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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

A STUDY ON THE RIGHT TO SELF-DETERMINATION **UNDER INTERNATIONAL LAW**

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Abstract

The contemporary International Law system is a consequence of the events and ideas of revolutionaries and activists of our near past, roughly four hundred years ago. International Law can be described as the brainchild of various writers and jurists of the sixteenth to the eighteenth century, who had a major influence in formulating its core fundamental principles.

In the most basic sense, International Law is a set of rules, agreements, and treaties that are binding between nations. These laws have been created by the mutual collaboration of nations, and the adherence to them is a product of prioritising “self-interest” by each of these nations. This leads us to the aims and core principles of International Law.

The concept of self-determination has been applied to various areas, including education, work, parenting, exercise, and health. Research suggests that having high self-determination can foster success in many different domains of life.

Keywords: International Law, Self-interest, self-determination.

1. Introduction

The contemporary International Law system is a consequence of the events and ideas of revolutionaries and activists of our near past, roughly four hundred years ago. International Law can be described as the brainchild of various writers and jurists of the sixteenth to the eighteenth century, who had a major influence in formulating its core fundamental principles.

In the most basic sense, International Law is a set of rules, agreements, and treaties that are binding between nations, these laws have been created by the mutual collaboration of nations and the adherence to them is a product of prioritizing “self-interest” by each of these nations. This leads us to the aims and core principles of International Law.

The existence of international law is the result of amplified “political rendezvous”. It mainly aims to maintain international peace and security among different states. It also helps promote and maintain friendly relations among the nations, provide basic humanitarian rights, international co-operation through peaceful settlement of issues, and many more such virtuous methods that ensure a nation’s sovereignty. However, International Law continues to do so because of its very well-established core foundation or principles. One such principle is that of “Self-determination”.

Psychologically speaking, self-determination is an important concept that refers to each person's ability to make choices and manage their own life. This ability plays an important role in psychological health and well-being. Self-determination allows people to feel that they have control over their choices and lives. It also has an impact on motivation; people feel more motivated to take action when they feel that what they do will affect the outcome.

1.1 The Theory of Self-Determination

The Theory of Self-Determination suggests that the motivation to grow and change comes from three innate and universal psychological needs: connection, competence, and autonomy. When these three needs are fulfilled, people can become self-determined. The concept of “intrinsic motivation” plays a vital role in the theory of self-determination.

Psychologists Edward Deci and Richard Ryan pioneered the concept of self-determination through their “Theory of Motivation” which put forth the idea that people tend to be driven by a need for growth and fulfilment.¹

¹Deci EL and Ryan RM, “*Intrinsic Motivation and Self-Determination in Human Behavior*” (Springer Science+Business Media 2014).

The following theory has two key assumptions:

1. ***“The need for growth drives behaviour”***. The first assumption of self-determination theory is that people are actively directed toward growth. Gaining mastery over challenges and taking in new experiences are essential for developing a cohesive sense of self.²
2. ***“Autonomous motivation is important”***. While people are often motivated to act by external rewards such as money, prizes, and acclaim (known as extrinsic motivation), self-determination theory focuses primarily on internal sources of motivation such as a need to gain knowledge or independence (known as intrinsic motivation).³

The self-determination theory can help understand the things that might motivate your behaviours. Being self-determined, feeling like you have the autonomy and freedom to make choices that shape your destiny, is important for each person's well-being. When you pursue intrinsically motivated things that are aligned with your goals, you will feel happier and more capable of making good choices.

1.2 Research Questions

1. *“Who else [other than the population of an overseas colony] falls under people and whether other people have the right to self-determination, and, if so, how can they exercise their right of self-determination?”*
2. *“What is the normative status of the right to self-determination under International Law?”*

2. Introduction to Self-Determination in International Law

The right to self-determination has been identified as “one of the essential principles of contemporary International law”⁴ by the International Court of Justice (ICJ). However, it remains one of the most unsettled and debated norms of International Law.⁵ This ambiguity surrounding self-determination is most true beyond its application in the colonial context, as described by Drew

²Deci EL and Ryan RM, *“Intrinsic Motivation and Self-Determination in Human Behavior”* (Springer Science+Business Media 2014).

