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Unwanted Citizenship in Annexed Territories: Emerging International Standards in the Jurisprudence of Human Rights Bodies and Courts on Forceful Imposition of Citizenship

1. Introduction

The imposition of citizenship by force on populations of annexed or occupied territories is a phenomenon with historical precedents; yet it remains understudied as a distinct issue in contemporary international human rights law (IHRL). Throughout the twentieth century, occupying powers have used citizenship policies as tools of control, assimilation, or erasure of existing national identities. Historical precedents include, *inter alia*, German practices in the Second World War¹ or Morocco's approach in Western Sahara.²

In recent years, the Russian Federation's annexation of Crimea in 2014, accompanied by the near-automatic imposition of Russian citizenship on Ukrainian residents with only a short and impractical opt-out possibility,³ has reignited legal and human rights debates concerning the permissibility and consequences of such practices under international law. Comparable measures have also been reported in other Ukrainian territories since 2022, underscoring the issue's contemporary relevance.⁴

Although Russia and Morocco deny that they are occupying powers in Crimea and Western Sahara, respectively, claiming instead to lawfully exercise sovereignty

¹ W. Wichert, "Niemiecki system okupacyjny na ziemiach polskich w latach 1939–1945. Zarys problematyki" [in:] *Stan badań nad pomocą Żydom na ziemiach polskich pod okupacją niemiecką – przegląd piśmiennictwa*, eds. T. Domański, A. Gontarek, Warszawa–Kielce 2022, pp. 66–67.

² A.M.P. Immanuel, "The right to nationality of the Saharawis and their legal identity documents," *Citizenship Studies* 2023, vol. 27, issue 7, pp. 914–932.

³ S. Wrighton, "Authoritarian regime stabilization through legitimation, popular co-optation, and exclusion: Russian passportizatsiya strategies in Crimea," *Globalizations* 2018, vol. 15, issue 2, pp. 283–300.

⁴ S. Adamovych, Y. Mykytyn, "Porushennia prav liudyny pid chas prymusovoi pasportyzatsii na tymchasovo okupovanykh terytoriakh Ukrainy (2022–2023 rr.)," *International Journal Law & Society* 2024, no. 9, pp. 11–14.

over those territories, the imposition of citizenship in such contexts contravenes the provisions of international humanitarian law (IHL). Under IHL, an occupying power does not acquire sovereignty over the occupied territory,⁵ and the granting or revocation of citizenship constitutes an exercise of sovereign authority over a territory and its population.⁶ As the occupying power is not sovereign, it cannot undertake actions that are reserved exclusively for the sovereign state. Attempts to confer its nationality on inhabitants of occupied territory have been described as “obviously inconsistent with international law.”⁷

Citizenship is deeply connected to personal and social identity. It also bears legal consequences under international law, particularly regarding the right to nationality, protection against statelessness, and diplomatic protection.⁸ From the perspective of IHRL, however, citizenship is generally not a determining factor, as fundamental human rights obligations apply, in principle, to all individuals regardless of their citizenship. Nevertheless, when citizenship is imposed – especially under occupation or annexation – it may lead to violations of IHRL. Examples include restrictions on language rights, private life, non-discrimination, and movement.

Despite these significant concerns, the legal treatment of the forcible imposition of citizenship under IHRL remains fragmented. Only recently have international courts and human rights bodies begun to address the matter, with diverging approaches. The UN Human Rights Committee’s (UN HRC) views in the decision on *Bratsylo and others v Russia*,⁹ the European Court of Human Rights’ (ECtHR) Grand Chamber Judgment in *Ukraine v Russia (re Crimea)*,¹⁰ and the International Court of Justice’s (ICJ) analysis in the *Ukraine v Russia* proceedings under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹¹ illustrate both the growing engagement with the problem and the lack of consensus in its treatment.

Against this backdrop, this article examines whether an international legal standard, grounded in human rights law, is crystallizing to prohibit the forcible imposition of citizenship on populations of annexed or occupied territories. Methodologically, the article applies a doctrinal analysis of international instruments, treaty bodies, and jurisprudence, with particular focus on recent cases concerning Crimea as a testing ground for the interaction of IHL and IHRL.

⁵ ICRC, *Commentary to the Fourth Geneva Convention*, Article 47.

⁶ B. von Rütte, *The Human Right to Citizenship*, Leiden 2022, pp. 58–86.

⁷ M.O. Hudson, *Report on Nationality, Including Statelessness*, Special Rapporteur, UN Doc. A/CN.4/50, p. 8.

⁸ See: O. Dörr, “Nationality” [in:] *Max Planck Encyclopedia of Public International Law*, para. 42, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e852#> [accessed: 7.08.2026].

⁹ UN HRC, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 3022/2017*, CCPR/C/140/D/3022/2017, 23 May 2024.

¹⁰ ECtHR, *Ukraine v Russia (re Crimea)* [GC], nos. 20958/14 and 38334/18, 25 June 2024, HUDOC.

