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Navigating between empires: the discourses on self-determination in and about Hong Kong

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Introduction

On 19 December 1984, UK Prime Minister Margaret Thatcher and Chinese Premier Zhao Ziyang signed the Sino-British Joint Declaration on the Question of Hong Kong (the 'Joint Declaration'), which provided that the former British colony would be 'handed over' to the People's Republic of China (PRC) as a Special Administrative Region (HKSAR). The political settlement of the Hong Kong Question through the 'One Country Two Systems' model has been praised by the People's Republic of China (PRC) as a triumph of international law. In July 1984, Deng Xiaoping emphasised that the 'One Country Two Systems' formula could be seen as the Chinese contribution to the peaceful resolution of territorial disputes across the world:

[T]he "One Country, Two Systems" formula will work. This will produce a favourable reaction internationally and will serve as an example for other nations in settling disputes history has bequeathed to them. When we developed the concept of "One Country, Two Systems", we also considered what methods could be used to resolve international disputes. There are so many issues all over the globe that are tangled in knots and very difficult to solve. It is possible, I think, that some of them might be disentangled by this method.¹

The UK, as the administering power of Hong Kong, has similarly celebrated the Joint Declaration for the reason that it was a success of flexible diplomacy.² In the words of British chief negotiator, Percy Cradock, the Joint Declaration was a remarkable achievement given that the UK found itself in a highly unequal negotiation in which the Chinese held virtually all the cards.³ While Margaret Thatcher remained disappointed that the UK could not 'keep' Hong Kong after 1997, she claimed that the Joint Declaration 'fully meets the political requirements of Britain and China as well as the interests of the Hong Kong people'.⁴

While Hong Kong commercial and business elites were invited to 'spectate' the signature of the Joint Declaration on 19 December 1984, ordinary citizens of Hong Kong were neither present at the signature ceremony nor

¹ 鄧小平, 鄧小平論香港問題 (Xiang gang di er ban, 三聯書店 (香港) 有限公司 2018) 11–12.

² Yash P Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (2nd ed, Hong Kong University Press 1999) 55.

³ Percy Cradock, *Experiences of China* (John Murray 1999) 211.

⁴ 'Signature Ceremony of the Joint Declaration -- China.Org.Cn' <<http://www.china.org.cn/english/China/213900.htm>> accessed 6 January 2025.

at the negotiation tables. The front-page story of the best-selling English newspaper on 20 December 1984 adequately captured the popular sentiment: 'A stroke of pen and it's all over'.⁵ Thirty years later, the discourses of Hong Kong people's right to self-determination re-emerged through a series of protests led by young student activists, who were born after the signing of the Joint Declaration and the enactment of the Basic Law. In particular, the lack of agency of the Hong Kong people during the Sino-British negotiations became a recurring theme that underlined the sentiments of exclusion and disempowerment. Amidst the large-scale anti-extradition law protests from 2019 to 2020, slogans such as 'Liberate Hong Kong, Revolution of Our Times' (光復香港,時代革命) and 'Hong Kong Independence, the Only Way Out' (香港獨立,唯一出路) reflected different aspirations of the Hong Kong protestors to take hold of their city's destiny.⁶ These aspirations were perceived by the PRC as 'Hong Kong' secessionism' (港獨), or foreign-sponsored 'colour revolution' (顏色革命) that directly challenged the Chinese claim of historical sovereignty over Hong Kong.⁷ In response, Beijing enacted 'the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region' (the 'NSL') in May 2020, which effectively criminalised the abovementioned discourses as incitement to the crimes of secession or subversion.⁸

Owing to Hong Kong's importance in global trade and finance, the controversies over Hong Kong did not remain bilateral. Instead, they quickly escalated into an international issue that manifested a clear pattern of 'East-West' and 'North-South' divide: In June 2020, 27 countries, most from the Western European and Others Group (WEOG), issued a joint statement condemning the NSL in Hong Kong at the UN Human Rights Council.⁹ At around the same time, the PRC and 53 other states, including Russia, Belarus, North Korea, Iran, and many other developing states from the Global South, issued another statement vocally supporting the PRC's enactment of the NSL.¹⁰ The US, which is no longer a member of the UN Human Rights Council, declared that it treats Hong Kong as no different from other

⁵ 'On This Day | Hong Kong's Return to China Endorsed as Sino-British Joint Declaration Is Signed – from the SCMP Archive | South China Morning Post' <<https://www.scmp.com/news/hong-kong/article/3291293/hong-kongs-return-china-endorsed-sino-british-joint-declaration-signed-scmp-archive>> accessed 6 January 2025.

