



Did Russia's passportization in Donbas, 2019, serve as a *casus belli* for its full scale invasion of Ukraine in 2022?

Abstract

This thesis takes a closer look at Russia's use of passportization in Donbas, 2019. How it was used as a calculated step towards its full-scale invasion in 2022. By distributing Russian passports to over 700,000 people living in separatist-controlled areas, Russia essentially created a legal and political excuse to justify its actions, presenting them as a way to “protect” their nationals. Passportization goes beyond humanitarian concerns - it actively undermines Ukraine's sovereignty and territorial integrity, violating Article 2(4) of the UN Charter. It also complicates efforts to resolve the conflict through agreements like the Minsk accords.

By comparing this strategy to similar situations in Georgia and Moldova, the paper highlights a pattern in Russia's tactics: passportization is used as a weapon in its hybrid warfare strategies. Finally, the Donbas case shows how citizenship can be weaponized to weaken state sovereignty, destabilize regions, and set the stage for military action under a mask of legality.

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1. Introduction

1.1 Introduction

This thesis will address Russia's use of passportization, the large-scale distribution of passports in contested areas, which has become an important tool in its geopolitical strategy. The paper dives into whether the passportization implemented in Donbas 2019, later served as a justification - a *casus belli* - for Russia's full-scale invasion in February 2022. Through the distribution of Russian passports to people living in separatist-controlled areas, Russia created a legal argument that the use of force in 2022 was necessary to protect its nationals and the Russian-speaking population in Ukraine.

This paper argues that Russia's passportization was in breach of Article 2(4) of the United Nations Charter by undermining Ukraine's sovereignty. The situation in Donbas will also be compared to similar scenarios in Georgia, Moldova, and Crimea, to show a repeating pattern in Russia's geopolitical strategy where it uses passportization as a weapon to destabilize regions and justify aggression.

1.2 Research question and thesis statement

This paper is based on a central research question: Did Russia's passportization in Donbas, 2019, serve as a *casus belli* for its full scale invasion of Ukraine in 2022? This question is supported through two subsidiary questions: Can this strategy be viewed as a violation of Article 2(4) of the UN Charter? and is passportization a form of hybrid warfare?

This paper argues that Russia's use of passportization in Donbas in 2019, later was used as a *casus belli* for the full-scale invasion in 2022, and that it was a strategy that was in breach of Article 2(4) of the UN Charter. By examining similar cases in Georgia and Moldova, the paper demonstrates how Russia's distribution of citizenship in contested territories is part of a broader strategy by Russia. That it uses it to strengthen control over contested areas under the guise of legal and humanitarian obligations. Moreover, the paper argues that passportization is used as a hybrid warfare strategy, blending legal and political means with military threats to achieve strategic objectives without direct conflict.

1.3 Abbreviations

- USSR: Union of Soviet Socialist Republics
- RSFSR: Russian Soviet Federative Socialist Republic
- SBU: Security Service of Ukraine
- EU: European Union
- OSCE: Organization for Security and Co-operation in Europe
- DPR: Donetsk People's Republic
- LPR: Luhansk People's Republic
- ICJ: International Court of Justice
- UN: United Nations
- FZ: Federal Law (Russian: Федеральний закон)
- MH17: Malaysia Airlines Flight 17
- *Casus Belli*: an act or situation that provokes or justifies a war.
- ILC: International Law Commission

- NATO: North Atlantic Treaty Organisation
- The Charter: The Charter of the United Nations
- IIFFMCG: Independent International Fact-Finding Mission on the Conflict in Georgia

1.4 Structure

To answer this paper's research question, the paper is divided into sections to build up the argument. The sections are structured as follows:

1. Introduction - Provides the research context, the research question, abbreviation, and an outline of the paper's structure.
2. Historical Background - Examines the dissolution of the USSR, important moments in Ukrainian history, and the conflict in Donbas leading up to the passportization.
3. Minsk Agreements - Discusses Minsk I, the Minsk Memorandum, Minsk II, and how passportization violated these agreements and undermined Ukraine's sovereignty.
4. International Court of Justice - Includes a discussion of the 1955 Nottebohm case and the principle on effective nationality, then applied to the situation in Donbas.
5. Russian policy - Analyzes Russian legal instruments, such as the Constitution, Federal law No. 62-FZ and presidential decrees and explains how they were used strategically in Donbas.
6. Passportization as a Pretext for Aggression - compares Russian passportization policy in Georgia, Moldova and Ukraine..
7. Hybrid Warfare - Defines hybrid warfare and explains how passportization can be seen as a form of hybrid warfare.
8. United Nations - Examines how passportization violates article 2(4) of the Charter and how Russia uses the Responsibility to Protect doctrine together with passportization to justify its actions.
9. Conclusion - summarises findings and provides a tentative answer to the research question.
10. Bibliography - List of all sources.

2. Historical Background

2.1 Dissolution of the USSR

In August 1991, Ukraine declared its independence from the USSR, marking a central moment in its modern history. Later that year, in December, a referendum was held, in which 90% of the population voted in favor of independence.¹

In 1992, Ukraine became a signatory to the Lisbon Protocol, a treaty that addressed the fate of the nuclear arsenal inherited from the USSR. The protocol stipulated that these weapons would remain under the centralized, secure control of a single authority - the Russian Federation.² Attached to this treaty was a letter from Ukraine's then-President, Leonid Kravchuk, addressed to U.S. then-President George Bush, dated May 2, 1992. In this letter, Kravchuk assured that Ukraine guaranteed the elimination of its nuclear

¹ BBC News, 'Ukraine Crisis: Timeline' (BBC News, 13 November 2014) <https://www.bbc.com/news/world-middle-east-26248275> accessed 21 October 2024.

² United States Department of State, *Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms* (23 May 1992), 1.

arsenal within a seven-year period, demonstrating Ukraine's commitment to global disarmament and security.³

In December, 1994, Ukraine, alongside the United States, the Russian Federation, and the United Kingdom, signed the Budapest Memorandum. This agreement was an important step in Ukraine's accession to the 'Treaty on the Non-Proliferation of Nuclear Weapons' as a non-nuclear state. In exchange for giving up its nuclear arsenal, Ukraine received security assurances from the other signatories. That they were to respect Ukraine's sovereignty and territorial integrity.⁴

2.2 The Orange Revolution

Ten years after the signing of the Budapest memorandum, Ukraine found itself in political turmoil following the presidential election of 2004. The election was a contest between Viktor Yanukovich, a former prime minister with backing from Russia, and Viktor Yushchenko, a pro-European candidate who spoke for closer ties with the EU. The campaign took a dark turn when Yushchenko was poisoned with dioxin, an attack widely suspected to have been orchestrated by the SBU.⁵

In the first round of voting, both candidates received about 40% of the vote. In the runoff, Yanukovich was declared the winner. This announcement triggered outrage among Yushchenko's supporters who accused Yanukovich's side of election fraud. The allegations started mass protests across the country, culminating in what came to be known as the Orange Revolution. For weeks, demonstrators filled the streets, demanding justice and fair elections. This led to Ukraine's Supreme Court invalidating the runoff results and ordering a new election in December 2004. In the new runoff, Yushchenko came out as the winner with 52% of the votes. This marked a triumph for the protest movement.⁶

However, the Orange Revolution ultimately failed to deliver meaningful, long-term change in Ukraine. Yushchenko's presidency was spoiled by political infighting, controversies, and frequent dismissals of officials. By the time of the 2010 presidential election, public disappointment had grown, and Yushchenko lost the presidency to his former rival, Viktor Yanukovich.⁷

³ President of Ukraine, Letter to President George Bush (7 May 1992) in United States Department of State, *Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms*, 6.

⁴ Ukraine, Russian Federation, United Kingdom, and United States, *Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons* (5 December 1994) UN Doc A/49/765.

⁵ Encyclopaedia Britannica, 'Ukraine: The Orange Revolution and the Yushchenko Presidency' (Encyclopaedia Britannica, undated) <https://www.britannica.com/place/Ukraine/The-Orange-Revolution-and-the-Yushchenko-presidency> accessed 21 October 2024.

⁶Ibid

⁷ The Kyiv Independent, 'Ukraine's Orange Revolution: How a Peaceful Protest Changed the Nation's Course' (The Kyiv Independent, undated) <https://kyivindependent.com/ukraines-orange-revolution/> accessed 21 October 2024.

