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A Tale of Two Cities: Lhasa and Hong Kong in the Shadow of Mao

Steven D. Mewha

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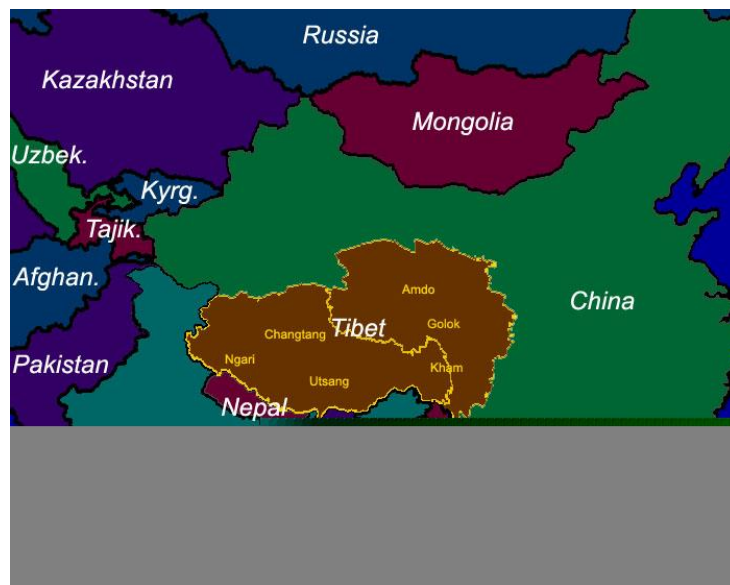
**A TALE OF TWO CITIES: LHASA AND
HONG KONG IN THE SHADOW OF MAO**

Steven D. Memba

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Tibet shown as part of the People's Republic of China.¹



Close up of Tibetan territory.²



¹ *Tibet at a Glance*, INT'L TIBET NETWORK, <https://tibetnetwork.org/about-tibet/tibet-at-a-glance/>.

² *Tibet Travel Maps*, EXPLORE TIBET (Apr. 19, 2019, 12:45 PM), <https://www.exploretibet.com/m/maps/>.

I. INTRODUCTION

This paper explores the histories and complexities of two states that have struggled for independence from the People's Republic of China ("PRC") and how, despite having vastly different histories and cultures, Tibet stands as an omen for things to come in Hong Kong. The paper will show that both states have the right under international law to become independent states, should they choose to do so, and that their occupations are illegal. These two states symbolize the struggle for self-determination in the post-colonial world, the same logic and international laws can be applied to millions of others who live in oppression under the rule of the world's powers. This paper analyses the arguments for independence and the possible paths to independence.

Despite Chinese propaganda claiming otherwise, Genghis Khan was Mongolian, not Chinese, and had conquered China; his grandson Kublai Khan created the Yuan Dynasty.³ Throughout its long history, Tibet had been an independent nation several times, but was conquered by Genghis Khan and later by the Qing Dynasty.⁴ Hong Kong had been a colony under British rule but was an uninhabited land prior to the British takeover.⁵

Tibet was independent of foreign control from 1911-1950, with Tibet's head of state (the thirteenth Dalai Lama at the time) formally declaring independence on February 13, 1913.⁶ I will show that under international law, as defined by the Montevideo Convention, Tibet meets the requirements of statehood.⁷ A "state" has

³ See PAUL LOCOCO, JR., *GENGHIS KHAN* vii-viii (2008).

⁴ WARREN W. SMITH JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS* 124-25 (1997).

⁵ STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 59 (2004).

⁶ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 813 (1989).

⁷ See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 cmt. *b* ("Whether an entity satisfies the requirements of statehood is ordinarily determined by others states when they decide whether to treat that entity as a state") cmt. 5 (AM. LAW INST. 1987) (herein referred to as RESTATEMENT 3D); LORI FISLER DAMROSCH AND SEAN D. MURPHY,

a set of rights, including sovereignty over its territory and general authority over its nationals, status of a legal person, with capacity to own, acquire, and transfer property, to make contracts and enter into international agreements, to become a member of international organizations, and to pursue, and be subject to legal remedies, and capacity to join with other states to make international law or by international agreement.⁸

After the fall of the Qing Dynasty, the 1914 Simla Convention was agreed upon between Great Britain, China, and Tibet.⁹ Under this convention, Tibet was to be split into Tibet and Outer Tibet; Outer Tibet would be under Chinese suzerainty, meaning it would be internally self-run, but internationally would fall under Chinese rule.¹⁰ Under Article 2 of the convention:

The Governments of Great Britain and China recognizing that Tibet is under the suzerainty of China, and recognizing also the autonomy of Outer Tibet, engage to respect the territorial integrity of the country, and to abstain from interference in the administration of Outer Tibet (including the selection and installation of the Dalai Lama), which shall remain in the hands of the Tibetan Government at Lhasa. The Government of China engages not to convert Tibet into a Chinese province.¹¹

In 1842, Hong Kong was ceded to the British Empire as a result of the first Opium War, with more territory ceded by China in 1860 after the second Opium War. Finally, a section called the “New Territories,” 368 square miles north of Hong Kong on the Kowloon

INTERNATIONAL LAW: CASES AND MATERIALS 283 (2014); *Montevideo Convention on the Rights of States*, 49 Stat. 3097, 165 L.N.T.S. 19.

⁸ See RESTATEMENT 3D § 206.

⁹ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 75 (1989).

¹⁰ *Id.*

¹¹ *Id.*

Peninsula, was leased to the British for ninety-nine years in 1898.¹² Hong Kong had a population of roughly 7,450 when the British first took control of the territory. Hong Kong's population skyrocketed through the years and now sits at 7.4 million.¹³

The Republic of China existed until 1949, when the leaders of the government fled Mainland China to Taiwan, setting up the *de jure* government there.¹⁴ The communist People's Republic of China ("PRC"), led by Mao Zedong, became the *de facto* government of Mainland China, and demanded the world view Taiwan as part of the PRC, and advocated a "one China" policy.¹⁵ In 1959, the Tibetan government fell to the Chinese People's Liberation Army ("PLA"), Mao Zedong's communist armed forces, causing the Dalai Lama and other governmental officials to flee the country and set up the *de jure* Tibetan government in India.¹⁶

It is of the utmost importance that states recognize Tibet as an independent state and call for its power of sovereignty to be restored; every day that passes, more are imprisoned in Tibet, the culture is diminished, and China's claim over Tibet grows as Tibetans intermarry with the Han Chinese.¹⁷ Recognition as a state is determined by others states in the world, as well as the United Nations.¹⁸ Further, recognition of a state, as a public act, is an optional and political act; unfortunately,

¹² See STEVE TSANG, A MODERN HISTORY OF HONG KONG 38 (2004); see TSANG, at 35; PATRICIA LIM, FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY 544 (2011).

¹³ Census and statistics department, *Population*, THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (Feb. 28, 2019, 5:03 PM), <https://www.censtatd.gov.hk/hkstat/sub/so20.jsp>.

¹⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 152 (2004).

¹⁵ *Id.*

¹⁶ See JIANGLIN LI, TIBET IN AGONY 194–95 (2016).

¹⁷ Xu Yangjingjing, *China promotes mixed marriages in Tibet as way to achieve 'unity,'* WASH. POST (Mar. 3, 2019, 2:34 PM), https://www.washingtonpost.com/world/asia_pacific/china-promotes-mixed-marriages-in-tibet-as-way-to-achieve-unity/2014/08/16/94409ca6-238e-11e4-86ca-6f03cbd15c1a_story.html?utm_term=.fecf1c3e6997.

¹⁸ RESTATEMENT 3D § 202.

there is no legal duty for any state to take this step.¹⁹ However, there was a precedent set by the UN Security Council in 1990 when Iraq invaded Kuwait: annexation of land under any form and whatever pretext has no legal validity and is considered null and void.²⁰ Since 1929, when the Kellogg-Briand Pact, also signed by China, came into force, a land title acquired through the use of force, including military force, is considered to be illegal under International Law.²¹ The pact was solidified under International law by Article 2, section 4 of the UN Charter, denouncing the use of force.²² In addition, Article 52 of the Vienna Convention on the Law of Treaties, which many regard as a solidification of existing Customary International Law, states that a treaty that is “procured by the threat or use of force” is void, meaning any treaty signed during the 1950 occupation of Tibet is not binding.²³

In 1950, the Chinese People’s Liberation Army (“PLA”) marched in to Chamdo, the capitol of the Tibetan Autonomous region (“TAR”) and forced the leaders to sign the Seventeen Point Agreement which ceded Tibetan sovereignty and power to the Peoples’ Republic of China and Chairman Mao.²⁴ According to accepted International Law principles, a treaty or agreement between states is void if it was made under duress, thus the Seventeen Point Agreement is invalid under international law as it was made under duress.²⁵ China was bound by the UN Charter at the time of the annexation of Tibet.²⁶ According

¹⁹ LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 287 (2014), quoting BROWNLIE CRAWFORD, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 148 (8th ed. 2012).

²⁰ See Security Council Resolution Concerning Iraq’s Attempted Annexation of Kuwait S.C. Res. 662 (Aug. 9, 1990).

²¹ See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 364 (2014).

²² See U.N. Charter art. 2, § 4.

²³ See generally LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 364 (2014).

²⁴ WARREN W. SMITH, TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS 294 (1996).

²⁵ Vienna Convention on the Law of Treaties, art. 69. May 23, 1969, 1155, U.N.T.S. 331; See *id.*; See WARREN W. SMITH, TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS 294 (1996).

²⁶ See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 362–66 (2014).

to Article 2, section 4 of the Charter, the use of force at the Battle of Chamdo, which led to the annexation of Tibet, was illegal.²⁷

Hong Kong was officially handed over to the Peoples' Republic of China in 1997 through the "Sino-British Joint Declaration"²⁸ in May 1985, with the express provision that the Capitalist economic system of Hong Kong remain in place until 2047, or fifty years after the handover.²⁹ At that point Hong Kong will become fully absorbed into the Chinese Communist system.³⁰ China has broken the Sino-British Joint Declaration by its suppression of democratic movements in Hong Kong, the censorship of local media, and the crackdown of the pro-independence Umbrella movement.³¹ Although Hong Kong's position is unique, there is little doubt that the history of Tibet offers a glimpse of what is in store for Hong Kong upon the eventual change into the authoritative Chinese Communist system.

Hong Kong has independently developed a separate culture, economic and legal systems with a diverse identity separate from Mainland China.³² International Law gives Hong Kong the right to sovereignty and self-determination due to its unique "people," culture, language, set of boundaries, and the ability to govern.³³ Under International Law, China has no right to either Tibet or Hong Kong;

²⁷ See Vienna Convention on the law of treaties, art. 69. May 23, 1969, 1155, U.N.T.S. 331; See WARREN W. SMITH, *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS* 294 (1996).

²⁸ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 225–26 (2004).

²⁹ *Id.* at 226.

³⁰ *Id.*

³¹ AFP-JIJI, *Thousands Protest in Hong Kong over China suppression*, JAPAN TIMES (Feb. 28, 2019, 5:29 PM) <https://www.japantimes.co.jp/news/2018/10/01/asia-pacific/thousands-protest-hong-kong-china-suppression/#.XG2sveHYrnE>; Carole J. Petersen, *Prohibiting the Hong Kong National Party: Has Hong Kong violated the International Covenant on Civil and Political Rights?*, 48 H.K.L.J. 789, 790 (2018); Associated Press, *Human rights in China under Xi Jinping 'worst since Tiananmen crackdown'*: Amnesty, SOUTH CHINA MORNING POST (Feb. 28, 2019, 4:15 PM), <https://www.scmp.com/news/china/policies-politics/article/2120318/human-rights-china-under-xi-jinping-worst-tiananmen>.

³² STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 193 (2004).

³³ LORI FISLER DAMROSCH AND SEAN D. MURPHY, *INTERNATIONAL LAW: CASES AND MATERIALS* 283 (2014).

these autonomous regions have the right to self-determination, and should be independent, free states.³⁴ In Part I of this article, I will prove this thesis by giving a brief background history of both Hong Kong and Tibet with enough detail to show their independent historical nature. In Part II, I will compare Tibet and Hong Kong, explain the international law principles guiding my paper, and give examples of other instances in which international law is followed under similar circumstances to Tibet and Hong Kong.

II. BACKGROUND

A. Tibet

1. History thru Independence

“After eating the mountain, hunger is not satiated. After drinking the ocean, thirst is not quenched.”³⁵

The Tibetan ethnic group differentiated from the Han Chinese sometime in the second millennium BCE.³⁶ The first conflicts between the Han Chinese and ethnic Tibetans can be traced back to as early as 206 BCE.³⁷ By 638 CE, Tibet began solidifying as an empire, with 200,000 soldiers sent to the border with China to ward off attacks.³⁸ The Tibetan state, as headed by the Dalai Lama, was founded in the mid-seventeenth century under the system of “religion and government joined together (*chösi nyiden* in Tibetan).”³⁹ The fifth Dalai Lama enlisted the help of Gushri Khan from the Qoshot Mongol group to defend the Red Hat sect of Tibetan monks and unify the country.⁴⁰ In 1642, the fifth Dalai Lama became the ruler of Tibet

³⁴ See *id.*

³⁵ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 344 (1989).

³⁶ WARREN W. SMITH, TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS 17 (1996).

³⁷ *Id.*

³⁸ *Id.* at 61.

³⁹ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 1 (2007).

⁴⁰ *Id.*

receiving the title from the Mongol chief Altan Khan; where Dalai means “ocean” in Mongolian and Lama—”spiritual master” in Tibetan.⁴¹ The leader of the country, the Dalai Lama, is recruited by reincarnation—the Dalai Lama incarnates his essence into the fetus of a Tibetan boy.⁴² The current Dalai Lama is now eighty-three years old, which is well beyond the average life expectancy of an adult male. When the Dalai Lama dies, the process for selecting a new Dalai Lama will be governed by the Chinese government.⁴³

Tibet was a pre-modern, theocratic society during its *de facto* rule between 1912-1950.⁴⁴ Its leaders saw greatness in Tibet because of their rejection of modern institutions such as public schools and a standing professional army.⁴⁵ Tibet was unique in its spiritual devotion, at one point as much as twenty-six percent of the male population were monks.⁴⁶ In 1721, the Qing Dynasty conquered Tibet, leaving the Dalai Lama as a symbolic spiritual leader, and established the council of leaders—the Kashag.⁴⁷ In 1903, the British saw Tibet as a key trading area due to its location between China, Russia, and India, and pressed Tibet into open relations.⁴⁸ The Tibetans initially refused but were easily defeated by the British army, leading to the signing of a trade agreement in September 1904.⁴⁹ Tibet had operated with semi-autonomy during the Qing dynasty rule but saw the British invasion as an opportunity to move away from Chinese rule and come under British protection.⁵⁰ The Chinese became fearful of losing territory and

⁴¹ *Id.* at 1–2.

⁴² *Id.* at 2.

⁴³ *World Health Statistics*, WORLD HEALTH ORGANIZATION (Apr. 18, 2019, 2:18 PM), https://www.who.int/gho/publications/world_health_statistics/2016/Annex_B/en/.

⁴⁴ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 2 (1989).

⁴⁵ *Id.*

⁴⁶ *Id.* at 21.

⁴⁷ WARREN W. SMITH JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 124–25 (1997).

⁴⁸ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 45 (1989).

⁴⁹ *Id.*

⁵⁰ *See Id.* at 45–46.

made attempts to bring eastern Tibet (Kham) under direct rule, ending the semi-autonomy they once enjoyed.⁵¹ As a result, taxes now flowed directly to the Chinese government, instead of the Tibetan chiefs; monasteries were abolished; and all inhabitants became subject to Chinese law.⁵²

In 1911, the Chinese Nationalists rebelled against the Qing dynasty.⁵³ When the news reached Lhasa, the capitol city of Tibet, a secret war department was formed and Tibet openly rebelled.⁵⁴ In 1912, the remaining 3,000 Chinese troops in Tibet surrendered and were expelled to India.⁵⁵ The Dalai Lama issued a proclamation announcing his return to Lhasa.⁵⁶ The proclamation also addressed several other issues such as tax collections and a warning that that Tibetans would need to defend their land against foreign invasion.⁵⁷ Although it is not explicitly stated, this written statement was seen as a declaration of independence.⁵⁸ The proclamation stated that the Dalai Lama desired freedom for Tibet and showed his intention to rule the country without Chinese interference.⁵⁹ In 1913, China and Tibet agreed to tripartite talks, called the Simla talks, with Britain.⁶⁰ The Tibetan position, as stated to the Chinese and British, was that

Tibet and China have never been under each other and will never associate with each other in the future. It is decided that Tibet is an independent state and that the precious Protector, the Dalai Lama, is the ruler of Tibet, in all temporal as well as in spiritual affairs.⁶¹

⁵¹ *Id.* at 46.

