

Wojciech Janicki
Maria Curie-Skłodowska University
Lublin, Poland

Relocating International Borders: The Cases of Kosovo and South Ossetia Confronted

Summary

The rule of state territorial integrity and the concept of self-determination of nations are mutually exclusive in case of small nations inhabiting multinational states. International agreements and documents neither circumscribe which of the rules is more important than the other nor precisely define states or nations, which makes decisions on the issue subjective, to a large extent. Kosovo and South Ossetia appeared on the world's political map in 2008, both breaking contractual criteria of legality of secession. Despite that fact, Kosovo gained widespread international recognition and South Ossetia is still a poorly recognized state. The rules of state territorial integrity and the self-determination of nations are not applied equally to both cases despite the fact that, from the point of view of international law, they are both states, even if this has not been confirmed by the United Nations. Kosovo and South Ossetia are not at all standalone entities, but are instead *de facto* protectorates of international powers, who build their own positions in international competition through the use of these conflicts.

Introduction

Shifting political borders have been one of the most patent outcomes of states' rivalry over the past centuries. The aims of the contests that underlay them used to be numerous, with economic and political goals numbering among the most important ones. A disputed territory might have been the subject of debate either among neighboring states or between central state authorities and the local population. In particular circumstances, the latter case may be considered a clash between two mutually exclusive tendencies: an effort to maintain territorial integrity by the state in possession of a disputed territory on the one hand, and an attempt to detach this territory and create another state in the name of the self-determination of its inhabitants, on the other.

There have existed numerous examples of such clashes over the last decades and several of them are especially notorious due to their overall importance in tracing the political map of the world, like in the cases of Israel–Palestine, Russia–Chechnya, Spain–Basque Country, United Kingdom–Northern Ireland, France–Corsica, Turkey/Iran/Iraq/Syria–Kurdistan and many others. In most cases, strivings to create a new state have previously been unsuccessful. However, 2008 witnessed two cases where new political units appeared on the political map of the world: Kosovo detached from Serbia and

Georgia lost South Ossetia. At first glance these two cases seem to be similar, although differences are also abundant. The goal of the paper is to examine and to confront the Serbia–Kosovo and Georgia–South Ossetia cases to determine whether the rule of territorial integrity or the concept of self-determination are equally and justly applied to both cases by other international players. Additionally, the importance of said rules in the contemporary world will be compared.

The rule of state territorial integrity

Despite the existence of numerous definitions of a state, most researchers agree that territory is one of the elements composing states, along with population and political authority with the ability to execute power over said territory¹. Sovereignty, capacity to enter into relations with other states and international recognition are some of the most commonly added attributes. Although some authors recall cases of states temporarily deprived of their territories and eloquently prove these entities could still be considered states², in most cases territory is an indispensable element of the state.

The latter has been confirmed in several documents and international treaties, like the Montevideo Convention on the Rights and Duties of States³. According to the Convention, the state has its defined territory (Article 1) and right to defend its integrity (Article 3). The integrity of the state's territory as an international rule dates back to at least 1815, when the arrangements of the Congress of Vienna guaranteed the inviolability of the territory of Switzerland. Also newer documents of top international importance rank state integrity high. Article 11 of the Montevideo Convention declares that state territory is inviolable, while Article 2 of the United Nations Charter forbids using military power and even the threat of military intervention in the name of state territory inviolability⁴.

Worth noting is that, according to some of the documents stemming from the declarative theory of the state, the political existence of the state is independent of recognition by the other states⁵. Conversely, the constitutive theory of the state considers international recognition of an entity essential to its obtaining the status of a state.

However, most documents of international importance concerning state integrity emphasize that they refer to external forces potentially threatening the status quo of a state, while its internal relations, including violations to its territorial integrity by its own inhabitants, are not examined. Therefore, detaching a part of a state by a part of its population seems not to be a violation of internationally accepted rules as long as no external interference in the case takes place.

¹ Z. Rykiel 2006. *Podstawy geografii politycznej*. Warszawa. M. Sobczyński 2006. *Państwa i terytoria zależne*, Łódź.