2.3 Euromaidan, The Revolution of Dignity

In November 2013, Ukraine's hopes and aspirations for closer ties with the EU were suddenly crushed. President Viktor Yanukovich canceled an EU association agreement just days before it was set to be signed. The agreement, which aimed to strengthen political and economic ties between Ukraine and the EU, was abandoned under intense pressure from Russia. The move triggered widespread outrage across the country.⁸

Protests quickly broke out in the nation, with the largest demonstrations taking place in Kyiv's Independence Square, known as Maidan Nezalezhnosti. On November 30, the situation escalated dramatically when the riot police violently tried to scatter the protesters. This only intensified public anger, drawing even larger crowds.⁹ December 1, an estimated 300,000 people had gathered in the square, marking the start of what would become a full-blown revolution.¹⁰

On December 17, Yanukovich traveled to Moscow to meet with the Russian President Vladimir Putin. He secured a 15 billion dollar loan package from Russia. This raised the anger among the protesters, as it was seen as evidence of Yanukovich aligning with Russia rather than addressing the demand of the people. In January 2014, Yanukovich passed hard anti-protest laws, but they failed to stop the movement. As a result, the protests turned deadly on January 22, with the first casualties, and the violence intensified over the following weeks.¹¹

By late February, the pressure on Yanukovich had reached a breaking point. On February 21, he signed a peace agreement arranged by the EU. It included a promise of a new election. However, the next day, Ukraine's parliament voted to impeach him. This led Yanukovich to fear for his freedom, making him flee to Russia, leaving behind a country in disorder.¹²

2.4 Crimea

On February 26, 2014, Russia took advantage of the internal disorder in Ukraine and placed its military forces on high alert. Russian President Putin ordered large-scale exercises near the border of Ukraine. This, as a response to growing disorder on the Crimean peninsula. The next day, February 27, armed pro-Russians seized government buildings around the peninsula. The Ukrainian interim government summoned Russia's ambassador, with a warning against military aggression, and interim President Oleksandr Turchynov reminded Russian forces to remain within their naval base in Sevastopol.¹³ On

⁸ Britannica, 'The Maidan Protest Movement' (2023)

<https://www.britannica.com/place/Ukraine/The-Maidan-protest-movement> accessed 31 October 2024.

⁹ The Kyiv Independent, 'The Euromaidan Revolution: Ukraine's Fight for a Future in Europe' (2023) <https://kyivindependent.com/euro-maidan-revolution/> accessed 31 October 2024.

¹⁰ House of Commons Library, *Ukraine: The Euromaidan Protests and the 2014 Revolution* (Briefing Paper CBP-9476, 2021) <https://researchbriefings.files.parliament.uk/documents/CBP-9476/CBP-9476.pdf> accessed 31 October 2024.

¹¹ Ibid

¹² Ibid

¹³ Shaun Walker, 'Pro-Russian gunmen seize Crimea parliament – as it happened' *The Guardian* (27 February 2014)

March 1, Russia's Federation Council approved a request from President Putin to deploy troops into Ukraine, as a response to the extraordinary situation, which was seen as a threat to Russian citizens.¹⁴ Crimea's pro-Russian regional government voted to join Russia, and scheduled a referendum for March 16. The result declared by Crimean officials, which was widely condemned by Ukraine and the West, was an overwhelming victory for the side wanting to join Russia. Crimean officials reported that 95% of voters supported joining Russia.¹⁵ On March 18, President Putin and Crimea's leaders signed a treaty to formally annex the peninsula to Russia.¹⁶

2.5 Donbas

The 7th of April 2014, in the cities of Donetsk, Kharkiv and Luhansk, pro-Russian protesters occupied regional government buildings. In the cities of Donetsk and Luhansk the protesters declared a "people's republic", demanded a referendum on separation from Ukraine, similar to the one held in Crimea, to be held on the 11th of May in Donetsk and Luhansk. As a response, Ukraine's interim President, Turchynov, announced the start of an "anti-terrorist operation" against the separatists, which quickly lost momentum.

On May 12, the separatist in Donetsk and Luhansk, declared a overwhelming victory in the referendums. The results were condemned by Ukraine and the West. The armed conflict between Ukraine and the pro-Russian separatists continued during the summer, and in June, the separatists shot down a military transport plane, killing all 49 Ukrainians onboard.¹⁷ In July, Malaysia Airlines flight MH17, towards Kuala Lumpur from Amsterdam, was shot down, killing all 249 onboard. Investigation later showed that the plane was shot down with a Russian-made Buk missile.

In late August international suspicion rose as a Russian convoy of 260 trailers, delivering humanitarian aid to eastern Ukraine. The then-French Foreign Minister Laurent Fabius warned it might have served as a disguise for Russia to establish a presence near Luhansk and Donetsk. A few days later Ukraine released videos of captured Russian troops, in response Russia claimed that the troops had crossed the border by mistake. On September 1, Ukraine reported that 700 of its soldiers had been captured as pro-Russian rebels advanced, taking ground in eastern Ukraine. The situation led to the signing of a ceasefire between Ukraine and the pro-Russian separatist, known as Minsk I, in an attempt to end almost half a year of fighting.¹⁸

<https://www.theguardian.com/world/2014/feb/27/ukraine-pro-russian-gunmen-seize-crimea-parliament-live-updates> accessed 31 October 2024.

¹⁴ BBC News, 'Russia Approves Troop Deployment in Ukraine' (BBC News, 1 March 2014)

<https://www.bbc.com/news/world-europe-26400035> accessed 1 November 2024.

¹⁵ BBC News, 'Ukraine Crisis: Russian Troops Take over Crimea' (BBC News, 3 March 2014)

<https://www.bbc.com/news/world-europe-26606097> accessed 1 November 2024.

¹⁶ BBC News, 'Crimea Crisis: Russian Forces Storm Naval Base in Feodosia' (BBC News, 24 March 2014) <https://www.bbc.com/news/world-europe-26630062> accessed 1 November 2024.

¹⁷ BBC News, 'Ukraine Crisis: Military Plane Shot Down in Luhansk' (14 June 2014)

<https://www.bbc.com/news/world-europe-27845313> accessed 31 October 2024.

¹⁸ House of Commons Library, *Ukraine: The Euromaidan Protests and the 2014 Revolution* (Briefing Paper CBP-9476, 2021) <https://researchbriefings.files.parliament.uk/documents/CBP-9476/CBP-9476.pdf> accessed 31 October 2024.

2.6 Passportization

Passportization is defined as the large-scale granting of citizenship to individuals living in disputed areas of a foreign country. The term became famous after the Russo-Georgian war, when Russian passports were handed out in the contested areas, Abkhazia and South Ossetia¹⁹. Russian passportization in post-Soviet territory is well understood as a pretext for future aggression. This is because Russia has followed a two-step pattern. First, fast-track passport distribution to residents in target territories. Then, Kremlin and its state media amplifies or invents threats against these passport-holders, justifying Russia's "duty" to intervene to protect its nationals.²⁰

On April 24, 2019, President Vladimir Putin signed the Presidential decree No. 183 'On the Definition of Categories of Persons Entitled to Apply for Citizenship of the Russian Federation under a Simplified Procedure for Humanitarian Purposes' (see section 5.3). Paragraph 1 of the decree allowed citizens of Ukraine, the Donetsk and Lugansk People's Republics, and stateless individuals permanently residing in these areas, or Ukraine, to apply for Russian citizenship under a simplified procedure. This decree widened the scope of Article 14 of Federal Law No. 62-FZ (see section 5.2) on Citizenship and started the passportization campaign in the region.²¹

3. Minsk Protocols

3.1 Minsk I

On September 5, 2014, Ukraine, Russia, OSCE, and leaders of pro-Russian separatist groups signed the first Minsk agreement, Minsk I. The agreement aimed to de-escalate the conflict in Eastern Ukraine. Through an immediate ceasefire and giving special status to the separatist-controlled regions of Donetsk and Luhansk through decentralization. Some key provisions in the agreement are the release of hostages and detainees, the enactment of an amnesty law for the separatists, the organization of local elections under Ukrainian legislation, initiatives for economic recovery and humanitarian aid for the Donbas region. The agreement also called for the withdrawal of unlawful armed groups.²² Despite its ambitious goals, the Minsk Protocol failed to freeze the conflict, as both sides repeatedly violated its terms, leading to continued hostilities in the region.²³

¹⁹ T Goddard, 'Passportization' in K W. Goetz, N. Hayoz and S. Hug (eds), *The Politics of Citizenship in Europe* (Springer 2023) https://link.springer.com/referenceworkentry/10.1007/978-3-030-11795-5_182-2 accessed 1 November 2024.

²⁰ Evan Harary, 'Opinio Juris: In Ukraine, Russian Passportization Generates Effective Denationalization' (ProQuest, 4 January 2024) <https://login.proxy.annalindhbiblioteket.se/login?url=https://www.proquest.com/blogs-podcasts-websites/opinio-juris-ukraine-russian-passportization/docview/2909636965/se-2?accountid=8325> accessed 1 November 2024.

²¹ 'List of Persons Entitled to Apply for Russian Citizenship under Simplified Procedure Expanded' (President of Russia, 11 July 2022) <http://en.kremlin.ru/acts/news/68853> accessed 1 November 2024.

