Comparative Study on Status Neutral Travel Documents

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About this assignment

Policy advice to Georgia’s State Ministry for Reintegration regarding the Action Plan for the ‘State Strategy on the Occupied Territories: Engagement for Co-operation.’

The overall objective of this project is to contribute to peace, conflict management and transformation in Georgia. The specific objectives of this action are to (1) provide process and policy advice on conflict management and transformation issues in Georgia, (2) to provide process advice as to the implementation of the Action Plan for the ‘State Strategy on the Occupied Territories: Engagement for Co-operation,’ (3) to identify technical expertise and (4) to facilitate information flows.

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Comparative Study on Status Neutral Travel Documents
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Antje holds degrees Economics and Diplomacy and International Relations and in European Economic and Public Affairs (M.Econ. Sci) from University College Dublin a Masters in Mediation from the European University Viadrain and a Doctorate in International Relations from Aalborg University (Ph.D) with a thesis entitled Towards a New European Ostpolitik.

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Main legal Expert

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John Packer is Professor of International Law and the Director of the Human Rights Centre at the University of Essex where he also serves as Senior Adviser for the Global Initiative on Quiet Diplomacy. From 2000 to 2004 he was Director of the Office of the OSCE High Commissioner on National Minorities where he previously served as Senior Legal Advisor (1995-2000). From 1991 to 1995 he was a Human Rights Officer at the United Nations where he investigated serious violations of human rights in Iraq, Burma and Afghanistan, established the operational work of the first Special Rapporteur on the Independence of Judges and Lawyers and worked on disappearances and arbitrary detention in selected countries. He has also worked for the International Labour Organisation (1989-1991) and the UN High Commissioner for Refugees (1987-1989). He holds degrees in Law and Politics and has an extensive publication record focusing on inter-ethnic conflict, diversity management, protection of minorities, international organisation and conflict prevention/management/resolution.

Professor Packer has been engaged in numerous international and domestic negotiations on most continents including bilateral and multilateral treaties, political accords and arrangements at national and local levels, institutional design and development as well as training of relevant actors. He advises a number of organisations and governments.

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We are grateful to the numerous interlocutors from the international community who have been in dialogue with us with the research project. Many thanks to the reviewers Professor Dr Emmanuel Decaux and Professor Dr David A. Martin who took time from their busy agendas to review and comment upon drafts. Their comments have allowed the team to improve the document.

Thanks to staff from the Initiative on Quiet Diplomacy for contributing some research and materials. Philipp Donath and Florian Franke, research assistants for Prof Dr Dr Hofmann are thanked for their most valuable contribution concerning the situation of West Berlin. We are grateful to Dr Jonathan Kulick for comments on the paper, Mr Jeff Morski for his committed copyediting, and Canan Gündüz for able support in publications management.
**Glossary**

*a fortiori* – even more so, all the more certainly, with greater reason (Latin; *argumentum a fortiori*).

**Allied Kommandatura** – The Allied Kommandatura (Russian word) signifies the structure of occupying powers of Berlin, formalised on 5 June 1945. Greater Berlin was divided into four occupying sectors and four occupation zones. This included Britain, France and the US in the western half and the Soviet Union in the east. In each of these sectors, a ‘Kommandant’ was chosen. The Inter-Allied Governing Authority, made up of these four Commandants of the individual sector, chose a chief Commandant, who served in rotation.

**debellatio** – the cessation of the existence of a state as subject of international law by its complete defeat in a war.

**de facto** – by [the] fact or in fact (Latin).

**de jure (also de iure)** – by [the] law (Latin), used in contrast to **de facto**

**Eastern Bloc** – the former Communist states of Eastern and Central Europe (Soviet Union and its satellites in the Warsaw Pact).

**habitual residence** – refers to the geographical place considered “home” for a reasonably significant period of time. The concept of habitual residence is used in a number of international conventions beginning with the Hague Convention on Civil Procedure of 14 November 1896 to complement or supplant the traditional connecting factor of domicile; e.g., in the Rome Convention 1980.

**jus sanguinis** – literally, the law of blood (Latin) denoting origin of nationality upon the basis of familial descent or parentage, as opposed to **jus soli** (the law of soil or territory) denoting origin of nationality on the basis of geographic place (i.e., country) of birth.

**laissez-passer** – travel document issued by a national government or inter-governmental organisations, often for one-way travel to the issuing country for humanitarian reasons only (often also referred to as emergency passports). From the French “let pass.”

**League of Nations** – an inter-governmental organisation founded as a result of the Paris Peace Conference that ended World War I; the predecessor to the United Nations (1919-1946).
Nansen Passport – internationally recognised identity cards first issued by the League of Nations to stateless refugees, named after the Norwegian explorer and philanthropist, Fridtjof Nansen.

Neue Ostpolitik – New Eastern Policy can be contrasted to the previous German Ostpolitik (Eastern Policy) which was the term that signified the political goal of West Germany to be recognised as the only legitimate representative of the German people and aimed at preventing international recognition of East Germany (GDR). The New Eastern Policy, introduced by the then Chancellor Willy Brandt (1969-1973), sought to change relations with East Germany and the Eastern European Nations through rapprochement and co-operation in many fields in order to facilitate more freedom for East Germans.

prima facie – at first sight (Latin).

propiska – a document serving both as a residence permit and migration recording tool in the Russian Empire before 1917 and from the 1930s in the Soviet Union (Russian; прописка).

