The concepts of statehood and self-determination provide the normative structure on which the international legal order is ultimately premised. As a system of law founded upon the issue of territorial control, ascertaining and determining which entities are entitled to the privileges of statehood continues to be one of the most difficult and complex matters in international law. Moreover, although the process of decolonization is almost complete, the principle of self-determination has raised new challenges for the metropolitan territories of established states, including the extent to which ‘internal’ self-determination guarantees additional rights for minority and other groups. As the controversies surrounding remedial secession have revealed, the territorial integrity of a state can be questioned if there are serious and persistent breaches of the human rights of its citizens. This volume brings together such debates to reflect further on the current state of international law regarding these fundamental issues.

Professor Duncan French is Head of the Law School and Professor of International Law at the University of Lincoln, UK.
STATEHOOD AND
SELF-DETERMINATION

Reconciling Tradition and Modernity in International Law

Edited by
DUNCAN FRENCH
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JESSICA ALMQVIST is a lecturer in public international law and international relations in the faculty of law, Autonomous University of Madrid. She has a Ph.D. in Law from the European University Institute (2002). She has previously been a researcher on the Project on International Courts and Tribunals, Center on International Cooperation, New York (2002–4), Adjunct Professor, New School, New York (2003–4), researcher at the Foundation for International Relations and External Dialogue in Madrid (2004–6), and also at the Center for Political and Constitutional Studies, Madrid (2006–9).

GRACE BOLTON is a D.Phil. candidate in international relations at St. Antony’s College, Oxford University, where she is examining remedial secession in theory and practice since 1945. In 2010, she obtained her M.Phil. in International Relations (Oxon.) and co-edited a special issue of St. Antony’s International Review entitled ‘Secession, Sovereignty and the Quest for Legitimacy’. Her research focuses on international responses to self-determination conflicts, EU enlargement and neighbourhood policy, and post-conflict state-building.

MARTIN DAWIDOWICZ Ph.D. is currently an associate at LALIVE, Geneva, where he specializes in public international law and investment treaty arbitration. Previously, he worked as Consultant in the UN Office of Legal Affairs (Codification Division) in New York and taught public international law at Oxford University, among other positions held. He has published on various topics of international law in a number of leading journals and publications, including the British Yearbook of International Law.

ERIC DE BRABANDERE Ph.D. is Associate Professor of Public International Law at the Grotius Centre for International Legal Studies
at Leiden University. He is also a Visiting Professor at the Université Catholique de Lille (France) and a member of the Board of Editors of the *Leiden Journal of International Law* and the *Revue belge de droit international*. He previously worked as an attorney-at-law at the Brussels Bar and at Ghent University. His areas of expertise include international dispute settlement, international (investment) arbitration and general international law.

**Katherine Del Mar** is a Ph.D. candidate in international law at the Graduate Institute of International and Development Studies, Geneva. She was Adviser to the Republic of Serbia in the advisory proceedings before the International Court of Justice in *According with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*.

**Malgosia Fitzmaurice** holds a Chair of Public International Law at Queen Mary University of London. She is an editor-in-chief of the *International Community Law Review* and one of the editors of *Queen Mary Studies in International Law*, published by Martinus Nijhoff Publishers. She is also a Nippon Foundation Professor of Marine Environmental Law at the International Maritime Law Institute of the International Maritime Organisation in Malta. Her research interests are the law of treaties, international environmental law, settlement of environmental disputes and indigenous peoples. She has published widely on all of these subjects.

**Duncan French** is Head of the University of Lincoln Law School and Professor of International Law. He was previously Professor of International Law at the University of Sheffield, where he hosted the 2011 International Law Association British Branch conference on ‘States, peoples and minorities: whither the nation in international law?’, at which the chapters in this volume were originally presented. Recent work includes edited collections on global justice and sustainable development, international dispute settlement and the criminological and legal consequences of climate change, and papers on such varied topics as Antarctica, governance of the deep seabed, EU/Caribbean treaty arrangements on foreign direct investment, and the development of complaint and grievance mechanisms in international law.