⁵² *Id.* at 47.

⁵³ *Id.* at 58.

⁵⁴ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 59 (1989).

⁵⁵ *Id.*

⁵⁶ *Id.* at 60–61.

⁵⁷ *Id.* at 61.

⁵⁸ *Id.* at 62.

⁵⁹ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 62 (1989).

⁶⁰ *Id.* at 69.

⁶¹ *Id.* at 70.

The terms of the Simla Convention of 1914 split Tibet into Outer Tibet, which would be autonomous and run by the Tibetan government, and Inner Tibet, which would ban all Chinese troops from entering the territory but still remaining under Chinese rule.⁶² The representatives of Tibet and Britain signed, and the Chinese plenipotentiary eventually initialed the draft.⁶³ The Chinese government was willing to allow Outer Tibet's status but was unwilling to agree to a border where they would lose Chamdo.⁶⁴ In 1917, a conflict broke out in Kham when the Chinese military invaded.⁶⁵ The Tibetan army successfully recaptured Chamdo defeating the Chinese.⁶⁶ The Tibetans and Chinese signed a truce in 1918 moving the border that had been set by the Simla Treaty eastward to the Upper Yangtze River (modern day Szechuan province) and increasing the recognized Tibetan territory.⁶⁷

2. Struggle to Remain Independent

By 1928, the Nationalists took control of China declaring it the Republic of China ("ROC").⁶⁸ The official stance of the ROC was that the empire was comprised of the Han people along with four minority nationalities: the Manchus, the Mongolians, the Tibetans, and the Muslims of Xinjiang.⁶⁹ During the government's inauguration, the Chinese government still held this view despite Outer Mongolia, Tibet, and Manchuria operating independently with Xinjiang operating semi-autonomously.⁷⁰ President Chiang Kai-Shek sent an envoy to the Dalai Lama in 1928 to improve relations.⁷¹ The Dalai Lama responded with eight points to restore relations, which included: good faith on the part of the Chinese government, a return of Tibetan districts from China,

⁶² *Id.* at 75–76.

⁶³ *Id.* at 75.

⁶⁴ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 75 (1989).

⁶⁵ *Id.* at 83.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 213.

⁶⁹ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 213 (1989).

⁷⁰ *Id.* at 213–14.

⁷¹ *Id.* at 215.

and a meeting to mend the discord.⁷² The Chinese drafted a response with ten points of their own, but the peace talks ended abruptly when the Chief of Beri, a town near the Chinese border in modern Gardze County, seized the estates of a lama in Kham.⁷³ The actions were supported by a Chinese commander and a Chinese General, along with the supporters of the Panchen Lama (an important religious figure in Tibet who had conspired against the thirteenth Dalai Lama in India).⁷⁴ Tibetan troops were sent and badly defeated the Chinese troops before negotiations could begin, pushing the Chinese as far as Tachienlu (just outside of modern-day Chengdu).⁷⁵ A truce was signed by the Tibetan and Chinese parties with the Yangtze River affirmed as the border between the two countries in October 1932.⁷⁶

A little more than a year later, the thirteenth Dalai Lama died on December 17, 1933.⁷⁷ The ROC continued negotiations with Tibet, attempting to bring them “back to the motherland.”⁷⁸ In the meantime, the search team conducted several tests and declared that it had found the fourteenth Dalai Lama and brought him to Lhasa in 1939.⁷⁹

In 1943, the British reviewed the status of Tibet in the eyes of Her Majesty’s Government, changing a 1921 memorandum to say “Tibet is an autonomous region under the suzerainty of China.”⁸⁰ The proposal of the British Foreign Office to make the change of Tibet’s status was sent to the India office, suggesting not to issue public or diplomatic statements, but no longer mentioning Chinese suzerainty over Tibet.⁸¹ In June of 1944, US Vice President Henry A. Wallace made a joint press release with Chiang Kai-Shek recognizing the “fundamental right of presently dependent Asiatic peoples to self-

⁷² *Id.* at 216–18.

⁷³ *Id.* at 221.

⁷⁴ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 221 (1989).

⁷⁵ *Id.* at 222.

⁷⁶ *Id.* at 223.

⁷⁷ *Id.* at 141–42.

⁷⁸ *See Id.* at 224–39.

⁷⁹ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 319–20 (1989).

⁸⁰ *Id.* at 397.

⁸¹ *Id.* at 399.

government.”⁸² The joint statement gave hope to the Tibetans for having a fully recognized *de jure* government.⁸³ In April of 1945, Chiang Kai-Shek sent a gift of weapons and ammunition to Tibet with a note stating that China would support Tibet free of cost.⁸⁴ By the end of World War II, China signed the treaty of Soviet-Chinese friendship, which forced it to recognize Outer Mongolia’s independence.⁸⁵ The National Assembly of Tibet issued a nine-point statement in 1946 to China clarifying what it had stated several times in the past, showing that its position was unchanged: Tibet was “an independent state, managing its own domestic and foreign, civil and military affairs.”⁸⁶

In 1948, the Tibetans sent a trade mission to the USA and UK in an effort to solidify their international standing.⁸⁷ After the trade team left Tibet and entered India using Chinese passports, the Tibetans switched to Tibetan passports, which were validated by the US when the Tibetans left Hong Kong for Honolulu.⁸⁸ The trade mission forced the US to reexamine its position on Tibet.⁸⁹ The new position, due to the impending Communist takeover of China, was to maintain friendly relations with Tibet short of offending the Chinese.⁹⁰

On November 2, 1949, the Tibetan Foreign Affairs Bureau sent a letter to Chairman Mao requesting an assurance that no Chinese troops would cross the Sino-Tibetan border, or take any military action, and stated that Tibet was “from earliest times up to now” an independent country “whose political administration had never been taken over by an [*sic*] Foreign Country.”⁹¹

⁸² *Id.* at 409.

⁸³ *Id.*

⁸⁴ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 535 (1989).

⁸⁵ *Id.*

⁸⁶ *Id.* at 541.

⁸⁷ *Id.* at 570.

⁸⁸ *Id.* at 583.

⁸⁹ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 607 (1989).

⁹⁰ *Id.* at 607–9.

⁹¹ *Id.* at 623.

In October 1949, the People's Republic of China ("PRC") took control of the Chinese government, emphasizing the "liberation" of Tibet and promising to reintegrate Tibet with the motherland.⁹² A month prior, the new Chinese ambassador from the PRC met with Tibetan representatives to discuss the Tibetan position.⁹³ "The Tibetans began the negotiations by reiterating their traditional position, assuring him that there was no need to liberate Tibet from imperialism since Tibet was ruled and protected by the Dalai Lama, not by any foreign power."⁹⁴ The Tibetan representatives were handed a pamphlet with the PRC's position and were explained that three points were critical: Tibet must accept that it is part of China, Tibet's defense must be handled by China, and all political and trade matters concerning foreign countries must be conducted through China.⁹⁵ The Chinese ambassador bluntly stated that Tibet must accept these three conditions or there would be war.⁹⁶ While the negotiations began between the PRC and the Tibetan government, the PLA advanced "day and night" through Khyungpo and Nangchen, then attacking Riwoche.⁹⁷ Tibetan forces suffered "heavy losses" near the Yangtze River and were forced to retreat.⁹⁸ "In Chamdo, the impending disaster quickly became apparent as word started arriving from fleeing district officials and soldiers of the Chinese victories at Gamto Druga, Rangsumdo, Markham, and so on."⁹⁹ The scene in Chamdo at seven AM on October eighteenth was described as: "panic was already breaking out in the town. People were running in all directions, carrying or dragging their personal belongings. . . . Then a small band of Khamba levies (soldiers) came running past, shouting angrily and looking murderous."¹⁰⁰ After Chamdo fell, the Chinese ambassador

⁹² *Id.*

⁹³ *Id.* at 675.

⁹⁴ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 675 (1989).

⁹⁵ *Id.* at 676.

⁹⁶ *Id.*

⁹⁷ *Id.* at 690.

⁹⁸ *Id.*

⁹⁹ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 691-92 (1989).

¹⁰⁰ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 693 (1989). It is at this point I am reminded of

blamed the attacks on the Tibetans for not going to Peking to negotiate.¹⁰¹

On October 29th, 1950, Tibet asked India to appeal to the United Nations on their behalf, India said Tibet should appeal directly and that India would support it.¹⁰² In the appeal to the Secretary General of the United Nations, Tibet made several relevant international law arguments.¹⁰³ Tibet argued that Chinese conduct split Tibet permanently from China in 1910, and that the thirteenth Dalai Lama declared complete independence in 1911-12.¹⁰⁴ Tibet stated that it never acceded to the Chinese claim of suzerainty in 1914 and that China was forbidden to meddle in the affairs of Lhasa.¹⁰⁵ Tibet conceded that because China did not sign the 1914 Simla Accords the terms of the agreement are not enforceable upon the country, but the Accords still guide relations between India, China, Britain, and Tibet.¹⁰⁶ Tibet's position, as well as my own, is that because of Tibet's autonomous nature, its several treaties with numerous foreign states, and the thirty-nine years of sovereignty, Tibet's independence has *de jure* status.¹⁰⁷

As long as the people of Tibet are compelled by force to become a part of China against the will and consent of her people, the present invasion of Tibet will be the grossest instance of the violation of the weak by the strong. We therefore appeal through you to the nations of the world to intercede in our behalf and restrain Chinese aggression.¹⁰⁸

the earlier stated opinion of a Chinese lawyer who called this time a “peaceful liberation.”

¹⁰¹ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 699 (1989).

¹⁰² *Id.* at 707.

¹⁰³ *See id.* at 708–13.

¹⁰⁴ *Id.* at 709.

¹⁰⁵ *Id.* at 709–10.

¹⁰⁶ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 710 (1989).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 711.

On November 14th, 1950, the chairman of El Salvador's delegation requested that the invasion of Tibet be added to the U.N. general committee's agenda based on the UN's responsibility to maintain international peace and stability.¹⁰⁹ The British Foreign Office relayed clear instructions to the British representative to support Tibet and support the Tibetan appeal.¹¹⁰ Once U.N. General Committee discussion was opened to the floor, the British representative, Younger, stated he did not think he could participate in the discussion of Tibet and that Britain was unclear of the legal status of Tibet.¹¹¹ There exists no evidence he was ever told to say that aside from India wanting to prevent the UN debate.¹¹² India was in the process of freeing itself from Britain and began to strengthen ties to China, despite its previous devotion to Tibet.¹¹³ India claimed it doubted Tibet's claim of sovereignty, which was a result of Chinese influence, and pushed for Tibet and China to continue negotiations without U.N. involvement.¹¹⁴ Younger's procedural postponement was followed by India claiming that the UN should abandon the issue because the Chinese had stopped their advance on Lhasa and that India was certain of a peaceful settlement, despite there being abundant evidence to the contrary.¹¹⁵

The negotiations began in 1951 between the PRC and the Tibetan representatives.¹¹⁶ The talks began on a strange note when the Chinese representative asked if the Tibetans accepted the young man the Chinese chose as the Panchen Lama, an extremely important role in the Tibetan religion.¹¹⁷ The Lhasa government, reluctantly and under extreme duress, announced the new Panchen Lama as the one chosen by the Chinese in order to secure peace.¹¹⁸ During the rest of the

¹⁰⁹ *Id.* at 713.

¹¹⁰ *See id.* at 730–32.

¹¹¹ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 733 (1989).

¹¹² *See id.*

¹¹³ *See id.* at 717–20.

¹¹⁴ *See id.*

¹¹⁵ *See id.* at 735.

¹¹⁶ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 759 (1989).

¹¹⁷ *Id.* at 760–62.

¹¹⁸ *See id.* at 762–63.

negotiations, whenever the Tibetans wanted to discuss any of the issues in the proposed agreements, the Chinese representative would get annoyed and threaten, “do you want peaceful liberation or liberation by force?”¹¹⁹ Within two weeks, a seventeen-point agreement was signed with no discussion of various sections.¹²⁰ Moreover, the Chinese delegation lied about the interpretations of each point and made false promises for some of the points.¹²¹ The Tibetan delegation never received approval through the Lhasa government for an agreement that recognized Chinese sovereignty over Tibet, for the first time ever in Tibet’s history.¹²² A few days after the announcement of the seventeen-point plan, the US Secretary of State sent a telegraph to the US ambassador to India, Loy W. Henderson, that Tibet should not be compelled by duress to accept a violation of its autonomy.¹²³ Distinguished social anthropologist and Tibet expert, Professor Melvyn Goldstein concluded this chapter of his book on Tibet by saying:

Tibet had become a part of the people’s republic of China. In the next few months, several thousand troops of the people’s liberation army arrived in Lhasa; although the old system continued to exist in some form or another for 8 more years, October 1951 marks the end of the *de facto* independent Lamaist state. Tibet had struggled for four decades to attain an internationally recognized status as fully autonomous or independent, but in the end it felt compelled to accept Chinese sovereignty, with the hope of preserving the essence of its social, political, and religious system.¹²⁴

¹¹⁹ WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 295–96 (1996).

¹²⁰ See MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 765–71 (1989).

¹²¹ See *id.*

¹²² *Id.* at 772.

¹²³ *Id.* at 780.

¹²⁴ *Id.* at 813.

3. Annexed by the People's Republic of China

I look back towards the memories of my young days, and they still stand before me, vivid and clear as the crystal streams of my land Nyarong. It was beautiful land, and the lives we lead there, those simple and hard, were happy. Then the Chinese came. At first with soft words and bright silver and later with guns and death. They took away my fields, my animals and my home. they looted, desecrated and burnt the temples and monasteries I worshipped in. Like vermin, they slew my friends, relatives, lamas, and all the people dear to my heart. On a frozen wasteland, thinly covered with wind-swept snow, I left behind me the twisted, bullet-ridden carcasses of my family and my only little daughter.¹²⁵

Clearly, Tibet wanted to remain independent from China.¹²⁶ What is less clear is why China, specifically Mao Zedong, wanted to annex Tibet. Many historians have attempted to answer this question, the two most cited reasons are national honor and the geopolitical significance of Tibet for China's national security.¹²⁷ China had become weak due to corruptness of previous Chinese regimes, and it became a focal point to restore sovereignty and control over all territory held by the Qing dynasty to erase the national humiliation suffered during the British invasion of Tibet in 1903.¹²⁸ Beijing considered Tibet's split from China as a part of British imperialism, and believed Tibet's desire for independence from China was due to British support for Tibetan autonomy.¹²⁹ Thus, "restoring" Tibet to the People's Republic of China had deep nationalistic and symbolic value, to such an extent that

¹²⁵ JAMYANG NORBU, *WARRIORS OF TIBET* 9 (1986).

¹²⁶ See MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 813 (1989).

¹²⁷ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET, VOLUME 2, THE CALM BEFORE THE STORM, 1951-1955* 20-21 (2007).

¹²⁸ *Id.* at 20.

¹²⁹ *Id.*; Yongmin Bian, *Legal Autonomy of Tibet – A Chinese Lawyer's Perspective*, 1 J.E. ASIA & INT'L L. 357, 358 (2008).

modern Chinese intellectuals called the annexation of Tibet a “peaceful liberation.”¹³⁰ In 1954, an internal Chinese Communist party document was released illustrating its perspective and discussing issues within Tibet:

Tibet and the motherland have had a close, inseparable relationship since a long time ago. Tibet is one part of the territory of our great motherland. How-ever, after the Republican Revolution (1911), Tibet’s rulers, who were con-trolled and manipulated by imperialists, abandoned the motherland and went to rely on the imperialists. To a great extent, imperialists controlled Tibet, signed unfair treaties and gained great privilege in the spheres of politics, eco-nomics, and military. Also, they took numerous pieces of territory from the bor-der area of Tibet. Because of the development of the anti-imperialist struggle of the entire Chinese people and the existence of an anti-imperialist force within the Tibetan nationality (among them, including a part of the upper-class lamas and aristocrats), they failed to conquer the whole of Tibet. During this period of time, Tibet was semi-colonial, and mainly took an independent attitude toward us.¹³¹

Mao Zedong alluded to his personal feelings that Tibet was necessary for China’s national security when he commented on the subject in a discussion with the Dalai Lama and Panchen Lama in 1954, stating, “now that the Tibetans are cooperating with the Han, our national defense line is not the Upper Yangtze River but the Himalayan Mountains.”¹³²

¹³⁰ For the biased Chinese analysis, which becomes propaganda more than a “perspective,” see Yongmin Bian, *Legal Autonomy of Tibet – A Chinese Lawyer’s Perspective*, 1 J.E. ASIA & INT’L L. 357, 358 (2008).