Passierschein – the Passierschein, issued upon the basis of pertinent agreement concluded by the German Democratic Republic (GDR) and West Berlin, was a document which allowed for the travel (passage) of citizens of West Berlin into East Berlin. From the West Berlin perspective, the Passierschein was a humanitarian instrument aimed at maintaining (limited) contacts between residents of West and East Berlin. For the GDR, the Passierschein constituted an indication of the recognition of the special status of West Berlin as being no part of the Federal Republic of Germany. Between 1963 and 1966, five agreements on the Passierschein were negotiated and concluded. This allowed for more than a million visits to East Berlin. These agreements were suspended from 1966 until 1971 until the Quadripartite Agreement on Berlin paved the way for the conclusion of a more general agreement on travels by residents of West Berlin to East Berlin and the GDR. The Passierschein agreements are seen by many as a precursor to the Neue Ostpolitik.

sui generis – of its own kind, unique in its characteristics (Latin).
The issuance of passports is the most established way for states to certify an individual’s identity. Until this present day, the holding of a passport enables its owner to pursue travel to other countries whilst also providing its holder the right to the re-entry of his or her own country.

Yet, the issuance of passports is not entirely universal as it might not fit the needs of specific populations. A variety of abnormal situations do exist—most often due to the consequence of an armed conflict—which have resulted in the creation and use of non-standard travel documents. This is the case of point herein.

The issuance of Status Neutral Travel Documents by the Government of Georgia to the residents of Abkhazia and South Ossetia is an attempt to fill the lacunae of providing the habitual residents and citizens of these regions with the opportunity to travel abroad with documentation that might be acceptable to the international community, following the requirement of a state to act responsibly towards its citizens, and the possibility for individuals to acquire such a travel document which provides them with the ease to travel abroad.

Since the end of 1991, habitual residents of Abkhazia and South Ossetia have acquired Russian passports. The legality of the issuance of such passports has been questioned, notably by the Tagliavini Report.\(^1\) Regardless of this fact, it is important that Georgia is able to provide its residents with identity cards and travel documents. Status Neutral Travel Documents are a unique way in dealing with this issue whilst taking into account the considerable effort that is required to provide a document which responds to the needs of the actual situation at hand but does not necessarily imply or confer upon the holder of such a document a status as regards his or her nationality.

The issuance of a Status Neutral Travel Document by the Government of Georgia has been the subject of discussion and debate by many. Since 2010, the European Forum for International Mediation and Dialogue (MediatEUr) has been tasked to advise the Georgian State Ministry for Reintegration on various issues regarding policies of conflict transformation. Following the elaboration of the Action Plan, stakeholders expressed a need to elaborate a legal opinion on this issue in June 2010 which was followed by a request to examine its legality in the context of the lessons learned as represented in this document. With Professor Dr Dr Rainer Hofmann and Professor John Packer, as the main legal experts and authors of this study, we were

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able to assemble an outstanding team of the finest experts available for this assessment. In order to ensure a high professional standard, we are grateful to Professor Dr David Martin and Professor Dr Emmanuel Decaux who have acted as reviewers for this work whose input has informed and improved this paper further. This study, therefore, aims to inform and provide recommendations for interested parties on the subject of a Status Neutral Travel Document. The research conducted here involved both visits and discussions with the relevant officials in Tbilisi and participation in a working group meeting as well as deliberations with representatives of the international community and a international legal experts. Whilst the main technical requirements of issuing such papers are following necessary international practice, the main question, of course, is whether or not such travel documents will or can be accepted by outside states. In this vein, the following paper is not speculating upon this issue but reviews and assesses the relevant international law and practice regarding such travel documents alongside presenting carefully considered cases that provide for lessons learned resulting from abnormal situations which created the need for issuing alternatives to passports. It needs to be iterated here that each one of the cases existing globally, and even those considered in this study, are *sui generis* with the issuance of the SNTD so being as well. The conclusions of this study are that such documents are indeed permissible within the framework of international law and consistent with practice as they facilitate the freedom of movement and well-being of the affected persons. Seen in this perspective, the European Union and the international community should actively support initiatives that aim to provide and promote opportunities for social interaction which in themselves may well contribute to greater stability and eventual peace.

The issuance of a Status Neutral Travel Document for use by affected persons in the prevailing situations, therefore, is one important initiative which should be supported and encouraged by the international community.

**Antje Herrberg**, CEO, mediatEur
The normal conduct of international relations—to meet the needs and interests of both States and individual persons bearing rights—has long known the use of official travel documents. These documents, which exist in a range of forms and types, facilitate the international movement of the identified person/bearer according to various terms. As international travel increased and became a usual part of modern life, a standard system of documentation evolved, most notably in the form of ‘passports’ issued by States typically, but not only, to and for their own nationals. At the same time, a wide variety of abnormal situations—often caused by or associated with armed conflicts—has resulted in the creation and use of non-standard travel documents to respond to specific needs of affected populations. A review of some such cases is informative.

The situations prevailing in Georgia vis-à-vis the territories of Abkhazia and South Ossetia merit a tailored treatment appropriate to their circumstances. This is both permissible under international law and consistent with practice. Whilst general international law in principle leaves the State free to issue passports, so a fortiori the State may also issue something ‘less.’ With regard to the prevailing situations, the Government of Georgia has expressed its determination to exercise its sovereignty by creating a Status Neutral Travel Document (hereafter also SNTD) as a pragmatic response to the abnormal situations prevailing in the two territories. The issuance of such a non-standard travel document is in line with international practice, for which there are various examples with each resulting from particular circumstances but aiming to facilitate the freedom of movement and well-being of the affected persons. Specifically, an SNTD would provide an important facility for habitual residents of the territories without necessarily conferring upon or implying a status for the holder of such a document as regards his or her nationality (especially where such a status may be problematic). As such, the issuance of an SNTD appears as a responsible, flexible, sensitive and pragmatic solution to the situations. The co-operation of third States as a matter of friendly international relations would also be consistent with international law and practice in such situations, thus offering a feasible alternative for the affected persons should they so choose. This initiative should be supported.
1.1 Background of the study

