THOUGHTS ON CITIZENSHIP AND HUMAN RIGHTS IN NON-RECOGNISED STATES IN THE FORMER SOVIET SPACE.

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1.Introduction

This paper seeks to shed light on a frequently overlooked matter: the human rights of individuals who are citizens of entities that are not recognised as states (referred to as non-recognised states, or NRS). This is especially relevant when these individuals interact with other states.[1] After this initial introduction, the second paragraph seeks to identify the key aspects of the issue for analysis. In the third paragraph, a concise summary is provided of a fundamental issue underlying the problem at hand - the complex dynamics between states and entities that lack official recognition but still exert control over a territory and its population. The paragraph also explores how legal doctrine and jurisprudence have approached these relationships across various areas of law. The fourth paragraph discusses the issue of NRS citizenship within the NRS borders, and introduces some basic problems related to human rights. The analysis in paragraph five examines the human rights of NRS citizens when they are abroad. It specifically looks at two important moments: the moment they leave the NRS and the moment they settle in a foreign country and seek to exercise their rights. Lastly, the sixth paragraph concludes the discussion, provides additional research ideas, and proposes a practical approach for states to balance their sovereignty under public international law with the protection of individual rights, acknowledging the reality of NRS and their impact on countless lives in a world where states are no longer the sole subject of international law.

2. Identifying the problem

The events that took place in Nagorno-Karabakh between 2020 and 2023, as well as the invasion of Ukraine by Russia in 2022 (following an armed conflict that existed since 2014), have brought attention to the frequently overlooked matter of the NRS. These are entities which possess the three internal elements of "internal" sovereignty under public international law (territory, population, effective government and permanent administration) and also possess, though to a certain limited extent, the "external" element of sovereignty, independence in international relations, although this independence is limited by precisely by the lack of recognition by other states. [2] It is crucial to separate the idea of sovereignty from jurisdiction, in the case of NRS. The first pertains to the inherent power of a sovereign

[1] In this paper the term state is used for states generally recognised as such by other states under public international law.

[2] Crawford, The Creation of States in International Law, 2nd ed., Oxford University Press, 2006, pp. 3-36

state and encompasses the scope of its powers. The second aspect, on the other hand, pertains to the effective exercise the state powers by the state, and it is divided in jurisdiction to prescribe, to enforce and to adjudicate.[3] The issue of NRS sovereignty certainly is an object of dispute, since their external sovereignty is extremely limited or non-existent. However, in most cases, the NRS exercises effective control over its territory and has a functioning legal system that governs legal relations within its borders. This means that the NRS is able to effectively prescribe, enforce, and adjudicate the law within its jurisdiction. In the post-soviet space, there were previously several NRS, but the number has been reduced to three following the annexation of the separatist republics of eastern Ukraine by Russia[4] and the dissolution of Nagorno-Karabakh.[5] These three NRS are Transnistria, Abkhazia, and Southern Ossetia. There are other examples in different parts of the world, such as Taiwan, Kosovo, Palestine, the Turkish Republic of Northern Cyprus (TRNC), and Somaliland. Every one of these cases has its own unique characteristics and distinctions. At this early stage of the analysis, it is noteworthy that these cases share some common characteristics: they saw the light as the result of a crisis, a breach in normal interstate relations, they claim independence from a parent state, and they have not been acknowledged by a significant number of members in the international interstate community, namely the recognised states.

In contemporary public international law, the requirement of state recognition is not necessary to establish statehood, which is assessed according to the principle of effectivity. However, recognition plays a significant role in ensuring that a state's claims and positions are recognised as legitimate on the international stage.[6] Despite their potential effectiveness, NRS still encounter various challenges. This paper addresses certain issues related to the lack of recognition of statehood, specifically how it hinders the population of NRS from fully exercising their rights. These challenges include the absence of international platforms for addressing human rights violations and the challenges that arise when NRS citizens interact with other states. This paper delves into the issue of NRS citizenship and its impact on individuals when they engage with foreign jurisdictions. Specifically, it explores how this unique situation can affect the individual's human rights. The analysis will briefly discuss international justice as a source of inspiration for possible approaches but does not aims as discussing in depth the work of international courts in relation to NRS.