³Deci EL and Ryan RM, *“Intrinsic Motivation and Self-Determination in Human Behavior”* (Springer Science+Business Media 2014).

⁴*Case concerning East Timor (Portugal v Australia) Merits*, Judgement, ICJ Reports, 1995 4 at 102, para 29.

⁵Cass DZ, *“Rethinking Self-Determination: A Critical Analysis of Current International Law Theories”* [2021] *Traversing the Divide: Honouring Deborah Cass’s Contribution to Public International Law* 157.

as “plagued by an excess of indeterminacy both in terms of scope and content”.⁶ Though the scope and content of the right are now relatively settled for the colonial context, international lawyers continue to be troubled by the question of whether or not any aspect of the legal norm has *jus cogens* status.⁷

International legal norms are dynamic, their scope and content can be changed over time. Central components in any development of an international legal norm are the practice and views of states. This is likely to be either as evidence of the nature of a rule of customary international law.⁸ Thus, although a norm might be formulated in vague terms, a more definite meaning can develop over time. The right to self-determination was introduced into international law in vague terms. For instance, paragraph 1 of common Article 1 of the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (together ‘the Human Rights Covenants’) reads: “All 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.”⁹ The backdrop to the emergence of the legal right of self-determination can be labelled as the movement responsible for decolonisation in the 1960s. This helps to explain why, despite self-determination as a political principle having several different dimensions, the core meaning of the legal right to self-determination centres on the idea of freedom from subjugation. An example of this can be found in the UN General Assembly’s Declaration on the Granting of Independence to Colonial Countries and Peoples 1960, which states that, “the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental rights, is contrary to the Charter of the United Nations...”¹⁰ and provides that, “all peoples have the right to self-determination; by their right, they freely determine their

⁶Drew, “*The East Timor Story: International Law on Trial*” (2001) 12 *European Journal of International Law* 651 at 658.

⁷Summers, “*The Status of Self-determination in International Law: A Question of Legal Significance or Political Importance*” (2003) 14 *Finnish Yearbook of International Law* 271 at 283.

⁸*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/ Netherlands) Merits*, Judgment, ICJ Reports 1969 3 at 44.

⁹999 UNTS 171, entered into force 23 March 1976, and 993 UNTS 3, entered into force 3 January 1976, respectively. On the debates at the time of the drafting of Article 1 of the ICCPR, see Bossuyt, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* (Dordrecht: Martinus Nijhoff, 1987) at 19-21.

¹⁰Summers, *supra* n 7 at 292.

political status and freely pursue their economic, social and cultural development.”¹¹ This became the basis for people who were subject to colonial rule to be given the choice if they wished to be constituted, independent, integrated, or associated with another state.¹²

It is possible to identify the rights that fall upon persons before they go through the process of determining their status, through various international instruments that have identified and addressed the concept of “self-determination”. These rights have been compiled by Dr. Catriona Drew. She states that “while its normative contours are yet to be definitively settled, the following can be deduced as a non-exhaustive list of the substantive entitlements conferred on a people by virtue of the law of self-determination in the decolonization context: (a) the right to exist demographically and territorially as a people; (b) the right to territorial integrity; (c) the right to permanent sovereignty over natural resources; (d) the right to cultural integrity and development; and (e) the right to economic and social development.”¹³

It is, however, now accepted that the legal right to self-determination expands much beyond the colonial context. However, the broad formulation of “all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development”, which is repeated similarly in almost all the relevant UN documents, including the Declaration on Principles of International Law Concerning Friendly Relations and common Article 1 of the Human Rights Covenants is central to why its meaning has been and continues to be the source of considerable contestation away from the colonial context. The following thoughts hence pose the question, ***“who else [other than the population of an overseas colony] falls under people and whether other people have the right to self-determination, and, if so, how can they exercise their right of self-determination?”***

¹¹Fox, “*Self-Determination in the Post-Cold War Era: A New Internal Focus?*” (1995) 16 Michigan Journal of International Law 733 at 780.