⁶ Ho-fung Hung, *City on the Edge: Hong Kong under Chinese Rule* (Cambridge University Press 2022) 4.

⁷ Chinese and Cantonese slogans and quotes are produced in their original language, and the English translations were provided by the authors.

⁸ See *HKSAR v Tong Ying Kit* [2021] HKCFI 2200 (HKCFI).

⁹ 'UN Human Rights Council 44: Cross-Regional Statement on Hong Kong and Xinjiang' (GOV.UK, 30 June 2020) <<https://www.gov.uk/government/speeches/un-human-rights-council-44-cross-regional-statement-on-hong-kong-and-xinjiang>> accessed 4 January 2025.

¹⁰ Eleanor Albert, 'Which Countries Support the New Hong Kong National Security Law?' <<https://thediplomat.com/2020/07/which-countries-support-the-new-hong-kong-national-security-law/>> accessed 19 January 2024.

parts of the PRC,¹¹ and imposed financial sanctions on top Hong Kong and Chinese officials who allegedly violated Hong Kong's autonomy.¹² In this regard, Hong Kong has become a place of contestation not only between Hong Kong's citizens and the governmental authorities, but also between opposing states, and their different approaches, understandings, and visions of self-determination, which deserve attention from international legal academia.

1.1 Hong Kong as a 'hard case' for self-determination

On the list of Former Non-Self-Governing Territories of the UN website, Hong Kong's decolonisation was curiously marked by the phrase: 'status changed'.¹³ This indirectly indicates that Hong Kong has been an outlier to the relatively consistent practice of decolonisation, in which colonies emerged as independent states following the holding of UN-supervised referenda. Nonetheless, it would be wrong to deduce from the resulting territorial status that the legal discourse of self-determination has no application to the Question of Hong Kong, because this simply overlooks the fact that the former British colony was promised a system of 'High Degree of Autonomy' and 'Hong Kong people govern Hong Kong' (港人治港). While one could of course challenge the extent to which this pledge has been realised, it is undeniable that the HKSAR has enjoyed, and continues to enjoy, certain treaty-making capacities and independent memberships at international organisations that are atypical for ordinary territorial autonomous entities. In the academic writings, the mismatch between Hong Kong's autonomy and the general UN practices of decolonisation has been poorly explained, as scholars either considered the right to self-determination in a black and white fashion with a sole reference to the discourse on colonial independence.¹⁴ So far, Hong Kong has been an inconvenient case for scholars who wish to preserve the consistency in the practice of the principle of self-determination.¹⁵ Thus, there has been no in-depth academic research looking at Hong Kong as a concrete legal problem deserving systematic analysis.¹⁶

¹¹ 'The President's Executive Order on Hong Kong Normalization' (*Federal Register*, 17 July 2020) <<https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization>> accessed 12 November 2024.

¹² 'Treasury Sanctions Individuals for Undermining Hong Kong's Autonomy' (*U.S. Department of the Treasury*, 20 September 2024) <<https://home.treasury.gov/news/press-releases/sm1088>> accessed 12 November 2024.

¹³ 'List of Former Trust and Non-Self-Governing Territories | The United Nations and Decolonization' <<https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsmts>> accessed 19 February 2024.

¹⁴ See section 2.1 Mapping the existing research on Hong Kong's self-determination.

¹⁵ Phil CW Chan, *China, State Sovereignty and International Legal Order* (Brill Nijhoff 2015) 44–45.

¹⁶ Cf John B Quigley, *The Case for Palestine: An International Law Perspective* (2nd ed, Duke University Press 2005); Steve Allen and Jamie Trinidad, *The Western Sahara Question and International Law: Recognition Doctrine and Self-Determination* (Routledge 2024); Fozia Nazir Lone, *Historical Title, Self-Determination and the Kashmir Question: Changing Perspectives in International Law* (Brill Nijhoff 2018).