² Z. Rykiel, *op. cit.*

³ Montevideo Convention on the Rights and Duties of States 1933. Online access: Council on Foreign Relations, www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897, (24 May 2012).

⁴ Charter of the United Nations. Online access: <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>, (12 May 2012).

⁵ Montevideo Convention, *op. cit.*, Art. 3.

Despite this fact, states vigorously oppose their own disintegration, as it is commonly perceived as a multidimensional threat to the state. It has its economic ramifications in the form of loss of area, population, resources and sometimes access to open sea (e.g. the Ethiopia-Eritrea case), and also political ramifications such as necessity to coexist with another state quite likely to be in conflict with its former authority. The threat is especially severe for relatively small states for whom the loss of even a minor part of their territory may be of significance. Additionally, prestige and position on the international arena suffer when a part of the state territory changes its authority; were it not the case, the Kuril Islands, hardly inhabited and holding hardly any economic or political value, would not have been the subject of international dispute between Japan and Russia for decades. Most states want to keep their territories untouched at all costs. There are few notable exceptions where other positions are professed, like the attitude the Canadian authorities towards the two referendums in Quebec⁶ or former Finnish president Martti Ahtisaari declaring in 1998 the *désintéressement* of his country towards parts of its territory seized by the USSR in the 1940s (the so-called Karelian question).

Territorial integrity also has a more global side to it. Some claim it has primary importance in preserving political stability in the world⁷. Others argue that the time for creation of new nation-states passed in the 19th and the beginning of the 20th century and today no reasons seem to be important enough to justify the creation of new political entities on the political map of the world⁸.

The self-determination of nations

Just as the notion of a state possesses multiple definitions, the nation is also a concept that cannot be unequivocally and precisely determined. In most cases, either objective or subjective criteria of national identity are invoked. The traditional approach to the debate on nationhood recognized the nation as an objectively existing social entity, deeply rooted in the culture and history of its members. According to this approach, it should be possible to unambiguously articulate whether a nation exists or not thanks to ethnographic, linguistic and other research. In contrast to this is the subjectivist attitude, with an emphasis on the importance of common identity and the way a community defines it. This approach grants individual statements the right to create nations, even when such nations are deprived of their own territory, like in case of the Kurds, the Roma or (formerly) the Poles or the Jews⁹.

⁶ W. Janicki 1998. Kanada podzielona? – problemy państw wielojęzycznych na przykładzie kanadyjskiego Quebecu. *Czasopismo Geograficzne* LXIX, Vol. 2, pp. 193-203.

⁷ V. Gudeleviciute 2005. Does the principle of self-determination prevail over the principle of territorial integrity? *International Journal of Baltic Law*, Vol. 2, No. 2, pp. 48-74.

⁸ P. Eberhardt 2007. Comment in discussion after an open lecture at the Polish Academy of Sciences by W. Janicki: *Ślązacy – a może jednak naród?* Warszawa, 11 October 2007.

⁹ W. Janicki 2009. Minority recognition in nation-states – the case of Silesians in Poland. In: *Chapters of Modern Human Geographical Thought*, T. Drobik, M. Sumberova (Eds), Cambridge, pp. 155-184.

The rule of self-determination of nations grants a nation the right to make decisions, in an independent way, without any pressure or external interference, on its political status in both the external and internal dimensions. The external dimension relates to decisions concerning the political status of an area inhabited by a nation; its members may wish to remain a part of a larger, multinational state or create their own state¹⁰. As Pavkovic and Radan put it: “The principle of self-determination bestows a right upon any nation to ‘determine itself’ where ‘to determine’ is usually interpreted to mean ‘to govern’ ”¹¹. The internal dimension refers to the choice of model of governance and political system, management of resources, development of culture and other internal issues. Every other state is obligated to respect these rights.

The right to self-determination of nations has also been widely supported in both national and international documents and agreements. The Declaration of the Rights of the Peoples of Russia from 1917, which granted nations the right to their own states, was among the first of these. However, the signatures of V. I. Ulyanov and J. V. Dzhugashvili at the bottom of the documents did not guarantee proper adherence of the state to the rights resulting from the Declaration. Even today, some effects that might be related to the formulations of that Declaration exist in Russia, where the Republic of Tatarstan is formally, although in no way actually recognized as a state associated with the Russian Federation¹².