¹³¹ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET, VOLUME 2, THE CALM BEFORE THE STORM, 1951-1955* 21 (2007);

¹³² *Id.* at 21–22; Zhonggong zhongyang wenxian yanjiu shi; zhonggong xizang zizhiqu weiyuanhui; zhongguo zangxue yanjiu zhongxin 2001: 117–22.

Yet, the resistance to China's annexation of Tibet continued. By early March of 1959, there were Tibetans openly fighting the Chinese PLA, erecting fortifications on major highways.¹³³ In a letter secretly written by Mao on March fifteenth, the Dalai Lama was told to come to the PLA's Military Area Command for his safety, though there is little doubt that the Dalai Lama would have been executed had he gone.¹³⁴ On March 17, 1959, the Dalai Lama fled with most of his officials to India.¹³⁵ In the two years that followed, about 80,000 Tibetans fled to India, Bhutan, and Nepal.¹³⁶ Two shells were fired by PRC militiamen, which landed in a pond near where the Dalai Lama was staying in Norbulingka.¹³⁷ Due to large crowds standing near Norbulingka to protect the Dalai Lama from the Chinese PLA, the Dalai Lama reasoned that since he was fleeing, the people could disperse, thus preventing a bloodbath.¹³⁸ The Battle of Lhasa began on March 19th and within a day, trucks were called in to haul away the mountains of corpses that created a "river of blood."¹³⁹ The aristocrats that followed the Dalai Lama out were "wary of the draconian Communist reforms," and they felt they needed to ensure the Dalai Lama's safety for the future of Tibet.¹⁴⁰ Beijing was notified two days later of the escape, despite several attempts by the PRC to claim they intentionally let the Dalai Lama flee.¹⁴¹ By March twenty-second, the fighting was over, and Lhasa had fallen.¹⁴² The Tibetan government was formally dissolved by the Chinese government on March 28th, 1959.¹⁴³

¹³³ See JIANGLIN LI, *TIBET IN AGONY* 178 (2016).

¹³⁴ See *Id.* at 178–84.

¹³⁵ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 825 (1989); See JIANGLIN LI, *TIBET IN AGONY* 194–95 (2016).

¹³⁶ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951*, 825 (1989).

¹³⁷ JIANGLIN LI, *TIBET IN AGONY* 194–95 (2016).

¹³⁸ *Id.* at 197.

¹³⁹ *Id.* at 243–81.

¹⁴⁰ *Id.* at 211.

¹⁴¹ *Id.* at 217.

¹⁴² See JIANGLIN LI, *TIBET IN AGONY* 289–91 (2016).

¹⁴³ MICHAEL C. VAN WALT VAN PRANG, *THE STATUS OF TIBET, HISTORY, RIGHTS, AND PROSPECTS UNDER INTERNATIONAL LAW* 163 (1987).

The Cultural Revolution reached Tibet in 1966, destroying all but roughly 500 of the 2,676 monasteries.¹⁴⁴ In March 2008, protests broke out in 100 Tibetan counties, some in modern Qinghai and Szechuan, due to the failure of the six-year negotiations between the Dalai Lama and the Chinese government.¹⁴⁵ Some of the other factors included the influx of Han Chinese, political repression, cultural assimilation, and economic marginalization.¹⁴⁶ The Chinese government responded with undeclared martial law with over a thousand people disappeared, arbitrary detention, and more than two-hundred dead.¹⁴⁷ Lobsang Sangay, a native Tibetan from Kham who fought against the Chinese in the 1959 Tibetan uprising, characterized it as “the Chinese government’s draconian response echoed its historic reactions to unrest in Tibet.”¹⁴⁸

B. Hong Kong

1. History through 1897

Hong Kong was the product of the First Anglo-Chinese War (1839-42), also known as the first Opium War, between China and Great Britain.¹⁴⁹ The reasons for the war are long and complicated, but in large part the war resulted from the belief in China that its shortage of silver was due to the opium trade with British India.¹⁵⁰ Along with the opium trade causing disharmony between China and Great Britain, the Chinese saw the British as barbarians, while the British saw the

¹⁴⁴ JIANGLIN LI, *TIBET IN AGONY* 309 (2016).

¹⁴⁵ Sangay Lobsang, *Legal Autonomy of Tibet: A Tibetan Layer’s Perspective*, 1 J. E. ASIA & INT’L L. 335, 335 (2008).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 336.

¹⁴⁸ *Id.* at 337.

¹⁴⁹ STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 3 (2004); PATRICIA LIM, *FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY* 37–40 (2011).

¹⁵⁰ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 3–15 (2004); JONATHAN FENBY, *THE PENGUIN HISTORY OF MODERN CHINA: THE FALL AND RISE OF A GREAT POWER 1850 TO THE PRESENT* 9 (2008).

Chinese and Chinese law as “primitive, arbitrary, and barbaric.”¹⁵¹ The racism seen by both the Chinese and British caused both sides to seek a solution to legal dilemmas.¹⁵² Due to the opium epidemic that was spreading throughout China, Chinese officials created a plan in which trade would collapse in Canton (where trade with Britain took place) to create a commercial panic among the British so they would sacrifice the opium trade for other commerce.¹⁵³ Unfortunately, opium was the most profitable item being traded between China and Britain, so when a Chinese official named Lin Zexu ordered the foreigner merchants to surrender the opium and to stop shipping opium into the country, Prime Minister Lord Melbourne responded to the loss of £2 million of opium by declaring that China needed to repay Britain for the loss of goods under threat of force.¹⁵⁴ Four thousand British troops, sixteen warships and twenty-eight transports were sent to China resulting in the Imperial Court sending Qi Shan, a senior official, to negotiate for peace.¹⁵⁵ Oxford historian Steve Tsang described the events:

The British again forced Qi to come to an agreement after a further display of naval superiority. Qi had no choice and reached a tentative agreement with Charles Elliot, known as the Chuenpi Convention. By this agreement, the island of Hong Kong was to be ceded to the British; an indemnity of six million silver dollars was to be paid over six years; official relations between the two empires was to be direct and on equal footing and trade was to be reopened immediately. As a result,

¹⁵¹ STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 3–15 (2004); PATRICIA LIM, *FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY* 44–45 (2011).

¹⁵² See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 3–15 (2004).

¹⁵³ See *id.*

¹⁵⁴ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 3–15 (2004); PATRICIA LIM, *FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY* 39–40 (2011); PAUL S. ROPP, *CHINA IN WORLD HISTORY* 104–5 (2010); JONATHAN FENBY, *THE PENGUIN HISTORY OF MODERN CHINA: THE FALL AND RISE OF A GREAT POWER 1850 TO THE PRESENT* 9 (2008).

¹⁵⁵ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 3–15 (2004).

the British took possession of Hong Kong and British rule began on 26 January 1841.¹⁵⁶

Both the British and Chinese governments were dissatisfied by the treaty terms, and the war continued until the Treaty of Nanking was signed on August 29, 1842, with the final act on June 26, 1843, giving the British Crown control of Hong Kong.¹⁵⁷

When the British took the island of Hong Kong, it was “merely a peripheral of Xinan county” without a place in the formal government.¹⁵⁸ The birth of the modern city of Hong Kong began after British occupation with the influx of merchants who felt protected by the British flag, an influx of Chinese nationals who were hired as laborers for the building of a new town, and other colonists.¹⁵⁹ The British had to create an entire society from scratch, establishing a new legal and judicial system that would function for a mix of Westerners and the poor, uneducated laborers from Mainland China who were often on the fringe of society.¹⁶⁰ The island itself only contained a few thousand fisherman and farmers, which made incorporating the local population difficult due to the language barrier and a lack of politicians and scholars.¹⁶¹ The British permitted the local Chinese to live by their own customs and law, unless they conflicted with British common law.¹⁶² Although this led to substantially harsher sentences for Chinese locals, it created a unique legal environment with dual systems in place.¹⁶³ Because of the increase in population, the infrastructure, and the amount of work that had been done, a man named Pottinger

¹⁵⁶ *Id.*

¹⁵⁷ *See Id.*; PATRICIA LIM, FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY 544 (2011); JONATHAN FENBY, THE PENGUIN HISTORY OF MODERN CHINA: THE FALL AND RISE OF A GREAT POWER 1850 TO THE PRESENT 9–10 (2008).

¹⁵⁸ STEVE TSANG, A MODERN HISTORY OF HONG KONG 45 (2004).; Tak-Wing Ngo, Industrial History and the Artifice of Laissez-faire Colonialism, *IN HONG KONG'S HISTORY: STATE AND SOCIETY UNDER COLONIAL RULE* 119 (Tak-Wing Ngo ed., 2002).

¹⁵⁹ STEVE TSANG, A MODERN HISTORY OF HONG KONG 16 (2004).

¹⁶⁰ *Id.* at 45.

¹⁶¹ *Id.* at 46.

¹⁶² *Id.* at 47.

¹⁶³ *See id.*

reported to London, “this settlement had already advanced too far to admit of its ever being restored to the authority of the Emperor.”¹⁶⁴ The English rule of law eventually took root in Hong Kong by the late 1800’s, gradually accepted among the multi-cultural residents showing that Hong Kong was already growing apart from Mainland China.¹⁶⁵

The British believed that the Treaty of Nanking, which opened four additional ports in China, should have led to a great expansion of trade and profits.¹⁶⁶ Not only did an expansion of profit not occur, the Chinese also denied British ships entry into Canton, and kept opium listed as contraband; this led to the second opium war from 1856-1860.¹⁶⁷ During the second opium war, the British took control of the tip of the Mainland opposite from Hong Kong island, an area known as Kowloon.¹⁶⁸ Though Kowloon was originally leased in 1860 for 500 silver dollars, the land south of modern Boundary Street was officially annexed as a result of the Convention of Peking later that year along with Stonecutter’s Island located to the west of Kowloon.¹⁶⁹ In the 1880s, several commanders in the local garrison in Hong Kong requested the British War Office to expand their territory in Hong Kong to include the entire peninsula.¹⁷⁰ Although China posed no military threat to Hong Kong, the local advocates relied on hypotheticals to convince the authorities in London of the need for the Northern Territories of Kowloon peninsula.¹⁷¹ Though there was a need for land for have military exercises, military barracks, and space for cemeteries, a large driving force was the need for land speculators to make money from the land.¹⁷² By 1898, 1.5% of Britain’s exports went to China, but Britain’s share of China’s trade was “larger than that of the rest of the world combined” with sixty-two percent of

¹⁶⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 16 (2004).

¹⁶⁵ *See id.* at 55.

¹⁶⁶ *Id.* at 29.

¹⁶⁷ *Id.* at 29–45; PAUL S. ROPP, CHINA IN WORLD HISTORY 168 (2010).

¹⁶⁸ STEVE TSANG, A MODERN HISTORY OF HONG KONG 35 (2004).

¹⁶⁹ *Id.*; Roda Mushkat, *The Dynamics of International Legal Regime Formation: The Sino-British Joint Declaration on the Question of Hong Kong Revisited*, 22 (4) EUR. J. OF INT’L L., 1119, 1123 (2011).

¹⁷⁰ STEVE TSANG, A MODERN HISTORY OF HONG KONG 36 (2004).

¹⁷¹ *Id.*

¹⁷² *Id.*

China's exports going to Britain.¹⁷³ Due to the economic considerations and to ensure Britain's economic superiority in China, it was in Britain's economic interests to keep China open to free trade and not antagonize the Chinese by taking more land.¹⁷⁴ When the French acquired a ninety-nine-year lease of Canton Bay (modern Zhanjiang) 210 miles away from Hong Kong, the British responded by acquiring a ninety-nine-year lease for the New Territories in 1898, roughly 370 square miles south of the Shenzhen River, along with 230 separate islands, completing the territory of what we call modern Hong Kong.¹⁷⁵

The only argument for the leased extension was that of defense despite no other country posing a military threat to Hong Kong at the turn of the century.¹⁷⁶ British forces hadn't built any significant fortifications for decades after the lease went into effect, and ten months passed before the British even took possession of the New Territories.¹⁷⁷ The historian Steve Tsang felt so strongly that the acquisition of New Territories lacked a real purpose that he characterized it as a "naked imperial expansion."¹⁷⁸ On October 20, 1898, the British declared a Royal Order in Council (a decree in the name of the monarch), which defined the New Territories in the eyes of the British, stating that the New Territories were "part and parcel of Her Majesty's Colony of Hong Kong in like manner and for all intents and purposes as if they had originally formed part of the said Colony."¹⁷⁹ The Royal Order stipulated that the New Territories would be a colony of the British empire for the duration of the lease, but in the eyes of many in the British empire, the New Territories were a part of Hong Kong as if they had annexed them.¹⁸⁰

¹⁷³ *Id.* at 37.

¹⁷⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 37 (2004).

¹⁷⁵ *See id.* at 38; PATRICIA LIM, FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY 544 (2011).

¹⁷⁶ STEVE TSANG, A MODERN HISTORY OF HONG KONG 37 (2004).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ STEVE TSANG, A MODERN HISTORY OF HONG KONG 41 (2004).

¹⁸⁰ *See Id.* at 39–40.

2. Hong Kong's Development during the Colonial Years.

The economy of Hong Kong, along with society in general, continued to develop freely.¹⁸¹ This free development was a result of the colonial government's lack of resources.¹⁸² The colonial government was small and preferred not to be involved in local matters unless British "jurisdictions, interests, or values were at stake."¹⁸³ Hong Kong became an international center for trade in the eyes of Western traders for its access to British jurisdiction and policy makers.¹⁸⁴ Hong Kong quickly became the choice for major traders' regional offices or headquarters despite being smaller than Shanghai, with the businesses having strong ties to European, American, and Asian cities across the globe.¹⁸⁵ By the 1850's, Hong Kong became a thriving trading port between China and Thailand, the Malay peninsula, Indochina, and modern-day Indonesia.¹⁸⁶ Trade in Hong Kong grew at an incredible pace, growing from 315 traders in 1876 to 395 traders in 1881.¹⁸⁷ Although the non-Chinese grew to only 1,600 by 1859, the Chinese community saw rapid growth, as Steve Tsang noted:

With the Chinese community growing fast—rising from 7,500 in 1841 to 22,800 in 1847 and to 85,300 in 1859—a meaningful domestic market emerged and grew, generating secondary economic activities and growth. By 1859, there were already 2,000 shops or enterprises owned or operated by the Chinese, including 278 traditional grocery stores, 49 stores for Western goods, 51 rice shops, 53 shipbuilders, 92 carpenters, 116 metal workshops and others.¹⁸⁸

A distinct, multi-cultural society began to form in Hong Kong aside from the Chinese.¹⁸⁹ Groups of Persians, Indians, and Portuguese

¹⁸¹ *Id.* at 56.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 57.

¹⁸⁵ STEVE TSANG, A MODERN HISTORY OF HONG KONG 57 (2004).

¹⁸⁶ *Id.* at 59.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *See id.* at 64–5.

came to Hong Kong, mostly as traders, and “Eurasians,” usually the offspring of a European father and a Chinese mother, began to become part of the Chinese community.¹⁹⁰ Although *de jure* segregation was enacted in 1888, it was legally ended in 1946.¹⁹¹ The colony of Hong Kong became so vastly different from Mainland China that it began influencing progressive-minded Chinese who visited to see a fully-functioning Western-style government.¹⁹²

Hong Kong’s existence also acted as an *Alamo* for many revolutionaries and reformers from China who sought an emergency exit.¹⁹³ Many of China’s most vocal supporters for reform were from Hong Kong including the father of Chinese journalism, Wang Tao.¹⁹⁴ The supporters of reform used Hong Kong as a platform to expose “the corruption, inefficiency, and oppression of China’s gentry-dominated ruling bureaucracy” and to advocate for China to be reorganized entirely.¹⁹⁵ Key leaders of the 1898 reform movement in China, such as Kang Youwei and Liang Qichao, were influenced by the British colony and Western learning.¹⁹⁶ Liang Qichao visited Hong Kong in 1881 and admired the “orderliness, cleanliness, and legal basis for British rule.”¹⁹⁷

Hong Kong continued influencing Mainland China into the 1900s when the idea of Republican Revolution was conceived in Hong Kong.¹⁹⁸ Sun Yat-sen, the most important leader and ideologist of the Republican revolution, created and shaped the ideas behind the revolution after studying in Hong Kong.¹⁹⁹ After organizing the XingZhonghui, or Revive China Society, in Hawai‘i, the group

¹⁹⁰ STEVE TSANG, A MODERN HISTORY OF HONG KONG 64-65 (2004).

