Preface

Secession is the process through which a portion of an existing state separates in order to create its own new state or in order to join another existing state. International law does not regulate secession and instead tolerates secessions as factual occurrences. International law does, however, contain the principle of self-determination which, in its most extreme form, may result in a remedial secession. This book seeks to propose a new international law framework on secession. The existence of such a framework would fill an existing vacuum in international law and would tame the role of geopolitics in (de)legitimizing various secessions throughout the world.

A number of secessions have taken place over the past five decades, including the cases of Bangladesh, Eritrea, South Sudan, Kosovo, and Crimea. Other secessions have been attempted, through at times violent internal warfare, and have been unsuccessful, resulting in the creation of de facto states whose status remains undetermined. Such cases include South Ossetia, Abkhazia, Nagorno-Karabakh, Transnistria, Republika Srpska, and Northern Cyprus. Finally, secessions have been unsuccessfully deliberated and attempted through democratic means, in the cases of Quebec, Catalonia, and Scotland. Because international law is silent on secession, none of these cases can be properly analyzed through a legal lens, and most of the outcomes mentioned directly above have been the direct result of regional and international politics. This state of affairs is unsatisfactory because it allows politics to dominate secessionist outcomes and because it highlights a gap in international law. International law as a tool of interstate conflict resolution should provide specific norms about solving secessionist conflicts. Such norms would serve as binding guidelines to world superpowers, whose willingness to (de)legitimize specific instances of secession would be legally tempered and constrained.

This book’s attempt to construct an international law framework on secession begins by discussing and distinguishing secession from self-determination. This book will argue that the existing framework on external self-determination is insufficient because it only applies to peoples and because it is conditioned on the conclusion that various
modes of autonomy have been attempted and exhausted by the secessionist group. The book then focuses on the idea of secession itself, by analyzing this theory as a process and as an emerging principle or right. Next, the book discusses how secession (and self-determination) are linked to other international law principles, such as statehood, recognition, sovereignty, and intervention. It then turns to an analysis of various case studies of successful and attempted secessions, such as those mentioned directly above. Finally, the book demonstrates not only that the existing international law vacuum on secession is unsatisfactory, but also that the creation of an international law framework on secession does not necessarily conflict with other existing norms, such as the norms of territorial integrity and sovereignty of states. Ultimately, the book proposes a new normative framework on secession, which will focus on secession as procedurally sound, on secession as a fair substantive solution, and on reconciling secession with the mother state’s right to territorial integrity.

Secession is a difficult proposition—accepting a normative right or entitlement to secession implies that sovereign statehood is no longer absolute. In light of the existence of relatively frequent secessionist conflicts, however, the development of an international law framework on secession is a necessity in the modern world. The absence of rules on secession leads to the existence of de facto states and frozen conflicts, as well as to unwarranted recognitions and unnecessary withholdings of recognition. International law is a dynamic and developing field, and it is our duty as lawyers to advocate for the creation of new international legal norms if existing rules and principles are unsatisfactory or inadequate. Secession can become a right under international law without threatening to undermine the existing international legal system.