Another document of high importance was created only a year later in the USA and is widely known as Woodrow Wilson’s Fourteen Points. In his speech to the Congress, Wilson, the President of the USA at the time, outlined his vision of a safe, just world. The introduction to the speech envisaged safety “(...) for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions (...)”¹³. This may easily be understood as granting nations as a whole the right to self-determination. Similarly, item 2 in Article 1 of the Charter of the United Nations, defines the purpose of the United Nations as “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (...)”¹⁴. Later documents, such as the International Covenant on Economic, Social and Cultural Rights, carry similar statements: “All

¹⁰ Nations execute this right in various ways, ranging from voluntary isolation (Roma), accommodation to the dominant nation (Jews in Western Europe), the search for autonomy (Aland Islands), separatism (Basques) or irredentism, understood as seeking unification with a neighboring territory controlled by the same ethnic group (e.g. Germans in the interwar period). For more about strategies of nations see H. Runblom 2002. *The Challenges of Diversity*. In: *The Baltic Sea Region. Cultures, Politics, Society*. W. Maciejewski (ed.), Uppsala, p. 375.

¹¹ A. Pavkovic, P. Radan 2003. *In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order*. *Macquarie Law Journal*, Vol. 3, p. 2.

¹² M. Sobczyński 2006, op. cit.

¹³ President Woodrow Wilson's Fourteen Points, Yale Law School, Lillian Goldman Law Library. Online access: http://avalon.law.yale.edu/20th_century/wilson14.asp (31 May 2012).

¹⁴ Charter of the United Nations, op. cit.

peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”¹⁵.

Two opposing principles: the clash

There are also documents that reference both the right to self-determination of peoples and respect for the territorial integrity of states. The United Nations Millennium Declaration¹⁶ places among the most recent documents in this category, stating:

“We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect for their territorial integrity and political independence, resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion and international cooperation in solving international problems of an economic, social, cultural or humanitarian character.”

Therefore, we need careful consideration in determining which of the two principles should prevail and under what circumstances one can be considered more important than the other. First of all, neither state nor nation can be unequivocally defined, so it is impossible to specify who is protected by these principles. Hence, in many cases we cannot be absolutely sure whether the ethnos in question is a nation or an ethnic group. And yet it is of crucial importance, as the status of the latter doesn't grant the right to self-determination. Similarly, when the statehood of a political entity is rejected, then the right to its territorial integrity may also easily be contested.

The interests of the state and the nation in such cases are diametrically opposed. The former strives to maintain its integrity, while the latter attempts to establish its existence according to its own rules. Only within the political concept of a nation that implies that states create nations such a clash does not exist by default. Overall, the noble and idealistic approach stemming from modern political ethics accords top priority to the self-determination of nations, but agrees at the same time with Robert Lansing, Woodrow Wilson's advisor, who stated that “application of this principle is dangerous to peace and stability”¹⁷. At the same time, state territorial integrity as an inviolable rule has, over the last

¹⁵ International Covenant on Economic, Social and Cultural Rights (ICESCR). Online access: Office of the United Nations High Commissioner for Human Rights, www2.ohchr.org/english/law/cescr.htm (1 June 2012).

¹⁶ United Nations Millennium Declaration. Online access: www.un.org/millennium/declaration/ares552e.pdf (24 May 2012).

¹⁷ U. Abulof, W. Danspeckgruber 2009. Two Rights Make A Wrong: Self-Determination Revisited. Online access: www.princeton.edu/lisd/archived/commentary_march2009.pdf (29 May 2012).

decades, blessed Europe with a period of no wars that is unprecedented in the history of the continent. Consequently, if peace is the goal, the state integrity rule should be regarded as more important and its violation should be considered lawful only when particular circumstances occur.

According to Antonowicz¹⁸, the contractual criteria of international law make it possible to prioritize the self-determination of nations in its external dimension, understood as secession and creation of new states, when five conditions are met:

1. claims are issued by a group that possesses an ethnic consciousness;
2. the group's rights are violated by the state it inhabits;
3. other states do not interfere;
4. only mass internal disintegrative powers are involved;
5. there are no other means of resolving the conflict.