¹⁹¹ *See id.* at 65–6.

¹⁹² *See id.* at 73.

¹⁹³ The reference to the Alamo is not in his book but is a better descriptor for what Hong Kong represented to the Chinese people as described in Steve Tsang’s book: *See* STEVE TSANG, A MODERN HISTORY OF HONG KONG 73 (2004).

¹⁹⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 74 (2004).

¹⁹⁵ *Id.* at 75.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 76.

¹⁹⁹ *Id.*

expanded dramatically when it opened a branch in Hong Kong.²⁰⁰ The first two uprisings for the Republican Revolution used Hong Kong as its base before the imperial government of China finally fell in 1912.²⁰¹ A week after the Wuchang uprising, where the Imperial Chinese government fell to revolutionaries, masses in Hong Kong attacked royalists who were flying the Chinese imperial flags.²⁰² The mood and attitude of the locals of Hong Kong toward China was best captured by Governor Sir Fredrick Lugard who, when false news that Beijing had fallen to revolutionaries spread to Hong Kong, wrote “the entire Chinese populace appeared to become temporarily demented with joy. The din of crackers . . . was deafening and accompanied by perpetual cheering and flag-waving—a method of madness most unusual to the Chinese.”²⁰³

By the end of the Great War (also called World War I), the population of Hong Kong had reached 598,100 ethnically Chinese and 13,600 non-Chinese citizens.²⁰⁴ Just as the Chinese Republicans used Hong Kong as a launching point for attacks in South China, so did the Chinese Communist Party (“CCP”) use Hong Kong to overthrow the authority figures in Canton in 1927.²⁰⁵ This did not last long, as the rise of the CCP’s influence, and the CCP’s organizing of labor strikes in the 1920’s, in Hong Kong gave the local police justification to deport CCP members back to the mainland, leading to a “bare skeleton” of CCP presence by 1932.²⁰⁶ Society continued to develop in Hong Kong with new technologies.²⁰⁷ Modern technology, such as automobiles, tramcars, and electricity, were first seen as “Western ways,” but were eventually accepted by the local Chinese community.²⁰⁸ Despite the Great Depression, there was a large growth in factories, from 403

²⁰⁰ STEVE TSANG, A MODERN HISTORY OF HONG KONG 76 (2004).

²⁰¹ See *Id.* at 76–7; PAUL S. ROPP, CHINA IN WORLD HISTORY 114–15 (2010).

²⁰² STEVE TSANG, A MODERN HISTORY OF HONG KONG 80 (2004).

²⁰³ *Id.*

²⁰⁴ *Id.* at 87.

²⁰⁵ STEVE TSANG, A MODERN HISTORY OF HONG KONG 103 (2004).

²⁰⁶ *Id.* at 100–03.

²⁰⁷ *Id.* at 107.

²⁰⁸ *Id.*

factories in 1933 to 829 in 1938.²⁰⁹ The population continued to expand growing from its small 7,500 origin to an estimated 1.6 million in 1941.²¹⁰

The reason why immigrants were coming to Hong Kong began to change around the time of the Japanese invasion of China in 1937.²¹¹ Most travelled to Hong Kong in order to find work prior to 1937, but immigrants quickly morphed into refugees by 1939.²¹² Shortly after the bombing of Pearl Harbor, the Japanese defeated the Hong Kong battalions in 1941.²¹³ As a result of losing Hong Kong to Japan, Britain began negotiations with China over the leased New Territories in late 1942.²¹⁴ What was eventually agreed upon was that the Chinese foreign minister would have the right to raise the issue of the New Territories lease “for discussion at a later date.”²¹⁵ Although historian Steve Tsang claims this is when “Britain accepted for the first time that there was a Hong Kong problem,” the discussion was formally over the leased New Territories.²¹⁶ The horrors the locals faced at the hands of the Japanese were enough to reduce the population of Hong Kong to between 500,000-600,000 by the time the Japanese surrendered in 1945.²¹⁷ Despite having lost Hong Kong to the Japanese in WWII, Britain was staunchly determined to return.²¹⁸ The feeling of retaking Hong Kong was so strong that Prime Minister Winston Churchill responded to a question over whether Britain would give Hong Kong

²⁰⁹ *Id.* at 108; Tak-Wing Ngo, Industrial History and the Artifice of Laissez-faire Colonialism, *In* HONG KONG’S HISTORY: STATE AND SOCIETY UNDER COLONIAL RULE 119, 122 (Tak-Wing Ngo ed., 2002).

²¹⁰ STEVE TSANG, A MODERN HISTORY OF HONG KONG 109 (2004).

²¹¹ *Id.* at 110.

²¹² *See id.* at 110–15.

²¹³ *Id.* at 121–24; PATRICIA LIM, FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY 545 (2011).

²¹⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 125 (2004).

²¹⁵ *Id.*

²¹⁶ *See id.* at 31–33, 125.

²¹⁷ For more about the horrors of the war, the entirety of Chapter 9 is devoted to it, *See* STEVE TSANG, A MODERN HISTORY OF HONG KONG 119–32 (2004).

²¹⁸ STEVE TSANG, A MODERN HISTORY OF HONG KONG 131 (2004).

back to China with “over my dead body.”²¹⁹ British officials felt that regaining sovereignty over Hong Kong was a matter of prestige and would help in future relations with China.²²⁰ By the end of the war, Britain cited three main reasons they had claim to Hong Kong: first, Britain had taken a small barren island and turned it into one of the world’s greatest ports, it was an important base for British merchants and industrialists doing business in China, and finally it was a point of national pride to restore Hong Kong to its normal state of order and prosperity.²²¹ The British created a special naval task force to sail to Hong Kong on the day the Japanese surrendered.²²²

By 1949, the Communists in China, led by Mao Zedong, had captured the Capital of Nanking (also spelled Nanjing), captured the financial center of Shanghai, and declared China to be the People’s Republic of China.²²³ Despite Mao stating several times that he had no interest in Hong Kong, Premier Zhou stated in 1972 that the issue of Hong Kong would be settled in 1997 when the lease of the New Territories would end; the PRC made no distinction between the lease of the New Territories and the land gained through the two Opium Wars (Kowloon and Hong Kong Island).²²⁴

With Hong Kong’s trade, industry, and manufacturing increasing with the world, its share in China’s total trade fell from thirty-two percent in 1951 to five percent in 1959; Hong Kong was also falling in line with Western countries in the cold war.²²⁵ By the 1970’s, the government had enough surplus saved from earlier austerity measures for huge social programs, infrastructure improvements, and free compulsory education.²²⁶ The rapid growth of the economy was matched by the population growth, with almost 6

²¹⁹ *Id.*; KLAUS MÜHLHAHN, MAKING CHINA MODERN: FROM THE GREAT QING TO XI JINPING 336 (2019).

²²⁰ STEVE TSANG, A MODERN HISTORY OF HONG KONG 132 (2004).

²²¹ *Id.*

²²² *Id.* at 133.

²²³ *Id.* at 152; PAUL S. ROPP, CHINA IN WORLD HISTORY 134 (2010).

²²⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 153–54 (2004);

²²⁵ *See Id.* at 164.

²²⁶ *Id.* at 171–72.

million living in Hong Kong by 1990.²²⁷ Hong Kong entrepreneurs eventually started building firms in the PRC and by 1997, had 5 million employees in the PRC.²²⁸ The successes of the Hong Kong businesses, and their subsequent spread into the PRC, highlights the very cultural and societal differences that existed between the PRC and Hong Kong.²²⁹ Although the head of the PRC, Deng Xiaoping, was reforming the communist economy towards more capitalist ideals, and although Guangdong improved the business environment, the PRC still disrupted businesses and production more than Hong Kong's government.²³⁰ The Hong Kong entrepreneurs were able to clear the bureaucratic red tape of the PRC more easily than their mainland counterparts.²³¹

The business owners were sufficiently different from their mainland counterparts to have been differentiated, but the people of Hong Kong, along with the society, evolved into a separate identity.²³² Rather than transient populations moving in and out of Hong Kong, the local population began to settle after the PRC took control of the mainland in 1949.²³³ Due to political embargoes, the border between Hong Kong and China closed after 1950 until the 1970's, causing a political culture and identity to form in Hong Kong separate from that of China.²³⁴ The rule of law became highly valued as the locals became educated, which only led to the "lawless horror" of the "near-totalitarian political system of the PRC."²³⁵ Tsang notes:

By the 1970s, Hong Kong people of all ethnic origins
had embraced the concept of the rule of law. Together

²²⁷ STEVE TSANG, A MODERN HISTORY OF HONG KONG 172 (2004); Roda Mushkat, *The Dynamics of International Legal Regime Formation: The Sino-British Joint Declaration on the Question of Hong Kong Revisited*, 22 (4) EUR. J. OF INT'L L., 1119, 1129 (2011).

²²⁸ STEVE TSANG, A MODERN HISTORY OF HONG KONG 177 (2004).

²²⁹ *Id.* at 177–78.

²³⁰ *See id.*

²³¹ *Id.* at 178.

²³² STEVE TSANG, A MODERN HISTORY OF HONG KONG 177–81 (2004).

²³³ *Id.* at 180.

²³⁴ *Id.* at 181; see Luk Hung-Kay, *Hong Kong History and Culture*, 30 (3) CHINESE SOC. & ANTHR. 13, 15–18 (1998).

²³⁵ STEVE TSANG, A MODERN HISTORY OF HONG KONG 182 (2004).

with the routine safeguarding of freedom in this British enclave these basic changes set the people of Hong Kong apart from the people of the PRC and produced the conditions for a sense of local identity based on a way of life and a world view different from that in the PRC.²³⁶

This separate identity came with agonizing soul searching since the Chinese were not willing to “give up the freedom and dignity benefitting every human being to return to the mainland.”²³⁷ In the 1960’s, the younger locals saw themselves as citizens of Hong Kong, but were still uncomfortable associating themselves with the colonial government.²³⁸ The true test of this new identity came in 1967 when a labor dispute turned into riots.²³⁹ The local communists chose the dispute in order to start a Cultural Revolution within Hong Kong in what would eventually be called “the confrontation.”²⁴⁰ As Maoists protested and rioted in the streets, tensions rose when word arose that Maoists planted over 8,300 suspected bombs, with over 1,400 being real.²⁴¹ The Maoists did not win the local public’s support; the violence was seen as repulsive, the bombing campaign was seen as repugnant when bodies were spotted floating down the river, and eventually the local Chinese chose the stability and order that the Hong Kong government, though not perfect, had offered.²⁴²

By the time of Mao’s death in 1976, even the students in local universities no longer celebrated the radical communist agendas, but instead chose to reflect upon their own cultural identity within Hong Kong.²⁴³ The cultural language of Cantonese became recognizably different from the Cantonese spoken in nearby Guangdong, and other cultures influenced the local Hong Kong people more than their

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.* at 183.

²³⁹ *Id.*

²⁴⁰ STEVE TSANG, A MODERN HISTORY OF HONG KONG 183–84 (2004).

²⁴¹ *Id.* at 187.

²⁴² STEVE TSANG, A MODERN HISTORY OF HONG KONG 189–90 (2004).

²⁴³ *Id.* at 192.

mainland counterparts.²⁴⁴ Through the 1980's, television and mass media showcased local talent, music, and entertainment, which further developed a local culture and separated Hong Kong from the mainland.²⁴⁵ The new culture of society was most notably influenced by the U.S., Great Britain, and Japan and even Westerners living in Hong Kong were known as 'belongers'.²⁴⁶ The government itself was changing too, now allowing Chinese to become government officials. By 1983, forty-nine percent of the directorate, the top governmental level in Hong Kong, were now Chinese.²⁴⁷ Confucianism still held strong within the Chinese population of Hong Kong, but modern Western concepts like free-speech, human rights, limited government, and a free economy were all incorporated into societal beliefs.²⁴⁸ By the 1980's, someone born and raised in Hong Kong would identify as from Hong Kong with only a minority identifying as still part of the mainland China.²⁴⁹

3. The Sino-British Joint Declaration.

In September 1982, the British formally met Deng Xiaoping to discuss Hong Kong's future.²⁵⁰ During the meeting, Deng Xiaoping stated the view that the PRC "has sovereignty over Hong Kong while Hong Kong has its own special position."²⁵¹ The British chose not to emphasize this and instead told the Hong Kong people to put their minds at ease.²⁵² Margaret Thatcher met the Chinese negotiators in Beijing with the intention of defending the treaties that granted sovereignty over Hong Kong, or at least the tip of the Kowloon peninsula, to the British.²⁵³ After negotiations initially failed, Hong Kong's population had a mixed reaction.²⁵⁴ Chinese nationalists and

²⁴⁴ *Id.* at 193.

²⁴⁵ *Id.* at 194.

²⁴⁶ *Id.*

²⁴⁷ STEVE TSANG, A MODERN HISTORY OF HONG KONG 194 (2004).

²⁴⁸ *Id.* at 194–95.

²⁴⁹ *Id.* at 195–96.

²⁵⁰ *Id.* at 214.

²⁵¹ *Id.*

²⁵² STEVE TSANG, A MODERN HISTORY OF HONG KONG 216 (2004).

²⁵³ *Id.* at 218; MARGARET THATCHER, MARGARET THATCHER 390–92 (2010).

²⁵⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 219–20 (2004).

communists made propaganda stating that Hong Kong locals should be proud to be Chinese and that the British were imperialists.²⁵⁵ On the other hand, many in Hong Kong had fled China and remembered the PRC's atrocious human rights record and others had first-hand accounts of that history from friends and relatives.²⁵⁶ There was apparent fear at the notion of being handed over to the PRC for within ten days of Margaret Thatcher leaving Beijing, Hong Kong's stock market dropped twenty-five percent and its dollar depreciated by twelve percent.²⁵⁷ The first round of negotiations lasted from October 1982 until June 1983 and the PRC continuously asserted that it refused to accept the validity of the treaties in which Hong Kong was acquired.²⁵⁸ The PRC simply ignored that international law deemed a ceded territory was valid if done by a treaty.²⁵⁹

In July 1983, during the second round of negotiations, the PRC claimed to represent the locals in Hong Kong and appointed someone to represent Hong Kong, despite its previous objection to the British attempt to do the same.²⁶⁰ The PRC perceived that Hong Kong was not involved in the negotiations for its own future.²⁶¹ By September 1984, Margaret Thatcher conceded that Britain would accept Chinese sovereignty over Hong Kong and Hong Kong's return to Chinese control if the people of Hong Kong accepted the outcome of the negotiations.²⁶² In the face of the PRC's staunch position, Britain finally conceded that it would cede authority of Hong Kong after 1997.²⁶³ On

²⁵⁵ *Id.* at 220.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 220.

²⁵⁸ *Id.*; MARGARET THATCHER, MARGARET THATCHER 390–92 (2010).

²⁵⁹ STEVE TSANG, A MODERN HISTORY OF HONG KONG 220 (2004). It is certainly ironic due to international law changing post-WWII, which would have made a treaty invalid if accomplished through the use of force; a tactic the PRC used to annex Tibet.

²⁶⁰ *See* STEVE TSANG, A MODERN HISTORY OF HONG KONG 223 (2004).

²⁶¹ *See Id.* at 222.

²⁶² *Id.* at 221; MARGARET THATCHER, MARGARET THATCHER 525–29 (2010).

²⁶³ STEVE TSANG, A MODERN HISTORY OF HONG KONG 224 (2004); Tim Summers, *The Hong Kong Special Administrative Region at twenty: evaluating the Sino-British Joint Declaration*, ASIAN ED. AND DEVELOPMENT STUD., Sept. 2017, at 89, 90; MARGARET THATCHER, MARGARET THATCHER 525–29 (2010).