The starting point is the very concept of citizenship and its legal implications. Citizenship is '*a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and*

[3] Marrella, Carreau, Diritto internazionale, 4th ed., Giuffrè, 2023.
[4] Treaty between the Russian Federation and the Donetsk People's Republic on the incorporation in the Russian Federation of the Donetsk People's Republic and the establishment of a new federal subject of the Russian Federation, done at Moscow on 30 September 2022, entered into force on 05 October 2022; Treaty between the Russian Federation and the Luhansk People's Republic on the incorporation in the Russian Federation of the Luhansk People's Republic and the establishment of a new federal subject of the Russian Federation, done at Moscow on 30 September 2022, entered into force on 05 October 2022;
[5] https://www.rferl.org/a/armenia-azerbaijan-separatists-decree/32743775.html [need legal source!}
[6] Marrella, Carreau, Diritto internazionale, op. cit.

sentiments, together with the existence of reciprocal rights and duties' between an individual and a state.[7] Individuals who lack a legal bond with any state are considered stateless and fall under the protection of international law. [8] On the other hand, individuals who face persecution from the state they hold citizenship in are regarded as refugees, another group that receives special protection.[9] This is important to consider in the context of human rights, since one of the key aspects of human rights is that they apply to all individuals, regardless of their legal status.[10] However, in an international society that is primarily based on relationships between states, individuals are often identified by their legal identity (the recognition as a person before the law) of a state. [11] This legal identity, often tied to citizenship, serves as the main link between an individual's legal identity and a state.[12] The close connection between these two concepts is evident in the fact that it is the state of citizenship, in general, that provides the primary proof of a person's legal identity, the legal identity document.[13] Individuals who lack citizenship, yet are entitled to protection under human rights law (as all states are obligated to respect, protect, and fulfil human rights),[14] are granted a distinct legal identity by international law.

Given that the right to citizenship is considered a fundamental human right, as recognised in the Universal Declaration of Human Rights (UDHR),[15] (as it is the right to a legal identity),[16] the issue surrounding NRS becomes quite delicate. On one hand, NRS grants citizenship that is legally recognised and valid within its own territory, possessing the characteristics mentioned earlier. This indicates that there exists a legal connection between the NRS and the individual, which is authentic and shows a genuine link. However, it is important to note that this sort of citizenship may not be opposable to other states and internationally the same way as citizenship of recognised states. As a result, individuals may face limitations in exercising their rights when engaging with other states beyond the NRS. It is crucial to acknowledge that generally citizenship is primarily determined by the laws of the issuing state.[17] Failing to recognise the state, and thus the authority of the state in making the law can create complications, as it may result in the non-recognition of one's citizenship. This, in turn, can severely restrict an individual's ability to exercise their rights.

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[7] ICJ Nottebohm Case (second phase), Judgement of April 6th, 19: I.C. J. Reports 1955, p. 4.; see also Von Rutte, The Human Right to Citizenship, Brill, 2022.
[8] Convention Relating to the Status of Stateless Persons, done at New York on 28 September 1954.
[9] Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951.
[10] UDHR, Art. 1.
[11] Ganohariti, Aspirant States and the (Non-)Recognition of Legal Identity (Documents), in Armed Groups and International Law, 31 march 2023.
[12] Coulmas, Identity: A Very Short Introduction, Oxford University Press, 2019.
[13] United Nations Country Team operational guidelines on Implementation of the United Nations Legal Identity Agenda, points 58-64 https://unstats.un.org/legal-identity-agenda/documents/UNCT-Guidelines.pdf
[14]
[15] UDHR, Art. 15, "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality" and subsequent legal instruments
[16] UDHR, Art. 6
[17] Private international law