¹²McCorquodale, “*Self-Determination: A Human Rights Approach*” (1994) 43 International and Comparative Law Quarterly 857 at 862.

¹³Sheeran, “*International Law, Peace Agreements, and Self-Determination: The Case of the Sudan*” (2011) 60 International and Comparative Law Quarterly 423 at 458.

3. Views of various States on the Right to Self-Determination

In the past couple of years, there have been two requests from the UN General Assembly for advisory opinions from the International Court of Justice on matters relating to the Right of Self-determination.

The first opinion dealt with the legal consequences of the construction of a wall in occupied Palestinian territory.¹⁴ The second opinion addressed the accordence with international law of the unilateral declaration of independence concerning Kosovo.¹⁵ Both these requests provided various opportunities for the ICJ to give their views on the scope and content of the right to self-determination. While the Court in the *Palestinian Wall* Opinion hardly provided a comprehensive account of the legal meaning of self-determination, it has been credited with confirming “previous jurisprudence concerning self-determination, reaffirming its status as an essential principle of international law and rooting it unquestionably in the Charter itself.”¹⁶ While in the *Kosovo* Opinion, the Court highlighted the extensive debate about whether a right to secession, as part of the law of self-determination, exists “outside the context of non-self-governing territories and peoples subject to alien subjugation, domination, and exploitation”.¹⁷

When asked to provide an advisory opinion, the ICJ will invite various nation-states to make written and oral statements on issues at stake. State submissions are particularly important when the questions asked of the Court, relates to an aspect of Law that has the potential to attract a divergent range of views on a doctrine. For instance, the representatives of the Netherlands in their oral statement to the Court for the *Kosovo opinion* stated that the doctrine was “informative, but it may not be authoritative.”¹⁸ This puts the onus on the Court to interpret relevant treaty provisions and to “ascertain the [relevant] legal opinions and the practice of States” for itself.¹⁹ As these tasks

¹⁴*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* Advisory Opinion, ICJ Reports 2004 136.

¹⁵Gareau, “*Shouting at the Wall: Self-Determination and the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*” (2005) 18 *Leiden Journal of International Law* 489 at 505.

¹⁶Gareau, *supra* n 15 at 520.

¹⁷*Accordence with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* Advisory Opinion, International Court of Justice, 22 July 2010, at para 82.

¹⁸The Netherlands, Oral Statement, 10 December 2009, at para 9 (all written and oral statements related to the Kosovo Opinion are available at: <http://www.icj-cij.org> [last accessed 11 March 2022]).

¹⁹*Ibid.*

are facilitated by the information that states provide in their submissions, it would be fair to assume a state that favours a progressive reading of a relevant aspect of international law would provide an especially detailed account of its position, in an attempt to persuade the Court to adopt the same position. However, this assumption is challenged by a review of the written statements from states that proposed a progressive reading of the law of self-determination about the Kosovo Opinion. For instance, several states put forward that the independence of Kosovo could be justified based on the concept of remedial secession,²⁰ but, as Serbia noted in response, provided little to substantiate this position as a matter of international law.²¹ Possible reasons for this reticence can be found through consideration of the approach taken by such states to the definition of the term “people”.

If the idea that the denial of self-determination to people within a state can trigger a right to remedial secession is to gain fuller acceptance as a point of international law²², there will first need to be greater clarity on the meaning of the term “people”. This makes it interesting that although states such as the Netherlands and Albania identified the concept of remedial secession as part of the right to self-determination, they did not address in any detail how they understand the meaning of the term “people”. Instead, they proceeded on the basis that it was sufficient that the population of Kosovo had been referred to as a “people” in the Rambouillet Accords (the Netherlands) and the constitutional framework for provisional self-government of Kosovo promulgated by the Special Representative of the UN Secretary-General (Albania).²³ This approach reduces the value of the submissions for the clarification and development of international law. It could be a sign that the states in question remain uncertain about what they see as an acceptable definition of the term.²⁴ However, it must also be seen in context. If these states had proposed criteria for the identification of the word “people” in this setting, it might have encouraged the Court to engage in a detailed evaluation of the meaning of the term, the outcome of which, given the uncertainty

²⁰See Written Statements from Albania, Denmark, Estonia, Finland, Germany, Ireland, Latvia, the Netherlands, Poland, Slovenia, and Switzerland, 19 April 2009. Remedial secession is a reference to the idea that the oppression of a group within a state can eventually lead to a right of secession from the state for the group: see Vidmar, ‘Remedial Secession in International Law: Theory and (Lack Of) Practice’ (2010) 6 *St Anthony’s International Review* 37.