¹¹ ICJ, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation)*, Judgment, I.C.J. Reports 2024, p. 78.

The structure of the article is as follows. Part 2 situates citizenship within international law and identifies the core principles of voluntariness and non-discrimination. Part 3 examines the emerging jurisprudence on the automatic imposition of Russian citizenship in Crimea, focusing on the decisions of the ICJ, the UN HRC, and the ECtHR. Part 4 evaluates whether these developments, when read together, amount to the crystallisation of a human rights standard prohibiting forced naturalisation in annexed or occupied territories.

By framing the forcible imposition of citizenship as a legal problem in its own right rather than as a peripheral issue of state sovereignty, the article fills a gap in scholarship by mapping divergent jurisprudential approaches and clarifying the capacity of IHRL to protect the identity and autonomy of populations under occupation.

2. Citizenship and international law

2.1. General remarks

The institution of citizenship has a dualistic nature, encompassing both domestic and international legal dimensions.¹² In the sphere of domestic law, citizenship refers to the legal status that binds an individual to a particular state and grants several rights and obligations. It usually entails political rights and obligations such as taxation or military service. In contrast, in international law, the term typically used is nationality, which serves primarily as a juridical link between an individual and a state, determining the state's capacity and duty to exercise diplomatic protection in international relations.

This distinction is not uniformly applied across legal systems or treaties, and in practice, both terms may overlap depending on linguistic, historical, and doctrinal variations.¹³ In the context of human rights discourse, many scholars tend to favour the term citizenship, particularly when referring to the enjoyment of civil, political, and social rights.¹⁴ Moreover, as noted by the Venice Commission, in the context of Central and Eastern European states, the term nationality is often used interchangeably with citizenship.¹⁵

The evolution of IHRL has increasingly blurred the traditional distinction between nationality and citizenship. Acquisition, loss or denial of citizenship is now treated not only as a sovereign matter but also through the lens of non-discrimination, legal identity, and protection against statelessness.

¹² W. Czapliński, „Międzynarodowe aspekty obywatelstwa,” *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 1984, vol. 46, issue 3, pp. 95–96.

¹³ Supra, note 6, pp. 11–18.

¹⁴ E.H. Ballin, *Citizens' Rights and the Right to Be a Citizen*, Leiden 2014, p. 71; P.J. Spiro, “A New International Law of Citizenship,” *The American Journal of International Law* 2011, vol. 105, no. 4, p. 695.

¹⁵ Venice Commission, *Draft Report on Consequences of State Succession for Nationality*, CDL-NAT(1995) 005 par. 6.

For the purposes of this paper, the terms nationality and citizenship are used to denote full legal membership in a state, defined as the legal bond between an individual and a state. The term nationality will be employed primarily when citing sources of international law or jurisprudence that explicitly use this terminology.

2.2. Rights related to citizenship in international law instruments

Although international law does not provide a universally accepted legal definition of citizenship, it recognizes the concept explicitly or implicitly in several instruments.¹⁶ Scholarly opinion remains divided on the nature and scope of the right to citizenship. Some scholars argue that this right should be understood as an umbrella concept encompassing a set of entitlements – such as the rights to acquire, retain, change, or renounce nationality – rather than as a justiciable right enforceable before international courts or treaty bodies.¹⁷ Others contend that the right to citizenship constitutes a fundamental human right in itself, although debates persist regarding the category of human rights to which it belongs.¹⁸ In turn, international human rights bodies or courts – particularly the United Nations Human Rights Council (UN HRC) or the Inter-American Court of Human Rights (IACHR) – generally treat it as a fundamental right.¹⁹

Notwithstanding the ongoing debate over the nature and scope of the right to citizenship, both universal and regional international standards increasingly impose significant limitations on the discretion of states to regulate access to nationality solely in accordance with their sovereign interests. These limitations are progressively reflected in international law and jurisprudence, particularly through prohibitions on discrimination²⁰ and prohibition of arbitrary deprivation of nationality.²¹

At first glance, international legal discourse on citizenship predominantly addresses its denial or arbitrary deprivation of it. Various international and regional human rights instruments affirm the rights to acquire nationality, to change nationality, and to protection against arbitrary deprivation, but none explicitly prohibits coercive imposition.

¹⁶ The Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

¹⁷ J. Połatyńska, *Sukcesja państw a obywatelstwo osób fizycznych*, Łódź 2013, pp. 91–92.

¹⁸ Supra, note 6, pp. 213–215.

¹⁹ For example, UN HRC, *Resolution 7/10. Human rights and arbitrary deprivation of nationality*, A/HRC/RES/7/10; IACHR, *Advisory Opinion OC-4/84 of 19 January 1984*, Series A, No. 4, para. 32.

²⁰ Article 5(d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination requires states to guarantee the right to nationality without distinction as to race, colour, or national or ethnic origin.

²¹ Open Society Justice Initiative, *Citizenship and Equality in Practice: Guaranteeing Non-Discriminatory Access to Nationality, Protecting the Right to be Free from Arbitrary Deprivation of Nationality and Combating Statelessness*, November 2005, pp. 7–9.