Citizenship plays an essential role not only in human rights but also in various aspects of an individual's life. It has a significant impact on a person's legal capacity, which is determined by the laws governing citizenship.[18] This, in turn, has far-reaching consequences, including the ability to exercise private autonomy. This is applicable in both the individual's home jurisdiction and when they act in foreign states. Certain acts of personal autonomy are covered also by human rights law. Interestingly, private international law (PIL) was the first discipline to tackle the issue of how a state legal system interacts with an NRS legal system and establishes practices and rules for such interactions. PIL focuses on the intricate dynamics of cross-border private relationships, particularly in determining the applicable law for a specific situation, which may involve foreign laws outside the jurisdiction where the situation occurs. Indeed, the existence of the state is a fundamental aspect of PIL. [19] Human rights issues are distinct from private matters, especially for what concerns those private issues not covered by human rights law. However, the tools proposed by PIL can offer valuable resources to begin addressing these concerns, particularly when there is an intersection between human rights and private interests. The tools provided by PIL are, however, insufficient and only effective when dealing with private interests.[20] When exploring human rights protection, it is essential to consider the broader implications beyond individual interests. Central to this discussion is the dynamic between the state, the individual, and administrative actions of NRS, even go beyond legal identity documents. Simply put, the issue quickly falls under the realm of administrative law. [21] Private relations (and private law) are closely intertwined with public law, and specifically, private relations are rarely disconnected from administrative law, as will become more evident in the following paragraphs. Furthermore, there are certain situations that pose significant challenges when trying to integrate them into the overall context.

Administrative law becomes relevant when the state begins to handle the primary document that establishes citizenship and proves legal identity, the legal identity document. This document is essential for individuals to exercise their rights and fulfil their duties. It is indeed true that citizenship is one of the main connecting factors in PIL, and specific regulations are in place to address situations where refugees and stateless individuals are involved. There are legal identity documents that serve domestic and external purposes. Legal identity documents for domestic purposes include identity cards, driving licences, and domestic passports, while legal identity documents external purposes are typically served by travel passports. However, the legal identity document is just one of the legal acts issued by NRS, and it only covers basic limited situations. A more intricate scenario may necessitate a state to handle a wide range of legal documents issued by the NRS or under the law of the NRS. These

[18] Basedow, Non-Recognised States in Private International Law, in Bonomi, Romano (eds.), Yearbook of Private International Law, Volume 20 (2018/2019), pp. 1-14.
[19] Basedow, op. cit.
[20] Basedow, op. cit.
[21] Handrlica, The Law of Non.Recognised States in International Administrative Law, in Persona e Amministrazione, 11(2), 2022, pp. 757-786.

may include criminal records, marriage clearances, medical records, college diplomas, or even judgments.

3. Preliminary observations: relations between states and NRS

Once the key problem has been identified, it is necessary to take an additional preliminary step. The entire analysis hinges on the decision of a state to recognise or deny recognition to another entity as a state. Thus, the approach taken by the state to address the issue discussed in the previous chapter is greatly impacted by the dynamics between the state and NRS. The introduction points out that NRS encompasses a wide range of situations, including puppet states under foreign military occupation and entities like Taiwan that function as de facto states. The relationship between states and NRS has been a long-standing historical reality. This was particularly evident during the Cold War, when Europe was divided by the Iron Curtain, and not all states on one side recognised those on the other side. Germany did not acknowledge her neighbours until 1970s, however, this does not imply that there were no connections between individuals from those different areas. In recent years, International Courts have made rulings on various cases, including those related to the TRNC, Palestine, Crimea, and the self-proclaimed republics of Donetsk and Luhansk. These rulings have covered a range of topics, from human rights issues to more typical private matters like business relations.

Relations between states and NRS, which basically a matter for public international law (and to a certain extent for politics, rather than for law)[22], become nevertheless relevant when dealing with private rights and human rights. There is a connection between interstate relations and the impact on individuals. In some cases, states may be reluctant to recognise acts created under the legal system of a NRS. This hesitation arises from concerns that recognising an act of an NRS could be seen as indirectly recognising the NRS as a state. Through the examination of state practice, legal scholars have been able to discern various approaches taken by states, particularly in private matters, with a particular focus on the decisions made by courts.[23] The approach a particular state typically follows is closely linked to its interaction with a specific NRS, and it can differ from one NRS to another. This topic will be addressed later after providing a brief overview of the approaches that have been adopted in state practice.