**Gleider I. Hernández** is Lecturer in Law at the University of Durham. From 2007 to 2010, he served as law clerk to Judges Bruno Simma and Peter
Tomka of the International Court of Justice. He completed his D.Phil. at Wadham College, Oxford and holds an LL.M. from Leiden University, and LL.B. and BCL degrees from McGill University.

Jackson Nyamuya Maogoto holds a Bachelor of Laws with First Class Honours from Moi University (Kenya) and postgraduate degrees from the University of Cambridge (Masters in Law), University of Technology Sydney (Masters in Law) and University of Melbourne (Doctorate in Law). He is currently a senior lecturer at the University of Manchester, UK. His international law interests encompass the fields of international criminal law, international humanitarian and human rights law, use of force and peacekeeping, space law, counter-terrorism and private military corporations.

Tamar Megiddo is a JSD student at New York University School of Law. She received her Bachelor’s degree in Law and the Humanities from the Hebrew University of Jerusalem (2009) and her LL.M. in International Legal Studies from NYU School of Law (2012). Her publications include a first Hebrew Guide to the Convention on the Elimination of All Forms of Discrimination Against Women (2011) (co-authored with Ruth Halperin-Kaddari).

Zohar Nevo is an Israeli attorney with Yigal Arnon & Co., where his practice focuses on matters involving corporate and commercial law. He received his LL.B. from the Faculty of Law at Hebrew University and an MBA from the School of Business Administration at Hebrew University. He is also interested in public international law and was a recipient of the Fritz & Margaret Oberlander Award for excellence in international law.

Alexandros X. M. Ntovas advocate (Athens), doctoral grantee in public international law, is lecturer in law at the University of Southampton Law School, UK. He has studied law, political analysis and international relations in Greece, England, Belgium and the Netherlands. He researches, teaches and practises in several substantive areas and levels of public and administrative law.

Jadranka Petrovic Ph.D. teaches international law and business law-related units in the Department of Business Law and Taxation, Monash University. Her research interests include international legal protection of cultural property and several other areas of international
law, such as international humanitarian law, international criminal law, international human rights law and international dispute resolution. She is the author of *The Old Bridge of Mostar and Increasing Respect for Cultural Property in Armed Conflict* (Brill, 2012).

**Yael Ronen** Ph.D. is senior lecturer in Sha’arei Mishpat College in Israel and academic editor of the *Israel Law Review*. She received her Ph.D. at the University of Cambridge in 2006. Prior to embarking on an academic career she served as a diplomat and lawyer in the Israeli Foreign Service for nine years. Her areas of interest include statehood and territorial status, the laws of armed conflict, international human rights law and international criminal law, as well as the intersection between these topics. Among her books are *Transition from Illegal Regimes under International Law* (Cambridge University Press, 2011) and *The Iran Nuclear Issue* (Hart, 2010).

**Katja L. H. Samuel** Ph.D. is a barrister, and lecturer at Reading University, UK, who specializes in human rights, rule of law and security-related matters, in particular counter-terrorism. Her research interests also include the Organisation of Islamic Cooperation and the influences of Islamic law, especially their influences upon international law-making, peace and security.

**Mohammad Shahabuddin** achieved LL.B. and LL.M. degrees from the University of Dhaka, and completed his Ph.D. in International Law at SOAS, University of London. He also studied at the Yokohama National University in Japan for the degree of Master of International and Business Law. He is currently the Chairman of the Department of Law & Justice at Jahangirnagar University in Bangladesh. He is also the Assistant Director (Research) of Bangladesh Institute of Law and International Affairs (BILIA).

**Kelly Stathopoulos** is a Ph.D. candidate at the University of Nottingham, UK, where she also teaches EU law as a part-time tutor. Her doctoral thesis examines the relationship between African intrastate peace agreements and self-determination. She previously studied law in Athens (LL.B., National and Kapodistrian University of Athens), Utrecht and Sheffield (joint LL.M. in Conflict and Security Law, Utrecht University and Sheffield University).
Charlotte Steinorth is Assistant Professor at the Legal Studies Department of the Central European University, Budapest. Before joining CEU in 2012, she was a research fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. After studies in law and political science at Paris II, she obtained an LL.M. and a Ph.D. from the London School of Economics, for which she was recipient of the Olive Stone Memorial Scholarship. Her research focuses on international human rights law, migration law and democratization and international law.