Less legalistic, but by far more straightforward thinking has led Rykiel¹⁹ to the conclusion that only effective secession is lawful. A number of effective secessions – Panama from Colombia (1903), Bangladesh from Pakistan (1971), Georgia from the USSR (1990-1991) or East Timor from Indonesia (1999) – have attracted international attention and finally found common recognition. Among the latest secessions of a similar type, the detachment of Southern Sudan from Sudan (2011) provides a good illustration. Throughout the 20th century, a plethora of non-effective secessions occurred, with Kurdistan trying to secede from its neighbors (since at least 1920), Katanga from Congo (1960-1963), Biafra from Nigeria (1967-1970) or Chechnya from Russia (1991-1999). A mid-way category of secessions of doubtful effectiveness, resulting in *de facto* independence from the former sovereign, but at the same time undermined by the lack of common state recognition, can be identified in Nagorno-Karabakh (detached from Azerbaijan) Abkhazia (from Georgia) or Transnistria (from Moldova)²⁰.

The case of contemporary mainland China is interesting in this context. Formally, the defeated escapees that fled to Taiwan have been successors to the pre-war Chinese authority and the People's Republic of China was a rebel state. However, since at least 1972, when the Taiwanese Chinese were replaced in the United Nations by the mainland Chinese, the world started becoming more and more convinced that it was the Taiwanese who detached from mainland China, even if in reality it was exactly the opposite. Common sense favors mainland China over Taiwan – how could a huge territory detach from a tiny island?

¹⁸ L. Antonowicz 2009. Podręcznik prawa międzynarodowego. Warszawa.

¹⁹ Z. Rykiel, op. cit.

²⁰ Ibidem.

The contemporary world witnesses situations on the international arena that cannot be unequivocally assigned to any of the three categories enumerated above. The territories of Kosovo and South Ossetia belong firmly among the debatable cases since they are both perceived differently depending on the point of view. Hence, a careful examination of both of them is required so as to state whether the violation of state territorial integrity was justifiable in the name of the nation's self-determination.

Kosovo: a state, a non-state

Kosovo, with its present borders, is a territory with an area of 10,900 square kilometres and inhabited by 1.8 million people. About 92% of them are ethnic Albanians, while Serbs constitute a small 5% minority concentrated in the north of Kosovo, in the borderland with Serbia. For both the Albanians and the Serbs, Kosovo is their mythical place of national origin. Albanians claim descent from the ancient Illyrians who settled this land around 2000 BC. In turn, Serbs refer to the Battle of Kosovo in 1389, where a Serb army defended the area against the Ottoman Empire. The battle became a symbol of national Serbian patriotism and Kosovo evolved into the symbolic cradle of Serbia. It is important that the Albanians supported the Ottomans in the battle. In 1459, Kosovo was incorporated into the Ottoman Empire and it was not until 1912-1913 that Serbia recaptured the territory following the Balkan Wars. After several changes, Kosovo became part of Serbia within Yugoslavia as an autonomous territory. The cancellation of its autonomy in 1989 gave birth to the contemporary changes that finally resulted in the proclamation of independence of Kosovo in 2008.

An examination of the five conditions justifying the secession of a territory, as enumerated in the previous section, should constitute serious support for statements concerning the present status of Kosovo. As regards Condition 1, most inhabitants of present-day Kosovo are ethnic Albanians. They differ from Serbs by language, culture and history – the most commonly recognized criteria of national identity. Albanians form a nation that possesses its own nation-state, so the consciousness of Kosovars²¹ may even be given a national and not only ethnic character. Additionally, Kosovars and Serbs differ by religion, a supportive criterion in the examination of national distinctiveness.

The autonomy of Kosovo, granted to this territory in 1946 and further extended in 1974, guaranteed that Kosovars could preserve and develop their culture despite unfavourable circumstances under totalitarian, communist rule. The surge in nationalistic sentiment after the death of Yugoslav dictator Josif Broz-Tito in 1980, and especially after 1989 when the state breakdown started, brought about cancellation of Kosovo's autonomy. Subsequently, measures were taken to assimilate the Kosovars into the Serb-dominated state. This generated massive protests and a secret referendum on the independence of Kosovo was hastily organized in the area. The first declaration of independence in

²¹ Kosovars are understood in the paper as inhabitants of Kosovo of Albanian descent.