The first approach is the normative approach[24], which ties together public international law and private matters. According to this approach, if a state does not recognise another state, it should not recognise any acts produced by the legal system of the NRS. This approach emphasises the importance of state sovereignty in a international society basically composed of states, and originates from a time when

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[22] Konig, Die Anerkennung ausländischer Verwaltungsakte, quoted in Handrlica, op. cit.
[23] On the approaches to the relations between states and NRS a brief selection of literature includes:
[24] Basedow, op. cit.

state recognition was regarded as a constitutive element of states.[25] Although this approach offers the benefit of creating consistency and unity within the international legal system, it does restrict the effects of events occurring in an NRS to the borders of the NRS itself. This limitation applies even in situations where the effects are genuine and tangible. As the international society has grown in complexity, sustaining this approach has become increasingly challenging. During the occupation of the Ruhr by France and Belgium following the First World War, a first critical observation to the normative approach in Europe was suggested.[26] The denial of recognition by Germany to the acts issued under the military administration of the region, were justified based on public policy reservation.[27] Said acts had a tangible effect and it would be awkward to deny they had any effect on the basis the military occupation of the Ruhr was not recognised. By utilising public international law tools, this perspective allows to deny any legal effect to said acts on the territory of the non-recognising state while separating state recognition from the recognition of the legal system and its related acts of the entity that is not recognised.

A second approach, known as the factual approach, has emerged in state practice. Although it gained popularity during the Cold War, the roots of this approach can be traced back to the American Civil War. During this time, the Supreme Court of the United States of America grappled with the challenge of the validity of certain acts issued under the law of the independent (and unrecognised) Texas.[28] The Supreme Court of the United States recognised that in certain cases, it may be necessary to recognise acts of NRS. Specifically, if these acts are issued by a effective government and are deemed necessary for maintaining "peace and order" among individuals (implying the effects are for private relations), they can be acknowledged without requiring recognition of the NRS as a state under public international law.[29] In brief, the Supreme Court of the United States acknowledged a cornerstone feature of the factual approach: if it weren't for the lack of recognition of the NRS, there would not be any reasons for that act and for the depending legal relations not to function. The approach was confirmed by the International Court of Justice (ICJ) in its Advisory Opinion on "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)" (the Namibia Opinion)[30]. The ICJ believes that "*In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international cooperation*" adding that "*while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for*

[25] Crawford
[26] Handrlica, op. cit.
[27] Neumayer
[28] Basedow
[29] Ibid.
[30] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.

instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory".[31] European domestic courts have increasingly adopted a factual approach during Cold War.[32] However, it is worth noting that a different approach is taken towards certain NRS that are nonetheless considered part of the international community. One notable example is Taiwan, which is considered de facto as a state by most countries.[33] On the other hand, there is a lack of established practice when it comes to NRS that are less integrated into the international community, like Abkhazia, Southern Ossetia, or the self-proclaimed people's republics in eastern Ukraine that were later annexed by Russia.[34] However, a potential explanation for this could be that these individuals engage with foreign states not as citizens of the NRS, but as citizens of the patron state. This will be explored in more detail in the upcoming paragraphs.

At last, a third approach arose alongside the evolution of human rights. The humanitarian approach, which has been extensively examined and applied in the field of human rights, has its roots in international courts, such as the European Court of Human Rights (ECtHR). However, its relevance extends beyond the realm of international jurisdictions and can provide valuable insights when addressing the rights of NRS citizens across different legal contexts, including foreign state courts and administrative bodies. The ECtHR was tasked with resolving cases concerning human rights across all NRS in the European continent. The European Convention on Human Rights (ECHR) confers jurisdiction to the ECtHR regarding issues pertaining to the interpretation and application of the ECHR.[35] The ECtHR initial challenge was to determine the admissibility of the claims that referred to facts happened on the territory of an NRS. Article 1 ECHR states that "*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*."[36] However, the existence of an NRS poses its own set of challenges as they are not official members of the ECHR but still exert effective control over the territory, which is de jure the territory of a state Party to the ECHR. As a result, the court has determined that it has the competence to adjudicate certain acts of the parent state, even if it does not have complete control over them. This jurisdiction is limited to acts that the parent state is capable of carrying out.[37] Additionally, the court can also exercise jurisdiction over the acts of a foreign state that is exerting its authority beyond its own borders (thus extraterritorially), specifically in relation to the territory of the NRS. This state is commonly referred to as a patron state, as it provides varying degrees of protection or sponsorship to the NRS, without necessarily officially recognising it. Upon initial examination, this approach appears to align more closely with the normative approach, disregarding the presence of the NRS or simplifying