James Summers Ph.D. is a lecturer in international law at the University of Lancaster. He is the author of a number of works on self-determination. His book Peoples and International Law was published in 2007 by Martinus Nijhoff. A second edition is currently being prepared for publication in 2013. He recently edited a book on the legal controversy surrounding Kosovo’s declaration of independence, Kosovo: A Precedent? (Martinus Nijhoff, 2011). He is currently working on a textbook on international law.

Mai Taha is an SJD (doctoral) candidate at the University of Toronto, Faculty of Law. She received her LL.M. from the University of Toronto and her M.A. in International Human Rights Law from the American University in Cairo. She was previously a legal adviser for refugees in Egypt, as well as holding positions at the International Criminal Court and the British Institute for International and Comparative Law. Her research focuses on public international law, international legal history and labour law.

Jure Vidmar is Leverhulme Trust Early Career Fellow at the Faculty of Law, University of Oxford, where he also teaches public international law. He was recently also a visiting fellow at the Institute for International and Comparative Law in Africa, University of Pretoria. His publications have mainly addressed the issues of statehood, self-determination, international delimitation, democratic theory, political participation and norm conflicts in international law. He recently co-edited (with Erika de Wet) Hierarchy in International Law: The Place of Human Rights (Oxford, 2012). He is also an editor of the Hague Yearbook of International Law.
JACQUI ZALCBERG is a lecturer in law at Humboldt University, Faculty of Law, Berlin, where she established, coordinates and teaches the Human Rights Law Clinic. She holds an LL.M. from Columbia University, where she was the Charles B. Bretzfelder Fellow in International Law, and received her B.A./LL.B. (Hons.) from Monash University, Australia. Her focus is on the rights of indigenous peoples in international law, and she has worked on a range of indigenous rights cases in a variety of international, regional and domestic courts, including as legal adviser to the UN Special Rapporteur on the rights of indigenous peoples.
Self-determination has formed part of the vocabulary of international law since the Treaty of Versailles and the formation of the League of Nations. Its influence has not been constant, but has waxed and waned according to circumstances. Following the virtual completion of the decolonization process (Western Sahara and Palestine two notable exceptions), the ‘first generation’ of self-determination has largely run its course. But the principle has not lapsed or been deprived of all continuing value, even if its relevance to cases such as the dissolution of the former Yugoslavia remains equivocal and contested.

Thus, the international law on statehood and the principle of self-determination provide a normative framework that supports the classic conception of the international legal order as shaped by and constituted of states. From a distance, it appears enduring, even basal. But quiet waters run deep, and the declarative effect of statehood and self-determination masks significant ongoing uncertainties, as well as disguising the difficulties inherent in applying these doctrines to novel and persistent factual situations. This is revealed in the International Court of Justice’s 2010 Advisory Opinion on Kosovo, over which a vibrant debate continues. The questions raised – and mostly left unanswered – by the Court reveal yet again the contested role of international law in governing many communities’ desires for autonomy and self-government, either within their state or beyond it.

This volume explores these issues through a wide-ranging discussion of many of the principal challenges, including the disputed doctrine of remedial secession, the rights of indigenous peoples, continued concerns over the diplomatic tool of recognition, and ongoing difficulties with self-determination. Equally, the volume balances general principle with instances of local circumstance and historical example. As the introduction notes, international law is enriched (if not made any more certain) by connection with the complexities of individual situations. Ultimately, the law on statehood and self-determination must be viewed as being in a
constant process of change, seeking to balance the precepts of the past with the diverse claims of peoples and communities.

The essays assembled by Professor French represent an ambitious attempt to resolve some current issues surrounding self-determination and sovereignty, including the disputed doctrine of remedial secession, the rights of indigenous peoples, the role of non-state entities and the unresolved, protean difficulties within self-determination itself. The result is a volume of some significance, assembling an array of problems concerning statehood and self-determination to be solved by reference to a central idea – the shared belief in the capacity of international law to evolve, adapt and provide principled solutions. The result is a work in which the value of the whole exceeds that of its (already worthy) constituent parts.

