

# THE RIGHT TO EDUCATION OUTSIDE UNRECOGNIZED ENTITIES AND OTHER CURRENT ISSUES OF INTERNATIONAL LAW



Article

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## Realization of the Right to Education outside Territories with a Disputed Regime by People Who Received the Education Therein

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**Abstract:** Difficulties arising from the realization of the right to access to education outside a territory with a disputed regime by individuals who obtained previous qualifications in such territory have existed for a long time. The issue was exacerbated after the Ukrainian political crisis of 2014 that led to the emergence of two self-proclaimed entities — the Donetsk People's Republic and the Luhansk People's Republic — and posed the question on the further destiny of young people who finished secondary schools in these territories. Although eventually many of them were admitted to Russian universities, it did not resolve the issue fundamentally. Therefore, the authors have set themselves a goal to answer the following question: is it in compliance with international law if a state body, a state agency, or a state educational institution refuses to recognize the qualification on the sole ground that it was obtained in

a territory with a disputed regime? While the answer should be negative, it seems that most states do not share this opinion. The possible solution to this and other issues concerning the implementation of the rights of people living in such territories is to conclude the treaty that will guarantee the implementation of all basic human rights that people have under international law including the right to access to education. However, before its conclusion, it is expedient to set a Martens clause-like norm in an international instrument that may contribute to full and consistent implementation of their rights since they do require such protection today.

**Keywords:** territories with a disputed regime; unrecognized states; education; right to education; access to education; recognition of qualifications; discrimination

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## I. Introduction

Over the past three decades, as a result of multiple political and territorial transformations, the number of unrecognized states, or, more precisely, territories with a disputed regime, significantly increased.<sup>1</sup>

The emergence of such entities is a consequence of the conflict between the right to self-determination (Para. 2 Art. 1 and Art. 55 of the UN Charter) and the principle of territorial integrity (Para. 4 Art. 2 of the UN Charter). The territories in question are not members of the UN, and the UN member states are unable to take a common decision on their status: the same territorial entity may be considered an occupied territory by one group of states and a sovereign state by another. However, in political and academic debates, their participants frequently forget that such territories are inhabited by the people who are victims of inter-state disputes and whose rights, consequently, require special international protection. They are born and live, they receive an education, marry, enter into transactions, etc. The recognition of facts that take place in territories with a disputed regime outside such territories and the recognition of legal documents issued by their authorities is often of particular importance to the people living there since the implementation of their rights in such territories is limited due to its weak integration into the global economy and international relations. For instance, passport holders of *de facto* states cannot travel abroad due to invalid travel documents (Ekelove-Slydal, Pashalishvili and Sangadzhieva, 2019). This puts constraints on their right to freedom of movement. The same is true for the right to education: for economic reasons, the quality of education in these territories may not meet the needs of their inhabitants; this makes them seek opportunities for getting higher education abroad. All of these as well as other factors

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<sup>1</sup> Relevant statistical information varies. Caspersen and Stansfield denoted nine existing unrecognized states (Caspersen and Stansfield 2011, p. 4). In 2017, M. Dembinska and O. Campana identified eleven secessionist territorial entities fairly admitting at the same time that their counting is a contested matter (Dembinska and Campana 2017, pp. 254–255, fn. 2).

lead to the outflow of the population from the territories in search of fuller and more consistent realization of their rights.<sup>2</sup>

In the case of the Russian Federation (Russia), the issue of realization of the right to education by individuals who received previous education in the territories with a disputed regime is of particular importance, since graduates of schools located in such territories (e.g., Transnistria) often come to study to a Russian higher education institution. This raises the question if it is consistent with international law when a state acting through its bodies or institutions refuses to recognize the qualification on the grounds that it was obtained in such territory.<sup>3</sup> The outcomes of our studies on this issue are presented in this article.