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[31] Ibid. para 125
[32] Basedow
[33] Crawford, p. 198-219
[34] Handrlica
[35] ECHR, Art. 32
[36] ECHR Art. 1
[37] Ilascu and others v Moldova and Russia

it to the definition of "*local authorities sustained by rebel forces*".[38]Nonetheless, this approach serves as a means to prevent the court from making a determination on sovereignty and, more significantly, avoids the possibility of denying justice to individuals due to the NRS not being a party to the convention. However, during the proceedings, in certain circumstances, the ECtHR tends to take a more factual approach. As an example, the rules of procedure of the ECtHR include the widely recognised principle of exhausting domestic remedies.[39] The ECtHR has often found the NRS courts to provide ineffective remedies, but in specific cases involving the TRNC[40], the ECtHR has deemed the remedies provided by the NRS to be effective. When it comes to admissibility before the ECtHR, the exhaustion of domestic remedies is a crucial requirement. However, it is worth noting that the ECtHR often finds itself handling cases that involve acts carried out under the law of the NRS during the proceedings on the merits. Local authorities are frequently the sole recourse for individuals within the jurisdiction of the NRS.[41] If the ECtHR were to disregard those acts, it would undermine the primary objective of the ECtHR itself, which is to ensure compliance with the ECHR (and ultimately, providing access to justice to the victims).[42] It is worth noting that the decisions of NRS authorities can be considered in relation to purpose of the ECHR, without implying any recognition of the NRS as sovereign.[43] The humanitarian approach adopts the spirit of the aforementioned Namibia Opinion, in particular in preventing detrimental effects of non-recognition of certain acts,[44] but to do so it seems to be combining elements of the normative approach with those of the factual approach for the purpose of humanitarian endeavours. It functions effectively at the international courts level, but can also serve as a model for the relationships between states and foreign individuals from an NRS.

Considering the current state practice, it is challenging to pinpoint a single uniform approach. Of course, each situation requires an individual approach, but there are examples of similar cases that are treated differently by the same state. However, it is worth noting two significant trends: firstly, the growing recognition of human rights and the corresponding obligation to safeguard individuals as human beings, regardless of their legal status, has resulted in states relying less on a normative approach when dealing with the state and NRS.[45] Furthermore, the perception that states have of a particular NRS plays a significant role in state practice, especially in determining which acts to recognise. When the NRS is seen as part of the international community, like in the examples of the Cold War relations or the case of Taiwan, there is a tendency to take a broad factual approach and recognise most (if not all, in particular in the case of Taiwan) public acts. However, when the NRS is not perceived as such, like in the former Soviet space or Somaliland, or even the Islamic State, a more normative approach is observed

[38] Ibid.
[39] ECHR Art. 35
[40] ECtHR, Cyprus v Turkey; ECtHR Demopoulos v Turkey.
[41] Handrlica
[42] ECHR Art.19
[43] EctHR Mozer v Moldova
[44] Cfr. Supra note XY
[45] Handrlica

and public acts are only recognised in very limited cases and for specific purposes. The paper will primarily focus on the latter NRS, while combining insights from the former NRS. Valuable insights are provided from the humanitarian approach, that continues to focus on the authority of the controlling state. Recognising a legal system and the acts created within it does not necessarily imply recognition of the state that established the legal system. Instead, it is about identifying the most suitable set of rules for a specific situation.[46] The factual approach and to some extent also the humanitarian approach emphasised by the ECtHR highlight the importance of acknowledging that NRS have effective control over the territory and that the actions carried out within that territory are governed by a functioning legal system, regardless of whether the state is officially recognised.[47] The following paragraphs are based on this assumption.

4. NRS Citizenship and HR

Based on the initial overall observations, it is now possible to delve into the examination of NRS citizenship and the subsequent recognition, or absence thereof, of legal identity documents. Indeed, the issue of NRS citizenship is quite complex, even within the borders of the NRS. NRS arise generally as a disruption in the normal affairs of the international community.[48] In such cases, there are at least two parties involved, each asserting their own sovereignty and jurisdiction over the territory: the disputed entity and the state it seeks to separate from (the parent state). Both will provide individuals with citizenship and the related legal identity documents, and this poses certain challenges.