This thesis looks beyond the positive interpretation of the right to self-determination as a stable and determinate governing framework for decolonisation. Instead, it builds on the existing academic literature that focuses on the discursive aspects of the right to 'self-determination'.¹⁷ In particular, this thesis is not interested in the debates as to whether the Handover of Hong Kong complied with the abstract right to self-determination. Rather, it is interested in how the right of self-determination was applied, interpreted, and contested in practice by governments, communities, and international actors in a historically, ideologically, and politically contested territory such as Hong Kong.¹⁸ Seeing Hong Kong as a 'hard case' for decolonisation,¹⁹ this thesis uses the case of Hong Kong to reveal the multi-faceted nature of the right to self-determination, whose interpretation is contingent upon political ideologies such as nationalism, statism, colonialism, anti-colonialism, liberalism, communism, and multi-culturalism. As such, the purpose of using Hong Kong as a case study is not to probe for new but yet unspecified positive law explanations for the uneven denial of self-determination in small colonial territories.²⁰ Rather, the case of Hong Kong is used to supplement the understanding of self-determination by challenging the fine distinction between politics and law in the practices of self-determination, in which the role of self-determination functions more as a 'discourse' for justification than as an enforceable 'right'. In this regard, it was up to other areas of international law than self-determination, most notably, the law of treaties, to set limits on the argumentative elasticity of the right to self-determination. The case of Hong Kong, a territory where its autonomy is contained in the Sino-British Joint Declaration, and subsequently, through the Basic Law of the HKSAR, accurately demonstrated this point.

1.2 Research question(s)

This thesis aims to answer the following research question:

What have been the understanding and approaches of the three main actors involved in the Handover of Hong Kong, namely the PRC, the UK and the

¹⁷ Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (First paperback printing, Princeton University Press 2020); Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford University Press 2007); There has also been rich scholarship that looks at how the indeterminacy of self-determination has been used as a language by empires and anti-colonial movements in different ways to construct, or re-construct their inter-power relations, see Miriam Bak Mckenna, *Reckoning with Empire: Self-Determination in International Law* (Brill/Nijhoff 2023). Oscar Schachter, *International Law in Theory and Practice* (Repr, Nijhoff 1997) 59.

¹⁸ For the concept of 'hard case', see Ronald Dworkin, 'Hard Cases' (1975) 88 Harvard Law Review 1057.

¹⁹ See, the usual methodological justification for selecting 'deviant case', in Jason Seawright and John Gerring, 'Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options' (2008) 61 Political Research Quarterly 294, 302–303.

community of Hong Kong, about the applicability, scope, contents and modes of implementation of the right to self-determination?

To answer this complex question, the principal research question was broken down into three research sub-questions. In particular, the thesis is interested in how the right to self-determination determined and shaped Hong Kong's external and internal status in three different ways:

- (1) What are the existing legal and political discourses of self-determination relevant to the Question of Hong Kong?
- (2) What are the internal and external constraints in the utilisation of legal and political discourses of self-determination in the context of Hong Kong?
- (3) To what extent has Hong Kong's external and internal status been shaped by the different discourses on self-determination from 1945 to 2021?

The thesis spans a timescale from 1945 to 2021, which is not the usual periodisation of the history of Hong Kong, which usually traced the Hong Kong negotiations to MacLehose's visit to Beijing in 1979. The year 1945 was chosen as the start of the inquiry because it was the year when the UN Charter was adopted, which created an obligation for the UK to introduce self-government to the Non-Self-Governing Territories. As Chapter II will show, the earliest discourse on Hong Kong's self-determination can be traced even back to 1942, when UK colonial officials began to invoke the 'spirits' of the Atlantic Charter to resist Chinese demands for Hong Kong's retrocession as part of the post-war settlement. The year 2021 was picked as the end date of the enquiry because it was the year when Hong Kong's electoral system underwent significant changes, which, as Chapter VI argued, effectively put an end to Hong Kong's political autonomy.