September 26, 1984, the Sino-British Joint Declaration was made, granting Hong Kong sovereignty to the PRC, a country that had different economic systems, different legal systems, and had been administered by a different government for over a century.²⁶⁴ The treaty established Hong Kong as a Special Autonomous Region (“SAR”) that would come under the authority of the Chinese government.²⁶⁵ The SAR was given autonomy “except in foreign and defense affairs.”²⁶⁶ Tsang wrote:

It would keep the existing social and economic systems as well as the existing lifestyle, whereby ‘rights and freedom, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law’. Private property, ownership of enterprises, legitimate rights of inheritance and foreign investments would also be protected by law.²⁶⁷

The treaty also promised that the SAR and the Basic Law would remain unchanged for fifty years.²⁶⁸ The people of Hong Kong felt that the negotiation was acceptable, but only if it was enforced honestly and in full from both parties.²⁶⁹ After the negotiations, most local people of Hong Kong were afraid that “their freedom, way of life, and standard of living” would be changed by the PRC’s meddling in the domestic activities.²⁷⁰ The people of Hong Kong grew frustrated

²⁶⁴ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 225–26 (2004); MARGARET THATCHER, *MARGARET THATCHER* 525–29 (2010).

²⁶⁵ STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 226 (2004).

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*; Tak-Wing Ngo, *Colonialism in Hong Kong Revisited*, in *HONG KONG’S HISTORY: STATE AND SOCIETY UNDER COLONIAL RULE 1* (Tak-Wing Ngo ed., 2002); GREG CLARK & TIM MOONEN, *WORLD CITIES AND NATION STATES* 152 (2017); MARGARET THATCHER, *MARGARET THATCHER* 528 (2010); JONATHAN FENBY, *THE PENGUIN HISTORY OF MODERN CHINA: THE FALL AND RISE OF A GREAT POWER 1850 TO THE PRESENT* 661 (2008).

²⁶⁹ STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 227 (2004).

²⁷⁰ *Id.* at 229.

from having no say in the negotiations and were split over whether they should become a democracy, become part of the power structure in the PRC or fight to protect their vested interests.²⁷¹ The PRC had no intention of letting Hong Kong become a democracy and kept claiming that it would allow “one country, two systems.”²⁷² In 1987, the Hong Kong government considered a political reform review and asked for the general public to submit opinions to the survey office.²⁷³ The Survey Office released a report but lied about the actual findings.²⁷⁴ There were 125,833 individual submissions where the majority of the submissions supported direct elections, and 233,666 signatures handed in through campaigns where all but 295 supported direct elections; the Office claimed there wasn’t support for holding elections in 1988.²⁷⁵ Britain, who was responsible for the lies released by the Survey Office in Hong Kong, hoped to slow down democratization in order to convince the PRC to allow direct elections by 1997, however whenever the PRC felt something threatened the system of government, it would be eliminated regardless of the cost.²⁷⁶ The PRC would also only allow roughly forty percent of important committees, such as the Basic Law Drafting Committee, to be representatives of Hong Kong, giving an illusion of democracy with the PRC holding unquestionable power.²⁷⁷ In drafting the Basic Law, Article 4 states that “the socialist system and policies shall not be practiced in the Hong Kong Special Autonomous Region.”²⁷⁸

When the student movement erupted in Beijing in 1989 the people of Hong Kong felt connected to it due to their frustration over the PRC restricting democratic movements and sidestepping the Joint

²⁷¹ *Id.* at 230.

²⁷² *Id.* at 231.

²⁷³ *Id.* at 233–34.

²⁷⁴ STEVE TSANG, A MODERN HISTORY OF HONG KONG 234 (2004).

²⁷⁵ Although they would eventually clarify this, the initial report in the “white pages” was wrong. *See* STEVE TSANG, A MODERN HISTORY OF HONG KONG 234 (2004).

²⁷⁶ STEVE TSANG, A MODERN HISTORY OF HONG KONG 236–37 (2004).

²⁷⁷ *Id.* at 238–39.

²⁷⁸ *Id.* at 244.

Declaration guidelines.²⁷⁹ Hong Kong staged a sympathy demonstration of 500,000 people, and then had another mass demonstration after learning of the tragic massacre at Tiananmen Square.²⁸⁰ Despite the strong calls for speeding up the democratic elections, and the popular opinion supporting them, Margaret Thatcher, fearing elections would undermine the agreement, responded that it “was not the time.”²⁸¹ To quiet public outcry, the Hong Kong government, with the blessing of the PRC, introduced a bill of rights to incorporate the International Covenant on Civil and Political Rights into Hong Kong law.²⁸²

In the 1991 Hong Kong elections, every candidate that boasted a pro-PRC view was defeated, and pro-democracy candidates won fifteen out of the eighteen executive council seats.²⁸³ In the 1995 elections, the PRC won only sixteen out of the sixty legislative council seats.²⁸⁴ The PRC responded by declaring the Hong Kong legislature would be made by appointments, which breached both the Basic Law and the Joint Declaration as the PRC began to meddle in the internal affairs of Hong Kong’s governance.²⁸⁵ In December of 1996, the provisional council was finally selected with thirty-three of the sixty seats to be held by the existing council.²⁸⁶ Following the handover of power in 1997, the new head of Hong Kong changed the government’s approach from the hands-off style to “actively managing new economic or social developments,” showing an immediate sudden shift to the PRC’s authoritative style.²⁸⁷

²⁷⁹ *Id.* at 246; see Tim Summers, *The Hong Kong Special Administrative Region at twenty: evaluating the Sino-British Joint Declaration*, ASIAN ED. AND DEVELOPMENT STUD., Sept. 2017, at 89, 96.

²⁸⁰ STEVE TSANG, A MODERN HISTORY OF HONG KONG 246 (2004).

²⁸¹ *Id.* at 250.

²⁸² *Id.*

²⁸³ *Id.* at 252.

²⁸⁴ *Id.* at 265.

²⁸⁵ STEVE TSANG, A MODERN HISTORY OF HONG KONG 265 (2004).

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 277; Roda Mushkat, *The Dynamics of International Legal Regime Formation: The Sino-British Joint Declaration on the Question of Hong Kong Revisited*, 22 EUR. J. OF INT’L L., 1119, 1123 (2011).

II. ANALYSIS

A. Tibet

1. Main International Law Argument for Sovereignty

Under international law, qualifying as a state requires passing a four-prong test: The state must (1) have a defined territory, (2) contain a permanent population, (3) be under control of its own governance, and (4) have the capacity to engage in formal relations with other states.²⁸⁸ At the time the PRC invaded Tibet, the government of Tibet satisfied all four of these conditions.²⁸⁹ The territory of Tibet, though sometimes expanding and contracting depending upon the treaty, was defined through several treaties with Britain, India, and even the ROC while they controlled China.²⁹⁰ The areas known as Outer Tibet, Kham (also called Eastern Tibet and Inner Tibet), and Amdo (Northern Tibet) have historically been part of the Tibetan state and under the governance of Lhasa.²⁹¹ Even under the rule of the Qing dynasty, boundaries of Tibet were defined as Tibet, Kham, and Amdo, with the

²⁸⁸ Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); See RESTATEMENT 3D § 201, cmt. f; see *Montevideo Convention on the Rights of States*, 49 Stat. 3097, 165 L.N.T.S. 19; Francois Finck, *The State between Fact and Law: The Role of Recognition and the Conditions under which It Is Granted in the Creation of New States*, 36 POLISH Y.B. INT'L L. 51, 55; see German Polish Mixed Arbitral Tribunal, *Deutsche Continental Gas-Gesellschaft v. Polish State*, Aug. 1, 1929.

²⁸⁹ See Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); See MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951, 710 (1989) (showing evidence of a self-run *de facto* government within Tibet); See GOLDSTEIN at 75 (showing treaties formed with foreign nations and defined borders); Lobsang Sangay, *Legal Autonomy of Tibet: A Tibetan Layer's Perspective*, 1 J. E. ASIA & INT'L L. 335, 339 (2008).

²⁹⁰ See MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951, 75 (1989).

²⁹¹ See WARREN W. SMITH, JR., TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS, 124-25 (1997); see MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 46 (1997); see GOLDSTEIN, at 75.

governing council (the Khashag) set up for self-governance.²⁹² Although the Tibetan region contained many Nomads, the population of Tibet was mostly a permanent population based upon a pre-modern, theocratic society with a spiritual leader as the head of state.²⁹³ Tibet had one of the largest populations of monastic devotion in the world (as a percentage of the population), all of which are considered a permanent population.²⁹⁴ The government in Lhasa was autonomous, levying and collecting taxes, raising and maintaining a military, issuing passports, and maintaining the peace.²⁹⁵ The Tibetan government also engaged in foreign relations with other states during its period of self-governance, including the Convention between Great Britain, China, and Tibet, (July 3, 1914), the Treaty of Friendship and Alliance Between the Government of Mongolia and Tibet (Dec. 29, 1912), the Convention Between Great Britain and Tibet (September 7, 1904), the Treaty Between Nepal and Tibet (March 1956), and the Peace Treaty Between Ladakh and Tibet at Tingmosgang (1684).²⁹⁶ Tibet satisfied all four requirements and was a state under the legal system of international law at the time it was invaded by the PRC.²⁹⁷

²⁹² See WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 124–25 (1997) (which also proves the third requirement of a state: self-governance).

²⁹³ See MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951*, 2–21 (1989).

²⁹⁴ *Id.* at 21.

²⁹⁵ *Id.* at 59–61; see GOLDSTEIN, at 81; see GOLDSTEIN at 223.

²⁹⁶ Lobsang Sangay, *Legal Autonomy of Tibet: A Tibetan Layer's Perspective*, 1 J. E. ASIA & INT'L L. 335, 339 (2008); see Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); see MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951*, 223 (1989); see GOLDSTEIN, at 75; see GOLDSTEIN, at 83; see GOLDSTEIN, at 223; see GOLDSTEIN, at 570 (the Tibetan trade mission).

²⁹⁷ See Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); See MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951*, 710 (1989) (showing evidence of a self-run *de facto* government within Tibet); See GOLDSTEIN at 75 (showing treaties formed with foreign nations and defined borders); Lobsang Sangay, *Legal Autonomy of Tibet: A Tibetan Layer's Perspective*, 1 J. E. ASIA & INT'L L. 335, 339 (2008).

The Restatement (third) of The Foreign Relations Law of the United States differs slightly from the Montevideo convention, requiring other states to treat the entity as a state for solidification of the state's recognition.²⁹⁸ The restatement says that a "state is formally recognized by other states . . . but a decision to treat an entity as a state may be manifested in other ways."²⁹⁹ The British recognized the sovereignty of Tibet through the ratification of several treaties.³⁰⁰ The Chinese had implicitly recognized Tibet as a sovereign through various treaties and negotiations with the Tibetan government during its existence.³⁰¹ Mongolia, Nepal, and Ladakh all signed treaties recognizing Tibetan sovereignty as well, along with a trade mission received by the United States from Tibet, all of which satisfy the restatements requirement.³⁰² Further, even during a military occupation, a state does not terminate statehood.³⁰³ Since Tibet's territory was unlawfully annexed under the United Nations charter, through the use or threat of use of force, Tibet's statehood was not terminated.³⁰⁴

Many academics believe that China is not going to agree to recognize the right of Tibet to independence, or even that Tibet has a right to greater autonomy.³⁰⁵ Due to China's brazen disrespect of international law in invading Tibet and its staunch stance on Tibet's

²⁹⁸ RESTATEMENT 3D § 201 (1987).

²⁹⁹ *Id.*

³⁰⁰ See MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 45, 75 (1989).

³⁰¹ See *id.* at 45, 75.

³⁰² Lobsang Sangay, *Legal Autonomy of Tibet: A Tibetan Layer's Perspective*, 1 J. E. ASIA & INT'L L. 335, 339 (2008); see Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); see MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 223 (1989); see GOLDSTEIN, at 75; see GOLDSTEIN, at 83; see GOLDSTEIN, at 223; see GOLDSTEIN, at 570 (the Tibetan trade mission).

³⁰³ RESTATEMENT 3D § 201 (1987).

³⁰⁴ RESTATEMENT 3D § 201 (1987), see Reporter's note 3.

³⁰⁵ Dr. Bryan Schwartz & Susan Waywood, *A Model Declaration on the Right of Secession*, 11 N.Y. INT'L L. REV. 1, 8 (1998); See Simpson, *supra* note 6; Michele L. Radin, *Rights to Development as a Mechanism for Group Autonomy; Protection of Tibetan Cultural Rights*, 68 WASH L. REV. 695 (1993); see Kevin MacMillan, *Secession Prospectives and the Independence of Quebec Comment*, 7 TUL. J., 333, 335 (1999).

status, the prospect of “remedial right only” theory is necessary to be discussed.³⁰⁶ Under the “remedial right only” theory, a group of people have the right to “secede only if the physical survival of its members is threatened by the actions of the state; it suffers from violations of other human rights; or its previously sovereign territory was unjustly taken by the state.”³⁰⁷ As one commentator notes in discussing the possible options for Quebec, “the biggest drawback to this theory is the likely need for armed uprisings to begin the secession process.”³⁰⁸

Tibet needs to secede from Chinese rule in order to guarantee the survival of its ethnic population.³⁰⁹ China has been encouraging Han Chinese to move to Tibet in the past thirty years in a greater attempt to solidify its sovereignty over Tibet.³¹⁰ The large influx of Han Chinese in Tibet even caused riots by Tibetans in 2008.³¹¹ Furthermore, the PRC has encouraged Han Chinese to intermarry with Tibetans over the past decade, causing so-called “mixed marriages” to grow from 666 marriages in 2008 to 4,795 marriages in 2013.³¹² Not only have Han Chinese been encouraged to move to Tibet, and intermarry with Tibetans, but the Chinese government has continued to destroy

³⁰⁶ See Kevin MacMillan, *Secession Prospectives and the Independence of Quebec Comment*, 7 TUL. J., 333, 335 (1999); see Dr. Bryan Schwartz & Susan Waywood, *A Model Declaration on the Right of Secession*, 11 N.Y. INT’L L. REV. 1, 8 (1998); See Simpson, *supra* note 6; Michele L. Radin, *Rights to Development as a Mechanism for Group Autonomy; Protection of Tibetan Cultural Rights*, 68 WASH. L. REV. 695 (1993).

³⁰⁷ Kevin MacMillan, *Secession Prospectives and the Independence of Quebec Comment*, 7 TUL. J., 333, 335 (1999).

³⁰⁸ *Id.* at 336.

³⁰⁹ Peter Hessler, *Tibet through Chinese Eyes*, THE ATLANTIC (Mar. 3, 2019, 2:22 PM), <https://www.theatlantic.com/magazine/archive/1999/02/tibet-through-chinese-eyes/306395/>.

³¹⁰ See Peter Hessler, *Tibet through Chinese Eyes*, THE ATLANTIC (Mar. 3, 2019, 2:22 PM), <https://www.theatlantic.com/magazine/archive/1999/02/tibet-through-chinese-eyes/306395/>.

³¹¹ Edward Wong, *Report Says Valid Grievances at Root of Tibet Unrest*, THE NEW YORK TIMES (Mar. 3, 2019, 2:29 PM), <https://www.nytimes.com/2009/06/06/world/asia/06tibet.html>.

³¹² Xu Yangjingjing, *China promotes mixed marriages in Tibet as way to achieve ‘unity,’* THE WASH. POST (Mar. 3, 2019, 2:34 PM), https://www.washingtonpost.com/world/asia_pacific/china-promotes-mixed-marriages-in-tibet-as-way-to-achieve-unity/2014/08/16/94409ca6-238e-11e4-86ca-6f03cbd15c1a_story.html?utm_term=.fecf1c3e6997.

Tibetan homes, structures, and cultural centers.³¹³ Chinese officials also ordered monasteries and schools not to teach the Tibetan language.³¹⁴ The Chinese government is committing cultural genocide, which makes secession from China the only way to ensure that the Tibetan culture, Tibetan ethnicity, and the Tibetan language survives; the horrific actions of China satisfy the requirement for the “remedial right only theory,” and the uprisings by the Tibetans against the Chinese further shows the need for secession.³¹⁵

2. Alternative Routes to Sovereignty

In 1928, the Permanent Court of Arbitration defined the necessary qualities to claim title to a territory.³¹⁶ Title to territory requires “the continuous and peaceful display of territorial sovereignty,” which is “as good as title.”³¹⁷ This concept to claim a territory that has not been continuously held is called prescriptive title.³¹⁸ In a dispute over sovereignty of land, title by means of prescriptive title requires that “the possession must be peaceful and uninterrupted.”³¹⁹ As shown in the preceding paragraph, it is impossible for China to claim sovereignty over Tibet as Tibet had possession over the Tibetan Autonomous Region, Kham, and Amdo during the reign

³¹³ Edward Wong, *China Takes Chain Saw to a Center of Tibetan Buddhism*, THE NEW YORK TIMES (Mar. 3, 2019, 2:40 PM), <https://www.nytimes.com/2016/11/28/world/asia/china-takes-a-chain-saw-to-a-center-of-tibetan-buddhism.html>.