Regarding the state that claims the NRS as its own territory, there is a question regarding the effectiveness of its legal system within the NRS. Despite the state's recognition of all NRS citizens as their own, there are significant challenges in establishing any form of authority over the territory. Furthermore, there may be reluctance among the NRS population to become part of the state. Simply put, there is no real connection and no genuine link between the state and individuals. Individuals of the NRS who desire parent state's legal identity documents may be granted them by the state, provided they are able to relocate to an area where the state has jurisdiction. In order to accomplish this, regardless of the state's political stance on the NRS, the state will need to rely on the NRS's legal identity document to identify the individual. Essentially, the normative approach is not feasible unless the state refuses to grant its citizens state citizenship, which would be illogical since the state's objective is exactly to provide individuals with said citizenship. An example of this is the acceptance of Abkhazian identity cards by Georgia, for the purpose of the acquisition of Georgian identity documents or for the special status of “neutral citizen”.[49] This case illustrates the need to separate the recognition of the NRS under public international law from the recognition of the acts produced under the NRS legal system. By

[46] Gruenbaum
[47] Handrlica
[48] Cfr. supra, note XY
[49] Republic of Georgia, Law on “Occupied Territories”, art. 8

doing so, it is possible to prevent absurd situations that would contradict the objectives of the non-recognising state.

At the same time, the NRS provides citizenship that is fully operational within its own borders. However, it should be noted that in terms of international opposability, the citizenship mentioned earlier (along with the related legal identity documents) may not be accepted or recognised by other countries. This will be discussed further in the following paragraph. However, the issue of whether an NRS citizenship can be recognised internationally is also important when it comes to individuals seeking to address domestic human rights abuses in international fora. As previously discussed, the humanitarian approach and extensive practice of the ECtHR in handling claims from NRS citizens or events occurring within their territory have emphasised the concept of effective control over the territory rather than formal citizenship and identity. This approach involves a third state, known as the patron state.

The patron state often extends its citizenship to individuals of the NRS, referring to humanitarian reasons as one of the main the justifications. This allows NRS individuals to obtain a globally recognised citizenship and legal identity. At first glance, this may appear to be a positive development, as it enables individuals to address their everyday issues before legal processes take its course. However, this could occur in violation of international law. A notable instance of this can be seen in the passportisation campaign carried out by Russia in the Russian sponsored NRS in Georgia[50] and in Eastern Ukraine.[51] The passportisation case raises an important issue: when a patron State requires or encourages the adoption of its own citizenship, it creates a loophole. This is because having that citizenship is essential for fully enjoying one's human rights, especially when outside the NRS. Other states may not recognise the exorbitant citizenship[52], even though they generally recognise the acts of the patron state generally, because under public international law all the states have an obligation not to recognise situations that arise from illegal acts.[53] This was in fact the position of the EU states decided to do towards Russian passports issued in the occupied areas of Ukraine and Georgia.[54] However, taking such a rigid normative position may lead to a potential infringement on the basic rights of individuals, as elaborated in the following paragraph.

Prior to delving into the examination of the two key instances individuals encounter when dealing with foreign legal systems, it ought to remember that the right to citizenship and legal identity are

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[50] Peters
[51] Barbirotto
[52] Peters
[53] Darsiwa art. 41 par. 2.
[54] European Union, Decision (EU) 2022/2512 of the European Parliament and of the Council of 14 December 2022 on the non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia, and European Union, Commission Implementing Decision 2023/1061 of 31 May 2023 on the establishment of the list of travel documents of the Russian Federation issued in or to persons resident in regions or territories in Ukraine which are occupied by the Russian Federation or breakaway territories in Georgia which are not under the control of the Georgian government that are not accepted as valid travel documents for the purposes of issuing of a visa or of crossing the external borders.

fundamental human rights. However, it is worth noting that international law does not provide any mechanisms to hold a state responsible for the absence of a citizenship that is recognised internationally. This kind of situation can potentially result in serious issues concerning human rights, their fulfilment, and their safeguarding in foreign countries. Although there is established legal practice regarding the obligation to protect individuals when a state has control over a case involving violations committed within an NRS, the situation becomes more complex when the person's fundamental rights are exercised outside of the NRS in question. This is especially true when it comes to the international implications of a person's citizenship and their associated legal identity documents, which is the main focus of this paper. The absence of a widely recognised citizenship has a direct impact on numerous human rights, beginning with the right to emigrate from one's home country[55], and extending to the all the rights associated with settling in a foreign nation.