²² Organization for Security and Co-operation in Europe, Protocol on the results of consultations of the Trilateral Contact Group, signed in Minsk, 5 September 2014 (OSCE, 5 September 2014) <https://www.osce.org/files/f/documents/a/a/123258.pdf> accessed 14 November 2024. (unofficial translation)

²³ The Moscow Times, 'Explainer: What Are the Minsk Agreements?' (The Moscow Times, 11 February 2022) <https://www.themoscowtimes.com/2022/02/11/explainer-what-are-the-minsk-agreements-a76327> accessed 13 November 2024.

2.2 Minsk Memorandum

The Minsk Memorandum, signed on September 19, 2014, served as a follow-up to Minsk I and aimed to solidify and implement measures to enforce the ceasefire and stabilize the situation in eastern Ukraine. This agreement defined concrete steps for de-escalation, including the establishment of a security zone and withdrawal of heavy weaponry. It was negotiated and signed by representatives of Ukraine, Russia, OSCE, and the self-proclaimed Donetsk and Luhansk People's Republics, demonstrating a joint effort to solve the ongoing conflict.²⁴

2.3 Minsk II

Five months later, on the 12th of February 2015, as a result of the failure of Minsk I and Ukrainian territorial losses to the pro-Russian separatists, Minsk II was signed by representatives of Russia and Ukraine. The agreement was mediated by France and Germany. Minsk II set out provisions to stabilize and freeze the conflict in eastern Ukraine. The key provisions of the agreement were a ceasefire, withdrawal of heavy weapons to create buffer zones. Minsk II demanded a dialogue on local elections, laws granting Donetsk and Luhansk special status in Ukraine, amnesty for the separatists, and the exchange of prisoners. Ukraine was to regain border control, with constitutional reforms ensuring decentralization in the separatist region by the end of 2015. All foreign armed forces had to withdraw, under OSCE monitoring.²⁵

As with Minsk I, Minsk II quickly fell apart with hundreds of weekly violations of the provisions set out. One of the major disagreements over Minsk I and II originates from different interpretations of Russia's role in the conflict. Russia claims to act as a mediator and not a party to the conflict. Ukraine argues that the tenth provision of the agreement, that calls for the withdrawal of "all foreign armed forces" directly concerns the armed forces of Russia. This despite Russia denying any military presence. Another issue is the order of steps for the elections in the separatist regions. Russia insisted that the elections should be held in the separatist regions before the withdrawal of military forces, while Ukraine argued the opposite, pushing for security measures to secure fair and free elections.²⁶

2.4 Passportization

When Russia in 2019 started to distribute passports in Donbas after the Presidential decree No. 183 'On the Definition of Categories of Persons Entitled to Apply for Citizenship of the Russian Federation under a Simplified Procedure for Humanitarian Purposes' (see section 5.2) which has granted Russian nationality to over 700,000 residents in the separatist controlled regions of Donetsk and Luhansk by 2022. Ukraine has seen this as a violation of the Minsk agreements and a threat to its sovereignty.²⁷

²⁴ Organization for Security and Co-operation in Europe, Memorandum on the implementation of the provisions of the Protocol on the results of consultations of the Trilateral Contact Group, signed in Minsk, 19 September 2014 (OSCE, 19 September 2014) <https://www.osce.org/files/f/documents/a/1/123807.pdf> accessed 14 November 2024. (unofficial translation)

²⁵ United Nations Security Council, Resolution 2202 (2015) Package of Measures for the Implementation of the Minsk Agreements, UN Doc S/RES/2202 (17 February 2015) Annex I

²⁶ *Supra note 23.*

²⁷ *Supra note 23.*

Russia's distribution of passports in the separatist regions violates the Minsk agreements as it undermines Ukraine's sovereignty and territorial integrity that are central to the agreements. The tenth provision in Minsk II, as mentioned, calls for the withdrawal of "all foreign armed forces" from Ukrainian territory under monitoring by OSCE. Through passportization, Russia creates an argument to justify a potential presence of its armed forces under the pretext of protecting its nationals, as it has done in other States e.g. Georgia (see section 6.1).

The Minsk agreements, specifically Minsk II, recognizes Donetsk and Luhansk as part of Ukraine, granting them special status within Ukraine's constitutional framework. By granting Russian nationality to the population in these regions, Russia changed their legal and political allegiance, effectively breaking down Ukraine's control over its territory.

4. International Court of Justice

4.1 Article 3(2) of The ICJ Statute

Article 3(2) of the ICJ Statute reads as follows: "A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights."²⁸

4.2 1955 Nottebohm Case, Judgment of April 6th, 1955 (Liechtenstein v. Guatemala)

4.2.1 Background

The Nottebohm Case, *Liechtenstein v. Guatemala* in 1955, is a historical judgment by the ICJ. It addressed the issue of nationality, diplomatic protection for a state's nationals, and its recognition in international law. Friedrich Nottebohm was born in 1881 in Hamburg, Germany. In 1905 he moved to Guatemala, and started as an employee in his brother's firm, Nottebohm Hermanos. In 1912 he became a partner of the firm and in 1937 he was appointed the head of the firm. Nottebohm applied in October 1939, a month after Germany's invasion of Poland, for citizenship in Liechtenstein. Allegedly to avoid the restrictions tied to his German nationality. After the war, Guatemala declared him an enemy of the state, seized his assets and refused to acknowledge his Liechtenstein nationality. Liechtenstein, seeking protection for Nottebohm as a national, filed a claim against Guatemala.²⁹

4.2.2 Effective nationality

In the Nottebohm case, the court addressed the principle of "effective nationality" to determine which nationality should prevail in case of dual-citizenship in regard to the exercise of diplomatic protection. The principle of effective nationality means that nationality needs to demonstrate a genuine, substantial relationship between the individual and the state. Several factors are taken into account and they may vary from case to case. The place of residence is one of importance, yet there are others, like family ties and engagement in public life.³⁰

²⁸ Statute of the International Court of Justice, art 3(2).

²⁹ Nottebohm Case (*Liechtenstein v Guatemala*) (Second Phase), Judgment of 6 April 1955, [1955] ICJ Rep 4.

³⁰ *Ibid*

4.2.3 Judgment

The Nottebohm judgment by the ICJ ruled that nationality must reflect a genuine and substantial bond between the individual and the state granting nationality. The judgment focused on different important principles. It established that nationality in international law demands more than a passport, it demands a substantial relation, like residence, family or professional ties and an active obligation to the state. The court found that Mr. Nottebohm's ties to Liechtenstein were next to none and motivated by his desire to round the restrictions imposed on Germans during the second world war. His main connection remained to Guatemala where he had lived, worked and integrated into society.³¹

The court ruled that it is the inherent right of every state to decide whom it grants nationality under its domestic laws. But it is not an obligation for the international community to recognize that nationality if the person possesses dual-citizenship. The Court ruled that nationality acquired solely for convenience, without a real relationship between the individual and state does not oblige other states to recognize that nationality. In this manner, the court ruled that Guatemala was justified in refusing to acknowledge Mr. Nottebohm's Liechtenstein nationality because of the lack of a genuine and substantial bond to the state of Liechtenstein.³²

4.2.4 Donbas 2019

The precedent set out by the judgment in the Nottebohm case clarified that for a State to grant protection for its nationals under international law, the nationality must be effective, with a genuine relationship between the state and individual.³³

The situation in Donbas, with Russia's passportization of Ukrainian citizens, raises the question of which nationality would be the most effective one. Before Russia's annexation of Donetsk, Luhansk, Zaporizhzhia and Kherson on September 30th 2022, the residents that had acquired Russian passports couldn't neither vote nor enjoy social benefits from Russia.³⁴ At the same time, the residents couldn't either enjoy the social benefits and protection from Ukraine, as an unknown but presumably a large number of residents had lost all means to prove their Ukrainian nationality. Those in the occupied areas of DPR/LPR that had lost their means to prove their nationality, were especially vulnerable to abuse like forced labor and enlistment to armed forces of the separatist region.³⁵

According to the judgment of ICJ in the Nottebohm Case, a basis to attribute nationality under international law is the relationship between the individual and the state, like residence, family or professional ties and active obligations to the state. The persons that acquired a Russian passport did not by default become recognised as Russian nationals by other states as they lacked a substantial bond to Russia. The diversity of demographic conditions has made it impossible for a general agreement on the rules relating to

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ BBC News, 'What Russian annexation means for Ukraine's regions' (September 30, 2022) BBC News What Russian annexation means for Ukraine's regions accessed 18 November 2024.

³⁵ *Supra note 20.*

nationality. Even though nationality affects international relations, it is up to each state to decide whom to grant nationality.³⁶

The court refers to the ‘Convention relating to the Conflict of Nationality laws’ from the Conference for the Codification of International Law held in Hague, 1930. Article 1 states that ‘it is for each State to determine under its own law who are its nationals’, and ‘this law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality’.³⁷ In this case, Russia and Ukraine, as sovereign states, can determine their nationals according to its domestic laws.