³¹⁴ Edward Wong, *Tibetans Fight to Salvage Fading Culture in China*, THE NEW YORK TIMES (Mar. 3, 2019, 2:45 PM), <https://www.nytimes.com/2015/11/29/world/asia/china-tibet-language-education.html?module=inline>.

³¹⁵ See Kevin MacMillan, *Secession Prospectives and the Independence of Quebec Comment*, 7 TUL. J., 333, 335; see Lobsang Sangay, *Legal Autonomy of Tibet: A Tibetan Lawyer's Perspective*, 1 J. E. ASIA & INT'L L. 335, 335 (2008).

³¹⁶ Island of Palmas Case (United States v. The Netherlands), 2 U.N. Rep. Int'l Arb. Awards 829 (1928); LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 366–71 (2014).

³¹⁷ Island of Palmas Case (United States v. The Netherlands), 2 U.N. Rep. Int'l Arb. Awards 829 (1928); LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 367 (2014).

³¹⁸ LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 372–73 (2014).

³¹⁹ *Id.* at 372.

of the ROC, which was peaceful and uninterrupted during the 1912-1950 reign of the Lhasa government in Tibet.³²⁰ There is no historical period in which Tibet was ruled by China prior to 1951.³²¹ China cannot claim sovereignty over Tibet as it did not hold Tibet peacefully, nor uninterrupted.³²²

According to international law, a state may establish its title to territory by showing the government is the successor to a preceding state which has since dissolved or disappeared.³²³ In October of 1949, the People's Republic of China took control of the Chinese government.³²⁴ The PRC succeeded the Republic of China, which did not have control, nor sovereignty over Tibet, Kham, or Amdo.³²⁵ The PRC became the successor state, causing the PRC to inherit all former treaties signed by the previous governments as well as the obligations under international law, to the United Nations, and to bordering states.³²⁶ Since the PRC inherited the treaties of the ROC, the PRC inherited all treaties made with Tibet, including the recognition of borders.³²⁷ Therefore, China had an international obligation to respect Tibet's territorial borders.³²⁸

³²⁰ See *id.* at 372–73; See Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); see MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 223 (1989).; see GOLDSTEIN, at 75, 83.

³²¹ Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 30 (1994).

³²² See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 372–73 (2014); See Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); see MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 223 (1989).; see GOLDSTEIN, at 75; see GOLDSTEIN, at 83.

³²³ LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 365–66 (2014).

³²⁴ MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951 623 (1989).

³²⁵ See *id.* at 813.

³²⁶ See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 365–66 (2014).

³²⁷ See *id.*

³²⁸ See *id.*

In the early twentieth century, several treaties and declarations revealed an emerging norm of customary international law: delegitimizing aggression.³²⁹ The creation of the League of Nations, the Kellogg-Briand Pact of 1928, the “Stimson Doctrine” of 1932, and Article 2 section 4 of the U.N. Charter all denounced and prohibited the threat or use of force.³³⁰ The Republic of China was a signatory to the Kellogg-Briand Pact of 1928, a founding member of the League of Nations, and a founding member of the United Nations.³³¹ As the PRC succeeded the ROC, and since China was a member of the United Nations when it invaded the sovereign nation of Tibet in 1950, the use of force was an illegal action under international law and all territories acquired due to the PRC’s use of force should not be recognized as part of China’s territory.³³²

International law, as recognized in the Vienna Convention on the Law of Treaties in 1969, establishes that a “treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.”³³³ As Professor Robert Sloane of Boston University School of Law stated, “illegal occupation cannot itself determine statehood.”³³⁴ The International Law Committee, a group of legal experts commissioned to codify existing norms of international law, stated in the 1966 report:

The traditional doctrine prior to the covenant of the League of Nations was that the validity of a treaty was not affected by the fact that it had been brought about by the threat or use of force. However, this doctrine was simply a reflection of the general attitude of

³²⁹ *Id.* at 362.

³³⁰ *Id.*

³³¹ U.N., *Multilateral Treaties to which China is a Party or Which China Has Signed*, U.N. (Feb. 19, 2019, 2:48 PM), <http://www.china-un.org/eng/zghlhg/flsw/t28583.htm>.

³³² See LORI FISLER DAMROSCH AND SEAN D. MURPHY, *INTERNATIONAL LAW: CASES AND MATERIALS* 362–66 (2014).

³³³ *Id.* at 177–78.

³³⁴ Lobsang Sangay, *Legal Autonomy of Tibet: A Tibetan Layer’s Perspective*, 1 J. E. ASIA & INT’L L. 335, 341 (2008); IAN BROWNLIE, *THE LAW OF RECOGNITION IN INTERNATIONAL LAW* 78 (1994).

international law during that era towards the legality of the use of force for the settlement of international disputes. With the Covenant and the Pact of Paris there began to develop a strong body of opinion which held that such treaties should no longer be recognized as legally valid. The endorsement of the criminality of aggressive war in the Charters of the Allied Military Tribunals for the trial of the Axis War criminals, the clear cut prohibition of the threat or use of force in Article 2, section 4 of the Charter of the United Nations, together with the practice of the United Nations itself, have reinforced and consolidated this development in the law. The Commission considers that these developments justify the conclusion that the invalidity of a treaty procured by the illegal threat or use of force is a principle which is *lex lata* in the international law of today.³³⁵

When the Tibetan delegation agreed to the seventeen-point agreement with China, the agreement was void due to three main reasons: (1) because Tibet was under attack at the time, (2) because the Tibetan delegation was coerced into signing the document, and (3) because the Tibetan delegation was not authorized to make concessions that they made.³³⁶ The Security Council of the United Nations voted that North Korea's invasion of South Korea in June of 1950 constituted a breach of the peace and was against international law.³³⁷ The sovereignty of South Korea, and the sovereignty of states in general, was such a firmly held belief in the Security Council that it asked for other UN members to assist South Korea just two days after

³³⁵ LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 178 (2014); *Yearbook of the International Law Commission, 1966, vol. II, 246.*

³³⁶ See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 178 (2014); See *Yearbook of the International Law Commission, 1966, vol. II, 246*; Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 36–7 (1994); WARREN W. SMITH, JR., TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS, 295–96 (1996).

³³⁷ See S.C. Res. 82, ¶ 1 (Jun. 25, 1950).

the condemnation.³³⁸ The conquest of territory by the threat or use of force was further shown to be contrary to international law when the Security Council of the UN condemned the invasion of Kuwait by Iraq in 1990.³³⁹ It seems likely that had the UN recognized Tibet as a sovereign state in 1949, the other members of the Security Council, aside from China, would have condemned China's invasion and subsequent use of force as well.³⁴⁰ Since Tibet should have been considered an independent sovereign state, and since the seventeen-point treaty was invalid due to the threat and actual use of force, there are no valid treaties which grant the PRC sovereignty over Tibet.³⁴¹

Tibet should be considered a non-self-governing territory as defined by the United Nations and China has a duty to promote self-governance within Tibet.³⁴² Tibet is a non-self-governing territory since the PRC formally dissolved the Tibetan government in 1959 and split the territory of Tibet across several provinces.³⁴³ Since Tibet is a non-self-governing territory, the 1960 UN Declaration on Granting Independence to Colonial Countries should apply to Tibet as well.³⁴⁴ Tibet should therefore be given three options in accordance to G.A. 1541: (1) to become an independent state, (2) to become associated with another state, or (3) to fully integrate with another state.³⁴⁵

³³⁸ See S.C. Res. 83 (Jun. 27, 1950).

³³⁹ See S.C. Res. 660, ¶ 1-2 (Aug. 2, 1990).

³⁴⁰ See S.C. Res. 82, ¶ 1 (Jun. 25, 1950); see U.N. Charter art. 2, section 4.

³⁴¹ See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 178 (2014); See *Yearbook of the International Law Commission, 1966, vol. II, 246*; See Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 36-37 (1994).

³⁴² See G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960); U.N. Charter art. 73, § b; see MICHAEL C. VAN WALT VAN PRANG, THE STATUS OF TIBET, HISTORY, RIGHTS, AND PROSPECTS UNDER INTERNATIONAL LAW 163 (1987).

³⁴³ See MICHAEL C. VAN WALT VAN PRANG, THE STATUS OF TIBET, HISTORY, RIGHTS, AND PROSPECTS UNDER INTERNATIONAL LAW 163 (1987); see VAN WALT VAN PRANG, at 158.

³⁴⁴ See G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960).

³⁴⁵ G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960).

The PRC has committed a wide array of human rights violations in Tibet.³⁴⁶ An Australian Human Rights delegation entered China in July 1991 with the intention of gauging the issues facing Tibet.³⁴⁷ Although the delegation felt as if they were being insulated from the general population, the delegation was still able to find “clear signs of anti-Chinese feelings.”³⁴⁸ The local Tibetans that spoke to the delegation “were unequivocal about the lack of religious freedom and civil and political rights” and went on to mention a “lack of justice, education, employment, and freedom of expression, as well as restrictions on movement.”³⁴⁹ The United Nations’ Universal Declaration of Human Rights created international legal norms, which include protections from arbitrary arrests, protection from systemic racial discrimination, the right of freedom of movement, freedom of religion, the right to education, and protection from torture.³⁵⁰ Between 1987 and July 1991, the delegation learned that fifty people had been sentenced for “counter-revolutionary” crimes, with two executions happening in 1990 alone.³⁵¹ Sources suggest that over one thousand prisoners were sentenced for political reasons in Lhasa at the time the delegation had visited.³⁵² China showed blatant disregard for international law by stripping the Tibetans of their rights, conveyed to them by the UN Universal Declaration of Human Rights.³⁵³ The conclusion the Australian delegation came to was that “a serious human rights problem exists in Tibet” and that it was “clear that China

³⁴⁶ Eugene Kamenka & Alice Erh-Soon Tay, *International Law, International Justice and the Autonomy of Tibet*, 18 BULL. AUSTL. SOC. LEG. PHIL. 36, 43–55 (1993)

³⁴⁷ *Id.* at 44.

³⁴⁸ Eugene Kamenka & Alice Erh-Soon Tay, *International Law, International Justice and the Autonomy of Tibet*, 18 BULL. AUSTL. SOC. LEG. PHIL. 36, 45 (1993).

³⁴⁹ *Id.*

³⁵⁰ LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 935 (2014); United Nations, *Universal Declaration of Human Rights*, U.N. (Feb. 22, 2019, 6:14 PM), <http://www.un.org/en/universal-declaration-human-rights/index.html>.

³⁵¹ Eugene Kamenka & Alice Erh-Soon Tay, *International Law, International Justice and the Autonomy of Tibet*, 18 BULL. AUSTL. SOC. LEG. PHIL. 36, 45 (1993).

³⁵² *Id.* at 45–46.

³⁵³ See Eugene Kamenka & Alice Erh-Soon Tay, *International Law, International Justice and the Autonomy of Tibet*, 18 BULL. AUSTL. SOC. LEG. PHIL. 36, 45–46 (1993); United Nations, *Universal Declaration of Human Rights*, (Feb. 22, 2019, 6:14 PM), <http://www.un.org/en/universal-declaration-human-rights/index.html>.

continues not to tolerate political opposition and dissent in Tibet.”³⁵⁴ When the delegation suggested that peace talks take place between Beijing and the Dalai Lama, China claimed that “no Tibetan wants a return to Feudalism,” despite the delegation having been told the opposite when they spoke to Tibetans upon their visit.³⁵⁵ The views of the Tibetans that were shared with the Australian delegation show that Tibet would choose to be an independent state if the local population were asked.³⁵⁶ In accordance with General Assembly resolution 1541 and confirmed by the ICJ’s decision on the Chagos Islands, Tibet should have the choice to vote for its own future.³⁵⁷

In conclusion, Tibet has the right to self-determination, China has no claim over Tibet, nor did China have uninterrupted control over Tibet necessary to establish sovereignty, and the treaty which granted China sovereignty over Tibet is void due to the use of force and the threat of force.³⁵⁸ China must also abide by international law and cease to use force or the threat of force to coerce Tibet into further treaties.³⁵⁹ Furthermore, the People’s Republic of China must also

³⁵⁴ Eugene Kamenka & Alice Erh-Soon Tay, *International Law, International Justice and the Autonomy of Tibet*, 18 BULL. AUSTL. SOC. LEG. PHIL. 36, 49 (1993).

³⁵⁵ *Id.* at 47; Kamenka & Tay, *supra* note 355, at 50–51.

³⁵⁶ See Eugene Kamenka & Alice Erh-Soon Tay, *International Law, International Justice and the Autonomy of Tibet*, 18 BULL. AUSTL. SOC. LEG. PHIL. 36, 45 (1993).

³⁵⁷ See G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960); International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, INT’L COURT OF J. (Feb. 28, 2019 12:05 PM), <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf> (cited as a webpage due to difficulty finding the official reporter listing).

³⁵⁸ See Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 24 (1994); See MELVYN C. GOLDSTEIN, A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951, 710 (1989) (showing evidence of a self-run *de facto* government within Tibet); See GOLDSTEIN at 75 (showing treaties formed with foreign nations and defined borders).

³⁵⁹ LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 178 (2014); *Yearbook of the International Law Commission*, 1966, vol. II, 246.

recognize the last treaty, which grants the Lhasa government and the Dalai Lama control over Tibet, Kham, and Amdo.³⁶⁰

B. Hong Kong

Hong Kong, despite being under colonial rule for most of its existence, has most of the qualifications to be considered an independent state.³⁶¹ The two treaties of Nanking and Peking in the nineteenth century, along with the 1898 lease of the New Territories give Hong Kong a defined territory.³⁶² The local administration of Hong Kong was self-governing throughout its colonial rule.³⁶³ Finally, Hong Kong had a permanent population, satisfying three of the four necessary qualities of a sovereign state.³⁶⁴ Hong Kong currently lacks the ability to enter into treaties with other states, but had it not been under the colonial rule of Britain and then under China's rule, it would have been able to do so.³⁶⁵ Due to its unique population, defined territory, and ability to self-govern, Hong Kong should be considered an independent state with full autonomy.³⁶⁶

Hong Kong was a colony of Great Britain from the time of the Nanking Treaty until the handover to China in 1997.³⁶⁷ In 1960, the United Nations passed the General Resolution for the Declaration on Granting Independence to Colonial Countries (resolution 1514), which should have granted Hong Kong the option for independence prior to the handover.³⁶⁸ Resolution 1514 was confirmed as being customary international law by the International Court of Justice in

³⁶⁰ MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 223 (1989).

³⁶¹ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 40 (2004) (defining the territory); see TSANG, at 41 (showing the creation of the government in Hong Kong); see TSANG, at 180 (describing the permanent population).

³⁶² See *id.* 3–15; see TSANG, at 35, 38; PATRICIA LIM, *FORGOTTEN SOULS: A SOCIAL HISTORY OF THE HONG KONG CEMETERY* 544 (2011).

³⁶³ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 41 (2004).

³⁶⁴ See *id.* at 180; See *Restatement 3D* § 201, comment *f*.

³⁶⁵ See *RESTATEMENT 3D* § 201, comment *f*.

³⁶⁶ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 194-95 (2004); see TSANG, at 41.

³⁶⁷ See *id.* at 40; see TSANG, 3–15.

³⁶⁸ G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960).

their advisory opinion on the Chagos islands.³⁶⁹ Since the 1960 resolution 1514 is seen as customary international law, Britain was under a legal obligation to grant all colonies, including Hong Kong, independence.³⁷⁰ In November 1972, the UN General Assembly voted to remove Hong Kong from the official list of colonies at the behest of China.³⁷¹ The removal of Hong Kong from the list of colonies was to ensure China would regain possession of Hong Kong in 1997.³⁷² Hong Kong should still be considered a colony, first of Britain then of China, since it has the qualifications of an independent separate state but was under the control of a colonial power.³⁷³ Therefore, Hong Kong, as a colony, should be granted the right of self-determination, and should have been granted self-determination after resolution 1514 was passed.³⁷⁴

³⁶⁹ International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, INT'L COURT OF J. (Feb. 28, 2019, 12:05 PM), <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf> (cited as a webpage due to difficulty finding the official reporter listing).

³⁷⁰ See G.A. Res. 2908 (XXVII), at 3 (Nov. 2, 1972); Joshua Wong, Jeffrey Ngo, *How China stripped Hong Kong of its right to self-determination in 1972- and distorted history*, HONG KONG FREE PRESS (Feb. 23, 2019, 2:59 PM), <https://www.hongkongfp.com/2016/11/08/china-stripped-hong-kong-right-self-determination-1972-distorted-history/>.