## **II. The Concept of a Territory with a Disputed Regime**

There is no universally accepted notion for entities that we call “territories with a disputed regime.” For this purpose, in the doctrine, the term “unrecognized states” is used most often (Caspersen and Stansfield, 2011; Bolshakov, 2007; Dobronravin, 2013). Among less frequently-used terms one can denote those such as “unrecognized territories,” “self-proclaimed states,” “self-proclaimed republics” (Bolshakov, 2007, p. 84), “contested states” (Geldenhuis, 2009, p. 7), “de facto states” (Florea, 2020, p. 1005; Dembinska and Campana, 2017, p. 254), “secessionist territorial entities” (Dembinska and Campana, 2017, p. 254), “statelike entities,” etc. (Geldenhuis, 2009, pp. 26–27).

However, it seems that the term “territories with a disputed regime” is more appropriate in this regard. Firstly, it is emotionally neutral as compared to the terms where the word “self-proclaimed” is

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<sup>2</sup> For instance, the Transnistrian population was 706,300 people in 1990, while according to some estimates it was 475,665 people in October 2015, *see* Crivenco and von Löwis, 2022, pp. 51, 53.

<sup>3</sup> In this article, the term “qualification” is understood in the meaning it has according to Art. I of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region signed on 11 April 1997 (the Lisbon Recognition Convention), i.e., depending on the type of qualification, this may be a degree, diploma, or other certificate issued by a competent authority.

used.<sup>4</sup> Secondly, it does not contain the word “state,” which reduces its political sensitivity. Thirdly, it generally reflects the essence of the phenomenon it denotes, i.e., the territory where the political regime, the legality of which is disputed by one or more states, operates. For all these reasons, we use this term in the present article.

### **III. The Right to Access to Education as an Element of the Right to Education**

The right to education is one of the fundamental human rights (Gros-Espiell, 2005, p. 5; Ashenova, 2015, p. 22). It includes several elements — human rights, the realization of which leads to the implementation of the right to education, while the infringement of any of them constitutes a particular case of its violation. In this respect, the full scope of states’ obligations with regard to the right to education is generally characterized by four concepts: availability, accessibility, acceptability, and adaptability (Monteiro, 2021, p. 228). In particular, the Committee on Economic, Social and Cultural Rights (the CESCR) interpreted them in its General Comment No. 13 on the right to education enshrined in Art. 13 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR).

According to the General Comment No. 13, accessibility means that educational institutions and programs have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Moreover, it has three overlapping dimensions: (1) non-discrimination which means, *inter alia*, that education must be accessible to all, in law and fact, without discrimination on any of the prohibited grounds; (2) physical accessibility which means that education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location or via modern technology (e.g., access to a “distance

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<sup>4</sup> The fact that such terms as, for example, “self-proclaimed states” and “self-proclaimed republics” are filled with emotions was noted by A. Bolshakov (2007, p. 84).

learning” program); (3) economic accessibility, i.e., education has to be affordable to all.<sup>5</sup>

Access to education is considered as its element in Para. 2 Art. 1 of the Convention against Discrimination in Education (the CADE) according to which the term “education” refers to all types and levels of education and includes, *inter alia*, the access to education.<sup>6</sup> Since the CADE preamble refers to the right to education proclaimed in the Universal Declaration of Human Rights (the UDHR),<sup>7</sup> when interpreting the CADE, one should consider access to education not only as the element of education but as the subjective right and consequently as an integral part of the right to education.

Thus, from the international law perspective, the right to accessibility of education, or the right to access to education, is considered as an element of the right to education. At the same time, the right to access to education naturally includes the right to be enrolled in an educational institution, as well as the right to recognition of education when such recognition is necessary for enrollment in a state other than that where the education of the previous level was received. Without the realization of these rights, the right to access to education cannot be implemented.

#### **IV. The Right to Access to Education as a Universally Recognized Norm of International Law**

The right to access to education is enshrined in many international instruments. Para. 1 Art. 26 of the UDHR provides in particular that “[t]echnical and professional education shall be made generally

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<sup>5</sup> United Nations, Office of the High Commissioner for Human Rights (1999), *CESCR General Comment No. 13: The Right to Education (Art. 13)*, adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999, pp. 2–3, Para. 6. Available at: <http://www.refworld.org/pdfid/4538838c22.pdf> [Accessed 19.09.2023].