Article 3 of the convention stipulates that persons having more than one nationality ‘may be regarded as its national by each of the States whose nationality he possesses’.³⁸ According to this provision, the residents in the occupied areas can be seen both by Russia and Ukraine as their nationals.

Article 5 of the convention, that addresses how a third state should decide the nationality of a person with dual citizenship, reads as follows: “Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.”³⁹

Donbas residents, living in Ukrainian territories occupied by Russian backed separatists, keep a primary residence connection to Ukraine, suggesting that their effective nationality remains with Ukraine under international law. Even with Russian passports, Donbas residents have an effective Ukrainian nationality based on legal criteria of residence and national relation. So even if this group has lost their means to prove their Ukrainian nationality, either by acquiring a Russian passport or by the consequences of armed conflict, their effective nationality should be seen as Ukrainians according to the judgment in the *Nottebohm Case*.

Passports issued in contested areas are generally not accepted as valid documents. Although nationality and passport are not the same, a passport often serves as a strong indicator of nationality. The International Court of Justice’s ruling in the *Nottebohm case* established that for nationality to be justified under international law, it must reflect a genuine legal and political bond between the individual and the state which the residents in Donbas that have received a Russian passport lack.⁴⁰ In 2022 the European Parliament

³⁶ *Supra note 29.*

³⁷ Convention on Certain Questions relating to the Conflict of Nationality Laws (adopted 12 April 1930, entered into force 1 July 1937) 179 LNTS 89, art 1.

³⁸ *Ibid*, art 3.

³⁹ *Ibid*, art 5.

⁴⁰ Bescotti, Elia, Burkhardt, Fabian, Rabinovych, Maryna; Wittke, Cindy: Passportization: Russia’s “humanitarian” tool for foreign policy, extra-territorial governance, and military intervention, *VerfBlog*, 2022/3/23, <https://verfassungsblog.de/passportization/> accessed 18 November, 2024.

decided to not accept Russian passports issued in the occupied territories of Ukraine and in the Georgian breakaway regions.⁴¹

5. Russian policy

5.1 The Constitution of the Russian Federation

5.1.1 Article 61. 2

Article 61.2 of the constitution of the Russian Federation states “The Russian Federation shall guarantee its citizens protection and patronage abroad.”⁴² This article of the constitution gives the Federation of Russia a right to itself to protect its nationals abroad. Together with passportization, Russia uses this to give itself a justification for aggression.

In the Independent International Fact-Finding Mission on the Conflict in Georgia’s report, article 61.2 of the Russian constitution is addressed, they stated that article 61.2 of the constitution “cannot serve as a justification for intervention under international law. Domestic law can in principle not be invoked as a justification for a breach of an international legal rule.”⁴³

5.1.2 Article 62

Article 62 of the constitution addresses dual nationality.

“1. A citizen of the Russian Federation may have citizenship of a foreign state (dual citizenship) in accordance with federal law or an international treaty of the Russian Federation.

2. The possession of foreign citizenship by a citizen of the Russian Federation shall not diminish his (her) rights and freedoms and shall not release him from obligations stipulated for Russian citizenship, unless otherwise specified by federal law or an international treaty of the Russian Federation.

3. Foreign citizens and stateless persons shall enjoy rights and bear obligations in the Russian Federation on a par with citizens of the Russian Federation, except in those cases envisaged by federal law or by an international treaty of the Russian Federation.”⁴⁴

5.2 Federal Law No. 62-FZ

The year of 2002, was of significance in Russia regarding its policy of citizenship. Federal Law No. 62-FZ of the Russian Federation was passed by the State Duma on April 19, 2002, by a small majority. The law changed the rules regarding citizenship drastically. It removed the privileges of former Soviet nationals borned outside the territory of Russia. Under the new law, only individuals born within the territory of the Russian Federation were eligible for Russian nationality through a simplified procedure, other former Soviet citizens were required to meet the same criteria as foreign nationals, set out

⁴¹ European Parliament, 'Amendments Adopted on 20 October 2022 on the Proposal for a Decision on the Non-Acceptance of Russian Travel Documents Issued in Ukraine and Georgia (COM(2022)0662 – C9-0302/2022 – 2022/0274(COD))' [2022] P9_TA(2022)0370 accessed 3 December 2024.

⁴² Constitution of the Russian Federation, art 61.2 <http://archive.government.ru/eng/gov/base/54.html> accessed 1 November 2024.

⁴³ Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), *Report Volume II* (2009) 283–290 https://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf accessed 26 November 2024.

⁴⁴ *Supra note 42, art 62*

in article 13 of the law. This because the open door policy regarding citizenship for former soviet nationals was seen as an economic burden on Russia. The new law made it harder for former Soviet citizens to acquire a Russian nationality, with a loophole for people residing in contested regions, at this time it was Abkhazia and South Ossetia in Georgia. The loophole is found in article 14 of the new law.⁴⁵

5.2.1 Article 6. Dual Citizenship

This article addresses dual citizenship in the Russian Federation and paragraph 1 states that a citizen who also holds another citizenship will be recognized solely as a Russian citizen, except in cases specified by an international treaty or federal law. Paragraph 2 says that the citizenship will not be terminated if a citizen acquires a citizenship in another State.⁴⁶

5.2.2 Article 7. Protection of and Assistance to Citizens of the Russian Federation Outside the Russian Federation

Section 1 of article 7 states that a national of the Russian Federation shall be granted defense and protection abroad and paragraph 2 is about Russian government bodies, diplomatic missions, and that consular institutions abroad are responsible for ensuring that Russian citizens can fully exercise their rights as outlined in the Russian Constitution, federal laws, international law norms, and treaties.⁴⁷

This law strengthens article 61.2 of the constitution of the Russian Federation that Russia has the right and duty to protect its nationals abroad. The articles are vague in what ways they will protect its nationals, which makes it open for interpretation.

5.2.3 Article 10. Documents Certifying the Citizenship of the Russian Federation

Article 10 states that Russian citizenship is verified by either a Russian passport or another officially designated document indicating citizenship, with the types of accepted identity documents determined by federal law.⁴⁸

5.2.4 Article 13. Admission to the Citizenship of the Russian Federation under the General Procedure

Article 13 section 1 a) of Federal law No. 62-FZ ‘Admission to the Citizenship of the Russian Federation under the General Procedure’ outlines the requirements to obtain citizenship in the Russian Federation. The first section of the article reads as follows: “1. Foreign nationals and stateless persons aged 18 or older and possessing legal capacity may apply for admission to the citizenship of the Russian Federation under the general procedure provided that they:

⁴⁵ Nagashima, Toru. “Russia’s Passportization Policy toward Unrecognized Republics: Abkhazia, South Ossetia, and Transnistria.” *Problems of Post-Communism*, vol. 66, no. 3, 2019, pp. 186–99, <https://doi.org/10.1080/10758216.2017.1388182>.

⁴⁶ Federal Law No. 62-FZ of 31 May 2002 on Citizenship of the Russian Federation, art 6 https://www.ecoi.net/en/file/local/1290334/1504_1216191797_federal-law-no-62-fz-of-31-may-2002-on-citizenship-of-the-russian-federation.pdf accessed 20 November 2024

⁴⁷ *Ibid*, art 7

⁴⁸ *Ibid*, art 10.

a) have resided in the territory of the Russian Federation for five uninterrupted years since being granted a residence permit and until the date of applying for admission to the citizenship of the Russian Federation, except for the cases provided for in part two of this Article. The period of residence shall be deemed uninterrupted if the person traveled outside the Russian Federation for not more than three months in one year.”

The other requirements under section 1 is that applicants for Russian citizenship must pledge to follow Russian laws, have legal income, renounce other citizenships (unless exempted), and demonstrate knowledge in the Russian language.

