- ◆ Introduced criminal liability for local government officials, state officials, and private individuals for acquiring Russian citizenship or obtaining a Russian passport;
- ◆ Introduced criminal liability for restricting the rights of people who have not obtained Russian citizenship and/or passport.

The draft law sees the acquisition of a Russian passport in temporarily occupied territories as justified only in cases when an individual uses this passport to return to free Ukraine through the territories of the Russian Federation and/or third countries.

¹⁸ Statement of the MFA of Ukraine on the issuance of Russian passports to citizens of Ukraine in the temporarily occupied territories, May 25th, 2022. Web Page. <https://poland.mfa.gov.ua/pl/news/statement-mfa-ukraine-issuance-russian-passports-citizens-ukraine-temporarily-occupied-territories> [accessed: 27.02.2024].

¹⁹ *Ibid.*

²⁰ I. Fremer. Ukraine: Draft Law Introducing Criminal Liability for Forced Russian ‘Passportization’ in Temporarily Occupied Territories Approved. 2022. Web Page. <https://www.loc.gov/item/global-legal-monitor/2022-09-28/ukraine-draft-law-introducing-criminal-liability-for-forced-russian-passportization-in-temporarily-occupied-territories-approved/> [accessed: 27.02.2024].

The law also states:

- ◆ Individuals who force Ukrainian citizens to obtain a Russian passport are punishable by a term of 8 to 12 years of imprisonment;
- ◆ For creating conditions under which failure to obtain a Russian passport infringes the right of a Ukrainian citizen or places them at a disadvantageous position by a term of 8 to 12 years of imprisonment;
- ◆ For civil servants receiving Russian passports by a term of 10 to 15 years of imprisonment.

According to Iryna Vereschuk (Deputy Prime Minister and Minister for Reintegration of the temporarily occupied territories of Ukraine) new law is aimed at “punishing the organizers of ‘hostile passportization’ and their accomplices, in particular, those Russian citizens who are engaged in ‘illegal passportization’ in the territory of Ukraine. Vereschuk also stated that ‘international law does not contain any proper norms for countering illegal Russian ‘passportization’ in the territory of Ukraine. For that reason, we must respond by strengthening [our] criminal legislation.”²¹

Final remarks

Russia does not pursue a uniform strategy for passportisation. In Transnistria, passportization had only begun after the hot phase of the territorial conflict, and “despite the call for intervention made by the Kyrgyz authorities, Moscow has depicted the crisis as an internal matter and has rather focused on relief measures and humanitarian assistance.”²² In Georgia, a plea to act by the discontented Georgians with Russian passports has been presented to the community of nations, even though, international law does not allow non-state entities or regions within a state to invite military intervention. In Crimea, Russia first tried to legitimize its action by direct consent from the displaced Ukrainian President – Viktor Yanukovich, and the then-new ‘Prime Minister of Crimea’ – Sergiy Aksyonov. Only when this justification has failed, general protection of Russian nationals has been claimed, but only after its annexation by Russia in 2014, when Russian citizenship was automatically granted to all residents of Crimea (1.5 mln passports issued to an estimated population of 2.28 mln people²³).

Russia's passportization gambit is a strategy that is still evolving. Mass passportization has been harnessed to both expand the Russian polity, as well as, to destabilize other states. It should, therefore, be met with stiff and strict

²¹ Ibid.

²² A. Kotyashko et al., *Normative resistance ...*, p. 12.

²³ *Forced...*, p. 6.

opposition from all civilized countries. As “Russia interpreted a provision of the 1970 Declaration on Friendly Relations among States as a legal basis for remedial succession (a succession hypothetically allowed in case of severe human rights violations committed by the central state),²⁴ this bloated hypothetical is not supported by facts in cases where Georgia, Ukraine or now Moldova are concerned. Therefore, all actions taken by Russia against those countries find or ought to find no footing in international law.

Abstract

In an annual State of the Nation address in 2005, Russian President Vladimir Putin called the collapse of the USSR “the greatest geopolitical catastrophe of the century.”²⁵ Since then, he seems to have figured out a ‘new’ and ‘cunning’ way to put the humpty dumpty together again. With a new and brilliant trick up his sleeve – passportization, his expansionist tendencies towards his neighbors have started to come to light. This article attempts to explain this new ploy and the problems it causes to the post-Soviet states and the international community as a whole.

Keywords: passportization, coerced naturalization, extraterritorial naturalization, *en masse* naturalization, passportization as *casus belli*.

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²⁴ W. Bescotti et al., Passportization: Russia’s...

²⁵ Speech by Foreign Minister Radosław Sikorski at the Atlantic Council, February 26th, 2024, <https://www.gov.pl/web/diplomacy/speech-by-foreign-minister-radoslaw-sikorski-at-the-atlantic-council-washington-dc> [accessed: 02.03.2024].

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