SAFEGUARDING EDUCATION BEYOND BORDERS

MASTER THESIS

Diana Elena BALANESCU

Supervisor: Dr. Anna JONSSON CORNELL

Uppsala University

2012/2013
The human right to education has been commonly regarded as a domestic matter of states. In this context, the present thesis proposes to focus on the question whether states have the obligation to realise the right to education beyond their territorial borders. More precisely, it explores whether, and if so, under which conditions, states can be held accountable for violations and denials of the right to education beyond their borders under the current international human rights law. To this aim the international and regional legal framework protecting the right to education are scrutinized with focus on the substance of the right, the corresponding states’ obligations and the available remedies to rights – holders. Also, the extraterritorial obligations of states to respect, to protect and to fulfil the right to education are assessed in the light of the clarifications brought by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights and by academics’ interpretations. For a better illustration, a case – study is conducted exploring the obligations of states and the extent of their responsibility in realising the right to education in Transdniestria. The thesis’ findings indicate that states’ obligations to respect and to protect the right to education extraterritorially are clearer, better defined and can be claimed against the duty – bearers in case of violations. However, it cannot be concluded that the extraterritorial obligation to fulfil the right to education entails a legally binding obligation for states to provide the right to education in foreign territories. Hence, it is the task of the courts and human rights treaty bodies to clearly articulate in individual cases the scope and legal nature of extraterritorial obligations of states in relation to the right to education.
ACKNOWLEDGEMENTS

I would like to express my gratitude to my supervisor, Anna Jonsson Cornell of Uppsala University, for her valuable comments, inspiring discussions and wise guidance.

I want to thank to Angela Melchiorre, E.MA Programme Director, and to Anna-Sara Lind, E.MA Director of Uppsala University, for their great dedication and support during this past year.

I also express my special thanks to Geanin Borcos whose constant encouragement, care and faith in all my endeavours drove me all along this way.
# TABLE OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>ComRC</td>
<td>Committee on the Rights of the Child</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>ESC</td>
<td>European Social Charter</td>
</tr>
<tr>
<td>ESCR</td>
<td>Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
</tr>
<tr>
<td>OP-ICESCR</td>
<td>Optional Protocol to the International Covenant on ESCR</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organisation for Security and Co-operation in Europe</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organisation</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

ABSTRACT ......................................................................................................................... i  
ACKNOWLEDGEMENTS ...................................................................................................... ii  
TABLE OF ABBREVIATIONS ............................................................................................... iii

1. INTRODUCTION.................................................................................................................. 1  
   1.1. Background ................................................................................................................... 1  
   1.2. Overall purpose and research questions ..................................................................... 5  
   1.3. Limitations ................................................................................................................... 6  
   1.4. Terminology ............................................................................................................... 7  
   1.5. Structure and methodology ....................................................................................... 8

2. EDUCATION AS A HUMAN RIGHT ................................................................................. 10  
   2.1. A rights based approach to education ........................................................................ 10  
   2.2. The protection of the right to education under human rights law ......................... 14  
      2.2.1. The protection of the right to education by international legal instruments ... 14  
      2.2.2. The protection of the right to education by regional legal instruments ....... 20  
      2.2.3. The core content of the right to education ....................................................... 27  
   2.3. From rights to obligations .......................................................................................... 30  
   2.4. From obligations to violations – identifying violations of the right to education .... 33

3. EXTRATERRITORIAL OBLIGATIONS OF STATES TO RESPECT, PROTECT  
   AND FULFIL THE RIGHT TO EDUCATION ........................................................................ 36  
   3.1. Understanding extraterritorial obligation of states in the area of ESCR ............... 36  
   3.2. The Maastricht Principles on extraterritorial obligations of states in the area of  
        ESCR ......................................................................................................................... 38
3.2.1. Background.......................................................................................... 38
3.2.2. Definition and typology of extraterritorial obligations of states ........... 39
3.2.3. Shortcomings ...................................................................................... 43
3.3. Legal status of the extraterritorial obligations of states ......................... 45
  3.3.1. Is there a legal obligation to cooperate internationally for the realisation of the right to education? ......................................................... 45
3.4. Human rights beyond borders. Reflections on jurisdiction .................... 47
4. EXTRATERRITORIAL OBLIGATIONS AND DE FACTO STATES .............. 52
  4.1. The lawless territories ......................................................................... 52
  4.2. The test of effective control .................................................................. 54
  4.3. A shared responsibility? ....................................................................... 55
  4.4. The right to education and division of responsibility in occupied territories .... 56
5. CASE STUDY – THE RIGHT TO EDUCATION IN TRANSNISTRIA .............. 61
  5.1. Introduction .......................................................................................... 61
  5.2. Background .......................................................................................... 62
  5.3. The circumstances of the case ............................................................... 63
  5.4. Legal analysis ....................................................................................... 67
    5.4.1. Considerations on jurisdiction ......................................................... 67
    5.4.2. Violations of the right to education ................................................... 71
    5.4.3. Accountability ................................................................................. 75
  5.5. Concluding remarks ............................................................................. 82
6. CONCLUSION .............................................................................................. 86
BIBLIOGRAPHY .............................................................................................. 92
Safeguarding education beyond borders

Balanescu, Diana Elena

https://doi.org/20.500.11825/484

Downloaded from Open Knowledge Repository, Global Campus' institutional repository