Since soon after the break up of the former Soviet Union, the regions of Abhkazia and South Ossetia have been outside the effective control of the Government of Georgia and, rather, under the control of de facto authorities sustained by the armed forces of the Russian Federation. This prevailing situation is problematic for the directly affected populations and limits their access to and meaningful enjoyment of various human rights and fundamental freedoms that are due the habitual residents of the two territories. The Government of Georgia, in exercising its sovereignty, is seeking to fulfil its domestic and international responsibilities in a flexible, sensitive and essentially pragmatic manner with a view to facilitating the better enjoyment of human rights and well-being of the populations through opportunities for, inter alia, access to social services, economic development and travel. In this last respect, the Government has, pursuant to consultations, adopted an Action Plan for Engagement that foresees the issuance of an SNTD for use by habitual residents of the two territories in order to travel abroad. Importantly, the SNTD would facilitate international travel by habitual residents of the two territories without specification as to the ‘nationality’ of the holder (i.e., the documents would be ‘status neutral’) whilst guaranteeing them the protection and services of Georgian consular and diplomatic authorities, should these persons so choose, as well as their readmission to Georgia.

Beginning in 2010, the European Forum for International Mediation and Dialogue (MediatEU) has held a contract with the European Commission to provide the Government of Georgia with technical assistance and advice on conflict transformation. As part of this assignment, a legal opinion was produced and submitted prior to a high level meeting of US, German, UK, UN and EU representatives, hosted by the then French Minister of Foreign Affairs, Bernard Kouchner, in Paris on 26 June 2010. It was agreed that a more detailed comparative study would be of benefit in order to inform international stakeholders about the various dimensions of such Status Neutral Travel Documents and including a review of lessons learned. As a result, follow-up Terms of Reference were produced and approved by the EU according to which a study on SNTDs was to be conducted. In February 2011, a visit was made to Tbilisi by the team leader for
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In this assignment, Dr Antje Herrberg, and the two legal experts who had produced the aforementioned legal opinion, Professor Dr Dr Rainer Hofmann (Germany) and Professor John Packer (UK). Various meetings were held with the representatives of the international community and the Government of Georgia including, notably, the State Ministry for Reintegration and the Inter-Ministerial Working Group on SNTDs. In these meetings, the need for a comparative study of relevant international practice was stressed by the EU interlocutors as well as by the representatives of the Government of Georgia. Initial findings were communicated in a presentation at a meeting with the international community in Tbilisi on 12 May 2011 after which several drafts of this study were produced. The drafts were reviewed and commented upon by two additional experts of international law, Professor Dr David Martin (US) and Professor Dr Emmanuel Decaux (France) whose inputs were taken into consideration for the production of this present document.

1.2 Purpose of the study

The main experts were tasked to provide a background document that could be used to inform and clarify the issue of a Status Neutral Travel Document for State actors and international agencies. In particular, the paper presents an analysis of the legal feasibility of introducing Status Neutral Travel Documents through an assessment of other comparative cases.

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In this light, the study provides relevant further information whilst at the same time framing the discussions about SNTDs amongst international parties (notably States and international organisations) to demonstrate that:

i. the issuance of SNTDs in such unusual situations as prevail in Abkhazia and South Ossetia is both permissible under international law and not unprecedented in international practice,

ii. the issuance of SNTDs in this specific situation would conform with principal conditions and satisfies essential concerns for such instruments and
iii. the issuance of SNTDs in the current situation is not only compatible with international law and consonant with international practice but is appropriate to the needs of all actors involved (States, international organisations, civil society at large and, above all, the individuals directly concerned) and legally feasible.

As any sovereign and generally recognised State, Georgia is entitled under international law to issue, as an inherent part of its sovereignty, documents for the use of persons within its jurisdiction. These documents are, typically, passports and other documents intended for use in international travel.²

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Under international law, passports (or their substitutes) are, as a rule, issued to individuals by national or, exceptionally, international authorities in order to facilitate their movement across international boundaries. There is general agreement upon the essential physical characteristics of such a standard document (notably, the shape of a booklet, the inclusion of a serial number and the word ‘passport’ printed on it) and its principal functions: it identifies its holder by photograph, signature, physical description and other relevant information; it indicates its period of validity and the issuing authority and, unless otherwise stipulated, it expresses or implies a—rebuttable—presumption that the holder of a passport is a national of the issuing State. As a rule, the issuing State is entitled to exercise diplomatic protection on behalf of persons carrying that State’s passport and is under a legal obligation (not only as an act of comity amongst nations) to re-admit such persons to its territory if third States so demand or if the holder so wishes.

Whilst travel documents may be and are typically issued by a State to its nationals, States are also free to issue documents to other

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Persons (including, *inter alia*, ‘subjects,’ ‘dependents,’ ‘protected persons’) who may require such documentation for purposes of travel. An issuing authority is not required to declare its ‘sovereignty’ with regard to the territory of residence (indeed, a national may be resident abroad as may be the issuing bureau located abroad) or the ‘nationality’ of the person named (who, as just noted, may have varying legal status). However, the issuing authority is specified in order to indicate provenance and responsibility, and stipulations are commonly included with regard to entitlements, exclusions, disclaimers or other clarifications (e.g., vis-à-vis cases of possible dual nationality).

Insofar as international law permits every State to issue passports (typically, but not only, to its nationals), so too does international law permit issuance of an SNTD as a kind of variation or minus (i.e., a more limited document) to such standard passports. For the purposes of this study, it is presumed that such an SNTD would fulfil most of the regular functions of a passport or similar travel document (i.e., description of the identity of the holder, identification of the issuing authority, recognition of the legal obligation to re-admit the person named and, possibly, preparedness to exercise diplomatic protection) but not all. Importantly, it would not necessarily confer or imply to the holder of such a document a status as regards his or her nationality. In this sense—and only in this sense—it would be ‘status neutral.’ However, in contrast to regular passports which third States are, even in the absence of pertinent treaty-based obligations, either under a legal obligation (based upon the rules of customary international law) or at least a soft-law obligation (based upon the principles of comity amongst nations) to recognise for the purposes of international travel, such non-standard travel documents imply no obligation on the part of third States to recognise or use them. Therefore, non-standard travel documents serve their purpose of facilitating international travel only to the extent they are explicitly accepted for use by third States.