James Crawford
Whewell Professor of International Law
Cambridge
26 June 2012
Issues of statehood, territory and self-determination continue to provide both a framework for, and the broad narrative of, international law in the twenty-first century. Though international law’s capacity to regulate ever more complex areas of state, individual and even corporate activity (at least indirectly) is remarkable and has often been noted, continued disputes over such a foundational matter as territorial sovereignty, and the increasingly persistent assertion of further, more limited, rights within and without such sovereignty should themselves not go unnoticed. Though international law now plays an undoubtedly more flexible, adaptive and technical role in the political, social and economic life of states, some of the core principles and assumptions on which international law rests remain open to significant debate and challenge.

Perhaps this has always been the case. Nevertheless, as political situations arise, new complexities in international law emerge. As the International Court’s 2010 Advisory Opinion in Accordance with international law of the unilateral declaration of independence in respect of Kosovo revealed – partially by way of its reasoning, but principally by what it did not say – there remain many aspects of international law for which we have little in the way of consensus; in this case, unilateral declarations of independence, remedial secession and the outer parameters of self-determination in a post-colonial setting, inter alia.

Within this context, there are several sub-themes that one might mention, and to which this preface can only briefly allude. These include, in no particular order, the doctrine and practice of recognition, the rights of indigenous peoples and other minorities, the role of third parties (including international organizations) in matters of state creation and state building, the symbiosis between culture, identity and nationhood in both concurrently upholding and undermining the fundamental basis of the ‘nation state’, and the countervailing (though certainly not conflicting) pressures of federalism, regionalism and supranationalism. Perhaps above all, there is the matter of the overarching relevance, application
and implementation of legal principle in shaping, determining and resolving complex factual situations.

This volume – as full as it is – cannot hope to do justice to all these issues in the same depth. Nevertheless, what it can (and hopefully does) do is to provide the reader with detailed and reasoned analyses of many of the key debates, as well as highlighting examples from across the globe of various instances of where international legal principle is affecting (and is potentially being affected by) local circumstances. It has often been said that facts shape the law, and indeed one of the most noticeable things is the interplay of local and global politics in framing issues of territorial sovereignty.

Moreover, what this volume reveals, above all else, is a truth that international lawyers would be wise not to ignore; namely, that to be meaningful, international law needs to continue to make a difference. Consequently, international lawyers must be aware not just of the global locus of the discipline, but also of the many diverse, and often local, settings in which ‘our’ rules and processes potentially impact. With discussion of situations as far afield as Greenland, New Caledonia, Somaliland, Taiwan, as well as Kosovo, amongst others, the collection is hopefully both contextual in content as well as being international in focus. Equally, as numerous chapters reveal, the past is not a foreign country but, if understood correctly, it can help us to reflect on – often very similar – issues that still resonate in the present day.

The chapters in this collection were amongst those presented at the 2011 International Law Association British Branch annual conference held at the University of Sheffield, when I was there as Professor of International Law and Director of the Sheffield Centre for International and European Law. It thus seems only fitting that I should thank Sarah Beedham, Lisa Burns and Harriet Godfrey of that School of Law’s research support office, who worked so hard to ensure that the conference occurred efficiently. Equally, I would like to acknowledge the support of Tawhida Ahmed, Ali Bohm, Russell Buchan, Paul James Cardwell, Richard Collins, Nathan Cooper, Scarlett McArdle, Andreas Rühmkorf, and Kate Wilkinson, both prior to, and during, the conference.

Particular thanks need to go to the contributors who have worked remarkably steadfastly in meeting the deadlines that I imposed, responding to my many demands on their time. But ultimately, this collection would not have been completed without the support of the staff at Cambridge University Press. Such thanks is not given as a matter of polite protocol, but out of real and sincere gratitude; completing this
collection whilst at the same time taking up post as a head of school would have not been possible otherwise.

This book is dedicated to my children, Anna, Jacob, Matthew and Rebecca, whose interaction so often reminds me of the diplomacy, negotiation tactics and the occasional use of force of states.
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