<sup>6</sup> This convention counts 109 states parties, including Russia. See Convention against Discrimination in Education of 14 December 1960. Available at: <https://en.unesco.org/about-us/legal-affairs/convention-against-discrimination-education> [Accessed 30.08.2023].

<sup>7</sup> Universal Declaration of Human Rights of 10 December 1948. Available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NRo/o43/88/pdf/NR0o4388.pdf?OpenElement> [Accessed 30.08.2023].

*available and higher education shall be equally accessible to all on the basis of merit.*" It follows that any man must have the right to access to education of the mentioned types and levels. As regards higher education, the word "all" means that any person must have this right, and personal knowledge and skills may be the only criterion for such access.

Although the UDHR was adopted as a non-binding instrument, the status of norms reflected in it has been changed, and it seems that now they are a part of customary international law. Firstly, it follows from Para. 7 of the Declaration on the Granting of Independence to Colonial Countries and Peoples according to which, all States shall observe faithfully and strictly the provisions of the UDHR.<sup>8</sup> Secondly, according to one of the provisions set in the CADE preamble, discrimination in education is a violation of rights enunciated in the UDHR. This implies that within these two instruments, the observance of the UDHR is considered as a matter of legal obligation rather than of discretion. Thirdly, scholars also opined in favor of the customary nature of the UDHR provisions (Balanescu, 2014, pp. 7–8). Fourthly, as regards Russia's approach to the issue, the Supreme Court of the Russian Federation considers the UDHR provisions as universally recognized principles and norms of international law<sup>9</sup> which means, *inter alia*, that they are of customary law nature.

The provisions of the UDHR were further developed in the International Covenant on Civil and Political Rights (the ICCPR) and the ICESCR, both adopted in 1966 (the Covenants). Unlike the UDHR, the Covenants are multilateral treaties that are legally binding for states

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<sup>8</sup> Declaration on the granting of independence to colonial countries and peoples dated 14 December 1960. Available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0152/88/pdf/NR015288.pdf?OpenElement> [Accessed 30.08.2023].

<sup>9</sup> See Plenary Session Ruling of the Supreme Court of the Russian Federation dated 31 October 1995 No. 8 (as of 03.03.2015) "On Some Issues Concerning the Application of the Constitution of the Russian Federation by Courts during the Administration of Justice," Para. 5. Available at: <https://cis-legislation.com/document.fwx?rgn=17004> (AI translated version in English); <https://vsrf.ru/documents/own/8342/> (In Russ.) [Accessed 30.08.2023].

parties. Currently, 173 states are parties to the ICCPR<sup>10</sup> and 171 states — to the ICESCR.<sup>11</sup> Russia is also a party to the Covenants.

As provided by Para. 2 Art. 13 of the ICESCR, States Parties thereto recognize that, with a view to achieving the full realization of the right of everyone to education: “...secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means...” (Subpara. “b”) and “...higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...” (Subpara. “c”). Consequently, the education shall be equally accessible not only to the nationals of a state party to the ICESCR but to all other persons as well. In this regard, as the CESCR concluded, the ICESCR rights apply to everyone including non-nationals regardless of legal status and documentation.<sup>12</sup>

In accordance with Para. “a” Art. 4 of the CADE, States Parties undertake in particular “...to make secondary education in its different forms generally available and accessible to all” and “...to make higher education equally accessible to all on the basis of individual capacity.” Largely, these norms correspond to the states’ wishes expressed at the time of CADE preparation. As such, it should include an article stipulating that the “Member States recognize in their laws and regulations and apply in their national practice the principle of equal access to education at all levels and of all types” (Daudet and Eisemann, 2005, p. 23).

The Convention on the Rights of the Child also provides that States Parties recognize the right of the child to education and, with a view to

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<sup>10</sup> International Covenant on Civil and Political Rights dated 16 December 1966. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en) [Accessed 30.08.2023].

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights dated 16 December 1966. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en) [Accessed 30.08.2023].