Kosovo was made in 1992, although it did not attract international attention. Kosovo was still perceived as an internal, strictly Serbian problem of minor importance, especially when compared to the problems the Balkans faced in the first half of 1990s. Then the mutual violence took on a more systematic, organized form. In 1996, the Kosovars created the Kosovo Liberation Army (UCK) and violence against the Serbs exploded. Two years later, the Serbian army entered Kosovo and violence against Albanians became an everyday experience in the area. After NATO's intervention in Serbia and Kosovo in 1999 and further changes in its wake, many people were accused of war crimes, so the discussion about maintaining the group rights of any of the parties seems ridiculous – Condition 2 is therefore met.

International powers demanded that Serbia withdraw its troops from part of its own territory – from Kosovo – in the name of protecting the Kosovars. Additionally, Serbia was expected to approve the presence of NATO troops in the whole of its state territory. After Serbia's rejection of these demands, NATO began its bombing campaign, which resulted in a few thousand civilian victims and the devastation of a significant part of the country's non-military infrastructure. Although the international intervention was assigned a NATO mandate, it is important to notice that the UN did not accept or condone the actions taken and troops from individual states, including the USA and Russia, were involved in the case. Therefore, Conditions²² 3 and 4 were not met.

Condition 5 seems to be the most subjective. Several scenarios might have been implemented well before the proclamation of independence of Kosovo in 2008, if only both sides of the conflict were willing to give an inch. However, each day of mutual violence effectively prevented any debate about peaceful solutions within the existing international status quo. On that account, the secession of Kosovo seemed inevitable.

Kosovo's proclamation of independence was the first unilateral act of this type in Europe since 1945. By May 2012, it had received recognition from 91 other UN member-states, including the USA, Poland and most members of the EU²³. However, several states objected to the recognition of Kosovo, with Serbia, Russia, Spain, Cyprus, China and Georgia leading the way; many of these states face their own internal problems with minorities striving for more autonomy or independence. According to the UN, Kosovo is a Serbian territory under international control until its status is finally settled. Temporarily, international military forces under the auspices of NATO (KFOR) and the EU Petersberg tasks are based in Kosovo. To simplify, Kosovo is *de jure* part of Serbia and *de facto* an international protectorate, as without constant international support it could perform neither the security nor the

²² see footnote 18.

²³ Who Recognized Kosovo as an Independent State? Online access: www.kosovothanksyou.com (11 June 2012).

economic functions of a state. Therefore, Kosovo is a state according to over 90 members of the international community despite the fact it cannot perform its own state duties and clearly is not standalone, while it is not a state according to over 100 other members of the international community²⁴ and the UN itself.

South Ossetia: a state, a non-state

South Ossetia occupies 3,900 square km of the southern slopes of the Caucasus Mountains and has a population of 70,000 people. About 64% of them are ethnic Ossetians, while the largest minority (25% of population) are Georgians. The early history of the area remains uncertain. In 1774, Ossetia was seized by Russia. Between 1918 and 1920, the Ossetians fought against the Georgians and in 1921, Ossetia was incorporated into Georgia and Georgia into the USSR. In 1990, the autonomy of Ossetia within Georgia was withdrawn, which triggered political unrest in the province. A year later, South Ossetia declared independence, but did not gain international recognition. At the same time, civil war began and Russia engaged militarily in the province. Since 1992, South Ossetia is *de facto* independent from Georgia. In 2006, Ossetians voted for independence in a referendum and two years later, after the 2008 war in Georgia, South Ossetia was recognized as a separate state by Russia and later by another four states (Venezuela, Nicaragua, Nauru and Tuvalu) and three non-recognized states (Abkhazia, Transnistria and Nagorno-Karabakh).

An examination of the five conditions of legality of secession enumerated in section 4 leads to similar conclusions as in case of Kosovo. There is no doubt that Ossetians differ ethnically from Georgians. None of the sides reject it and mutual hatred, magnified by the recent history of the area, confirms existence of differences²⁵. Ossetians and Georgians also differ by language and culture – the most important objective criteria of national identification.