The second section stipulates the residency requirement for obtaining Russian citizenship may be shortened under specific circumstances. These include being born in the RSFSR and previously holding USSR citizenship, being married to a Russian citizen for at least three years, or being unemployable with an adult child who is a Russian citizen. Additionally, the requirement can be reduced for individuals with significant achievements in science, technology, or culture, or those possessing a profession or qualification deemed valuable to the Russian Federation. Political asylum or recognition as a refugee under federal law also qualifies as grounds for shortening the residency period.⁴⁹

5.2.5 Article 14. Admission to the Citizenship of the Russian Federation under the Simplified Procedure

Section 1 of article 14 of Federal Law No. 62-FZ reads as follows:

“Foreign nationals and stateless persons aged 18 or older and possessing legal capacity may apply for admission to the citizenship of the Russian Federation under the simplified procedure without meeting the requirements referred to in item a) of part one, of Article 13 of this Federal Law, provided that they:

- a) have at least one unemployable parent possessing the citizenship of the Russian Federation;
- b) possessed USSR citizenship, resided and still reside in States that formed part of the USSR, received no citizenship of those States and remain stateless persons as a result.”⁵⁰

Passportization is legally grounded in Article 14 of Law No. 62-FZ, which introduces a dual approach to citizenship acquisition. While it imposes stricter requirements for former Soviet nationals, at the same time it includes a loophole for residents of contested regions, allowing them to acquire Russian citizenship through a simplified procedure. Specifically, they are exempted from the requirement outlined in Item (a) of Part One of Article 13, which states that individuals must reside in Russia for five consecutive years after obtaining a residence permit.⁵¹

This provision is widely regarded by researchers as the starting point of Russia’s passportization policy. They argue that the law deliberately incorporated this loophole to

⁴⁹ Ibid, art 13

⁵⁰ Ibid, art 14

⁵¹ Nagashima, Toru. “Russia’s Passportization Policy toward Unrecognized Republics: Abkhazia, South Ossetia, and Transnistria.” *Problems of Post-Communism*, vol. 66, no. 3, 2019, pp. 186–99, <https://doi.org/10.1080/10758216.2017.1388182>.

facilitate the naturalization of residents in breakaway regions.^{52 53}

5.2.6 Article 29. Powers of the President of the Russian Federation

Article 29 states that the President of the Russian Federation holds the authority to make key decisions regarding citizenship matters. To ensure efficiency, the President coordinates the activities of authorized agencies responsible for citizenship matters and issues decrees related to citizenship. In exceptional cases, the President may personally evaluate applications for admission or reinstatement of citizenship for foreign nationals and stateless individuals.

5.3 Decree No. 183

The Decree of the President of the Russian Federation No. 183, issued on April 24, 2019, established a framework for a simplified procedure to grant Russian citizenship to specific groups of individuals for humanitarian purposes. The decree primarily focused on citizens of Ukraine and stateless persons residing permanently in Ukraine. It allowed these individuals to apply for citizenship under a simplified procedure in accordance with Federal Law No. 62-FZ "On Citizenship of the Russian Federation." Applications were to be submitted to designated offices of the Ministry of Internal Affairs of the Russian Federation, with decisions to be made within three months of submission. This simplified procedure aimed to address humanitarian needs and ensure the protection of vulnerable populations. The decree underwent several amendments between 2020 and 2023 to refine its provisions and adapt to changing circumstances. It was invalidated by Presidential Decree No. 11 on January 4, 2024.⁵⁴

This policy marked the start of passportization in Donbas as it described Russia's strategy of using passportization as a tool for political influence. Through passportization, Russia established a direct connection to residents of Donbas, creating a population that it later could claim to protect. This follows a pattern seen in Russia's interventions in South Ossetia, Abkhazia, and Transnistria, where similar passportization efforts preceded deeper political and military involvement.⁵⁵

By mid-2021, hundreds of thousands of Donbas residents had obtained Russian passports, tying their connection to Russia.⁵⁶

This strategy served multiple strategic purposes. It weakened Ukraine's sovereignty, secured Russian influence in Donbas, and created a pretext for future military intervention under the appearance of defending Russian citizens. The decree was the start

⁵² Ibid

⁵³ Peter Hilpold, 'Passportization' [2020] Verfassungsblog <https://verfassungsblog.de/passportization/> accessed 21 November 2024.

⁵⁴ Decree of the President of the Russian Federation No 183 of 24 April 2019 on Defining Categories of Persons Eligible to Apply for Russian Federation Citizenship Through a Simplified Procedure for Humanitarian Purposes [2019] <http://www.kremlin.ru/acts/bank/44190/page/2> accessed 21 November 2024 (unofficial translation)

⁵⁵ Ibid

⁵⁶ Ivan Nechepurenko, 'Russia Is Issuing Passports to Ukrainians, and Kyiv Is Not Happy' *The New York Times* (21 July 2021) <https://www.nytimes.com/2021/07/21/world/europe/russia-passports-ukraine.html> accessed 21 November 2024.

of a broader effort to strengthen Russia's presence in Donbas, making it a turning point in the conflict and a precursor to Russia's full-scale invasion of Ukraine in 2022.⁵⁷

5.4 Decree No. 187

Executive Order of the President of the Russian Federation No. 187 of April 29, 2019, 'On Certain Categories of Foreign Citizens and Stateless Persons who Have the Right to Apply for Citizenship of the Russian Federation under a Simplified Procedure', established a simplified procedure for acquiring Russian nationality for several categories of individuals, which included Ukrainian citizens without other citizenship and stateless persons born in Crimea who left before March 18, 2014, along with their families, Ukrainian citizens and stateless persons living in Russia with specific legal statuses who were residents of the DPR or LPR as of April 2014 and their families.⁵⁸

6. Passportization as a pretext for aggression

6.1 Georgia

Since 2002, Russia has used passportization in contested areas to strengthen its influence. Russian passportization intensified in Abkhazia and South Ossetia after Georgia's Rose Revolution in 2003, which turned Georgia more to the West. Both regions had fought secessionist wars against Georgia in the early 1990s, with indirect support from Russia, which later deployed its troops as peacekeepers in these territories.⁵⁹

By 2006, approximately 90% of the populations in Abkhazia and South Ossetia had acquired Russian passports, effectively linking these regions to Russia. In August 2008, following escalating provocations in South Ossetia, Georgia launched a military response. Russia countered with a large-scale military intervention against Georgia. They justified its actions as a defense of Russian citizens in South Ossetia. Referring to Article 51 of the UN Charter (see section 8.1.2), Russia justified its intervention on the grounds of collective self-defense and alleged that Georgia was committing genocide against South Ossetians. This was a significant moment in Russia's use of passportization to later justify military action.⁶⁰

Russia did not explicitly label its 2008 intervention in Georgia as a humanitarian intervention, but statements by then-President Medvedev, mentioning civilian casualties and Russia's role in protecting the Caucasus, aligned with the Responsibility to Protect (see section 8.3). Under international law, humanitarian interventions without UN

⁵⁷ Roman Olearchyk and Max Seddon, 'Russia's "Passportisation" Push in Eastern Ukraine Raises Tensions' *Financial Times* (28 April 2021)

<https://www.ft.com/content/921c4e17-b75b-49a1-b1b2-dfcdf5b60194> accessed 21 November 2024.

⁵⁸ Confidence Group, 'President of Russia Granted the Right of Admission to Russian Citizenship under a Simplified Procedure to New Categories of Foreign Citizens' (Confidence Group, 31 May 2023)

<https://eng.confidencegroup.ru/info/news/pryezidyent-rossii-pryedostavil-pravo-priyoma-v-grazhdanstvo-rf-v-uproschyonnom-poryadkye-novym-katregoriyam-inostrannykh-grazhdan/> accessed 27 November 2024

⁵⁹ European University Institute, 'Passportization: Russia's Humanitarian Tool for Foreign Policy, Extra-Territorial Governance, and Military Intervention' (GLOBALCIT, 6 August 2021)

<https://globalcit.eu/passportization-russias-humanitarian-tool-for-foreign-policy-extra-territorial-governance-and-military-intervention/> accessed 19 November 2024.

⁶⁰ Ibid

Security Council authorization are illegal. Russia's actions, driven by geopolitical interests and lack of approval from the international community, failed to meet the legal criteria for the Responsibility to Protect. Also, Russia's opposition to NATO's humanitarian justification for its actions in Kosovo undermines any similar claims for its intervention in Georgia. The IIFMCG concluded that the Russian intervention could not be justified through protecting its nationals as Russia had created these nationals shortly before the intervention by passportization and therefore created the reason for its intervention by its own actions. In the report they refer to the Nottebohm case judgment (see section 4) where the ICJ stated that for international law to recognize the diplomatic protection of its nationals, there must be a genuine bond between the state and individual, a "effective nationality" which Russia lacked to the population it claimed to have the responsibility to protect.⁶¹

The events in Abkhazia and South Ossetia showed how Russian passportization extends beyond distribution of passports. It serves as a strategic tool to gain influence and justify military intervention. By distributing Russian passports to a majority of residents in these regions, Russia created a pretext for aggression under the guise of protecting its nationals. The 2008 conflict with Georgia showed the effectiveness of this strategy, as Russia took advantage of its passportization to justify its actions on the international stage while strengthening its control over the breakaway territories. This set a precedent for how Russia would act in future conflicts in the post-Soviet space, showing the important role of passportization in Russia's regional ambitions.