<sup>12</sup> Committee on Economic, Social and Cultural Rights (2009), *General Comment No. 20. Non-discrimination in economic, social and cultural rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, Forty-second session, Geneva, 4–22 May 2009, p. 9, Para. 30. Available at: <http://www.refworld.org/docid/4a60961f2.html> [Accessed 30.08.2023].



achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make secondary education, including general and vocational education, available and accessible to every child (Subpara. “b” Para. 1 Art. 28) and make higher education accessible to all on the basis of capacity by every appropriate means (Subpara. “c” Para. 1 Art. 28).<sup>13</sup>

It follows that the right to access to education is a universally recognized human rights norm and every state is obliged to ensure its implementation, including with regard to persons who received a previous education in territories with a disputed regime and wish to continue their education abroad. Consequently, a state may not refuse to recognize such education on the sole ground that the territory with a disputed regime is not recognized as a state by its government or by other states.

## **V. Refusal to Recognize the Education Received in Territories with a Disputed Regime as a Form of Discrimination**

The non-discrimination principle is the one underpinning human rights cooperation between states. The Human Rights Committee in its General Comment No. 18 found that the term “discrimination” as used in the ICCPR “*should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*”<sup>14</sup>

Based on the case law under the European Convention on Human Rights, van Dijk and van Hoof concluded that “[a] violation

<sup>13</sup> To date of submitting this Article, the Convention has 196 participants, including Russia. See Convention on the Rights of the Child of 20 November 1989. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en) [Accessed 30.08.2023].

<sup>14</sup> CCPR General Comment No. 18: Non-discrimination, adopted at the Thirty-seventh Session of the Human Rights Committee, on 10 November 1989, p. 2, Para. 7. Available at: <http://www.refworld.org/docid/453883fa8.html> [Accessed 30.08.2023].

*of the principle of equality and non-discrimination arises if there is (a) differential treatment of (b) equal cases without there being (c) an objective and reasonable justification, or if (d) proportionality between the aim sought and the means employed is lacking”* (van Dijk and van Hoof, 1990, p. 539). This approach to understanding discrimination is used by human rights treaty bodies.<sup>15</sup>

Against this legal background, the refusal to recognize an education on the ground that it was obtained in a territory with a disputed regime unambiguously constitutes discrimination. Although this reason for the discrimination is not expressly mentioned in non-discrimination provisions set forth in international legal instruments, it nevertheless falls within the scope of some of them.

For instance, Art. 26 of the ICCPR stipulates the following: “**All persons** [emphasis added]... *are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as* [emphasis added] *race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” Therefore, regardless of the rights affected by the discrimination, the laws of the State party to the ICCPR must prohibit discriminatory treatment as such and guarantee all persons equal and effective protection against any form of discrimination. If there are no rules in the national law providing the prohibition and guarantees mentioned in Art. 26 of the ICCPR, due to *the pacta sunt servanda* principle, domestic norms

<sup>15</sup> Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium (merits) dated 23 July 1968, Para. I(B)(10). Available at: <https://hudoc.echr.coe.int/eng?i=001-57525> [Accessed 30.08.2023]; Case of Marckx v. Belgium dated 13 June 1979, Para. 33. Available at: <https://hudoc.echr.coe.int/eng?i=001-57534> [Accessed 30.08.2023]; Views, Communication No. 943/2000, Human Rights Committee, Eighty-first session, 5–30 July 2004, CCPR/C/81/D/943/2000, Para. 9.5. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstcNDCvDan1pXU7dsZDBaDVpLr9rrMzSQKZXAhP%2fG8OWoPU%2btSjQ8R1xJRppbqV%2fmUxJAfWmhwFqME4Aeme5frsBE1ug3yto2AGGGe%2f%2bIexKsss3ve%2bmHNoamGdNPvgVDtp9GVfDfVRJsIeE37yLdR8%3d> [Accessed 16.03.2024].

are to be applied consistently with Art. 26 in order to ensure the implementation of the latter.

As it was noted in General Comments No. 18 to the ICCPR, Art. 26 “...prohibits discrimination in law or in fact in any field regulated and protected by public authorities.”<sup>16</sup> In the doctrine, it was also argued that Art. 26 is not confined either with respect to the rights or with respect to the grounds (Vierdag, 1973, p. 110). It constitutes “...an authoritative, representative example of a non-discrimination clause of global applicability” (Vierdag, 1973, p. 120).