The prohibition of non-consensual naturalisation predates modern instruments. It first appeared in early twentieth-century Latin American disputes²² and it was later reaffirmed by International Law Commission (ILC) Special Rapporteur Hudson in 1952 (“Naturalization must be based on an explicit voluntary act of the individual or of a person acting on his behalf”).²³

Contemporary international institutions reaffirm this understanding. The Venice Commission affirmed that the “(...) State should make provision for conferring its nationality on a voluntary basis,”²⁴ further explaining that States “need to take account of the individuals wishes [,which] implies in particular that the persons concerned (...) are not forced to adopt a nationality against their will.”²⁵ Another regional body, IACHR, has defined the acquisition of citizenship as “a voluntary act aimed at establishing a relationship with a given political society, its culture, its way of life and its values,”²⁶ thereby underscoring the centrality of consent in the process of naturalisation. Scholarship generally concurs that naturalisation without free consent contravenes international law. This position is grounded in human rights principles that prioritize individual autonomy in matters of nationality.²⁷ The ILC reflects this paradigm shift, recognizing that the evolution of IHRL has recalibrated the balance between state sovereignty and individual rights, elevating the latter.²⁸

Despite these advances, the absence of clear provisions on the right to renounce or relinquish imposed citizenship in major human rights instruments reflects a regulatory gap. This silence suggests that, while international law condemns arbitrary deprivation of citizenship and emphasizes the voluntary nature of naturalisation, it has not yet fully addressed the issue of compulsory acquisition of citizenship as a distinct violation. The formulation of voluntariness as a requirement, thus, functions more as a principle arising from broader human rights norms than as a specific, enforceable right in itself.

This normative lacuna is, however, partially addressed by the IHL, applicable in situations of belligerent occupation and annexation. Within this regime, Article 45 of the 1907 Hague Regulations – which prohibits compelling the inhabitants of occupied territory to swear allegiance to the hostile power – operates as a legal analogue to the human rights-derived principle of voluntariness in matters of nationality.²⁹ Since

²² P.J. Spiro, *Nottebohm and ‘Genuine Link’: Anatomy of a Jurisprudential Illusion*, Investment Migration Working Papers IMC-RP2019/1, p. 4, <https://investmentmigration.org/wp-content/uploads/2020/10/IMC-RP-2019-1-Peter-Spiro.pdf> [accessed: 7.08.2026].

²³ *Supra*, note 7, p. 8.

²⁴ *Supra*, note 15, part IV A, para. 4.

²⁵ Venice Commission, *Draft Explanatory Report on the Declaration on the Consequences of State Succession for the Nationality of Natural Persons*, CDL-NAT(1996)008, para. 7.

²⁶ *Supra*, note 19, IACHR, *Advisory Opinion...*, para. 35.

²⁷ A. Peters, *Passportisation: Risks for international law and stability – Part I*, 9 May 2019, <https://www.ejiltalk.org/passportisation-risks-for-international-law-and-stability-part-one> [accessed: 7.08.2026].

²⁸ ILC, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*, chap. IV, commentary on Article 4, para. 6.

²⁹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907?activeTab=default> [accessed: 7.08.2026].

citizenship is conceptualised not merely as a legal relationship between the state and the individual but also as a manifestation of allegiance owed by the national to the state,³⁰ the automatic extension of the occupant power's nationality law to the inhabitants of occupied or annexed territory operates as an act compelling such allegiance. In proscribing the imposition of political loyalty under occupation, IHL thus offers a complementary layer of protection against non-consensual naturalisation, particularly where such measures are utilised as tools for altering the legal status and political identity of the occupied or annexed population.

Complementarily, Article 47 of the Fourth Geneva Convention stipulates that persons in occupied territory shall not be deprived of the benefits of the Convention "by any change introduced, as the result of the occupation, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territory and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."³¹

In light of the foregoing rules, involuntary naturalisation is incompatible with IHL, as the teleology of occupation law is fundamentally aimed at preserving the legal continuity and political identity of the occupied population until the cessation of occupation or annexation.

Collectively, these legal principles – emanating from IHRL and IHL – establish a normative framework that proscribes non-consensual naturalisation. Nevertheless, the safeguards guaranteeing the voluntary nature of nationality acquisition, while recognized, remain insufficiently articulated and unevenly enforced. In this context, the findings of recent decisions by UN HRC, ECtHR, and ICJ are particularly significant, as they contribute to the further development of standards addressing the forceful imposition of citizenship on populations in annexed or occupied territories under IHRL.