6.2 Moldova

Passportization in Transnistria, a contested region of Moldova, showed Russia's strategic use of passportization to strengthen its influence. Following the 1991-1992 civil war, Transnistria became an independent state, with many residents rejecting Moldovan citizenship. Unlike Abkhazia and South Ossetia, the population in Transnistria sought both Russian and Ukrainian citizenship due to the region's ethnic diversity between Russians, Moldovans, and Ukrainians. Also because of the region's geographic closeness to Ukraine. Which had created a strong economic and historical bond with Ukraine.⁶²

In 1995, Transnistria introduced a dual citizenship policy, allowing residents to hold Transnistrian citizenship alongside another nationality. This gave access to Russian and Ukrainian citizenship. Russia began issuing passports in the 1990s, but with logistical limitations, such as the lack of a Russian consulate which limited its capacity to distribute passports. By 2001, about 65,000 Transnistrians, 12% of the population, held Russian passports. By 2014, this figure rose to 200,000, with an average of 10,000 new passports issued on a yearly basis. This steady process differs from the rapid distribution of passports seen in Abkhazia and South Ossetia.⁶³

Ukraine also granted citizenship to many Transnistrians. By 2014, 80,000 residents held Ukrainian passports, highlighting the competing influences in the region by both Russia

⁶¹ *Supra note 43*

⁶² Peter Hilpold, 'Passportization' [2020] Verfassungsblog <https://verfassungsblog.de/passportization/> accessed 21 November 2024.

⁶³ *Ibid*

and Ukraine. At this time, nearly half of Transnistria's 480,000 residents held foreign citizenship, this indicated the region's increasing separation from Moldova. Even though slower than in Georgia, Russia's passportization efforts in Transnistria were a calculated strategy to strengthen influence and establish presence.⁶⁴

This case highlights how Russia's passportization policy in Transnistria, even if slower than in Abkhazia and South Ossetia, was strategically planned to strengthen influence in the separatist region. By steadily increasing the number of Russian passport holders and taking advantage of dual citizenship policies, Russia strengthened its influence over Transnistria while hindering Moldova's efforts to assert its sovereignty. The coexistence of Ukrainian and Russian citizenship in the region further shows Transnistria's geopolitical difficulty. Ultimately, passportization in Transnistria demonstrates how Russia uses citizenship as a long-term strategy to strengthen control and exercise influence in contested territories.

6.3 Ukraine

6.3.1 Crimea

Following the 2008 Russia-Georgia conflict, Rein Müllerson, a professor of international law at King's College, warned in his article 'The World After the Russia-Georgia War' about the potential for escalating tensions in Crimea. He argued that Russia's actions in the Caucasus would depend on whether the United States treated them as a partner or adversary, suggesting that NATO expansion and efforts to isolate Russia could increase instability. Müllerson predicted that Russia might formally annex Georgian breakaway territories and create disorder in pro-Russian regions of Ukraine. He highlighted Crimea, and particularly the Sevastopol naval base, as a likely breaking point. He noted that Russia was unlikely to withdraw its Black Sea-fleet when the lease expired in 2017. He also warned that Ukraine's potential NATO membership would almost certainly trigger a crisis over Crimea, emphasizing the region's importance and vulnerability.⁶⁵

Since the start of the dissolution of the Soviet Union in 1989, Russia has actively issued passports to non-Russian citizens residing in Crimea.⁶⁶ In Crimea, the Russian consulate in Simferopol had been issuing Russian passports for years leading up to the events in early 2014.⁶⁷ In late February 2014, unmarked soldiers in green uniforms, known as the "little green men", seized strategic places across Crimea, including the regional parliament in Simferopol, where they raised the Russian flag. While there were clear indications of Russian military involvement, officials, including President Vladimir Putin, initially denied any connection, claiming the forces were local "self-defense units" created to protect Crimea's Russian-speaking population from alleged threats. However,

⁶⁴ Ibid

⁶⁵ Rein Müllerson, 'The World After the Russia-Georgia War' (openDemocracy, 15 September 2008) <https://www.opendemocracy.net/en/the-world-after-the-russia-georgia-war/> accessed 26 November 2024.

⁶⁶ Sam Wrighton (2018) Authoritarian regime stabilization through legitimation, popular co-optation, and exclusion: Russian pasportizatsiya strategies in Crimea, *Globalizations*, 15:2, 283-300, DOI: 10.1080/14747731.2017.1396798

⁶⁷ Agnia Grigas, *Beyond Crimea: The New Russian Empire* (Yale University Press 2016) 43 <https://web-p-ebscobhost-com.proxy.annalindhbiblioteket.se/ehost/ebookviewer/ebook/ZTAwMHh3d19fMT E2MzlyNF9fQU41?sid=d1aa9749-6840-4760-b496-ce3c7b21874d@redis&vid=0&format=EB&rid=1> accessed 26 November 2024.

in the 2015 documentary ‘Crimea: The Way Home’, Putin admitted that these troops were indeed Russian soldiers, confirming Russia’s direct participation in the annexation of Crimea.⁶⁸

In his speech on March 18, 2014, two days after the controversial referendum held in Crimea, Putin highlighted the composition of the Crimean population to justify Russia's actions. He emphasized that of Crimea’s 2.2 million residents, nearly 1.5 million were Russian nationals, 350,000 were Ukrainians who largely spoke Russian as their native language, and approximately 300,000 were Crimean Tatars, who according to Putin, also leaned toward Russia. And that it was shown in the referendum results. This demographic narrative was central to Russia's justification for the annexation. He continued that there was no legitimate authority in Ukraine since, as he called it, “the coup” forced Viktor Yanukovich to flee Ukraine and that the coupmakers had threatened those who opposed them with repression. According to President Putin, the first in line to be repressed was the population of Crimea, “the Russian-speaking Crimea.”⁶⁹

This series of events demonstrates how Russia used a combination of military force, even though not a single shot was fired, and demographic arguments to justify its annexation of Crimea. By demonstrating the peninsula’s Russian-speaking majority and portraying the Ukrainian government as illegitimate and repressive, Russia framed its actions as protecting the vulnerable populations. The acknowledgment of direct military involvement, together with claims of historical and cultural ties, shows how Russia created this narrative to strengthen control over Crimea while trying to prevent accusations of violating international law.

6.3.2 Donbas

By 2021, Russia had distributed over half a million passports to the population in the occupied parts of Donbas, according to the Russian Interior Ministry. This effort was made possible by Presidential Decree No. 183, signed by President Vladimir Putin on April 24, 2019. The decree is seen to mark the start of Russia's passportization in Donbas, a region involved in armed conflict for five years at that point. While Russia officially denied being a party to the conflict, framing it as a civil war between Ukraine and separatist forces, its actions in the region suggested the opposite.⁷⁰

As will be argued for in the next section, the full-scale invasion of Ukraine launched by Russia in early 2022 and President Putin's speech on the morning of the attack showed how Russia’s passportization in Donbas served them as a *casus belli*. By granting Russian citizenship to residents of the occupied territories, Russia created a justification for aggression under the appearance of protecting its nationals. This strategy demonstrates

⁶⁸ Carl Schreck, 'From "Not Us" To "Why Hide It?" How Russia Denied Its Crimea Invasion, Then Admitted It' (Radio Free Europe/Radio Liberty, 26 February 2019) <https://www.rferl.org/a/from-not-us-to-why-hide-it-how-russia-denied-its-crimea-invasion-then-admitted-it/29791806.html> accessed 26 November 2024.

⁶⁹ Vladimir Putin, 'Address by President of the Russian Federation' (President of Russia, 18 March 2014) <http://en.kremlin.ru/events/president/news/20603> accessed 26 November 2024.

⁷⁰ Warsaw Institute, 'Behind Russia's Passportization in Donbas' (Warsaw Institute, 27 May 2021) <https://warsawinstitute.org/behind-russias-passportization-donbas> accessed 27 November 2024

how passportization was not only a humanitarian measure for the residents of Donbas but a strategic move in Russia's larger geopolitical strategy.

