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Alternative Approaches to the Right of Self-determination

Even before the term "self-determination" itself was coined, the right to self-determination has always been surrounded by controversy and has equally suffered from fundamental indeterminacy with respect to both its meaning and its application. This has resulted in a wide range of interpretations. Over the centuries, the right to self-determination gradually evolved from a vague political principle into a legal right; the fundamental dichotomy in the interpretation of this notion has, nevertheless, always remained. Due to the vague formulation of the right in the most eminent sources of international law, such as the United Nations Charter, several International Human Rights Covenants, various General Assembly Resolutions and decisions of the International Court of Justice (ICJ), as well as the reluctance of the ICJ to embark on the development of a detailed framework concerning a uniform interpretation of the right, theoretical uncertainty about the extent to which self-determination can be applied outside the colonial context remains. This contribution explores the diversity found in the academic literature on this subject by constructing a typology of the approaches found.

The "UN Paradigm", as the temporary standard interpretation, constitutes the first ideal type of approaches to self-determination. An assessment of demands for self-determination according to this school of thought would amount to a conservative approach and virtual disregard for attempts at external self-determination; merely internal self-determination is envisaged as a viable and legitimate political aspiration. The second ideal type of alternative approaches, referred to as "Flexibility Approach" proposes increased flexibility in assessing claims to self-determination; it is important to involve both parties into a negotiation process in order to attain the most viable solution to the dispute. The third ideal type, the "Human Rights Approach", suggests perceiving the right of self-determination as a human right. Ethnic minorities would have the highest chance of success in the pursuit of their political aspirations if this approach happened to enjoy a status as temporary standard interpretation. Not only has the third school of thought adopted the most admissive and flexible attitude towards diversified claims of self-determination, whether aimed at realizing internal or external self-determination, but also does it recognize seemingly more attainable qualifications for groups that wish to assert their alleged right to self-determination.