Of course, as a matter of general international law, irrespective of documentation, every State is free in the exercise of its territorial

**Simply, there is no bar in international law to the recognition of travel documents of any kind, whether a standard passport or other document tailored to specific situations or needs.**
sovereignty to determine whether and how it will admit aliens; that is, if the receiving/admitting State accepts a specific individual and which document(s), if any, the State may require either as a rule or upon a case-by-case basis. Simply, there is no bar in international law to the recognition of travel documents of any kind, whether a standard passport or other document tailored to specific situations or needs. Similarly, a sending/certifying State or authority, having issued a document, cannot require that such documentation be recognised and used by a prospectively receiving/admitting State as this is a matter for usual international relations to negotiate upon the basis of sovereign equality.

In summary: Georgia is, under international law, entitled to issue identity and travel documents to habitual residents of Abkhazia and South Ossetia. Third States are entitled under international law to accept such documents for use and to co-operate in their use. As Georgia is entitled to issue ‘passports,’ it is equally entitled to issue a more limited document in the form of an SNTD, which third States may (but are not obliged to) recognise as valid travel documents. In the prevailing situations, Georgia’s initiative and determination to act responsibly, flexibly, sensitively and pragmatically to issue non-standard travel documents (which are neutral as to status and not as to Georgia’s responsibility) is both consonant with international relations and law and appropriate in the circumstances.

International law and practice know of a wide range of travel documents. These have typically been created to respond proactively to a variety of particular situations of need and the circumstances prevailing in Abkhazia and South Ossetia prima facie constitute similarly particular situations to which Georgia is responding. Differing situations (in terms of facts) may be grouped for better analysis and understanding as follows.

1. One group is constituted by identity and/or travel documents that are issued by international authorities exercising de facto ‘sovereignty’ over specific territories such as internationally mandated administrations including, for example, the United Nations Interim Administration in Kosovo (UNMIK) or the United Nations Transitional Administration in East Timor (UNTAET). These documents were/are ‘status neutral’ in the sense described above.


and did/do not assert or imply a specific nationality status although they constituted evidence that holders of such documents were/are residents of Kosovo or East Timor, respectively. Although not issued by a recognised ‘national authority,’ it is useful to note the bases (including personal identification) for such travel documents and under which conditions they were recognised as valid travel documents and by which States. The UNMIK example will be summarised in Part II.

2. A second group of non-standard travel documents has been and continues to be issued by States Parties to the 1951 Convention Relating to the Status of Refugees and the 1954 Convention Relating to the Status of Stateless Persons (which provides for the successor to the so-called Nansen Passport issued under the League of Nations). These documents (i.e., the ‘Refugee Travel Document,’ ‘Aliens Passports,’ ‘Certificates of Identity’ used for travel or similar documents) are issued by States to non-nationals in fulfilment of an international treaty obligation (Article 28 of the aforementioned Conventions). The fundamental purpose of these travel documents is to facilitate travel for persons who have either a well-founded fear of persecution by their own State of nationality (and so may not rely upon it for protection) or no State of nationality (de jure or de facto) upon which they may rely.6

3. Another group relates to travel documents issued by States to persons habitually residing on their territory who are non-nationals and do not hold any nationality at all (de facto they are stateless persons) or whose nationality is contested as is any genuine or effective link with a third State. Such situations appertain notably where there have been changes of authority due to previous occupations and population transfers (forced or otherwise) and there exist some individuals who have not (yet) acquired the nationality of the State of their habitual residence (i.e., they have not been naturalised). This is the case of significant parts of the populations of Estonia and Latvia as a result of an almost half-century of occupation by the former USSR and the eventual restoration of their sovereignty. In these situations, respectively, ‘Aliens Passports’ and ‘Non-citizen Passports’ were created and widely conferred and used. The examples of Estonia and Latvia will be summarised in Part II.

There are still more peculiar cases (historical and contemporary) of non-standard travel documents including very specific examples of

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'passports' that are, for historical reasons, recognised for international travel purposes by some States such as passports issued by the Sovereign Order of Malta. In a number of highly contested situations, some de facto authorities have issued standard ‘passports’ that assert status vis-à-vis both nationality and sovereignty but these are highly problematic in use and arguably do not facilitate the free movement or well-being of the affected persons. In a somewhat related but different category belong travel documents issued by (some) North American First Nations (i.e., indigenous peoples whose ‘authority’ is uncertain at best) which are, to some extent, sufficient for international travel. Lastly, there are all kinds of documents issued (and recognised or used) en lieu of passports, often for single journey purposes, such as laissez-passer documents, ‘temporary travel documents’ allowing for the return of the holder to his or her country of origin, no-objection certificates, visitors’ passports, etc.

Of the many and varied situations known in international relations—featuring divided authorities with willingness to accept responsibility but presenting practical difficulties for intended beneficiaries to access travel—was that which endured for some decades in post-war divided Germany. In that situation, a State issued a somewhat ‘lesser’ document to persons whom it considered as its nationals in addition to its regular passports. These were the so-called auxiliary identity cards given to residents of West Berlin for purposes of travelling to States belonging to the Eastern Bloc during the times of the partition of Germany. This example is also summarised in Part II.