³⁷¹ G.A. Res. 2908 (XXVII), at 3 (Nov. 2, 1972); Joshua Wong, Jeffrey Ngo, *How China stripped Hong Kong of its right to self-determination in 1972- and distorted history*, HONG KONG FREE PRESS (Feb. 23, 2019, 2:59 PM), <https://www.hongkongfp.com/2016/11/08/china-stripped-hong-kong-right-self-determination-1972-distorted-history/>.

³⁷² Joshua Wong, Jeffrey Ngo, *How China stripped Hong Kong of its right to self-determination in 1972- and distorted history*, HONG KONG FREE PRESS (Feb. 23, 2019, 2:59 PM), <https://www.hongkongfp.com/2016/11/08/china-stripped-hong-kong-right-self-determination-1972-distorted-history/>.

³⁷³ See STEVE TSANG, A MODERN HISTORY OF HONG KONG 3-15 (2004); see Simon Denyer, *Believe in the Motherland, China's Leader tells Hong Kong people - and respect its might*, THE WASH. POST (Feb. 28, 2019, 11:48 AM), https://www.washingtonpost.com/world/believe-in-the-motherland-chinas-leader-tells-hong-kong-people--and-respect-its-might/2017/06/30/4812b88a-5c18-11e7-aa69-3964a7d55207_story.html?noredirect=on&utm_term=.21c8d88b0026.

³⁷⁴ G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960); see International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* INT'L COURT OF J. (Feb. 28, 2019, 12:05 PM), <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf>, at paragraph 160.

The international legal principle of self-determination was solidified into law under the U.N. charter, in Article 1, section 2, and Article 55 and continued to be implemented into many U.N. resolutions thereafter.³⁷⁵ The principle of self-determination was also embedded into the UN Declaration on Granting Independence to Colonial Countries.³⁷⁶ Since Hong Kong was a colony of Britain at the time of the UN Declaration, the declaration should be applied to Hong Kong.³⁷⁷ Since Hong Kong was a colony, and the UN Declaration applied to it, Britain did not have the authority to grant sovereignty over Hong Kong; only Hong Kong can decide if it wants to give its sovereignty away to China.³⁷⁸ Resolution 1541 states that all colonies, also called non-self-governing territories in the UN, can reach full self-governance by choosing to (1) become an independent state, (2) become associated with another state, or (3) fully integrate with another state, but it is a decision that the colony must choose.³⁷⁹ Since Hong Kong did not choose to become integrated with China, the Sino-British Joint Declaration should be voided, and Hong Kong should be given the choices stated in resolution 1541.³⁸⁰

The Umbrella movement, also called the Umbrella Revolution, was a series of pro-democracy protests in 2014 that attracted tens of

³⁷⁵ Cisst K. S. Lam, *Sovereignty over Hong Kong*, 16 CAMBRIAN L. REV. 77, 78–79 (1985); see G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960).

³⁷⁶ Cisst K. S. Lam, *Sovereignty over Hong Kong*, 16 CAMBRIAN L. REV. 77, 79 (1985); G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960).

³⁷⁷ See G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960); see International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, INT'L COURT OF J. (Feb. 28, 2019, 12:05 PM), <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf>, at ¶ 160.

³⁷⁸ See G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960); see G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960); see International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, INT'L COURT OF J. (Feb. 28, 2019 12:05 PM), <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf>, at paragraph 160.

³⁷⁹ G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960).

³⁸⁰ G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960); see G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960); see International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, INT'L COURT OF J. (Feb. 28, 2019, 12:05 PM), <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf>, at ¶ 160.

thousands of Hong Kong locals.³⁸¹ The Chinese government responded to the protests with violence, many protestors were beaten and arrested.³⁸² Since two conditions of the Sino-British Joint Declaration were to allow Hong Kong to have “executive, legislative, and independent judicial power including that of final adjudication,” and to allow the current system to remain unchanged for fifty years, China has not performed its obligations under the treaty due to its suppression of the Umbrella movement.³⁸³ Further, China has become increasingly totalitarian under the rule of Xi Jinping.³⁸⁴ The totalitarian rule, and the diminishment of Hong Kong’s reputation as China’s freest city, is a direct violation of the treaty granting China sovereignty over Hong Kong.³⁸⁵

³⁸¹ See Danny Lee, Gary Cheung, *Beijing tells Britain it has no ‘moral responsibility’ for Hong Kong*, SOUTH CHINA MORNING POST (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless>; see BBC, *Hong Kong Protests: Timeline of the Occupation*, BBC NEWS (Feb. 23, 2019, 4:00 PM), <https://www.bbc.com/news/world-asia-china-30390820>; see The Guardian, *Hong Kong’s Umbrella revolution - the Guardian briefing*, THE GUARDIAN (Feb. 24, 2019, 11:06 AM), <https://www.theguardian.com/world/2014/sep/30/-sp-hong-kong-umbrella-revolution-pro-democracy-protests>.

³⁸² See BBC, *Hong Kong Protests: Timeline of the Occupation*, BBC News (Feb. 23, 2019, 4:00 PM), <https://www.bbc.com/news/world-asia-china-30390820>; see The Guardian, *Hong Kong’s Umbrella revolution - the Guardian briefing*, THE GUARDIAN (Feb. 24, 2019, 11:06 AM), <https://www.theguardian.com/world/2014/sep/30/-sp-hong-kong-umbrella-revolution-pro-democracy-protests>.

³⁸³ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 225–26 (2004).

³⁸⁴ Carole J. Petersen, *Prohibiting the Hong Kong National Party: Has Hong Kong violated the International Covenant on Civil and Political Rights?*, 48 H. K. L. J. 789, 790 (2018); Associated Press, *Human rights in China under Xi Jinping ‘worst since Tiananmen crackdown’*: Amnesty, SOUTH CHINA MORNING POST (Feb. 28, 2019, 4:15 PM), <https://www.scmp.com/news/china/policies-politics/article/2120318/human-rights-china-under-xi-jinping-worst-tiananmen>.

³⁸⁵ See Carole J. Petersen, *Prohibiting the Hong Kong National Party: Has Hong Kong violated the International Covenant on Civil and Political Rights?*, 48 H.K.L.J. 789, 790 (2018); see Associated Press, *Human rights in China under Xi Jinping ‘worst since Tiananmen crackdown’*: Amnesty, SOUTH CHINA MORNING POST (Feb. 28, 2019, 4:15 PM), <https://www.scmp.com/news/china/policies-politics/article/2120318/human-rights-china-under-xi-jinping-worst-tiananmen>.

Ni Jian, the Chinese deputy Ambassador to Britain stated that the Joint Declaration “is now void and only covered from the signing in 1984 until the handover in 1997.”³⁸⁶ According to Michael Davis, a law professor at Hong Kong University, the obligation to Hong Kong and the British under the Sino-British Joint Declaration “cannot possibly be fulfilled until the 50 years pass.”³⁸⁷ China has violated the Sino-British Joint Declaration treaty by banning political parties, blocking people from running for elections, and even denied individuals from opening a bank account.³⁸⁸ According to Article 69 of the Vienna Convention on the Law of Treaties, if acts have been performed in reliance of a treaty that has since been voided, “each party may require any other party to establish as far back as possible in their mutual relations the position that would have existed if the acts had not been performed.”³⁸⁹ The reason Britain gave Hong Kong’s sovereignty to Beijing was due to the promises made in the Joint Declaration, and to void the joint declaration would mean returning Hong Kong’s governance to Britain.³⁹⁰ The Chinese ceded Hong Kong Island and part of Kowloon peninsula to the British under legal treaties, the British developed the area into one of the world’s leading economies and had no international nor legal obligation to hand over

³⁸⁶ Danny Lee, Gary Cheung, *Beijing tells Britain it has no ‘moral responsibility’ for Hong Kong*, South China Morning Post (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless>.

³⁸⁷ Simon Denyer, *Believe in the Motherland, China’s Leader tells Hong Kong people - and respect its might*, THE WASH. POST (Feb. 28, 2019, 11:48 AM), https://www.washingtonpost.com/world/believe-in-the-motherland-chinas-leader-tells-hong-kong-people--and-respect-its-might/2017/06/30/4812b88a-5c18-11e7-aa69-3964a7d55207_story.html?noredirect=on&utm_term=.21c8d88b0026.

³⁸⁸ See Simon Denyer, *Believe in the Motherland, China’s Leader tells Hong Kong people - and respect its might*, THE WASH. POST (Feb. 28, 2019, 11:48 AM), https://www.washingtonpost.com/world/believe-in-the-motherland-chinas-leader-tells-hong-kong-people--and-respect-its-might/2017/06/30/4812b88a-5c18-11e7-aa69-3964a7d55207_story.html.

³⁸⁹ Vienna Convention on the Law of Treaties art. 69, May 23, 1969, 1155 U.N.T.S. 348.

³⁹⁰ See Vienna Convention on the Law of Treaties art. 69, May 23, 1969, 1155 U.N.T.S. 348; See also Danny Lee & Gary Cheung, *Beijing tells Britain it has no ‘moral responsibility’ for Hong Kong*, SOUTH CHINA MORNING POST (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless>.

Hong Kong's sovereignty to China.³⁹¹ China has no valid treaties that grant it sovereignty over Tibet nor Hong Kong, which means both are illegal occupations.³⁹² Since Hong Kong is under an illegal occupation, just as was stated for Tibet, an "illegal occupation cannot itself determine statehood."³⁹³

C. Hong Kong is Tibet's Past and Tibet is Hong Kong's Future

When analyzing the history of Tibet and the modern issues surrounding Hong Kong, similarities begin to emerge, which give the strong impression that Tibet's past is Hong Kong's future.³⁹⁴ The People's Republic of China has a history of implementing radical changes slowly over time.³⁹⁵ Mao Zedong first told the Tibetans there

³⁹¹ See STEVE TSANG, A MODERN HISTORY OF HONG KONG 3-15 (2004); see Cisst K. S. Lam, *Sovereignty over Hong Kong*, 16 CAMBRIAN L. REV. 77, 78-80 (1985).

³⁹² See Vienna Convention on the Law of Treaties art. 69, May 23, 1969, 1155 U.N.T.S. 348; See Danny Lee & Gary Cheung, *Beijing tells Britain it has no 'moral responsibility' for Hong Kong*, SOUTH CHINA MORNING POST (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless> (Sino-British Joint Declaration is void); See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 178 (2014); See *Yearbook of the International Law Commission, 1966, vol. II*, 246; see Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 36-7 (1994); WARREN W. SMITH, JR., TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS 295-96 (1996).

³⁹³ See Vienna Convention on the Law of Treaties art. 69, May 23, 1969, 1155 U.N.T.S. 348; See Danny Lee & Gary Cheung, *Beijing tells Britain it has no 'moral responsibility' for Hong Kong*, SOUTH CHINA MORNING POST (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless> (Sino-British Joint Declaration is void); See LORI FISLER DAMROSCH AND SEAN D. MURPHY, INTERNATIONAL LAW: CASES AND MATERIALS 178 (2014); See *Yearbook of the International Law Commission, 1966, vol. II*, 246; see Hilary K. Josephs & Denise J. Harvey & Mary E. Landergan, *Independence for Tibet: An International Law Analysis*, 8 CHINA L. REP. 21, 36-7 (1994); WARREN W. SMITH, JR., TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS 295-96 (1996); Lobsang Sangay, *Legal Autonomy of Tibet: A Tibetan Layer's Perspective*, 1 J. E. ASIA & INT'L L. 335, 341 (2008); IAN BROWNLIE, THE LAW OF RECOGNITION IN INTERNATIONAL LAW 78 (1994).

³⁹⁴ See Cisst K. S. Lam, *Sovereignty over Hong Kong*, 16 Cambrian L. Rev. 77, 78-80 (1985); see JAMYANG NORBU, WARRIORS OF TIBET 122 (1979).

³⁹⁵ See JAMYANG NORBU, WARRIORS OF TIBET 122 (1979); see Norbu, at 132; see Derek Watkins, *What China has been Building in the South China Sea*, THE NEW YORK

would be no class struggle, but after 1956 the message morphed to “the unending class struggle between the serfs’ landlords must be a peaceful one,” and within three modifications of this message Mao changed it to “all landlords are enemies of the people. They are like rotten meat. If we do not destroy the meat, it will always smell and collect flies.”³⁹⁶ Similarly, in 1956, the message of religion from Mao was “freedom of religion must be respected,” which eventually morphed to “freedom of religion is only for individuals, no organizations may be created for religious reasons,” until the final message was “Religion is the opium of the people. All monks and lamas are exploiters and enemies of the people. The Red [clergy] and Black [aristocracy] enemies must be eliminated.”³⁹⁷ The seventeen-point agreement promised not to alter the existing political system in Tibet, nor change any of the functions or powers of the Dalai Lama, and yet within months *de facto* autonomy was taken from Tibet, and the Dalai Lama was forced to flee with 80,000 other Tibetans.³⁹⁸ Almost immediately after the Chinese troops arrived in Lhasa, the authority of the Dalai Lama and existing political structure was undermined.³⁹⁹ Despite the PRC’s promise to not change the status, functions, and powers of the Lhasa government, the territory of Tibet was then divided into Tibet, Qinghai, Szechuan, and Yunnan.⁴⁰⁰ The Tibetan government was formally dissolved on March 28th, 1959.⁴⁰¹ This is similar to the promise made by the PRC to allow Hong Kong’s system to remain unchanged for fifty years.⁴⁰² In the aftermath of the 1959

TIMES (Feb. 23, 2019, 3:32 PM), <https://www.nytimes.com/interactive/2015/07/30/world/asia/what-china-has-been-building-in-the-south-china-sea.html> (showing the progression in building islands in 2014 in order to make a claim over the entirety of the South China Sea).

³⁹⁶ JAMYANG NORBU, *WARRIORS OF TIBET* 122 (1979).

³⁹⁷ *Id.* at 132.

³⁹⁸ MELVYN C. GOLDSTEIN *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951*, 813 (1989); WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 299 (1996).

³⁹⁹ MICHAEL C. VAN WALT VAN PRANG, *THE STATUS OF TIBET, HISTORY, RIGHTS, AND PROSPECTS UNDER INTERNATIONAL LAW* 158 (1987).

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.* at 163.

⁴⁰² See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 225–26 (2004).

uprising in Tibet, Tibetan currency was banned, private trade became restricted, freedom of movement was restricted, Tibetans were subjected to propaganda by the Chinese communists, while monastic officials were arrested and sent to labor camps.⁴⁰³ In Hong Kong, China has banned political parties from being officially registered, and banned the members from running for office.⁴⁰⁴ Banning political parties is a small step towards authoritarianism in Hong Kong and is a violation of human rights that were guaranteed to the Hong Kong people.⁴⁰⁵ The changes were not sudden in Tibet, and began with less harsh language, but eventually evolved to radical language, encouraging violence against the landlords and monks.⁴⁰⁶ As the leader of the Hong Kong National Party said, Beijing is Hong Kong's "colonial master," and China poses "a threat to all free peoples in the world."⁴⁰⁷

Tibet was promised it would keep the political and religious systems; Hong Kong was promised fifty years for retaining its governing system.⁴⁰⁸ Both states saw these promises broken within years of the agreements.⁴⁰⁹ After the official handover of power of

⁴⁰³ WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 472–74 (1996).

⁴⁰⁴ Lily Kuo, *Hong Kong bans pro-independence party as China tightens grip*, THE GUARDIAN (Mar. 2, 2019, 11:35 AM), <https://www.theguardian.com/world/2018/sep/24/hong-kong-bans-pro-independence-party-as-china-tightens-grip>.

⁴⁰⁵ See *id.*

⁴⁰⁶ See JAMYANG NORBU, *WARRIORS OF TIBET* 122 (1979); see NORBU, at 132; See WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 472–74. (1996).

⁴⁰⁷ Lily Kuo, *Hong Kong bans pro-independence party as China tightens grip*, THE GUARDIAN (Mar. 2, 2019, 11:35 AM), <https://www.theguardian.com/world/2018/sep/24/hong-kong-bans-pro-independence-party-as-china-tightens-grip>.

⁴⁰⁸ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 225–26 (2004); WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 299. (1996).