5.3.3 February 24, 2022

In an early morning broadcast on Russian state television, President Vladimir Putin announced that Russian armed forces would conduct “a special military operation” in Ukraine.⁷¹

In the first part of his speech, Putin criticized NATO's expansion in the East and the West's disregard for Russia's security concerns. He described these actions as existential threats to Russia. He then pointed out the bombing of Belgrade by NATO in 1999 as an example of Western disregard for, and violation of international law. As the attack was executed without a mandate from the Security Council under Chapter VII of the Charter. He describes it as an important moment of hypocrisy and aggression. Putin contrasts this with, as he sees it, Russia's historical openness and disarmament after the dissolution of the USSR. He then accused the West of taking advantage of Russia's “weakness” to impose its dominance. He argued that NATO's actions in Ukraine represent a continuation of this strategy, crossing Russia's “red lines” and justifying a decisive Russian response to protect its sovereignty and future.⁷²

He then turned to the situation in Donbas, and that Russia for eight years had done everything possible to settle the situation by peaceful means. He accused the government of Ukraine for being illegitimate since Euromaidan in 2014, which he called a coup. He goes on by stating that the government of Ukraine has kept its power through orchestrated elections, and abandoned its efforts towards a peaceful resolution of the conflict. Putin then accused Ukraine of grave atrocities on the people of Donbas, that there is a genocide of the millions of people who live there and they has set their hopes to Russia. He continued with an accusation that Ukraine is run by far-right nationalists and neo-nazis and that they will not forgive and forget the people of Crimea for, as he portrays it, freely decided to “reunite with Russia.”⁷³

Putin accuses Ukraine of preparing to bring the conflict to Crimea, as in Donbas, and that Ukraine is claiming regions in Russia. He accuses Ukraine of aspiring to acquire nuclear weapons. He asserts that Russia has consistently respected the post-Soviet state's sovereignty but cannot ensure its security while allegedly facing constant threats from Ukraine. Referring to past Russian actions in the Caucasus, Crimea, and Syria as necessary self-defense measures. Putin frames these as examples for protecting Russia's sovereignty and security against inevitable confrontation. He states that the DPR and LPR have asked for help from Russia.⁷⁴

⁷¹ House of Commons Library, *Russia's War on Ukraine: The Conflict and its Global Implications* (CBP-9847, 9 May 2023) <https://researchbriefings.files.parliament.uk/documents/CBP-9847/CBP-9847.pdf> accessed 27 November 2024

⁷² President of Russia, 'Address by the President of the Russian Federation' (24 February 2022) <http://en.kremlin.ru/events/president/news/67843> accessed 29 November 2024

⁷³ Ibid

⁷⁴ Ibid

Putin continued by referring to his statements and that “pursuant to Article 51 of the UN Charter, with the approval of Russia’s Federation Council, and in implementation of the treaties of friendship and mutual assistance with the Donetsk People’s Republic and the Lugansk People’s Republic, ratified by the Federal Assembly on February 22,” he decided to initiate “a special military operation.” His stated purpose for the “special military operation” was to protect individuals who, according to Putins claims, had faced humiliation and genocide by the Ukrainian government since 2014. The operation aimed to achieve the “demilitarization and denazification” of Ukraine and to bring to justice those responsible for numerous violent crimes against civilians, including Russian citizens.⁷⁵

7. Hybrid Warfare

7.1 Definition

Hybrid warfare combines conventional and unconventional means, strategically blending them to exploit the opponent's weaknesses, e.g. cyberattacks, disinformation, and economic pressure, to achieve political and military objectives. It combines physical and non-physical tactics to injure in the most effective way possible. Hybrid warfare is defined by two main elements. The first one is that the boundary between peacetime and wartime becomes blurred, resulting in it becoming hard to recognize the threshold of armed conflict. As hybrid strategies dont use direct force, armed conflict becomes questionable and harder to define. This strategy is less riskable and more cost-effective than traditional military strategies, e.g. launching a disinformation campaign through non-state actors is not as riskable and expensive as deploying armed forces and materiel into another State, yet the impact is still significant.

The second element of hybrid warfare involves vagueness and attribution. As hybrid attacks are intentionally vague, to make it hard for the targeted State to detect and attribute them to the responsible state. Hybrid warfare exploits gaps in detection and accountability to complicate the ability of the targeted state to form a strategic response.⁷⁶

7.2 Russia’s passportization as a mean of hybrid warfare

Passportization works as an element of Russia’s hybrid warfare, a strategy through which Russia grants passports and citizenship to residents in occupied and disputed regions. Combined with Russia's disinformation campaigns and cyber-attacks, passportization enables Russia to conduct warfare without directly endangering its own soldiers. Passportization serves Russia’s purposes especially in three ways.

First, through passportization Russia can apply political influence over the targeted region. The distribution of passports can nurture loyalty among the targeted population and by that increase Russia's influence over the targeted regions. Second, through passportization Russia is creating a *casus belli*, justification for future aggression in the disputed areas by claiming a duty to protect its nationals abroad. Third, passportization

⁷⁵ Ibid

⁷⁶ NATO, 'Hybrid Warfare: New Threats, Complexity, and Trust as the Antidote' (NATO Review, 30 November 2021)

<https://www.nato.int/docu/review/articles/2021/11/30/hybrid-warfare-new-threats-complexity-and-trust-as-the-antidote/index.html> accessed 19 November 2024

undermines the sovereignty of the targeted state by creating a population with dual loyalties which complicates governance and unity.⁷⁷

Russia's use of passportization as a hybrid warfare strategy is an intentional and functional strategy that is set out to destabilize and apply control over contested areas. By distributing passports to the population in these areas Russia increases its political influence and creates a *casus belli* for later aggression. Passportization undermines the sovereignty of the targeted state, in this case Ukraine. It also creates a population with divided loyalties that weakens unity in the targeted state.

8. United Nations

8.1 The Charter of the United Nations

8.1.1 Article 2(4)

Article 2(4) of the United Nations Charter states: "All Members shall refrain in their international relations 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."⁷⁸

In its work to codify the law of treaties, the International Law Commission highlighted that Article 2(4) of the Charter, the prohibition of the use of force, is a clear example of a *jus cogens* in international law.⁷⁹ The ICJ refers to the work of the ILC in its judgement in the 'Case Concerning Military and Paramilitary Activities in and Against Nicaragua'. In paragraph 190 of the judgment the court affirms that Article 2(4) of the Charter is a rule of customary law and has the character of *jus cogens*, that "may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law."⁸⁰

Can Russia's passportization be a violation of article 2(4) of the Charter? Passportization in itself is not a violation of article 2(4) as every state has the right upon itself to decide who it will grant citizenship. But if you put passportization in a larger context, linked to the use of force, it could be a violation of the article. By distributing passports on a large scale in contested regions, Russia is creating a population in these areas that it later claims to have a responsibility to protect. This has been the case in Georgia, with the military intervention in South Ossetia and Abkhazia, and Ukraine with Crimea and later Donbas. By creating this new population, Russia constructs a legal and moral justification

⁷⁷ International Conflict Resolution Center, 'Russian Passportization Poses Long-Term Threat to Ukrainian Sovereignty' (ICR Center, 12 May 2021) <https://icrcenter.org/russian-passportization-poses-long-term-threat-to-ukrainian-sovereignty/> accessed 19 November 2024.

⁷⁸ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art 2(4).

⁷⁹ International Law Commission, 'Draft Articles on the Law of Treaties with Commentaries' (1966) II Yearbook of the International Law Commission 247, art 50, para 1 https://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf accessed 26 November 2024.

⁸⁰ Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 90, para 190.

for its actions that otherwise would violate article 2(4). It is like in domestic criminal law with circumstantial evidence, alone passportization is not a violation of the prohibition on the use of force but when you put it together with other circumstances it can become a violation.

When looking at the exact wording of the article, it says that all members of the United Nations shall refrain from using force “against the territorial integrity or political independence of any state”. The article does not say what kind of force, so when Russia distributes passports on a large scale in the contested regions of Ukraine, it can be seen as an attack on the political independence of Ukraine. This by creating a population whose allegiance may have shifted and through that interfere in the internal affairs of Ukraine.

In paragraph 191 of the Nicaragua case, the ICJ refers to General Assembly resolution 2625 (XXV) to differentiate the gravest forms of the use of force, like an armed attack, from the lesser grave forms to decide what legal framework that applies for the lesser grave forms.⁸¹ The resolution is formally titled as ‘Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations’. In the resolution, the general assembly recalls “the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State”.⁸² Russia’s mass distribution of passports in Donbas can be seen as political coercion, by creating a population of Russian nationals within Ukraine. Through this Russia is able to exert political influence over the Donbas-region that undermines Ukraines political independence.

Russian passportization of Donbas violates the principle articulated in Resolution 2625 (XXV) that states must refrain from any form of coercion aimed at eroding another state’s political independence.

7.1.2 Article 51

Article 51 of the United Nations Charter is together with Chapter VII mandates from the Security Council the two exceptions from the prohibition on the use of force. It states: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”⁸³

⁸¹ Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 90, para 191.

⁸² UN General Assembly, 'Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations' (24 October 1970) UNGA Res 2625 (XXV) <https://documents.un.org/doc/resolution/gen/nr0/348/90/pdf/nr034890.pdf> accessed 2 December 2024.

⁸³ *Supra note 78*, art 51.

In his speech on the morning of February 24, the start of Russia's full-scale invasion of Ukraine, Putin says that "the people's republics of Donbas have asked Russia for help" and that it is with this context that he claims that Russia's "special military operation" is launched accordingly with Article 51 of the Charter.⁸⁴ Even if Putin does not explicitly mention collective self-defense, it is that part of Article 51 he refers to and claims to act in accordance with. It is because of that he says that the people's republic of Donbas has asked for help from Russia, as for collective self-defense to apply the victim state has to ask for help. One of the major issues with this is that the people's republics of Donbas, DPR and LPR, are not acknowledged by the International community and are not members of the UN. It is recognized as the eastern part of Ukraine, this means that Russia uses the gravest form of the use of force to intervene in Ukraine's internal affairs. This is not in line with Article 51 of the Charter.