7 These have been accepted by some States, notably Switzerland, on a seemingly ad hoc basis.
Relevant situations of previous or actual use of non-standard travel documents include those tailored for populations to be protected by inter-governmental organisations acting as agents of communities of States, or of individual States acting alone to afford protection to specific populations as well as arrangements tailored in the context of divided States. Such arrangements have been, in general, responses of an interim or transitional nature, which seek pragmatic solutions facilitating the interests of the intended beneficiaries and the smooth conduct of international relations in the circumstances. The following selection of examples reflects the creativity of pragmatic solutions—from a wide variety of practice—and demonstrates tailored responses to particular needs. However, in order to contrast these non-standard travel documents with a standard one in a highly contested situation, one such standard ‘passport’ will first be reviewed indicating the problematic aspects.

Following persistent tensions and a civil war in Cyprus, Turkish armed forces entered the Republic of Cyprus in 1974 resulting in its partition: the northern third of the island was unilaterally declared to be the Turkish Republic of Northern Cyprus (TRNC) by representatives of its Turkish Cypriot population. Despite the United Nations having determined the declaration of independence of Northern Cyprus to be legally invalid and the fact that the self-declared Government of the TRNC has not been recognised except by the Government of Turkey, the prevailing situation persists in causing various difficulties for the affected populations including with regard to international travel.

The de facto authorities of Northern Cyprus have issued various documents to persons within their effective control, including identity and travel documents. The Northern Cypriot Citizen ‘Passport’ (and not a status neutral document) issued by the Passport and Migration Office of the Ministry of Interior of the TRNC states explicitly that its holder is a ‘citizen’ of the TRNC. According to the TRNC Ministry of Foreign Affairs, the passport is recognised and accepted for use by seven States: Australia, France, Great Britain, Pakistan, Syria, Turkey and the USA. It may be used by holders without a visa to visit only Turkey. Whilst a citizen of Northern Cyprus is entitled to citizenship of Turkey and, thereby, may obtain a passport from Turkey, this possibility implies loss of claim to Cypriot citizenship and risks to various interests including residency and property rights. However, persons who were born in Cyprus with residence in Cyprus before

PART 2. SELECTED CASES

2.1 Use of a standard travel document in a contested situation: The case of Northern Cyprus
partition may apply for and receive a Cypriot passport from the Republic of Cyprus.

As a result of on-going international mediation and, not least, entry into the EU by the Republic of Cyprus in 2004 (together with evolving negotiations between the EU and Turkey concerning its prospective membership of the EU), the problematic situation dividing the island and presenting the residents of Northern Cyprus (especially those naturalised persons) with certain difficulties may eventually be resolved upon reunification or diminishment of the significance of frontiers within the EU. However, this has yet to be resolved and international travel by the affected persons remains problematic since the passport of the TRNC is hardly recognised or accepted for use. For those who may not possess a second passport as a dual national, they may have little choice but to accept the TRNC passport if they need to travel abroad and so they would be prejudiced with regard to their nationality in obtaining and using that passport. Further, possession of the TRNC passport may be reasonably viewed as evidence of allegiance to the TRNC with implications for treatment.

The following are examples of uses of non-standard travel documents responding to different situations and emanating from different recognised authorities.

2.2 Use of non-standard travel documents

2.2.1 UNMIK

Problem
The population of a sub-State territory affected by armed conflict whose status was contested was in need of travel documents in a situation where an internationally/UN mandated authority held responsibility for the well-being of the residents of the territory including facilitation of their rights and freedoms.

Solution
A passport-like Travel Document was created. It conformed with international standards and was issued to habitual residents who sought them for purposes of their international travel. It was accepted by a substantial number of States.

The United Nations Interim Administration in Kosovo (UNMIK) issued two types of status neutral documents: UNMIK ID cards and UNMIK Travel Documents. Their issuance was based upon UNMIK Regulations promulgated by the UN Special Representative of the Secretary General to Kosovo pursuant to UN Security Council Resolution 1244.
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The issuance of the UNMIK Travel Document was a response to the need of habitual residents of Kosovo to obtain documents to facilitate their international travel because the majority of the population at the time either lacked or rejected passports issued by the authorities of the Federal Republic of Yugoslavia.

The UNMIK Travel Document was a passport-sized document used for foreign travel. It contained many of the features of a modern passport. It was a machine-readable strip or zone where the data on the identity page were encoded in optical-character-recognition format. As the issuing authority was UNMIK, the document had the official three-letter code ‘UNK’, where the country code is normally placed. The document was approved by the International Civil Aviation Organisation (ICAO) as the UN agency that sets the standards for passports and similar documents.

Upon creation of the UNMIK Travel Document, thirty-nine (39) States recognised its validity and accepted its use including almost all Council of Europe Member States and some others. It is relevant to note that in May 2000 the then European Commission encouraged EU Member States to recognise the UNMIK Travel Document but acknowledged the discretion of each State to decide upon its visa requirements. A number of States withheld acceptance until all Schengen countries officially recognised the document, as eventually occurred.

A person had to fulfil two requirements in order to be eligible for an UNMIK Travel Document: Kosovo habitual-residence status and possession of an UNMIK ID card. Possession of these documents did not confer nationality upon its holder as they were not issued by a State and did not intend to address either the status of the territory or the nationality of persons therein. The document simply carried UNMIK Travel Document/“Titre de voyage” on the cover and included the usual personal data of the holder of this document is a habitual resident of Kosovo and is entitled to return to Kosovo at any time.

Of course, the UNMIK Travel Document did not guarantee its holder admission to other States and so any travel was typically subject to usual visa requirements. It may be relevant to note that this initially presented some problems in obtaining visas although these were overcome through international co-operation. One particular practice was that a Kosovo resident travelling to the USA or some other countries received the visa.
sticker/stamp on a detached sheet and not inside the UNMIK Travel Document itself thus varying from usual practice in order to facilitate travel without prejudice against the person or the visa-issuing State.

UNMIK stopped issuing travel documents following Kosovo’s declaration of independence in February 2008. The existing documents retained their validity until expiry.

