

## **Whose Claim, to what Right? A Taxonomy of the Self-Determination Genus**

Invocations of self-determination are commonplace in international affairs, and are seen as occupying an important position in the international legal system. The International Court of Justice (ICJ) has declared the right of peoples to self-determination ‘one of the essential principles of international law’, and has stated that it is a norm of *erga omnes* character (*Case Concerning East Timor*, [29]), and it has even been argued that the concept has acquired *ius cogens* status (Cassese, 1995, p. 140). Nevertheless, the dark side of the concept cannot be denied: as Duursma has noted, ‘practically all’ armed conflicts relate to the exercise of self-determination (1996, p. 1), and it is not uncommon to see the concept invoked as a justification-claim for radically different outcomes. Rather than casting the concept into doubt, however, these circumstances should be taken to show yet more strongly that it is widely seen by those claiming it as powerful source of legitimacy for their cause.

This paper will argue that the widely used internal/external framework of classification of self-determination claims is not able to capture the complexities of the usages of the concept or of the different legitimacy-claims that it can represent. In focussing only on the outcomes sought it treats self-determination claims as a *species*: as of a single *kind*, but exhibiting perhaps different behaviours. It collapses the many types and sources of justification to which the concept variously refers, and thus inhibits the ability of the international legal system to distinguish between types of self-determination claims.

By contrast, this paper will present a four-part taxonomy of such claims as species within a self-determination *genus*. Although it will argue that the four kinds of self-determination claims—political, colonial, remedial and secessionary—share a deep root, it will refer to the ideational and historical foundations of the forms in order to show that they rely on different justification narratives, and represent invocations of different principles. Thus, for example, although both seek as outcome the displacement of sovereignty, the principles underlying a claim to colonial self-determination and a claim to remedial self-determination are sufficiently different that they cannot be meaningfully compared, let alone equivalentised.

That conclusion has, of course, significant implications for the international legal system. In rendering both the forms and the justification narratives of self-determination claims more readily distinguishable, it enables claims of different kinds to receive different legal treatment. There are indications that, in the coming years, the already significant role self-determination plays in international affairs may increase, including in some of the most unstable and contested regions of the world. A renewed focus on the idea of self-determination and of the claims it can represent is therefore timely.

(3066 Characters)