3. Recent jurisprudential developments on the automatic imposition of citizenship in annexed Crimea

3.1. Background

In February 2014, Russian forces occupied Crimea, establishing de facto control over the peninsula. On 16 March 2014, a referendum was held, purportedly approving the annexation of Crimea by the Russian Federation. The annexation has been widely condemned by the international community as a violation of Ukraine's sovereignty and

³⁰ H. Irving, "Citizenship, Statehood, and Allegiance in Managing Diversity" [in:] *Managing Diversity. Practices of Citizenship*, eds. N. Brown, L. Cardinal, Ottawa 2007, pp. 37–67; *eadem*, "The Concept of Allegiance in Citizenship Law and Revocation: An Australian Study," *Citizenship Studies* 2019, vol. 23, issue 4, pp. 372–387.

³¹ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 287, Article 47.

contrary to international law.³² On 18 March 2014, the Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea to the Russian Federation was signed, providing that the Russian legal framework would be fully implemented in Crimea by 1 January 2015. Subsequently, on 21 March 2014, the Russian Federation adopted Federal Constitutional Law No. 6-FKZ, formalizing Crimea's integration into Russia.³³ These actions clearly contravene the rules of IHL, which prohibit an occupying power from exercising sovereign authority over occupied territory.

These instruments provided that all permanent residents would automatically be recognised as Russian citizens, subject to a one-month opt-out. However, in practice, exercising this option proved extremely difficult. The procedure was constrained by a very short time frame, limited and delayed dissemination of information, and severe logistical barriers, while Russian passports were made readily accessible.³⁴

In effect, the automatic conferral of Russian citizenship, coupled with the procedural obstacles to renunciation, left most residents with little practical choice, raising significant concerns under IHRL, particularly regarding the protection of personal identity as developed in human rights jurisprudence, as well as the right to nationality, and the right to private life.

Building on the IHRL and IHL framework prohibiting non-consensual naturalisation, recent jurisprudence has begun to clarify its application in contexts of unlawful annexation, as well as its broader implications for the protection of fundamental rights of the affected population. In 2024, three major decisions were delivered in proceedings brought by Ukraine against Russia, addressing alleged human rights violations stemming from the annexation of Crimea, including the automatic imposition of Russian citizenship on the territory's inhabitants. This section examines in detail the findings of the ICJ, the UN HRC, and the ECtHR concerning the forceful imposition of Russian citizenship.

While all three bodies confronted the same underlying practice, their perspectives diverged in line with their mandates. The ICJ approached the issue primarily through the prism of state responsibility for breaches of international law, the UN HRC assessed it within the individual rights-centred framework of the ICCPR, focusing on privacy and non-discrimination. The ECtHR, within the European human rights system, addressed it chiefly under Article 8 ECHR on private life and identity.

³² T.D. Grant, "Annexation of Crimea," *American Journal of International Law* 2015, vol. 109, no. 1, pp. 68–95; *Opinia Doradczego Komitetu Prawnego przy Ministrze Spraw Zagranicznych RP w sprawie przyłączenia Półwyspu Krymskiego do Federacji Rosyjskiej w świetle prawa międzynarodowego*, 22 czerwca 2014, http://www.msz.gov.pl/pl/aktualnosci/wiadomosci/przylaczenie_krymu_do_federacji_rosyjskiej_w_swietle_prawa_miedzynarodowego [accessed: 7.08.2026].

³³ See particularly: N. Cwiczinskaja, "The Legality and Certain Legal Consequences of the 'Accession' of Crimea to the Russian Federation," *Polish Yearbook of International Law* 2014, vol. 34, pp. 58–83.

³⁴ Open Society Justice Initiative, *Report. Human Rights in the Context of Automatic Naturalization in Crimea*, June 2018, pp. 21–23, <https://www.justiceinitiative.org/uploads/5ce04ddd-0fda-470c-9f94-eaa5bf928768/report-osji-crimea-20180601.pdf> [accessed: 7.08.2026].

The procedural posture and substantive scope of the three proceedings varied considerably, both in Russia's level of participation and in the way citizenship rights were treated. Before the ICJ, Russia participated partially, and nationality issues appeared only indirectly, framed within claims under CERD. Before the UN HRC, Russia declined to participate, and the Committee addressed citizenship explicitly under the ICCPR, linking it to privacy and equality rights. The ECtHR presented yet another configuration: Russia took part only in the preliminary phase, and nationality was assessed mainly through Article 8 ECHR on private life, intertwined with broader questions of the population's legal and political status. These divergences reflect the distinct mandates and interpretative approaches of each body, shaping how the human rights consequences of automatic Russian citizenship in Crimea were framed and adjudicated.

3.2. ICJ judgment

The ICJ, whose jurisdiction is confined to disputes between States, has only occasionally engaged with human rights issues, and then usually indirectly through treaty disputes.³⁵ On 31 January 2024, it rendered judgment in Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v Russia*). Among other matters, the ICJ considered whether Russia's 2014 citizenship regime in Crimea amounted to racial discrimination under Article 1(1) CERD. That provision defines "racial discrimination" by an exhaustive list of grounds – race, colour, descent, and national or ethnic origin – where measures have the purpose or effect of impairing human rights. Article 1(3), however, excludes state provisions on nationality, citizenship, or naturalisation, unless directed against a particular nationality. The Court had already touched on nationality issues in an earlier CERD case, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Qatar v United Arab Emirates*),³⁶ which informed its approach in *Ukraine v Russia*.