### Problem

Subsequent to a long occupation of Estonia and Latvia, during which there was a substantial movement of population into each State, upon the restoration of sovereignty and the reinstitution of Estonian and Latvian nationality laws there remained (and remain) significant populations who are *de jure* or *de facto* stateless and in need of a pragmatic and effective means of documentation to facilitate international travel.

### Solution

Non-standard travel documents (notably, a ‘Non-citizen Passport’ in Latvia and an ‘Aliens Passport’ in Estonia) were created for use by each State in respect of the relevant populations and as accepted by a substantial number of States.

Following a half-century of Soviet occupation, the full and effective sovereignty of the Republics of Estonia and Latvia was restored soon after the end of the Cold War (specifically, in 1991). However, over the long period of occupation during which the two Republics were annexed by and incorporated within the former Union of Soviet Socialist Republics (USSR), large numbers of people were moved—some forcibly removed from Estonia and Latvia, and others moved into Estonia and Latvia—which altered the demographics of the two States. Upon the restoration of their sovereignty (i.e., regaining their effective independence), each Republic also reaffirmed the applicability of their respective nationality laws, both of which follow the principle of *jus sanguinis*. As such, the populations (and their descendants) that had moved into Estonia and Latvia were not automatically conferred Estonian or Latvian nationality (unlike in some other former republics of the former Soviet Union). Instead, these persons were faced with the choice of either seeking Russian Federation nationality (which was generally available to them as Russia was the successor State of the USSR, but likely not effective or reliable and for which many had no genuine or effective link, much less any interest) or applying for naturalisation within
Estonia or Latvia and, to that end, going through a process that was problematic for many of them and did not guarantee its acquisition. In effect, a great many persons found themselves *de jure* or *de facto* stateless. However, the authorities of Estonia and Latvia contested that this would be so and argued that the availability of Russian Federation nationality (even if not effective, reliable or, for the persons concerned, wanted) implied at least a ‘dormant’ nationality, which barred any claim to being stateless and, indeed, provided a presumed nationality. The Governments of Estonia and Latvia maintained that the affected persons should activate their dormant nationality and, preferably, ‘return’ to Russia (even if they had not been born there or ever visited) or seek to naturalise.

One practical effect in the two situations was the inability of the affected populations to travel internationally (although some continued to travel to Russia and some other countries using their former Soviet passports or even old *propiskas*). This was not only problematic in various senses but constituted a source of particular tensions amongst the communities in what were then somewhat fragile situations and uncertain times, notably before Estonia or Latvia became Member States of NATO and the EU.

In exercise of their sovereign rights and freedoms, both Estonia and Latvia acted in the circumstances to create a non-standard travel document for the use of the affected populations should they so choose: to avoid recognition of the status of a ‘stateless person,’ Latvia created a ‘Non-citizen Passport’ and Estonia created an ‘Aliens Passport.’ In the case of Latvia, this was pursuant to adoption of its 12 April 1995 law ‘On the Status of Those Former USSR Citizens Who Are Not Citizens of Latvia or Any Other Country.’ Pursuant to developments in technologies and applicable international agreements to which Estonia and Latvia are both parties (notably within the EU and the ICAO), the ‘Non-citizen Passport’ and the ‘Aliens Passport’ have complied with the required technical specifications of usual passports. In creating and issuing these non-standard travel documents, Estonia
and Latvia have accepted responsibility to avail their holders of Estonian and Latvian consular services abroad and guaranteed their readmission. Almost all Council of Europe Member States and a number of others have, pursuant to usual international relations, recognised and accepted the use of these non-standard travel documents. To date, Estonia has issued some 165,000 ‘Aliens Passports’ and Latvia has issued almost one million ‘Non-citizen Passports.’ It is pertinent to observe that in the cases of Estonia and Latvia, the States acted flexibly and pragmatically with regard to persons who are not their nationals, in respect of which the international community responded co-operatively. This suggests that such international co-operation should follow *a fortiori* in a situation where the issuing State in principle accepts the nationality of the affected populations (or, at least, a genuine link) and is willing to act pragmatically to facilitate the well-being of the affected persons.

### Problem

At the end of World War II, Germany came under the occupation of the four Allied Powers. In 1949, the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR) were established. A special regime applied to Berlin, which resulted in contested views on the nationality status of permanent residents of West Berlin, which, in turn, created specific problems for such persons when wishing to travel to East Berlin, the GDR and Eastern Bloc countries. In this situation, an effective and pragmatic instrument to enable and facilitate such travels without having to declare their nationality was required.

### Solution

*Auxiliary identity cards* were created and were used for the particular purpose of such travels (in addition to the availability of usual FRG passports used for travel to countries outside the Eastern Bloc) until the reunification of Germany.

As this case holds evident parallels with the prevailing situations in Georgia, it is described in somewhat greater detail than those abovementioned and is structured into three parts: (a) it recounts briefly the legal status of Berlin after World War II, (b) it describes the travel and other identity documents issued to West Berlin residents during the partition of Germany and (c) it presents the

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9 A number of these are re-issued documents to the same persons.
actual travelling opportunities accorded to residents of West Berlin until the reunification of Germany in 1990.

i) From 8 May 1945, subsequent to the declaration of unconditional surrender by the German armed forces, the territory of the German Reich was under the occupation of the four Allied Powers. Germany was divided into four Zones of Occupation and was administered by the Allied Control Council. However, tensions emerged and increased between the Western Powers and the former Soviet Union concerning the future government of Germany as a whole. As a consequence, the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR) were established in 1949 in the respective Zones of Occupation. The legal status of these two entities and their legal relationship with the (former) German Reich remained an issue of dispute.

Initially, the FRG's Constitutional Court held that the German Reich continued to exist within the boundaries of 1937 and that the FRG was, from a legal point of view, identical with the German Reich; the GDR was seen not as a State under international law but as a regime installed by the Soviet occupying power. From the West German perspective, then, the two German entities were not foreign countries with respect to each other. This view did not change until 1969 and the Neue Ostpolitik. Whilst the FRG continued to consider itself as being identical with the German Reich as a subject of international law (although with a different territory), the GDR was now considered a State under international law.