The group rights of Ossetians in Georgia were violated. Much like in the case of many other young states that just released from totalitarian rule, so too in Georgia did patriotic feelings quickly drift towards nationalism. Minorities were persecuted and formerly autonomous regions became the object of military attacks on the part of their own *de jure* authority. Georgian air raids over Ossetian villages, and also over Abkhazia, became symbols of the relations between Georgia and its minorities. Therefore, Condition 2 of the legality of secession was clearly fulfilled.

²⁴ The total number of existing states is subject to independent discussion and goes far beyond the reach of this paper. It is assumed in this paper that the approximate number of states in the world is similar to the number of UN members.

²⁵ Gruzja – Osetia Południowa. Online access: www.stosunkimiedzynarodowe.info/kraj,Gruzja,problemy,Osetia_Poludniowa (20 May 2012).

Conditions 3 and 4, concerning external interference in the case, were not met. Russian troops engaged in the 2008 war and cannot be regarded as representatives of the UN security forces, as Russia maintains. Military intervention, to be considered justifiable in terms of international law, has to be carried out by troops of a group of states and not by a single country, no matter how strong it is²⁶. Only Russian forces participated in the 2008 war, and no UN mandate was assigned.

With regard to Condition 5, it seems that the possibilities of solving the Ossetian problem within the political frame that existed previously have been exhausted. The Ossetian-Georgian conflict has lasted for more than a century, and forcible solutions adopted by successive Georgian governments aiming at assimilating minorities and reinforcing the unity of the state through strong centripetal actions would always generate opposing tendencies. Additionally, Ossetians have their compatriots living in the northern slopes of the Caucasus in North Ossetia, which constitutes part of Russian Federation. Numerous declarations by Ossetian officials on uniting both parts of Ossetia as a remedy to the Ossetian-Georgian conflict were heard, both before and after the war. It seems clear that Georgian authorities' lack of willingness to offer more autonomy to the Ossetians on one hand, and the reluctance of the Ossetians to remain a part of Georgia on the other, closed door to the continuation of the former status quo.

The second proclamation of independence of South Ossetia was quickly recognized by Russia and later by another four commonly recognized states and three mostly unrecognized states. Opposition to recognition for the new state has been widespread, with the USA and numerous EU states forming the core of the group²⁷. The main points of emphasis were the violation of international law by Russia and the lack of self-sufficiency of South Ossetia. South Ossetia is *de facto* a Russian protectorate, officially supported by its patron according to numerous agreements legalizing the stationing of Russian troops in the country and their control over its external borders.

Kosovo and South Ossetia – a comparison

Comparing the cases of Kosovo and South Ossetia leads to the conclusion that both secessions were illegal, at least according to the contractual criteria of international law, because only three out of the five conditions of the legality of secession were fulfilled. The similarities do not end there; in fact, this is where they begin. In both cases, the seceding areas are inhabited by people who formed ethnic minorities in their former states and now constitute majorities in their new countries. Both have their co-ethnics (Albanians and Ossetians) on the other side of the border. In both cases, ethnic tensions over history have generated hatred and high levels of nationalism toward the dominating nations. Both

²⁶ See: A. Cassese 2005. International law. Oxford.

²⁷ Konfrontacja gruzińsko-rosyjska w Osetii Południowej. Online access: www.stosunkimiedzynarodowe.info/artykul,174,Konfrontacja_gruzinsko-rosyjska_w_Osetii_Poludniowej_-_q_and_a.html, (7 June 2012).

conflicts were of a markedly separatist character. Neither region has ever been an independent state. In both cases, the rule of 'all or nothing' was adopted – separatists wanted nothing but independence. Both new entities are dependent, to a large extent, on external help and are not prepared for independence, politically nor economically, so they will have to constantly rely on foreign support. Last but not least, both declarations of independence were unilateral – neither Serbia nor Georgia recognized the secession of their respective regions.