Art. 2 of the UDHR provides that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Since Art. 2 of the UDHR does not provide an exhaustive list of discrimination grounds, discrimination based on prior education received in the territory with a disputed regime is also covered by its provisions.

Consequently, a refusal to recognize an education on the ground that it was received in the territory with a disputed regime not recognized as a state by the country in which the recognition is sought would constitute a violation of Art. 2 of the UDHR by that country. In addition, if the country were a party to the ICCPR, the refusal would also be contrary to its obligations under Art. 26 of the ICCPR. In the context of Para. 1 Art. 26 of the UDHR and, as regards a state party to both the ICCPR and the ICESCR, in the context of Subparas. “b” and “c” Para. 2 Art. 13 of the latter, the refusal for the reason under consideration would mean, in fact, a denial of the right to access to the education of respective level and type on the discriminatory ground and consequently, the violation of legal obligations arising from all these rules and provisions.

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<sup>16</sup> CCPR General Comment No. 18: Non-discrimination, adopted at the Thirty-seventh Session of the Human Rights Committee on 10 November 1989, p. 3, Para. 12. Available at: <http://www.refworld.org/docid/453883fa8.html> [Accessed 30.08.2023].

## **VI. The Issue of “Substantial Difference” between the Education Received in a Territory with a Disputed Regime and the One Received in an Internationally Recognized State**

On 11 April 1997, the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (the Lisbon Recognition Convention) was signed. Now there are 56 signatories including those states that are not Council of Europe members (Australia, Canada, Israel, New Zealand).<sup>17</sup> This Convention does not directly address the question on the recognition of qualifications issued in the territories with a disputed regime. However, according to its Art. VI.1 “...each Party shall recognise the higher education qualifications conferred in another Party, unless a substantial difference can be shown between the qualification for which recognition is sought and the corresponding qualification in the Party in which recognition is sought.” This norm raises the question whether the qualification issued in a territory with a disputed regime and the one issued in an internationally recognized state are “substantially different” due to the status of the territory?

In its Final report published in 2016, the Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (the Committee) provided answers to the questions the Committee had sent to the states parties to the Lisbon Recognition Convention within the implementation monitoring procedure. It pointed out that “[q]ualifications from non-recognised territories were also mentioned [by states parties] as a potential substantial difference” and added that, “[f]or example, the host country may not recognise qualifications from a specific territory, e.g., Northern Cyprus, Crimea and other territories.”<sup>18</sup> It is worth paying attention to

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<sup>17</sup> See the list of states parties: Chart of signatures and ratifications of Treaty No. 165 (Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 11 April 1997). Available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=165> [Accessed 30.08.2023].

<sup>18</sup> Monitoring the Implementation of the Lisbon Recognition Convention. The Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, Final report, Paris; 2016, p. 46, Para. 11. Available

the fact that it was the states parties' answer to the Committee's request to indicate "any other reason" along with substantial differences case for the refusal of recognition or for the recommendation not to recognize. As we see, the states answered in terms of the Lisbon Recognition Convention, using a slightly modified term — "potential substantial difference."<sup>19</sup> Although the Committee did not expressly opine on this practice, it concluded, *inter alia*, that "[t]he competent recognition authorities should carefully weigh up their decisions and advisory statements against the purpose of the application for recognition and reflect on whether established substantial differences should on all occasions and for all purposes be considered a factor."<sup>20</sup> In this context, it seems that the Committee believed that the qualification got in a non-recognized territory due to the very fact of its issuance therein does not become "substantially different."

In addition, the provisions of the Global Convention on the Recognition of Qualifications concerning Higher Education (the Global Convention) also confirm that the issuance of a qualification in a territory with a disputed regime does not make this qualification substantially different from that issued in a different state.<sup>21</sup> This is due to the fact that "substantial differences" are understood therein as "*significant differences between the foreign qualification and the qualification of the State Party which would most likely prevent the applicant from succeeding in a desired activity, such as, but not limited to, further study, research activities, or employment opportunities*" (Art. I). In addition, under Subpara. "b" Para. 2 Art. XIX of the Global

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at: [https://www.enic-naric.net/fileusers/Monitoring\\_Implementation\\_LRC-Final\\_Report.pdf](https://www.enic-naric.net/fileusers/Monitoring_Implementation_LRC-Final_Report.pdf) [Accessed 30.08.2023].