8.2 United Nations Security Council's 8516th meeting

The United Nations Security Council's 8516th meeting, held on April 25, 2019, focused on the conflict in Donbas, with particular attention to Russia's recent decree No. 183 (see section 5.3). The decree was condemned by many Council members as a violation of Ukraine's sovereignty, a breach of the Minsk agreements, and a deliberate provocation aimed at deepening instability. It was compared to Russia's previous passportization strategy in Georgia's breakaway regions, raising concerns about its potential to justify future interference under the guise of protecting Russian nationals.⁸⁵

The meeting occurred in the middle of Ukraine's presidential transition, with delegates expressing cautious optimism about the President-elect, and later President, Volodymyr Zelensky's potential to put new life into peace efforts. However, Russia's decree was seen as an intended challenge to his leadership and the Minsk agreements.⁸⁶

The Council reaffirmed its support for Ukraine's sovereignty and called on Russia to reverse the decree, adhere to the Minsk agreements, and cease actions undermining peace. The decree was framed as a dangerous precedent that threatens international law and the principles of the United Nations Charter.⁸⁷

8.3 Responsibility to Protect (R2P)

The 2005 World Summit, held at the United Nations Headquarters in New York with the Participation of over 170 heads of state and government, marked a significant milestone in the evolution of international norms. The outcome document of the summit formalized the principle of the Responsibility to Protect (R2P) in paragraphs 138, 139 and 140, showing a collective commitment to prevent and respond to mass atrocity crimes such as genocide, war crimes, ethnic cleansing, and crimes against humanity.⁸⁸

⁸⁴ *Supra note 72*

⁸⁵ United Nations Security Council, *Provisional Verbatim Record of the 8516th Meeting* (25 April 2019) UN Doc S/PV.8516 <https://undocs.org/en/S/PV.8516> accessed 25 November 2024.

⁸⁶ *Ibid*

⁸⁷ *Ibid*

⁸⁸ United Nations, *2005 World Summit on the Responsibility to Protect and Sustainable Development* <https://www.un.org/en/conferences/environment/newyork2005> accessed 25 November 2024.

Paragraph 138 asserts that: "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means"⁸⁹

This principle underscores the duty of states to protect their own populations from gross violations of human rights. Prior to Russia's invasion, there was no credible evidence of such atrocities being committed against neither the Russian-speaking population nor the holders of Russian passports. Vladimir Putin's claims of genocide in Ukraine has been widely discredited by independent investigations and international organizations.⁹⁰ Without evidence of such gross crimes, the invocation of the responsibility to protect as a justification for military intervention is groundless.

Paragraph 139 extends this principle to the international community, emphasizing its duty to act when national authorities fail to protect their populations: "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian, and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Should peaceful means be inadequate and national authorities manifestly fail to protect their populations, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis"⁹¹.

This paragraph introduces the possibility of collective action under Chapter VII of the UN Charter, including the use of force if peaceful means prove insufficient. With its "special military operation" Russia rounded these steps by choosing unilateral military action instead of addressing their concern to the Security Council, which if there was evidence of such crime could use its mandate under Chapter VII to organize a collective intervention. This violates the requirement to exhaust all peaceful means before resorting to the use of force.

Paragraph 140 reaffirms the international commitment to prevention, stating: "We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide"⁹². This reflects a broader emphasis on early detection and intervention to avert atrocities.

The Responsibility to Protect doctrine recognizes state sovereignty and only permits

⁸⁹ United Nations General Assembly, *2005 World Summit Outcome* (24 October 2005) UN Doc A/RES/60/1, para 138
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf accessed 25 November 2024.

⁹⁰ International Association of Genocide Scholars, 'Statement on Ukraine' (23 February 2022) <https://genocidescholars.org/wp-content/uploads/2022/03/IAGS-EB-Ukraine-Statement-2022.pdf> accessed 29 November 2024.

⁹¹ *Supra note 89*, para 139

⁹² *Supra note 89*, para 140

intervention if a state fails to protect its population or itself perpetrates atrocities against them. The government of Ukraine was not involved in committing crimes against its population. Russia's invasion violated the sovereignty and territorial integrity of Ukraine. Russian passportization in Donbas undermines its claim to protect its nationals. By granting Russian Nationality to the population in Donbas, Russia created the population it later claimed to protect. This engineering of nationals for geopolitical ends threatens the spirit of the Responsibility to Protect, whose aim is to safeguard vulnerable populations, not fabricate grounds for aggression.

Russia's full-scale invasion extended far beyond the territories of Donbas, targeting Kyiv, Kharkiv, and other regions far away from the areas Russia claimed required protection. This demonstrates that the invasion was not aimed to protect civilians but at a broader geopolitical objective, further breaching its responsibility to protect claims.

Russia's justification for its invasion of Ukraine under the guise of protecting its nationals is inconsistent with the principles of the Responsibility to Protect. As it requires evidence of mass atrocities, a commitment to peaceful resolution, authorization by the Security Council, and respect for sovereignty. All of which Russia's actions lack. Instead, the invasion represents a clear violation of international law and a misuse of the Responsibility to Protect doctrine to justify its aggression.

9. Conclusion

9.1 Summary

This paper has examined Russia's passportization in Donbas, which started in 2019, and argued that it has been used as a strategic tool that undermined the sovereignty of Ukraine and has served as a justification for the use of force against Ukraine in 2022.

Passportization in this paper refers to the distribution of Russian passports en masse in contested regions. The paper has shown it as part of a broader strategy of hybrid warfare, where Russia combines legal, political, and military means to destabilize states that formerly were a part of the USSR, in this case Ukraine, to achieve its geopolitical goal without direct conflict.

The paper started with a historical background, with focus on Ukraine's independence, the dissolution of the USSR, the Orange Revolution, and the Euromaidan protest. Where Russia took advantage of the turmoil in Ukraine and annexed Crimea in 2014. Then the following conflict in Donbas. It argues that the mass distribution of passports in Donbas violated the Minsk agreements, the sovereignty and territorial integrity of Ukraine, and was later used as a *casus belli* for Russia's full-scale invasion in February 2022, under the guise of protecting its nationals. By February 2022, over 700,000 Russian passports had been issued in Donbas, a move purported by Russia as a humanitarian effort but was widely condemned and seen as a political strategy.

By comparing similar cases in Georgia and Moldova, the paper shows that passportization is part of a consistent pattern in Russia's foreign policy toward states that formerly were a part of the USSR. Russia uses the distribution of passports as a means to exert influence, justify interventions, and establish territorial claims. The paper argues

that Russia by distributing passports in contested areas to later use it as a justification for aggression violates Article 2(4) of the UN Charter, as passportization is part of the Russian strategy to violate the prohibition of the use of force and make it seem legal.

Moreover, this paper criticizes Russia's invocation of the Responsibility to Protect doctrine to justify its full scale invasion of Ukraine, pointing to the absence of evidence of mass atrocities in Donbas towards the russian-speaking population and Russian nationals. The argument that Russia's policy of passportization is a form of Hybrid Warfare shows its strategic vagueness and trust in non-military means to later achieve military objectives.

9.2 Conclusion and Tentative Answer to the Research Question

Russia's policy of passportization in Donbas, 2019, should be seen as a part of Russia's hybrid warfare strategy, directly undermining the sovereignty of Ukraine and laying the grounds for future aggression. This strategy follows a pattern that can be seen in both Georgia and Moldova, where passportization preceded military intervention. By justifying its aggression through the need to protect Russian nationals in Donbas, Russia used passportization as a de facto *casus belli*, giving them a legal and moral justification for its aggression towards Ukraine.

This paper supports the conclusion that Russia's passportization in Donbas constitutes a violation of Article 2(4) of the Charter as it is a part of a broader strategy. First they create a Russian population and then claim that they need to be protected from gross atrocities. As mentioned in the text in section 6.1, the IIFMCG concluded that Russia's use of force in Georgia could not be justified by the need to protect or rescue Russian nationals. While the granting of citizenship in itself is not a violation of the article, the paper argues that when used as a tool for political coercion and later a justification for the use of force it becomes a breach of the article. Furthermore, Russia's passportization in Donbas exemplifies hybrid warfare, as it is blurring the lines between peacetime and conflict. This makes attribution harder as Russia uses legal loopholes to destabilize Ukraine.

In reply to the research question, this paper strongly suggests that Russia's passportization in Donbas served them as a *casus belli* for its full scale invasion on February 24, 2022. By systematically creating a population of Russian nationals in the contested regions of Ukraine, Russia created a self-serving justification for aggression, reflecting an intentional and unlawful strategy to erode Ukraine's territorial integrity and political independence.

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