The differences are also numerous. Kosovars do not want to unite their country with Albania, while Ossetians have declared it their will to become part of Russia, if independence is impossible²⁸. Therefore, the strategies of these nations differ, as the Kosovars clearly adopted a separatist strategy while the Ossetians took on an irredentist strategy²⁹. Kosovo and South Ossetia differ by number of states that recognize and reject their statehood. The share of their most numerous ethnic minority, connected with their former state, in the total population is also different (5% Serbs in Kosovo and 25% Georgians in South Ossetia). The attitude of the main political powers of the world is different between the cases. Only the states of Tuvalu and Nauru have recognized both entities as states. Interestingly, in 2010 the International Court of Justice announced that the declaration of independence of Kosovo does not violate international law, while in 2011 the European Parliament passed a resolution stating that the Russian presence in South Ossetia is an unlawful occupation of an area belonging to Georgia³⁰.

It seems that the similarities prevail, not only in terms of numbers, which is less important, but in terms of their political weight and importance. The different treatment of the Kosovar and Ossetian cases by the international community implies a lack of clear rules of international acceptance of newly born states, which may seriously endanger political stability in the world, even in parts of it that have been tranquil as of late. The international community, and especially multinational and poorly recognized states, may start interpreting their cases as they desire. The Basque Country, Catalonia, Quebec, Transnistria, Abkhazia, Flanders, Kurdistan, the Republic of Srpska, Ilam, Nagorno-Karabakh, Chechnya and many others may wish to use the examples of both Kosovo and South Ossetia to support and justify their struggle for more autonomy or for full independence. Therefore, many states with a similar multiethnic structure are moderate and cautious in their recognition of the new states. Abkhazia and South Ossetia have already delivered a petition to the UN and to the Commonwealth of Independent States in order to gain their formal recognition as states.

²⁸ To an extent, this may have resulted from significant Russian diaspora in South Ossetia, continuously supported by Russia and enlarged by the Ossetian emigration from Russia.

²⁹ H. Runblom 2002, op. cit.

³⁰ Evroparlament: Gruzii okkupirovana. Online access: <http://pik.tv/ru/news/story/23971-evroparlament-gruziia-okkupirovana> (15 June 2012).

Conclusions

An examination of the contractual criteria of the legality of secession has led to the conclusion that neither Kosovo nor South Ossetia seceded legally from their mother-states. The similarities between the two situations are aplenty and their importance seems to prevail over the differences. Despite that fact, many states recognized the statehood of Kosovo and very few states recognized that of South Ossetia. Therefore, the rule of state integrity was considered less important than the rule of self-determination of nations in the case of Serbia and more important in the case of Georgia. It seems justifiable to ask the same question in both cases: was an international dictate imposed on Serbia or was the Albanian minority in southern Serbia protected? And similarly: was Russian dictate imposed on Georgia or was the Ossetian minority in northern Georgia protected? Common sense would support identical answers in both cases, but it is not a widespread position. Interestingly, in terms of international law, both Kosovo and South Ossetia are independent states now, because they have been recognized by more than one internationally recognized state³¹.

An illegal attack on an independent state whose territorial integrity should be protected against external military aggression – does this formulation describe Serbia or Georgia? Or maybe both? A righteous attack of security forces on a repressive state that did not respect the right of its minority to self-determination – what is the answer now?

There are different degrees of self-determination. Both Kosovo and South Ossetia have aimed for the highest level of it – independence – and both, to a significant extent, have succeeded. Without the external help of world powers, neither would have succeeded. Therefore, the fates of Serbia, Georgia, Kosovo and South Ossetia, pawns on the world chessboard, seem to be reliant on the mighty. Despite the end of the Cold War, the former players jealously guard and want to further extend their zones of influence, making use of a foreign conflict to build their own positions in the international competition³². Maintaining the imperial position of the USA and rebuilding the imperial power of Russia seem to be the most convincing explanations.

³¹ M. Sobczyński 2006, op. cit.

³² See also T. Otłowski 2008. Geopolityczne aspekty konfliktu gruzińsko-rosyjskiego. Online access: www.psz.pl/tekst-13475/Tomasz-Otlowski-Geopolityczne-aspekty-konfliktu-gruzińsko-rosyjskiego (10 June 2012).