Since 2004, the ICJ has occasionally referred to the findings of human rights treaty bodies when interpreting treaty obligations, and in some cases has explicitly given them weight.³⁷ Moreover, in its 2010 judgment in Ahmadou Sadio Diallo (*Republic of Guinea v Democratic Republic of the Congo*), the ICJ held that the HRC's views deserve "great weight" because they are the views of the body charged with supervising the

³⁵ J. Crawford, A. Keene, "Interpretation of the human rights treaties by the International Court of Justice," *The International Journal of Human Rights* 2019, vol. 24, no. 7, pp. 935–956.

³⁶ ICJ, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v United Arab Emirates)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 71.

³⁷ E.R. Rieter, "The International Court of Justice and Its Contribution to Human Rights Law. Final Report of the ILA International Human Rights Law Committee (Part 1)" [in:] *Judging International Human Rights. Courts of General Jurisdiction as Human Rights Courts*, eds. S. Kadelbach, S.T. Rensmann, E.R. Rieter, Cham 2019, pp. 23–29.

implementation of the ICCPR. It added that reliance on such practice promotes clarity and consistency in international law, while also confirming that it is not formally bound by treaty body interpretations.³⁸

Indeed, the ICJ's 2021 judgment in *Qatar v United Arab Emirates* exposed tensions between the ICJ's interpretation of CERD and that of the CERD Committee, established specifically to supervise the application of CERD. Whereas the Committee read nationality-based measures broadly within "national origin" under Article 1(1), the ICJ adopted a narrower view, excluding nationality and citizenship. This restrictive stance, criticised by some judges,³⁹ was reiterated in *Ukraine v Russia*, where the ICJ again relied on Article 1(3) to exclude distinctions between citizens and non-citizens from the scope of racial discrimination.

As Gaiane Nuridzhanian correctly observes, Ukraine's claim before the ICJ was not based on nationality *per se*.⁴⁰ Rather, it argued that Russia's legislation, which automatically conferred citizenship with only a limited opt-out, discriminated against Crimean Tatars and ethnic Ukrainians.⁴¹

The claim turned on indirect discrimination: inasmuch as CERD covers not only measures adopted with a discriminatory purpose but also ostensibly neutral ones producing disproportionate effects.⁴² In this view, the forced citizenship regime fell within the Convention's scope despite Article 1(3). Russia countered that only measures directly based on protected grounds, not disparate outcomes, amount to racial discrimination.⁴³

Ultimately, the ICJ adopted a middle-ground position: it acknowledged that indirect discrimination falls within CERD, but limited its reach by excluding collateral effects.⁴⁴ While recognising that Crimean Tatars and ethnic Ukrainians faced disproportionate harm from the citizenship regime, the Court held this was not linked to the grounds listed in Article 1(1). In so doing, it rejected Ukraine's expansive interpretation and the CERD Committee's intersectional approach to indirect discrimination,⁴⁵ without fully endorsing Russia's restrictive view. This narrow stance risks weakening protection for minorities whose vulnerabilities arise from intersecting factors, revealing a gap between legal reasoning and lived reality.

³⁸ ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 664.

³⁹ *Supra*, note 33, Dissenting Opinion of Judge Bhandari, p. 76; *supra*, note 33, Dissenting Opinion of Judge Robinson, p. 83.

⁴⁰ G. Nuridzhanian, *Forceful imposition of foreign citizenship as discrimination and breach of the right to respect for private life*, 18 June 2024, <https://www.ejiltalk.org/forceful-imposition-of-foreign-citizenship-as-discrimination-and-breach-of-the-right-to-respect-for-private-life> [accessed: 7.08.2026].

⁴¹ *Supra*, note 10, Reply submitted by Ukraine, 29 April 2022, paras. 546–548.

⁴² *Supra*, note 11, para. 183.

⁴³ *Ibid.*, para. 189.

⁴⁴ *Ibid.*, para. 196.

⁴⁵ CERD Committee, *General recommendation No. 32 The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, 24 September 2009, CERD/C/GC/32, paras. 7–8.

In this first ICJ case involving forced citizenship, an intersectional approach would have been especially pertinent. Though formally neutral, Russia's regime disproportionately affected Crimean Tatars and ethnic Ukrainians, compounding existing pressures.⁴⁶ The CERD Committee's framework on indirect discrimination recognises that measures with disproportionate impact can amount to racial discrimination even without intent.⁴⁷ Applied here, it could have captured the real-world consequences of forced citizenship for vulnerable minorities and offered more nuanced protection in contexts of occupation or annexation. Instead, the ICJ's reluctance to follow treaty-body interpretations underscores a broader tension in international law: its state-centred mandate versus evolving human rights norms, a stance that risks narrowing protection for minority groups.