<sup>19</sup> However, the Final report has left some grounds for doubt as regards the word "potential" in this phrase since it is unclear whether the states, that had answered the question, had used this word or it was the Committee that added it.

<sup>20</sup> Monitoring the Implementation of the Lisbon Recognition Convention. P. 88.

<sup>21</sup> The Global Convention entered into force on 5 March 2023. As of 22 September 2023, it had 22 states parties. The Russian Federation has not become a party thereto yet. *See*, Global Convention on the Recognition of Qualifications concerning Higher Education of 25 November 2019. Available at: <https://en.unesco.org/about-us/legal-affairs/global-convention-recognition-qualifications-concerning-higher-education> [Accessed 30.08.2023].

Convention the states parties thereto are obliged to take into account its provisions when interpreting and applying particularly the regional recognition conventions to which they are parties, and in this regard, the Lisbon Recognition Convention is covered by this provision.<sup>22</sup> Consequently, if a state party to the latter becomes a party to the Global Convention, it has to interpret the term “substantial differences” in the Lisbon Recognition Convention heeding the meaning it has in the Global Convention, i.e., *inter alia*, without regard to the status of the territory where the qualification, for which the recognition is sought, was obtained.

### **VII. The Issue of Recognition of the Education Received in Territories with a Disputed Regime in the Light of Sovereign Equality of States Principle**

In practice, the recognition of education received in territories with a disputed regime may turn out to be more complicated. For instance, as regards Germany, the recommendation of the Central Office for Foreign Education (ZAB)<sup>23</sup> states that “*Diplomas, study certificates, etc. issued by the universities in the ‘breakaway’ republics of Abkhazia and South Ossetia – the Abkhaz State University (in Sokhumi/Sukhumi) and the South Ossetian State University ‘A.A. Tibilov’ (in Tskhinvali) – can be recognized if they have been previously sanctioned (confirmed) by the Georgian Ministry of Education and Science. [...] Diplomas and study certificates issued using official certificate forms of the Russian Federation cannot be recognized.*”<sup>24</sup>

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<sup>22</sup> The Lisbon Recognition Convention is mentioned among other regional recognition conventions on the UNESCO website. See UNESCO, (2023). Higher education regional conventions. Available at: <https://www.unesco.org/en/higher-education/conventions> [Accessed 23.08.2023].

<sup>23</sup> For more information about ZAB, see Kultusministerkonferenz, “Zentralstelle für ausländisches Bildungswesen.” Available at: <https://www.kmk.org/zab/zentralstelle-fuer-auslaendisches-bildungswesen/ueber-die-zab.html> [Accessed 23.08.2023].

<sup>24</sup> Anabin – Das Infoportal zu ausländischen Bildungsabschlüssen. “Häufig gestellte Fragen.” Available at: <https://anabin.kmk.org/filter/faq/einzelne-laender.html> [Accessed 23.08.2023]. Germany and Georgia are parties to the Lisbon Recognition Convention.

From those willing to continue their education abroad, Moldova demands that their education certificates issued by the educational institutions located in eastern regions of the Republic of Moldova and the city of Bender after 1992<sup>25</sup> be changed for the respective education certificates drawn in due form that is recognized by Moldova.<sup>26</sup> German authorities are also of the opinion that degrees from Transnistria can only be evaluated if they have been previously recognized and a Moldovan diploma has been issued.<sup>27</sup>

On the one hand, these approaches make it difficult to realize the right to access to education in states that do not recognize respective territories as independent states. On the other hand, they do not prevent persons who received education in these territories from realizing their right, and obviously, they are based on the respect for the sovereignty of the state that claims the territory in question as part of its own territory (mother state) and the sovereign equality of states principle. Nevertheless, taking into account all the foregoing obligations of states, we are convinced that at least in the following examples, the education received in the territories with a disputed regime must be recognized by other states without the requirement of the confirmation of that education in the mother state:

(1) if a mother state conducts a non-confirmation policy in respect of the education received in the part of its territory that is under a disputed regime, or if the mother state has not adopted any procedure for this confirmation;

(2) if the people who received an education in a territory with a disputed regime cannot enter the territory of the mother state, or if the obstacles to such entrance make it actually impossible or inaccessible for the majority of the inhabitants of the territory with a disputed

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<sup>25</sup> I.e., in Transnistria.