⁴⁰⁹ STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 265 (2004) (cancelling the election results since the PRC only won 16 of 60 seats); Danny Lee & Gary Cheung, *Beijing tells Britain it has no 'moral responsibility' for Hong Kong*, SOUTH CHINA MORNING POST (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visa-ban-useless> (claiming the Sino-British Declaration was void after 1997); BBC, *Hong Kong Protests: Timeline of the Occupation*, BBC NEWS

Hong Kong in 1997, the new governor of Hong Kong announced a more active governing approaching, which is a distinct difference from the British *laissez-faire*, or ‘hands off,’ style.⁴¹⁰ From the 1997 declaration that the elected positions would be appointments from the government, to claiming the Joint Sino-British Declaration to be void, to the violence seen in the wake of the Umbrella movement, China has been systematically becoming more authoritarian towards Hong Kong.⁴¹¹ With each step the PRC takes towards authoritarian solutions in Hong Kong, there is a direct reflection of the gradual authoritative steps taken in Tibet during the 1950’s.⁴¹² Tibet’s language has slowly been disappearing due to the government banning schools and monasteries from teaching Tibetan; Hong Kong is beginning to see a similar tactic being implemented with the city government encouraging “students to become . . . trilingual in English, Cantonese, and Mandarin.”⁴¹³ After Mao’s death, the same authoritative mentality

(Feb. 23, 2019 4:00 PM), <https://www.bbc.com/news/world-asia-china-30390820> (showing PRC reaction to protests); see WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS*, 472-74. (1996); see MICHAEL C. VAN WALT VAN PRANG, *THE STATUS OF TIBET, HISTORY, RIGHTS, AND PROSPECTS UNDER INTERNATIONAL LAW* 163 (1987).

⁴¹⁰ STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 277 (2004).

⁴¹¹ *Id.* at 265 (cancelling the election results since the PRC only won sixteen of sixty seats); Danny Lee & Gary Cheung, *Beijing tells Britain it has no ‘moral responsibility’ for Hong Kong*, SOUTH CHINA MORNING POST (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless> (claiming the Sino-British Declaration was void after 1997); BBC, *Hong Kong Protests: Timeline of the Occupation*, BBC NEWS (Feb. 23, 2019 4:00 PM), <https://www.bbc.com/news/world-asia-china-30390820> (showing PRC reaction to protests).

⁴¹² See JAMYANG NORBU, *WARRIORS OF TIBET* 132 (1979); see STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 265 (2004); see Danny Lee & Gary Cheung, *Beijing tells Britain it has no ‘moral responsibility’ for Hong Kong*, SOUTH CHINA MORNING POST (Feb. 23, 2019, 12:18 PM), <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless>; see BBC, *Hong Kong Protests: Timeline of the Occupation*, BBC NEWS (Feb. 23, 2019, 4:00 PM), <https://www.bbc.com/news/world-asia-china-30390820>.

⁴¹³ Juliana Liu, *Cantonese v Mandarin: When Hong Kong languages get political*, BBC NEWS (Mar. 3, 2019, 2:57 PM), <https://www.bbc.com/news/world-asia-china-40406429>; see Edward Wong, *Tibetans Fight to Salvage Fading Culture in China*, THE NEW YORK TIMES (Mar. 3, 2019, 2:45 PM), <https://www.nytimes.com/2015/11/29/world/asia/china-tibet-language-education.html>.

continued into Deng Xiaoping, the leader of the PRC during the Tiananmen Square incident, a violent suppression of a student-led protest in June 1989.⁴¹⁴ Xi Jinping has taken the same authoritative tone when dealing with the Umbrella movement, sending “a warning to the pro-independence or other so-called anti-China elements to not challenge the authority of the central government.”⁴¹⁵ Hong Kong should look toward Tibet’s past, in the slow evolution of restrictions and authoritative handling in order to see where its own future lies.⁴¹⁶

Although China will claim “one country, two systems,” there is only one government allowed in China, and that authoritative government is the central government of Beijing.⁴¹⁷

D. Political Viability

Xi Jinping became the leader of the PRC between 2012 and 2013.⁴¹⁸ From his first actions in jailing Chinese communist party leaders for corruption, to his bold moves to reorganize the military, and aggressive economic agenda, Xi has consolidated power in China.⁴¹⁹ Chinese scholars have called Xi an “emperor” and have said the decision-making process in the Politburo Standing Committee is

⁴¹⁴ See WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS* 620 (1996).

⁴¹⁵ Austin Ramzy, *Xi Delivers Tough Speech on Hong Kong*, THE N.Y. TIMES (Feb. 23, 2019, 4:51 PM), <https://www.nytimes.com/2017/07/01/world/asia/hong-kong-china-xi-jinping.html>.

⁴¹⁶ See JAMYANG NORBU, *WARRIORS OF TIBET* 122 (1979); see NORBU, at 132; see Austin Ramzy, *Xi Delivers Tough Speech on Hong Kong*, THE N.Y. TIMES (Feb. 23, 2019, 4:51 PM), <https://www.nytimes.com/2017/07/01/world/asia/hong-kong-china-xi-jinping.html>; see MELVYN C. GOLDSTEIN, *A HISTORY OF MODERN TIBET: THE DEMISE OF THE LAMAIST STATE, 1913-1951* 813 (1989).

⁴¹⁷ See STEVE TSANG, *A MODERN HISTORY OF HONG KONG* 231 (2004); see Austin Ramzy, *Xi Delivers Tough Speech on Hong Kong*, THE N.Y. TIMES (Feb. 23, 2019, 4:51 PM), <https://www.nytimes.com/2017/07/01/world/asia/hong-kong-china-xi-jinping.html>.

⁴¹⁸ CHENG LI, *CHINESE POLITICS IN THE XI JINPING ERA: REASSESSING COLLECTIVE LEADERSHIP* 9 (2016).

⁴¹⁹ See CHENG LI, *CHINESE POLITICS IN THE XI JINPING ERA: REASSESSING COLLECTIVE LEADERSHIP* 8–12 (2016).

“Xi’s one man show.”⁴²⁰ Although Chinese historian Cheng Li believes it is too early to make a judgement on Xi Jinping’s intentions on domestic and foreign issues, since Xi is currently leading the PRC we must analyze his leadership style and reactions to domestic issues to gauge the political possibilities surrounding Tibetan, and Hong Kongese, sovereignty.⁴²¹

As aforementioned, Xi Jinping regained the Chinese public’s confidence when first taking office by launching a bold anti-corruption campaign.⁴²² Despite the ubiquitous corruption within the Chinese Communist Party (“CCP”), Xi rallied continued CCP rule while jailing senior CCP members.⁴²³ This duality of both prosecuting party leaders while promoting continued party rule shows how difficult it is to predict Xi’s response as the two are seemingly contradictory.⁴²⁴ Further, Xi came from a privileged party family, but his father was purged by Mao in the 1960’s which caused his family to suffer hardship in a rural area.⁴²⁵ Xi’s initiatives crack down on State-owned enterprise monopolies while promoting China’s national champions, the very State-owned enterprises he promises to crack down on.⁴²⁶ Xi continues with a conservative governance style that alienates liberal intellectuals, while simultaneously prioritizing the development and promotion of think tanks to create liberal intellectuals as a national strategic objective.⁴²⁷ All of these are direct contradictions, highlight the difficulty in analyzing Xi and guessing his future policy decisions.⁴²⁸ The contradictions do point towards the qualities of a leader who is not dogmatic, nor a zealot, but instead a flexible and adaptable leader who can bend with the wind.⁴²⁹

⁴²⁰ *Id.* at 14.

⁴²¹ *See id.* at 34.

⁴²² *Id.* at 352.

⁴²³ *Id.*

⁴²⁴ CHENG LI, CHINESE POLITICS IN THE XI JINPING ERA: REASSESSING COLLECTIVE LEADERSHIP 353 (2016).

⁴²⁵ *Id.* at 354.

⁴²⁶ *Id.* at 355.

⁴²⁷ *Id.*

⁴²⁸ *See id.* at 352–56.

⁴²⁹ *See* CHENG LI, CHINESE POLITICS IN THE XI JINPING ERA: REASSESSING COLLECTIVE LEADERSHIP 357 (2016).

Zhang Lifan, a Chinese historian, has argued that Xi's goal is to be "as strong as Vladimir Putin when dealing with domestic and foreign affairs."⁴³⁰ Xi also firmly opposes ethnic and religious demands for autonomy.⁴³¹ However, changes within Chinese society may soon push Xi towards changing his policies yet again.⁴³² The middle class is growing in China, as well as a growth in interest group politics, and constitutional demands from the legal community may push Xi to political reforms.⁴³³ Further, China is in transition from being a regional power to a global power, now ranked as the second largest economy on earth.⁴³⁴ With China becoming a global entity, the opinion of the international community will become more important to the decision within China to secure trade and maintain peaceful relations.⁴³⁵ The United States holds a great deal of power with China due to the interdependence between the two countries in terms of economy and trade.⁴³⁶ If Xi is a flexible and adaptive leader as is suggested, international and domestic pressure could create an opportunistic situation for both Tibet and Hong Kong.⁴³⁷

There are other indicators that Xi Jinping believes in "national sovereignty and territorial integrity" and promotes these ideas heavily within China.⁴³⁸ The conflict of the South China Sea, where China built upon small uninhabited islands to claim ownership of the entire sea, shows that Xi will not cease its actions to maintain its perceived

⁴³⁰ *Id.* at 12.

⁴³¹ *Id.* at 355–57.

⁴³² *See id.* at 397.

⁴³³ *See id.*

⁴³⁴ Su Ge, *Xi Jinping's Strategic Thought Guiding Chinese Diplomacy*, 61 CHINA INT'L STUD. 11, 14.

⁴³⁵ *See id.* at 14–15 (this author gives great insight into the Chinese perspective on Xi Jinping, but also shows absurd bias claiming China occupies the "high ground of international morality and order").

⁴³⁶ *See* Teng Jianqun, *Trump's America First Security Strategy: Impact on China-US relations*, 70 CHINA INT'L STUD. 116, 128.

⁴³⁷ *See* CHENG LI, CHINESE POLITICS IN THE XI JINPING ERA: REASSESSING COLLECTIVE LEADERSHIP 357 (2016).

⁴³⁸ Zhao Yongchen, *Dialectical Unity of Xi Jinping's Thought on Diplomacy*, 70 CHINA INT'L STUD. 15, 17 (although the law journal of Chinese International Studies seems to be CCP propaganda written by party insiders hoping to get a promotion, the journal grants an outsider the unique opinion on the godliness of 'comrade' Xi Jinping).

sovereignty over the South China Sea.⁴³⁹ When also viewing the US interests in the Korean peninsula, coupled with the U.S. performing “freedom of navigation operations” in the South China Sea, the conflict between the U.S. and China seems inevitable.⁴⁴⁰ As Dr. Teng Jianqun of the China Institute of International Studies wrote, “[t]he U.S. perception of China as a ‘strategic competitor’ will surely bring frictions and conflicts to the bilateral relations, but China has to keep calm, searching out more opportunities for cooperation and make unremitting efforts to maintain stability of the relationship.”⁴⁴¹ With conflict seeming to be in the future, the United States could use its superior economy and relationships in the international community to create pressure and liberate the occupied areas in Tibet and Hong Kong.

III. CONCLUSION

China has violated international law in both the treatment of the Hong Kongese after the Sino-British Joint Declaration, and in the illegal annexation of Tibet in 1950.⁴⁴² The United States and the European Union, along with all other members of the U.N. are obligated under international law not to contribute to China’s violation of international law.⁴⁴³ The obligation of international law is satisfied if the U.S. and the other members of the U.N. side with the victims.⁴⁴⁴

⁴³⁹ See Teng Jianqun, *Trump’s America First Security Strategy: Impact on China-US relations*, 70 CHINA INT’L STUD. 116, 129.

⁴⁴⁰ See *id.* at 129–30.

⁴⁴¹ *Id.* at 131.

⁴⁴² AFP-JIJI, *Thousands Protest in Hong Kong over China suppression*, JAPAN TIMES (Feb. 28, 2019, 5:29 PM) <https://www.japantimes.co.jp/news/2018/10/01/asia-pacific/thousands-protest-hong-kong-china-suppression/#.XG2sveHYrnE>; Carole J. Petersen, *Prohibiting the Hong Kong National Party: Has Hong Kong violated the International Covenant on Civil and Political Rights?*, 48 H. K. L. J. 789, 790 (2018); Associated Press, *Human rights in China under Xi Jinping ‘worst since Tiananmen crackdown’: Amnesty*, SOUTH CHINA MORNING POST (Feb. 28, 2019, 4:15 PM), <https://www.scmp.com/news/china/policies-politics/article/2120318/human-rights-china-under-xi-jinping-worst-tiananmen>; see RESTATEMENT 3D § 201 reporter’s note 3.

⁴⁴³ Lea Brilmayer & Isaias Yemane Tesfalidet, *Third State Obligations and the Enforcement of International Law*, 44 N.Y.U. J. INT’L L. & POL. 1, 5 (2011).

⁴⁴⁴ *Id.*

Lea Brilmayer, professor of Yale University and New York University, argued that there are two different means of supporting international law: direct support of international law where the state obliges in all dealings with other countries, and indirect support where the state respects international law by basing its positions on disputes between states on what international law requires.⁴⁴⁵ Professor Brilmayer further makes the case for third parties to enforce international law, stating:

[A] powerful State's greatest contribution to international law occurs through pressure or persuasion directed towards other States' conduct, rather than through the direct effect of its own compliance . . . Powerful States, including the United States, have an important effect on international law when they evenhandedly pressure or cajole less powerful States to comply. Purporting to act as global hegemon, the United States has a moral obligation to use its authority consistently and for the good of the international community.⁴⁴⁶

Under this doctrine, every powerful state on earth has the obligation to put pressure on China and Xi Jinping in order to enforce international law for the freedom of both Tibet and Hong Kong.⁴⁴⁷ Since the annexation of Tibet by China could be seen as territorial expansion taken through a war of aggression, this violates the highest level of international law; *jus cogens*, or preemptory norm.⁴⁴⁸ *Jus cogens* norm is not permitted to be derogated from.⁴⁴⁹ The International Law Commissions articles on State Responsibility provides that "States shall cooperate to bring to an end through lawful means any serious breach" of *jus cogens* norms, and "[n]o State shall recognize as lawful a situation created by a serious breach . . . , nor render aid or assistance in maintaining that situation."⁴⁵⁰ Until China grants Hong Kong and

⁴⁴⁵ *Id.* at 8.

⁴⁴⁶ *Id.* at 13–15.

⁴⁴⁷ *See id.* at 15.

⁴⁴⁸ Lea Brilmayer & Isaias Yemane Tesfalidet, *Third State Obligations and the Enforcement of International Law*, 44 N.Y.U. J. INT'L L. & POL. 1, 21 (2011).

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.* quoting; Articles on Responsibility of States (2001), art. 40–41.

Tibet the three options listed under the U.N. General Assembly resolution 1541, all states in the U.N. have an obligation to pressure China with the means at their disposal.⁴⁵¹ The U.N. Security Council has the means to decide when an act is threatening international peace.⁴⁵² Since China is a member of the Security Council, the Security Council will not likely resolve the conflict, which will leave it in the hands of the states with the greatest power, namely the United States and the European Union.⁴⁵³

Since Xi Jinping is a flexible leader and reacts to each situation accordingly, and because the U.N. will be rendered impotent on the matter, the United States should join with the European Union to make a “trade embargo” with China until it complies with international law.⁴⁵⁴

Inaction in the past should not justify inaction in the future. History is littered with the dead bodies of the innocent, who fell waiting in hope for a miracle to occur from someone or something powerful enough to end the injustice. A cultural genocide is slowly being implemented in Tibet, while the cry for self-governance is suffocated in Hong Kong. Every moment we wait, the horror continues for millions. To continue to sit in a state of apathy or inaction is an act of cowardice and shows a lack of conscience.

⁴⁵¹ G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960); see Lea Brilmayer & Isaias Yemane Tesfalidet, *Third State Obligations and the Enforcement of International Law*, 44 N.Y.U. J. Int'l L. & Pol. 1, 5 (2011).

⁴⁵² U.N. Charter arts. 40–41.

⁴⁵³ Juergen Bering, *The Prohibition on Annexation: Lessons from Crimea*, 49 N.Y.U. J. INT'L. L. & POL. 747, 769–70.

⁴⁵⁴ See CHENG LI, CHINESE POLITICS IN THE XI JINPING ERA: REASSESSING COLLECTIVE LEADERSHIP 357 (2016); see Juergen Bering, *The Prohibition on Annexation: Lessons from Crimea*, 49 N.Y.U. J. INT'L. L. & POL. 747, 769–70; see Lea Brilmayer & Isaias Yemane Tesfalidet, *Third State Obligations and the Enforcement of International Law*, 44 N.Y.U. J. INT'L L. & POL. 1, 5 (2011).