5. NRS Citizens abroad

When a citizen of the NRS decides to leave the NRS, they may encounter challenges regarding the recognition and validity of their legal identity documents and other important legal acts that are necessary for the enjoyment of their rights. Various challenges arise when individuals attempt to depart from the NRS, and when they manage to do so and seek a fresh start in another country. It is worth noting that the issues mentioned are not universally applicable, as an entity that is typically considered an NRS may be recognised as a state by certain states. In such cases, normal bilateral relations would occur between the two states. For example, the situation of South Ossetia and Abkhazia with Nicaragua is relevant when discussing the former Soviet space.[56]

5.1 Moving abroad

The very first problem faced by the NRS citizen is how they can eventually exit the NRS. Although in many cases this can be resolved by using the travel passport of the patron state, it is nevertheless pertinent to consider whether these passports were issued in violation of public international law, as seen in the instances of Russian passports issued in Ukraine and Georgia. A solution could envisage that individuals holding only the passport of an NRS may be granted certain rights by third states that are similar to the fundamental rights of movement for refugees. However, these rights may be limited by the requirement of meeting certain general conditions for establishment, similar to those applied on non-favoured foreigners. This could be particularly valuable in situations where there are established instances of human rights violations within the NRS, which do not specifically target individuals (thus not leading to international protection), but nonetheless create highly dangerous circumstances for life within the NRS. This solution addresses the issue for individuals in the NRS who wish to relocate

[55] UDHR, Art. 13 par. 2
[56] Decree of the President of the Republic of Nicaragua No. 46-2008, and Decree of the President of the Republic of Nicaragua No. 47-2008.

without being compelled to acquire the citizenship of another state. Additionally, it establishes a foundation for the protection of fundamental human rights once they leave the NRS. However, this approach necessitates the acceptance of the NRS travel document, which in turn requires states to avoid adopting a normative approach, which might contrast with the foreign policy of the state.

5.2 Establishment abroad

Even after an NRS citizen is admitted into a foreign country, there may still be concerns regarding the rights they can enjoy, especially when it comes to human rights. What if someone, while overseas, wishes to marry a citizen of the state and requires a wedding clearance that can only be obtained from the NRS authorities? What if someone wants to pursue higher education but only has diplomas from the NRS? These are just two examples of fundamental human rights that necessitate resort to legal acts related to citizenship under the NRS. The best answer to these problems was offered by the ICJ in 1971, in the aforementioned Namibia Opinion. It is vital to ensure no prejudice is caused to individuals, especially when dealing with rights pertaining to family and private matters. A factual approach should be taken to avoid that individuals are those who in practice bear the burden of acts of both states and NRS under public international law. If the authorities of the NRS have effective control over the territory, the necessary acts required to fulfil human rights should be recognised, in accordance with the spirit outlined in the Namibia Opinion.

6. Moving forward

The issues presented encompass a majority of the challenges encountered by an individual who possesses the citizenship and legal identity document of an NRS. However, the situation can become more intricate, with increased state involvement, thereby deepening the connections between the private and public domains. There are certain issues that need to be further researched and, if necessary, also addressed by the courts. One example is the potential international responsibility of a State when one of its citizens, acting in an official capacity for the State, engages in wrongful act. Another interesting case to consider is when a citizen of the NRS requires diplomatic protection against an alleged violation committed by a state. Additional examples could explore human rights indirectly, focusing on different areas of international law like investment law or environmental law. The position presented in this paper advocates for an extensive interpretation of the humanitarian approach when human rights are at stake. When the international community upholds human rights and states are dedicated to respecting, protecting, and fulfilling these rights, it is imperative that the non-recognition of the NRS should not serve as a basis for denying individuals access to their fundamental human rights. The states are called to accept that the contemporary international society is different from the XIX and XX century inter-state society, and it exists along a rapidly evolving transnational society. According to theory of *dedoublement fonctionnel*, the state itself has the duty to oversee and protect the fundamental values of the international system, in addition to its traditional functions, and among those

values are fundamental human rights. Even in the most extreme situations of non-recognition, such as the EU's normative approach towards Russian-issued legal identity documents in Eastern Ukraine, it is essential to maintain a humanitarian reservation. This reservation ensures that individuals are not held responsible for actions that are beyond their control, keeping in mind that for many the authorities of the NRS and those of the patron state are the sole to which the individual can resort. Furthermore, a denial of recognition of the NRS-issued legal identity documents would represent a gross violation of human rights, contradicting the very values that the international community and the states purport to uphold.