<sup>26</sup> See Para. 2, 4, 5, 7 of the Regulation on the legal effects of education certificates issued by the educational institutions of eastern regions of the Republic of Moldova and the city of Bender No. 20 dated 30 January 2004 (as amended on 5 November 2012). Available at: <https://www.legis.md/#> [Accessed 30.08.2023].

<sup>27</sup> Kultusministerkonferenz. Statement of Comparability for university degrees from Moldova: Checklist. P. 1. Available at: [https://www.kmk.org/fileadmin/Dateien/pdf/ZAB/Zugnisbewertungen/Einzureichende\\_Dokumente/Moldau\\_Zugnisbewertung\\_Dokumente\\_EN.pdf](https://www.kmk.org/fileadmin/Dateien/pdf/ZAB/Zugnisbewertungen/Einzureichende_Dokumente/Moldau_Zugnisbewertung_Dokumente_EN.pdf) [Accessed 23.08.2023].



regime, or if the entrance involves a risk of persecution on the grounds associated with the emergence of the territory (e.g., for the reason that a person belongs to its population).

As for the recognition of education in states that have recognized the territory with a disputed regime as an independent state, it does not seem necessary to seek any confirmation of the qualification from the mother state. In such a case, the recognition of the territory logically implies the recognition of the legitimacy of acts performed by its authorities, including the issuance of qualifications.

### **VIII. Conclusion**

Based on the analysis presented above, we have come to the following conclusion. The refusal by a state, acting through its bodies or institutions, to recognize an education on the grounds that it was received in a territory with a disputed regime is not in conformity with international law, at least in cases when the applicant has to face obstacles in the confirmation process caused by the authorities or institutions of the mother state, or when the applicant is not allowed to enter the territory of the mother state, or when the entry may pose the risk of persecution on the grounds associated with the emergence of the territory with a disputed regime.

Taking into account the universal nature of the treaties and the customary nature of the UDHR provisions setting out the right of access to education and the general prohibition of discrimination existing in international law, we are convinced that our conclusions are relevant to any state and state educational institutions when they have to deal with the question of further realization of the right to education by a person who received the previous education in the territory with a disputed regime.

The complexities outlined in this article indicate that the issue of protection and realization of the right to access to education by persons living in territories with a disputed regime requires special international regulation. However, since this right is not the only internationally recognized human right the enjoyment of which is restricted as regards the persons under consideration, a treaty providing special legal



guarantees for the implementation of all those fundamental human rights that these persons have under international law should be drafted and brought to the attention of states. These guarantees would enable them to enjoy the rights, including the right to education and access thereto, outside territories with a disputed regime to the extent and in the manner in which they can be exercised abroad by nationals of any state.

Until the treaty is concluded, we invite colleagues and human rights institutions including international organizations or intergovernmental bodies to consider the adoption of instruments on the rights of people living in territories with a disputed regime that could provide, *inter alia*, a Martens clause-like norm that may have the following wording:

“Until more comprehensive provisions to safeguard the rights and legitimate interests of persons residing in territories with a disputed regime has been issued, such persons shall remain under the protection and the rule of the principles of international law, as they result from the usages established among peoples, from the laws of humanity, and the dictates of the public conscience. In particular, these persons have the right to recognition everywhere as persons before the law and the right to recognition of facts, legal status, and documents that enable them to exercise their rights. The recognition of acts performed by the authorities, which exercise *de facto* jurisdiction over the territory, related to the legal status of persons living therein shall neither affect the international legal status of the territory, nor the status of bodies and institutions acting therein, nor the sovereignty of the state which claims the territory in question as the part of its own territory.”

In turn, this may encourage states to render the proposed clause a part of their laws and treaties and consequently, to create conditions for more effective realization of the rights of persons who live in territories with a disputed regime including their right to access to education.

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