²¹Serbia, Written Comments, 17 July 2009, at para 312.

²²*Reference Re Secession of Quebec* [1998] 2 SCR 217 at paras 135 and 138.

²³The Netherlands, Written Statement, 17 April 2009, at para 3.3; and Albania, Written Statement, 17 April 2009, at para 84.

²⁴For an approach that was available to be adopted, see UNESCO experts, *infra* n 66.

surrounding this point of law, may not have suited the interests of the states in question. This highlights another reason why what a state includes in a submission to the Court is significant.

What a state chooses to disclose about how it views a particular aspect of International Law can have a substantial influence on how the Court interprets that aspect or whether the Court addresses that aspect at all.²⁵ The United States' opinion on the *Kosovo* situation is a confirmation that States consider such a possibility when the US in its policy chose not to reveal its views on the scope and content of the law of self-determination in its submissions to the Court about the *Kosovo Opinion*.²⁶ The US adhered to this policy even in the face of a host of submissions from other states, such as Serbia's statement that "there can never be a remedial/external right to self-determination that applies to any situation", that might have been expected to prompt the US to clarify its views on the law.²⁷ This suggests that the US was aware that this policy of no direct expression of its views on the meaning of the right to self-determination strengthened the persuasiveness of its call to the Court not to consider the law of self-determination.

The main aim here is not to suggest that submissions made by various states concerning advisory opinions do not play a role in the clarification of a legal norm, but rather is that the usefulness of state submissions as a source for clarification of the scope and content of legal norms is limited, because of the interest that states have in influencing the approach taken by the ICJ in advisory opinions, which is likely to affect what a state is willing to disclose about its views on a particular aspect of law. A review of the oral statements in the *Kosovo Opinion*, for instance, provides insights into the views of states on several important aspects of the debate about the meaning of the right to self-determination, such as the existence of a right to remedial secession,²⁸ the meaning

²⁵On the strategy of Serbia in framing the question that was set before the Court, see Weller, "Modesty Can Be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?" (2011) 24 Leiden Journal of International Law 127 at 130.

²⁶United States, Written Comments, 17 July 2009, at 21.

²⁷Instead, the US responded by highlighting to the Court how 'even some of Serbia's staunchest supporters argue that there is, in fact, a right of remedial/external self-determination under certain circumstances, before reiterating that it would not express a view on 'the issues of who is a "people", whether there is a remedial/external right to self-determination in certain egregious situations, or to whom such a right could flow': see the United States, Written Comments, 17 July 2009, at 21-2.

²⁸China, Oral Statement, 7 December 2009, at para 23 and Russia, Oral Statement, 8 December 2009, at para 8.

of the term people,²⁹ and the sort of constitutional arrangements that are required by the right to self-determination.

The political organs of the UN, in recent years, have provided States with various opportunities to publicise their opinion and understanding of the scope and content of the right to self-determination. In particular, there have been a host of large-scale international interventions in conflict and post-conflict situations, which raise issues related to the right to self-determination. For instance, during 2004 in Haiti, the UN was a central actor in the initiative that saw, amidst the backdrop of worsening security, the step down of the elected president, the deployment of an international military presence, and the establishment of a part-internationally selected interim government.³⁰ There is scope for reading this international initiative as a contravention of the right of the people to self-determination, in the sense that the people were not left to determine their affairs; or as an attempt to enable the people to exercise self-determination, by bringing an end to circumstances that were preventing the people from determining their affairs in any meaningful way. Yet in an extensive debate at the UN on how to respond to the situation, there was no explicit mention of the right of the Haitian people to self-determination. Rather the guiding principles for action put forward by various states, such as Jamaica (on behalf of the Caribbean Community (CARICOM)) and the UK, concentrated on the importance of respect for democracy.³¹ One might read the omission of reference to self-determination as a sign that states did not see this situation as raising issues of self-determination. Alternatively, it might be seen as a reflection of states not wanting to complicate matters, in terms of gaining agreement on a plan of action amongst a group of states with a diverse range of interests and outlooks. However, states have also been reluctant to expand on the meaning of the right to self-determination in a context where they are asked specifically about the right concerning no other situation than their own.