This periodisation is justified by one of the thesis' core arguments that, what 'autonomy' meant in the context of Hong Kong could only be understood in the *longue durée* by tracing the changing understanding of self-determination discourses at different key periods of time. The periodisation of this thesis echoes with the argument recently pushed forward by Professor Ching Kwan Lee that the 2019 Hong Kong protests was not just as a fight for democracy, but as the culmination of a decades-long struggle against 'double colonisation', firstly by the UK, and later by the PRC.²¹ Here, the long temporal scope allows me to trace the commencement of the UK-PRC negotiations further back in time to include the Sino-British tacit agreement in the 1950s, which is argued to be the *de facto* governing framework prior to the Sino-British Joint Declaration. It is only when one considers the agreement to exchange the preservation of Hong Kong's *status quo* with the indefinite postponement of self-government, one could better understand

²¹ See, Ching Kwan Lee, *Forever Hong Kong: A Global City's Decolonization Struggle* (1st ed, Harvard University Press 2025).

the reluctance of the UK (as well as the PRC) to have the Hong Kong Question discussed at the UN level, which led to the delisting of Hong Kong by the UN in 1972, and the complete absence of democratic advancement that took Hong Kong off the track of decolonisation, even before the desilting happened. In this regard, this research supplemented the existing scholarly work that focused mostly on the Sino-British negotiations over Hong Kong in the 1980s, because, as this thesis argues, the interactions among Great Powers over Hong Kong from 1945 to the early 1970s, effectively conditioned how the Sino-British negotiations in the 1980s were conducted, as well as how Hong Kong was governed after 1997.

1.3 Approaches and methodology

The premise of this research assumes that international law is, *per se*, indeterminate. As famously argued by David Kennedy, international law is not a neutral or objective system of rules, but rather a set of rhetorical structures and arguments. Instead, the 'law' is discourse itself, not a set of external, pre-existing rules.²² The indeterminacy of legal concepts means that legal decisions are always, at their core, political choices. As such, international lawyers, judges, and diplomats do not simply apply the law; they are constantly engaged in a process of interpretation and selection that is shaped by their own political and ideological commitments. In Martti Koskenniemi's phenomenal work, *From Apology to Utopia: The Structure of International Legal Argument*, he took Kennedy's arguments one step further, by arguing that international legal argument is constantly oscillating between two opposing poles: 'utopia' versus 'apology'. While Koskenniemi argued that this dichotomy somehow limited the discretion of actors in the process of interpretation and selection, he admitted that a middle-of-the-road position between 'apology' and 'utopia' is only tenable when the arguments, norms, and doctrines are not contested.²³ As Chapter I of this thesis demonstrates, self-determination belongs to this limited category of legal norms where a middle-of-the-road position is untenable, and where the distinction between law and politics is thinner than most other norms in international law. For instance, there has been no agreed definition of what constituted 'self-determination' in international law, but the cannons of international law usually refer to the general description offered by common article 1 of the ICCPR and the ICESCR and define 'self-determination' as a right for the people to freely determine their political status and freely pursue their economic, social, and cultural development. However, what common article 1 entails remains subject to various interpretations, ranging from the right to form one's own nation-state, the right to declare independence, the right

²² For the 'indeterminacy thesis', see, famously, David Kennedy, *International Legal Structures* (1. Aufl, Nomos-Verl-Ges 1987); David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press 2018).

²³ Martti Koskenniemi (ed), *The Politics of International Law* (Hart 2011) 43.

to call for a referendum, the right to genuine political participation, and to a right of local autonomy. The hard case of Hong Kong seemed to demonstrate precisely the contradiction between flexibility and legal certainty in the legal norms on self-determination, in which its entitlement, contents, and modes of application are all contested, and contingent upon the interpreter's own political interests and ideological worldviews.