The divergence between the ICJ and the CERD Committee exposes the challenge of maintaining coherence when different bodies interpret overlapping norms, and suggests that minority protection may hinge more on judicial discretion than on consistent human rights standards.

The contrast between the ICJ and the UN HRC underscores this tension. In *Bratsylo v Russia*, the UN HRC adopted a broader view of discrimination, focusing on the adverse effects of automatic Russian citizenship on Ukrainians in Crimea. This divergence shows how state-centred and rights-centred approaches can yield different outcomes on similar facts, each with its own strengths and limits.

3.3. UN HRC decision

On 27 March 2024, the UN HRC issued a landmark decision on Russia's forced naturalisation in Crimea, clarifying human rights obligations in occupation or annexation contexts. The 2017 communication, filed under the ICCPR Optional Protocol by three individuals who had been Ukrainian citizens at the time of their detention in Crimea and had been charged and/or convicted under Ukrainian law as of spring 2014. They alleged retroactive application of Russian criminal law, denial of rights as Ukrainian citizens, and, for two applicants, automatic conferral of Russian citizenship without their knowledge. Although Crimea residents were formally granted a month to opt out of Russian citizenship, procedural hurdles reduced this to about eighteen days. The situation was acute for detainees, many of whom were informed too late – or not at all. Some discovered they had been made Russian citizens only after the deadline, leaving them unable to renounce the status.⁴⁸

The UN HRC upheld all the applicants' claims and, for the first time, recognised that the ICCPR protects against forced imposition of foreign citizenship. It held that Article 17's right to privacy extends to the protection of nationality, as an essential element of personal and social identity.

⁴⁶ Supra, note 38, paras. 546–548, 557–570.

⁴⁷ See: CERD Committee, *Opinion Communication No. 31/2003 L.R. et al. v Slovakia*, 10 March 2005, CERD/C/66/D/31/2003, para. 10.4.

⁴⁸ Supra, note 9, para. 8.14.

The right to privacy is broadly framed and was left undefined in early UN HRC practice and in General Comment No. 16.⁴⁹ The UN HRC has nevertheless treated it as the sphere in which individuals build and express their identity, and its scope has progressively expanded.⁵⁰ This demonstrates the considerable potential for the expansion of the notion of privacy within UN HRC's jurisprudence. Over time, the concept has evolved to cover a wide range of normative values, interests, and areas of protection that extend beyond the original confines of Article 17.⁵¹ In this case, the HRC extended it further by explicitly recognising citizenship as part of privacy's protective ambit.

Echoing international jurisprudence that ties citizenship to personal identity,⁵² the UN CHR emphasized that nationality significantly affects an individual's social identity and, therefore, falls within the ambit of privacy protection. Against this backdrop, it held that protection against arbitrary and unlawful interference with privacy extends to shielding individuals from the imposition of a foreign citizenship without their consent. Applying this principle, the UN HRC concluded that the forced Russian naturalisation of the two complainants amounted to an arbitrary interference with their privacy rights. In doing so, the UN HRC clarified that Article 17 encompasses protection against such impositions insofar as they intrude upon a person's identity and private sphere, marking the first instance in which it recognized forced naturalisation as a violation of the ICCPR.

Moreover, the UN HRC found that Russia's citizenship regime in Crimea constituted direct discrimination based on national origin. Automatic conferral of Russian citizenship applied only to Ukrainian citizens and stateless residents in Crimea, without reasonable or objective justification, thus violating Article 26 ICCPR. Obviously, a differentiation in treatment does not amount to discrimination "if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate" under the ICCPR. However, in the UN HRC opinion, Russian Federation did not provide a "reasonable justification" for the differential treatment of Ukrainian citizens.⁵³ However, national origin was not the only ground of discrimination identified by the UN HRC.

The Committee further found discrimination linked to the complainants' status as "protected persons" under the Fourth Geneva Convention, in the context of their transfer to the Russian Federation to serve prison sentences, in violation of Article 26 ICCPR. It stressed that the Covenant applies alongside IHL in armed conflict,⁵⁴ and therefore "protected person" status qualifies as "other status" as a category protected

⁴⁹ See: the dissenting opinion in the UN HRC, *Views Communication No. 453/1991 Coeriel and Aurik v The Netherlands*, 9 December 1994, CCPR/C/52/D/453/1991, p. 9.

⁵⁰ *Ibid.*, para. 10.2.

⁵¹ For example, changing names for religious purposes, prohibition of homosexuality, deprivation of ancestral burial territory.

⁵² *Supra*, note 9, para. 8.10.

⁵³ *Ibid.*, para. 8.17.

⁵⁴ *Ibid.*, para. 8.18.

against discrimination under Article 26. This reasoning expands the provision's scope beyond national origin to IHL-based categories, reinforcing the ICCPR as a safeguard against discrimination in situations of conflict and annexation.

