A Tale of Two States: Territoriality and Minority Rights in Kosovo and Georgia

Milena Sterio*

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1. Introduction
Over the past decade, violent secessionist struggles have taken place in Kosovo and in South Ossetia and Abkhazia. Whereas Kosovo successfully declared independence from its mother State, Serbia, in 2008, South Ossetia and Abkhazia have officially remained an integral part of their mother State, Georgia.¹ The two conflicts highlight the tension between the principle of territorial integrity on the one hand, and the need to protect minority rights on the other. Preserving the territorial integrity of mother States would lead toward denying remedial secession to struggling minority groups and arguably thereby refusing to respect minority rights. Allowing minorities to secede, in the goal of having their rights to self-determination fulfilled, would lead toward disrupting the territorial integrity of mother States. How can we reconcile the principle of territorial integrity with minority rights, and in particular, with the idea of self-determination – that every “people” ought to have a nation State?

* Assistant Professor of Law, Cleveland-Marshall College of Law. J.D., Cornell Law School & Université Paris I-Panthéone-Sorbonne, summa cum laude; Master’s Degree, Private International Law, Université Paris I-Panthéon-Sorbonne, cum laude. The author would like to thank the Cleveland-Marshall College of Law Library for outstanding research assistance.

¹ See infra Parts 3 and 4.
This article will argue that territoriality and minority rights can work in tandem, because most secessionist claims by minority groups involve claims to territory. Thus, territoriality and minority rights are both about land, and the relevant inquiry should be whether to alter the status quo, at the expense of a mother State’s territory and in order to accommodate minority rights. This paper seeks to answer this difficult question in the context of recent secessionist struggles in Kosovo and in Georgia. Part 2 will discuss the principle of territorial integrity under international law, before turning to a discussion of minority rights, and in particular, the principle of self-determination. Part 3 will focus on Kosovo and will describe the recent war in this region, leading toward the Kosovar unilateral declaration of independence in 2008. Part 4 will similarly focus on Georgia, and will describe the recent conflicts in South Ossetia and Abkhazia. Part 5 will attempt to propose a reconciliation between territoriality and minority rights, by comparing the conflicts in Kosovo and Georgia, by arguing that the conflicts have produced different results because of politics, not because of law, and by outlining principles which could be relevant in examining future secessionist struggles. This article concludes that the international community should rely on objective legal criteria in judging the validity of secessionist struggles, rather than drawing conclusions based on political calculus.

2. Territoriality versus Minority Rights

The principles of territorial integrity of States and of minority rights may seem at odds in certain situations. If the need to respect minority rights rises to the level of secession – that is, if the minority group’s rights are being abused by the mother State, or if the minority group no longer wishes to continue its existence within the mother State for other justifiable reasons – then respect for minority rights may trump the territorial integrity of the mother State. Conversely, if the territorial integrity of the mother State is preserved at all cost, this may at times lead toward a denial of protections and basic rights of the minority group. According to Lea Brilmayer, “[i]f … territorial integrity takes priority, then minority groups within the existing state will be denied their cherished claims to independence”. The two seemingly conflicting principles, territorial integrity and minority rights, will be examined in sections 2.1 and 2.2 below.

2.1. Territorial Integrity

The principle of territorial integrity is one of the basic tenets of international law; it is, according to Catherine Iorns, “a fundamental norm of the present world system of states and state sovereignty”.