In this research, discourse refers to language in use, whether spoken or written, that extends beyond a single sentence and is shaped by its social, cultural, and historical context.²⁴ Based on the indeterminacy thesis, this thesis treats the right to self-determination as a 'place holder' for different meaning.²⁵ As Ingo Venzke correctly pointed out, international law itself is not self-evident. Instead, international law is about how different actors, such as international courts, states, and institutions, compete to define what the law means through interpretation, which is both performative and constitutive of what international law is really about.²⁶ This thesis follows Venzke's idea by defining interpretation as more than just judicial interpretation, but more generally, a process through which actors possessing certain 'semantic authority' could have its interpretation of the law accepted and establish new points of reference for other actors. In the context of Hong Kong, this thesis demonstrates how the 'semantic authority' over self-determination is not yield by the ICJ or the UNGA, but by a wide range of actors, including statesmen, diplomats, party cadres, legal advisors, social elites, activists, scholars, judges, and parliamentarians, who have all played a part in shaping Hong Kong's external and internal status. As such, the interpretation for the right to self-determination happened not only between states, but also within a state's government and its civil society. While the case of Hong Kong demonstrated that the interpretation of state authorities or those favored by states still yield a higher degree of 'semantic authority' that non-state actors do not enjoy, the existence of discursive spaces outside of state control, at least before the implementation of NSL in Hong Kong in 2020, has played an important part in initiating, directing, and articulating changes to the state-centric framework that they had no chance to part take or consent. It is the existence of this space that gave Hong Kong the room to 'navigate between the Empires'.

²⁴ The 'linguistic turn' of international law was pioneered by Martti Koskenniemi, who drew on the contribution of the American Critical Legal Studies movement and the work of the French structuralists, see *ibid* 9.

²⁵ This corresponds to the idea that international law is a language or a medium of interaction, see, e.g., Martti Koskenniemi, 'Speaking the Language of International Law and Politics: Or, of Ducks, Rabbits, and Then Some' in Jeff Handmaker and Karin Arts (eds), *Mobilising International Law for 'Global Justice'* (1st edn, Cambridge University Press 2018); *ibid*; Dino Kritsotis, 'The Power of International Law as Language' (1998) 34 California Western Law Review 397.

²⁶ Ingo Venzke, *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (1st publ. in paperback, Oxford Univ Press 2014).

In addition to critical legal studies, this thesis also takes inspiration from Carlo Focarelli's constructivist approach to international law.²⁷ Similar to the critical scholars, the constructivist also sees international law not as an objective, *a priori* system, but is instead created by the beliefs and practices of people.²⁸ As such, constructivism departed from the indeterminacy thesis by looking more broadly at how the society at large perceives and understands international law. From a societal angle, law is not merely a language of communication but also a power instrument. The purported neutrality of law, and its functional dissociation from politics, offers certain authority that normal discourses do not enjoy.²⁹ It has long been recognised, even by the ICJ in its famous *Nicaragua* judgment, that actors resorted to international legal norms in justifying their actions and delegitimising the actions of others proved the normative power of the norm itself, even in light of its indeterminacy in scope, content, and application.³⁰ Thus, not only compliance, but condemnation for violation, in and of itself, also reinforce the power of international law as a discourse.³¹ Thus, this thesis is not interested in the doctrinal question of whether Hong Kong has the right to self-determination according to certain prescribed rules, or whether the right to self-determination has been complied with in the case of Hong Kong, but rather, how different actors, states or non-state, justified their political demands and counterdemands in the languages of international law.

In this regard, this thesis echoes the recent scholarly turn of taking the interpretation of international law outside of the courtroom, by examining the right to self-determination in a non-adjudicatory context.³² It is argued that the interpretation, selection, and implementation of self-determination, owing to its highly political and non-judiciable nature, happen mostly outside of courtrooms. As Sarah Nouwen and Orfeas Chasapis Tassinis rightfully observed, the legal literature on self-determination concentrated largely on the texts and circumstances of the UN General Assembly resolutions of the 1960s and 1970s, which are considered the 'cannons' of the law on self-determination. As a result, the nuanced history in which traditional colonial power championed self-determination to pursue imperial objectives has been largely overlooked, and the alternative interpretations of

²⁷ See, Carlo Focarelli, *International Law As Social Construct: The Struggle for Global Justice* (Oxford University Press, Incorporated 2012).

²⁸ *ibid* 495.

²⁹ Hendrik Simon, *A Century of Anarchy? War, Normativity, and the Birth of Modern International Order* (Oxford University Press 2024) 10–11.

³⁰ See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), (Merits)* [1986] ICJ Rep 14 (ICJ) [186].

³¹ For a recent historical discourse analysis focusing on the 19th century justification of wars, see, e.g., Simon (n 29).