Scholars describe the relationship between IHL and IHRL in terms of separation, convergence, complementarity, or cross-fertilisation. But no court or treaty-monitoring body has given a definitive interpretation of how these two bodies of law interact concerning non-discrimination.⁵⁵ The UN HRC appears to support the complementarity of the two regimes, at least with respect to the right to life and the right to liberty and security, by suggesting that IHL rules and principles can provide guidance in determining whether deprivation of life or liberty is "arbitrary."⁵⁶ In the case at hand, it extended this reasoning to discrimination, consistent with contemporary scholarship favouring harmonious interpretations that maximise protection.⁵⁷

Thus, while the ICJ refrained from characterizing Russia's forced naturalisation policy in Crimea as discriminatory, the UN HRC took the opposite approach by explicitly recognizing its discriminatory nature, marking a significant divergence in how international bodies address the human rights implications of citizenship imposition.

The issue of the forcible imposition of Russian citizenship has also been litigated by Ukraine in a case against Russia before the ECtHR.

3.4. The ECtHR judgment

Similar to the UN HRC case, Ukraine's complaint in the ECtHR proceedings concerns an alleged violation of the right to respect for private life. In particular, it asked the ECtHR to consider whether automatic imposition of Russian citizenship was unlawful in itself, read in light of Article 45 of the 1907 Hague Regulations, and whether the opt-out procedure operated in practice to breach Article 8.⁵⁸

Although the ECHR does not expressly guarantee a right to citizenship, the ECtHR has addressed nationality since the 1970s, especially in contexts of non-discrimination and statelessness. The Court moved from excluding nationality proceedings altogether (*X v Austria*) to recognising that nationality provisions may directly breach the Convention (*Genovese v Malta*).⁵⁹ Current case law holds that, in certain circumstances, issues relating to citizenship fall within the scope of the right to respect for private life under Article 8 of the ECHR. The ECtHR has held that the arbitrary refusal to grant nationality, the arbitrary deprivation of nationality, as well as the arbitrary refusal of

⁵⁵ G. Dvaladze, "Unveiling claims of discrimination based on nationality in the context of occupation under international humanitarian and human rights law," *International Review of the Red Cross* 2023, vol. 105, issue 923, pp. 947–964.

⁵⁶ UN HRC, *General Comment No. 35 Article 9 (Liberty and Security of Person)*, 16 December 2014, CCPR/C/GC/35, para. 66; UN HRC, *General Comment No. 36 Article 6 on the Right to Life*, 3 September 2019, CCPR/C/GC/36, para. 64.

⁵⁷ *Supra*, note 52, pp. 947–964.

⁵⁸ *Supra*, note 10, para. 1026–1029.

⁵⁹ For the evolution of ECtHR jurisprudence, see L. van Waas, "Fighting statelessness and discriminatory nationality law in Europe," *European Journal of Migration and Law* 2012, vol. 14, no. 3, pp. 250–254.

a request to renounce citizenship, may all amount to interferences with private life.⁶⁰ This approach is grounded in the ECtHR's recognition that nationality is a core element of personal identity with significant impact on private life.⁶¹

In *Ukraine v Russia (re Crimea)*, including its admissibility decision, the ECtHR relied on its settled case law.⁶² It declined to rule on whether automatic naturalisation was inherently contrary to Article 8, read with Article 45 of the 1907 Hague Regulations,⁶³ and instead examined the effectiveness of the opt-out system. Against a background of intimidation acknowledged by international bodies and not disputed by Russia, the ECtHR noted that those refusing Russian citizenship became "foreigners in their own land" and lost access to rights. It held that the absence of an effective system for opting out constituted an interference with the right to respect for private life. Although, the ECtHR held back from pronouncing generally on the lawfulness or otherwise of the Russian Federation's system for opting out of Russian citizenship, it considered that serious flaws in the procedure – including an extraordinarily short time limit, lack of adequate information, and the very limited number of locations where declarations could be made – placed a disproportionate burden on the affected residents.⁶⁴ While the shortcomings did not stem directly from the law itself, their scale and intensity in practice prevented Crimean residents from genuinely exercising the possibility of renouncing Russian citizenship, thereby violating Article 8.

The judgment has been hailed as both strong and courageous decision,⁶⁵ and as "a clear and undeniable victory for Ukraine."⁶⁶ The ECtHR unanimously held that Russia has violated virtually all substantive provisions of the ECHR and its additional protocols, including Articles 2–11, 14, 18, 38, Protocol 1 Articles 1–2, and Protocol 4 Article 2. With respect to nationality, it found that flaws in the opt-out system and the resulting inability to renounce Russian citizenship were sufficiently serious to amount to a violation of Article 8.

⁶⁰ ECtHR, *Case – law Guide on Article 8 Right to respect for private and family life, home and correspondence*, para. 323.

⁶¹ ECtHR, *Affaire El Aroud et B.S. v Belgium*, nos. 25491/18 and 27629/18, 5 December 2024, HUDOC, para. 59.

⁶² *Supra*, note 10, para. 1031; ECtHR, *Ukraine v Russia (re Crimea)*, nos. 20958/14 and 38334/18, Decision, 16 December 2020, paras. 436–437.