As a consequence of the West German position regarding the continuity of the German Reich, Germans in both the FRG and the GDR possessed one—the German—nationality. In particular, FRG authorities maintained that all GDR citizens held a ‘dormant German (FRG) nationality’ which could be activated at any moment (usually by applying for a FRG passport upon presentation of GDR documents); without such ‘activation,’ FRG authorities did not treat GDR citizens as ‘German’ nationals. Most third States (with the exception of the socialist States) accepted this in practice.

In the GDR’s view, the German Reich had ceased to exist in 1945 (debellatio) and two entirely new States had been founded upon parts of the territory of the former German Reich. From a GDR perspective, therefore, no bond existed between the two German States. Since

1949, then, two different German nationalities existed with each of the two German States having its own nationals. In the view of the GDR, the populations followed the change of sovereignty in matters of nationality coinciding with each of the (new) States per the long-established principle of general international law.\(^{12}\)

ii) The situation of Berlin differed considerably from that of ‘Germany as a whole’ in that Berlin had been occupied by Soviet forces in May 1945. The Protocol of 12 September 1944 on the Zones of Occupation in Germany and the administration of ‘Greater Berlin’ had foreseen that the Berlin area would be jointly occupied by the Allied Forces. Berlin was to be divided into four sectors.\(^{13}\) The Protocol stipulated that the Berlin area was not part of one of the four Zones of Occupation of Germany. From 1948 onwards, when the Soviet Commandant withdrew from the joint administration of Greater Berlin, the administration of the city of Berlin was, in fact, divided. The three Western Sectors of Berlin were to a great extent included in the FRG’s constitutional, legal, economic and monetary systems. However, in 1949 when the three Allied Powers gave their consent to the Federal Constitution, they formally stated that West Berlin ‘may not be governed by the Federation.’ Nevertheless, the legal system of the FRG was, with few exceptions, also applicable in West Berlin; legislation was taken over and applied in West Berlin by means of special laws adopted by the West Berlin parliament. West Berlin was, therefore, in effect a political exclave surrounded by East Berlin and the GDR. This isolation was intensified by the erection of the Berlin Wall by East German authorities in 1961.

In the Quadripartite Agreement on Berlin of 3 September 1971, the four Allied Powers confirmed their rights and responsibilities relating to Berlin.\(^{14}\) According to the formal declaration in the Agreement, the ties between the Western Sectors of Berlin and the FRG could be maintained and developed, but these sectors would continue not to be constituent parts of the FRG and not to be governed by the latter. The international representation of West Berlin by the FRG was accepted by the Soviet Union and the GDR and a so-called Transit Commission was established to solve disputes or conflicts between the two German States with regard to transit between West Berlin and the FRG. In return, the GDR achieved a quasi-recognition (beyond the Eastern Bloc) as a State under international law.


The nationality of permanent residents of West Berlin was highly disputed between the two German States. Under the FRG’s position, such persons had ‘German’ nationality since West Berlin was occupied territory of the German Reich. As a result of the abovementioned position that the FRG was identical with the German Reich as a subject of international law but only ‘partly identical’ as concerns territory and population, therefore, permanent residents of West Berlin—the same as Germans in the FRG, East Berlin and the GDR—held ‘German’ nationality. However, the ‘German nationality’ of permanent residents of West Berlin was not considered to be a ‘dormant’ one that needed ‘activation’ as in the case of citizens of the GDR (including residents of East Berlin). In contrast thereto, the GDR did not accept the ‘German’ (FRG) nationality of permanent residents of West Berlin. In the understanding of the Government of the GDR, the nationality of such persons was different from the ‘German’ (FRG) nationality: according to the GDR, since the German Reich had ceased to exist in 1945, West Berlin could not be part of the FRG. Therefore, in the view of the GDR, the FRG could not validly issue ‘German’ (FRG) passports or other identity documents to permanent residents of West Berlin.

In practice, these opposed and contested positions led to complications when permanent residents of West Berlin intended to travel into or through East Berlin, the GDR or other Eastern Bloc countries. As a result, a special arrangement was required to address these extraordinary circumstances and respect the free will of the individuals concerned.

After the institution of governance by the Allied Control Council in Germany and the subordinated Allied Kommandantura in Berlin, the military governments established the obligation of every person in Berlin (and elsewhere) to carry identity documents. For this purpose, they issued military legislation. The Allied Kommandantura, by decree BK/O (46) 61 of 24 January 1946, introduced an identity document called auxiliary identity card (in German: Behelfsmäßiger Personalausweis) in all four sectors of Berlin.

After October 1953, East Berlin residents received the usual identity documents: identity cards (Personalausweise) and passports of the GDR, as the GDR Government and the Soviet Union considered the Soviet Sector of Berlin to be a regular part of the GDR and
even its capital, despite continual protests from the Western Allied Powers based upon the wording of the applicable international instruments regulating the occupation of Berlin resulting in the status of East Berlin as part of an occupied city.

In contrast thereto, the FRG did not issue its regular identity cards (*Personalausweise*) to residents of West Berlin. Until Germany’s reunification in 1990, residents of West Berlin continued to receive the abovementioned *auxiliary identity cards*.

The West Berlin auxiliary identity cards, however, differed visually from the regular FRG identity cards. They had green bindings instead of the grey FRG standard and did not show the Federal Eagle.

Permanent residents of West Berlin could, in fact, receive two documents: passports and *auxiliary identity cards*. The passports issued in West Berlin were identical to those issued in the FRG. They were labelled with ‘Federal Republic of Germany’ and issued not by the West Berlin authorities but by the FRG Ministry of the Interior.