This is a reference to the approach that has been taken by states when providing information concerning Article 1 of the ICCPR in the reporting procedure to the HRC. Under Article 40 of the

²⁹Azerbaijan, Oral Statement, 3 December 2009, at para 36.

³⁰Saul, "From Haiti to Somalia: The Assistance Model and the Paradox of State Reconstruction in International Law" (2009) 11 International Community Law Review 119.

³¹UN Security Council debate on "The Question Concerning Haiti", S/PV.4917, 26 February 2004.

ICCPR states parties are required to submit an initial report, and periodic updates, on what they are doing to fulfil each of the rights in the ICCPR. The process allows the HRC to raise any issues of concern with the state in question, but it also is intended to feed into the general comments of the HRC, which deal with the scope and content of the rights in the UN Charter.³² Thus, it would at least not be inappropriate for states to comment explicitly on what they see as the requirements of Article 1. For instance, does Article 1 require particular constitutional arrangements or not? On rare occasions, this has been the case. India, for example, has identified that Article 1 includes a right to democracy.³³ However, the majority of states that have addressed Article 1 in their reports have chosen to limit their comments to a brief account of what has been undertaken at the domestic level to fulfil the right.³⁴ The apparent reticence to contribute to the determinacy of the norm in this context might be explained by the fact that the self-determination of people is a politically sensitive issue for certain states at the domestic level.³⁵ However, it is also possible to think of other more general reasons for states to want to keep the law of self-determination indeterminate.

It is important to stress, though, that uncertainty in the law of self-determination can also help to explain the occurrence of certain armed conflicts. As Charney has pointed out, it can be argued that “uncertainty (*in the law of self-determination*) has itself contributed to many human tragedies the world has witnessed in the post-World War II period by giving false hope to minority groups that they have rights to autonomy or independence against the states in which they are found, even absent a colonial history.”³⁶ This is a strong reason why, even in the light of the benefits that states might derive from the indeterminacy of the law, it would be reasonable to expect states to have been more forthcoming than they have been to date about the publication of views on the meaning of the right.

³²See General guidelines regarding the form and contents of reports from States parties under Article 40 of the Covenant, Annex IV, Documents of the first to fifth sessions, Yearbook of the Human Rights Committee 1977^1978, Vol II, CCPR/1/Add, 248, at paras 1 and 6.

³³India, Report to the Human Rights Committee, CCPR/C/76/Add.6, 17 June 1996, at para 32.

³⁴McGoldrick, “*The Human Rights Committee, Its Role in the Development of the ICCPR*” (Oxford: Clarendon Press, 1991) at 246-68.

³⁵Scheinin, “*The Right to Self-Determination under the Covenant of Civil and Political Rights*”, (2000) 13 Leiden Journal of International Law 219 at 221.

³⁶Charney, “*Self-Determination: Chechnya, Kosovo, and East Timor*” (2001) 34 Vanderbilt Journal of Transnational Law 455 at 458.

4: The Normative Status of the Right to Self-determination under International Law

The debate regarding whether self-determination was a legal norm or just a mere political principle took a considerable amount of time to subside.³⁷ However, the pronouncements from the ICJ on the legal status of the norm can be considered as an end to this debate.

There has also been a debate on whether self-determination in International Law is a legal rule or a legal principle. In this respect, the position that it is both a legal principle that postulates “people must be enabled freely to express their wishes in matters concerning their conditions”³⁸ and an umbrella legal rule for a collection of more specific legal rules, is most appropriate.