⁶³ *Supra*, note 10, para. 1032.

⁶⁴ *Ibid.*, paras. 1032, 1036–1037, 1039.

⁶⁵ J. Miklasová, *Ukraine v Russia (re Crimea): Article 6 ECHR in the context of Russia's annexation and implications for Ukrainian sovereignty*, 3 July 2023, <https://strasbourgobservers.com/2024/07/03/ukraine-v-russia-re-crimea-article-6-echr-in-the-context-of-russias-annexation-and-implications-for-ukrainian-sovereignty> [accessed: 7.08.2026]; E. Fripp, 'Passportisation': ECtHR finds imposition of Russian citizenship in Crimea a breach of article 8 ECHR, 4 February 2025, <https://www.ejiltalk.org/passportisation-ecthr-finds-imposition-of-russian-citizenship-in-crimea-a-breach-of-article-8-echr> [accessed: 7.08.2026].

⁶⁶ K. Dzehtsiarou, *Ukraine v Russia (re Crimea): The European Court of Human Rights Goes 'All-in'*, 27 June 2024, <https://www.ejiltalk.org/ukraine-v-russia-re-crimea-the-european-court-of-human-rights-goes-all-in> [accessed: 7.08.2026].

Yet the ECtHR's Article 8 reasoning shows clear limits. It avoided the broader question of whether quasi-automatic naturalisation itself violates private life, despite nationality being central to personal identity. Instead, it reduced the issue to the effectiveness of the opt-out system.

This reasoning overlooks that requiring individuals to undergo renunciation may itself interfere with identity and private life. By concentrating on procedural flaws – short deadlines, poor access, inadequate information – the Court gave little weight to Article 8's substantive protection of identity, framing the violation as a matter of systemic dysfunction rather than essence.

As a result, although the judgment marks an important step in recognising the human rights implications of the imposition of citizenship under annexation, it leaves crucial questions concerning the substantive impact of coercive naturalisation on human rights largely unanswered.

4. Conclusions

The picture that emerges is uneven. Forced citizenship in occupied territories is no longer invisible in international law, yet it is far from settled. What was once treated solely as a matter of sovereignty is now recast, at least in part, as a question of rights and identity.

The ICJ narrowed the issue to discrimination, the HRC recognised its intrusion into private life, and the ECtHR condemned the dysfunctions of Russia's opt-out system while sidestepping the core question. Together these judgments sketch the outline of a principle: citizenship cannot be imposed without genuine consent. But the lines remain faint, and protection fragile. At stake is not only coherence between IHL and IHRL, but also the autonomy of communities confronted with annexation.

The cases relating to Crimea have moved the law forward; yet they also reveal its limits. Citizenship is ultimately about allegiance and identity; imposed without choice, it denies both. Whether international law will crystallise this insight into a clear norm is a challenge that lies ahead.

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Summary

Natalia Cwiczinska

Unwanted Citizenship in Annexed Territories: Emerging International Standards in the Jurisprudence of Human Rights Bodies and Courts on Forceful Imposition of Citizenship

This article examines the emerging treatment of forced naturalisation in annexed or occupied territories under international law. Long viewed primarily as a sovereignty issue, citizenship imposition is increasingly reframed through human rights law as a matter of identity and consent. Focusing on Crimea, the analysis here compares recent jurisprudence of the ICJ, UN HRC, and ECtHR. The three bodies adopt divergent approaches – ranging from narrow readings of discrimination to recognition of nationality as part of private life – but together sketch the contours of a principle that citizenship cannot be imposed without genuine consent. The lack of coherence, however, leaves protection fragile, and clear human rights standards against the imposition of citizenship in situations of annexation are still in the making.

Keywords: citizenship, annexation, human rights.

Streszczenie

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Niepożądane obywatelstwo na terytoriach anektowanych – standardy międzynarodowe w orzecznictwie organów i sądów praw człowieka dotyczące przymusowego obywatelstwa

Przedmiotem analizy jest kształtująca się w prawie międzynarodowym praktyka traktowania przymusowej naturalizacji na terytoriach anektowanych lub okupowanych. Zjawisko to, długo postrzegane głównie jako kwestia suwerenności, jest coraz częściej ujmowane w perspektywie praw człowieka jako problem tożsamości i zgody. Koncentrując się na Krymie, w opracowaniu porównano najnowsze orzecznictwo MTS, Komitetu Praw Człowieka ONZ oraz ETPCz. Te trzy organy przyjmują odmienne podejścia – od wąskich ujęć dyskryminacji po uznanie obywatelstwa jako elementu życia prywatnego – ale łącznie szkicują zarys zasady, że obywatelstwa nie można narzucać bez autentycznej zgody. Brak spójności pozostawia jednak ochronę kruchą, a jasne standardy praw człowieka sprzeciwiające się narzucaniu obywatelstwa w sytuacjach aneksji wciąż są w fazie kształtowania.

Słowa kluczowe: obywatelstwo, aneksja, prawa człowieka.