The West Berlin auxiliary identity cards, however, differed visually from the regular FRG identity cards. They had green bindings instead of the grey FRG standard and did not show the Federal Eagle. Importantly, the documents did not contain any indications as to the issuing State. They included, however, a statement that the holder of the document is a German citizen. Upon entry into countries of the (then) Eastern Bloc, their authorities sometimes ‘over-stamped’ this statement with the note that the holder of this document was a person with a permanent residence in West Berlin in effect varying or, rather, specifying the terms by which they ‘recognised’ (i.e., accepted) the document and its statements and allowing its use for practical purposes.

The term ‘*Behelfsmäßiger Personalausweis*’ without the indication ‘FRG’ and without the Federal Eagle was also maintained when the new machine-readable identity cards were introduced in 1987 in the FRG and West Berlin.
2.2.3.3 Travelling opportunities for West Berlin permanent residents

It was possible at all times for West Berlin residents to enter Western countries. The FRG passports issued to West Berlin residents were accepted as well as the auxiliary identity cards if West German identity cards would suffice (for the purposes of the receiving States) for residents of West Germany.

Passage through the Soviet zone of occupation was nearly always possible under the conditions of the so-called Transitverkehr (‘Transit Traffic’) except for the period of the Soviet Berlin Blockade from June 1948 until May 1949.

After the creation of the GDR, Transit Traffic between the FRG and West Berlin was always burdened with political implications. In principle, West Berlin residents could travel to the FRG and West German residents to West Berlin. The situation was exacerbated, however, because of the lack of agreements on this issue. Transit Travel was possible only on specially defined air, sea and land routes and the GDR authorities collected special tolls for using the roads. From 1968 onwards, it was also required that West Berliners obtain a visa for transit between West Berlin and the FRG.

After the construction of the Berlin Wall in 1961, residents of West Berlin could not even visit East Berlin. Between 1963 and 1966, agreements between the Senate of West Berlin and the Government of the GDR (in German: Passierscheinabkommen) allowed West Berlin residents only brief visits to their family members in East Berlin for Christmas and the New Year.

The Passierscheinabkommen, which were also accepted by the Government of the FRG and the Western Allies, were the starting point for a new policy for Germany (Neue Ostpolitik). It is notable that humanitarian reasons became more important than questions of legal status.

The Quadripartite Agreement on Berlin of 1971 and the subsequent FRG-GDR Transit Agreement of 17 December 1971 (Transitabkommen) created a new legal basis for travels by West Berlin residents. It thereby became possible for them not only to visit (close) relatives in East Berlin but also friends and mere acquaintances in East Berlin and the whole GDR, albeit with a special visa. Visas for the transit through GDR territory were thereupon issued directly at the point of entry to the driver of the car, and luggage carried on transit travels was not controlled. However, West Berlin residents still had to use their auxiliary identity cards and not their FRG passports when entering or
passing through East Berlin, the GDR or other Eastern Bloc countries. The authorities of the Eastern Bloc States accepted the *auxiliary identity cards* as travel documents only in order to express their understanding of West Berlin's special legal status as not being part of the FRG.

After the fall of the Berlin Wall in 1989, the requirements applicable to West Berlin residents for entering East Berlin or the GDR and the Transit Travel were gradually eased. Eventually, all intra-German border controls were repealed by 30 June 1990, which was the day of the entry into force of the Economic and Monetary Union between the FRG and the GDR. This was followed by the re-unification of Germany on 3 October 1990. The extraordinary situation had fully ended as had the basis or need for non-standard travel documents.
The above examples show that, in essence, the issuance of status neutral travel documents is possible and permissible under international law, and may be acceptable and welcomed in so far as they facilitate the human rights and well-being of the affected persons.

PART 3.
CONCLUSIONS AND RECOMMENDATIONS

This study has selected the abovementioned cases due to their relevance to the particular Georgian case. It needs to be reiterated, however, that each and every case is by nature *sui generis*. At the same time, the above examples show that, in essence, the issuance of status neutral travel documents is possible and permissible under international law, and may be acceptable and welcomed in so far as they facilitate the human rights and well-being of the affected persons.

In particular:

i. It is within the sovereign right of any State to issue documentation of its choosing. Indeed, it is arguably a duty of the State to issue appropriate documentation in order to facilitate the enjoyment of human rights (notably, in this context, freedom of movement, including the freedoms to leave and return to one’s country).

ii. It is neither unforeseen nor unprecedented that in unusual situations non-standard documents are created and used that are appropriate to the circumstances.

iii. International relations knows a wide variety of practice that constitute flexible and pragmatic solutions in such situations.

iv. Georgia is currently a case of a *de facto* divided State with contested positions negatively affecting the populations.
In proposing the issuance of a status neutral travel document, the Government of Georgia has acted within its sovereignty in a responsible, flexible, sensitive and pragmatic manner—consistent with international law and practice—to facilitate enjoyment of the human rights of the affected populations and to promote opportunities for social interaction contributing to peace and stability, and is seeking international co-operation in support of its initiative and efforts.

v. Such international co-operation is wholly consistent with international law and established practice in such unusual situations and would be supportive of the legitimate and responsible actions of Georgia, encouraging friendly co-operation for the sake of the intended individual beneficiaries and to help ‘unfreeze’ the prevailing situations with their attendant risks.

i. In the particular context of the unusual situations prevailing in Abkhazia and South Ossetia, the initiative and determination of the Government of Georgia to make available a status neutral travel document for the benefit of the affected populations is to be welcomed as a responsible, flexible, sensitive and pragmatic exercise of Georgian sovereignty that seeks to facilitate the enjoyment of human rights and contribute to social cohesion, peace and stability.

ii. The initiative of the Government of Georgia should be supported by the international community in such a way that States in their bilateral relations with Georgia, and also through multilateral organisations, should co-operate with Georgia to achieve, in practice, the use of the status neutral travel document with the desired results for the benefit of the affected populations.
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