Whether there is a difference in the rules of self-determination that are found in customary international law and those in the Human Rights Covenants has also been given some consideration.³⁹ The fact that there are now 167 states parties to the ICCPR⁴⁰ reduces the need for inquiry along these lines. As even if this quantity of states parties does not result in Article 1 being seen as customary international law, it still means that the vast majority of states will be bound by the full plethora of rules that it is possible to bring under the principle of a right of self-determination in international law. Moreover, the HRC has indicated that “in connection with article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination.”⁴¹ This suggests that the HRC has not attempted, in its pronouncements, to develop Article 1 of the ICCPR as a stand-alone, conventional right to self-determination. These factors can help to explain why scholars and states alike have also made little effort to distinguish between customary and conventional rules of self-determination in their accounts of the law.⁴²

³⁷Laing, “*The Norm of Self-Determination 1941-1991*” (1991-2) 22 California Western International Law Journal 209 at 220.

³⁸Cassese, “*Self-Determination of Peoples. A Legal Reappraisal*” (Cambridge: Cambridge University Press, 1995) at 128.

³⁹Cassese, supra n 38 at 159-62.

⁴⁰United Nations Treaty Collection database at: <http://treaties.un.org/> [last accessed 11 March 2022].

⁴¹Human Rights Committee, General Comment No 12: The right to self-determination of peoples (art 1), 13 April 1984, HRI/GEN/1/Rev.1 (1994); (1994) 1-2 IHRR 10 at para 7.

⁴²Craven, “*The European Community Arbitration Commission on Yugoslavia*” (1995) 66 British Yearbook of International Law 333 at 334.

The present concern is with how the legal right to self-determination has been elevated beyond a basic normative status in international law. Here, as will be seen, the umbrella principal aspect of the norm and the question of customary law or conventional legal norm are not without potential relevance. Four different normative levels for the right to self-determination can be identified from the literature: human right, association with sovereignty, *erga omnes*, and *jus cogens*. In setting out the strength and consequences that follow from these claims, a particular interest is in the implications that categorisation of the right at a certain normative level, and the debate surrounding it, might have for the willingness of states to suggest and expand on legal content for the right.

Conclusion

The right to self-determination is undeniably one of the most debated and unsettled norms in International Law. This is true for both its legal as well as normative aspects. There is reason to believe that the way the normative status has been presented in legal doctrines, could be deterring States from publicising their views on the scope and content of the right to self-determination. In particular, the presentation of the norm as one of the *jus cogens* has been highlighted. It has been suggested that because the identification of the case for the norm to be seen as *jus cogens* is often made in a general manner, states might form the impression that any aspect of the right to self-determination that becomes more determinate will automatically also have *jus cogens* status. This has been argued to not be the case, but it still might be enough, in the light of the consequences that follow from *jus cogens* status, to deter states from contributing to the determinacy of the scope and content of the right to self-determination.

To address this concern, it has been suggested that as the first step towards states making more effective use of the opportunities, they have to present their views on the scope and content of the right to self-determination, states should be encouraged to make a conscious effort to use these opportunities to publicise their understanding of the normative status of the right. The idea is that clarity on the normative status issue might make states more willing to discuss the scope and content of the right to self-determination.

It has been suggested that out of the opportunities presented by submissions to the ICJ, debates in political organs of the UN, and state reports to the HRC, it is the latter that would seem most likely to be adopted as a site for states to publicise their understanding of the right to self-determination. However, a review of statements by states to the HRC has shown that states are not making use of this opportunity. The likelihood of states starting to make fuller use of the HRC reporting procedure to help clarify the meaning of the law of self-determination, given the record, can hardly be assumed. Hence, this article should also be seen as a call for a responsible approach by legal scholars to the identification of the normative status of the right to self-determination. In particular, scholars can strive to bring clarity to the question of normative status, by expressing their position on the aspects of the norm that are perceived as having *jus cogens* status, and the legal basis for this view, with as much precision as is practicable.