³² Ian Johnstone and Steven R Ratner (eds), *Talking International Law: Legal Argumentation Outside the Courtroom* (Oxford University Press 2021).

self-determination that entrenched, rather than challenged states' power, have remained unexplored.³³ This thesis aims precisely to pile open 'the black box' through a case study of Hong Kong, where the ICJ have had no chance of considering the validity of different self-determination claims. In this case, the 'life' of self-determination could only be discovered in the secret diplomatic briefs, in the meeting records of the highly technical sub-committees of the UNGA, the written memorandum of the legal advisors, the cabinet meeting records, parliamentary debates, petitions from non-governmental groups, popular and scholarly publications, and even the slogans chanted in a public assembly. Here, discourse analysis on the invocation of the ideas and concepts of self-determination allows us to uncover how Britain, China, and Hong Kong actors strategically used competing vocabularies to argue their cases for self-determination both in public and in secret. This method is particularly useful given the thesis's subject matter: the intersection of law and geopolitics, where positive legal rules often fail to resolve conflicts, and its meaning is, in turn, shaped by political rhetorics, strategic framing, and flexible interpretation.³⁴ By tracing how concepts such as 'autonomy', 'sovereignty', or 'democracy' evolved, discourse analysis highlights both the productive and undermining ambiguity inherent in the Joint Declaration and the Basic Law.³⁵ In short, rather than seeking an objective account of 'what the law is', discourse analysis reveals how legal meaning is created through an interpretative exercise between various actors, offering insight into why certain norms of international law, such as the right to self-determination, has proven structurally fragile when confronted with the reality of Great Power politics.

³³ Orfeas Chasapis Tassinis and Sarah Mh Nouwen, "'The Consciousness of Duty Done'? British Attitudes towards Self-Determination and the Case of the Sudan' [2019] British Yearbook of International Law 3–4 <<https://academic.oup.com/bybil/advance-article/doi/10.1093/bybil/brz002/5418556>> accessed 1 May 2025.

³⁴ The constraining potential of self-determination was particularly revealed when an Empire, who clothed itself as a 'nation state', invoked the language of self-determination to justify its expansion and conquest, which could be traced all the way back to the Napoleonic War, see Sze Hong Lam, 'To Perfect the Imperfect Title: How Referenda Were Historically Manipulated to Justify Territorial Conquest by Nations' (*EJIL: Talk!*, 21 October 2022) <<https://www.ejiltalk.org/to-perfect-the-imperfect-title-how-referenda-were-historically-manipulated-to-justify-territorial-conquest-by-nations/>> accessed 14 February 2025; see also Mark R Beissinger, 'Self-Determination as a Technology of Imperialism: The Soviet and Russian Experiences' (2015) 14 *Ethnopolitics* 479; and, generally, Johannes Socher, *Russia and the Right to Self-Determination in the Post-Soviet Space* (Oxford University Press USA – OSO 2021).

³⁵ Brian CH Fong, 'Stateless Nation within a Nationless State: The Political Past, Present, and Future of Hongkongers, 1949–2019' (2020) 26 *Nations and Nationalism* 1069, 1071.

1.4 The source materials used in the analysis

Instead of repeating the works of the previous authors who exclusively viewed the Sino-British negotiations³⁶ and the city's struggle for popular democracy from a purely legal or historical angle,³⁷ this thesis is interested in how self-determination functioned as a political-legal discourse in shaping the negotiations on Hong Kong's future.³⁸ Of primary interest to this research is the express and implicit invocation of self-determination as between states, which can be found in the official statements, public declarations, *note verbale*, UN official records, newspaper articles, parliamentary speeches, meeting records between state officials and representatives, and other official correspondences. Moreover, this thesis is not only interested in the discourses themselves, but also in how they were internally perceived and shaped the decision-making processes. To reconstruct the interpretation and re-interpretation of 'self-determination' by the UK in relation to Hong Kong, the thesis builds upon recently declassified documents from 10 Downing Street (PREM/19 files), the Colonial Office (CO/1030 files) and the Foreign and Commonwealth Office (FCO/40 files), which have remained largely unpublished, and where many details remained unknown even to Hong Kong historians. In this regard, this thesis is particularly interested in the legal advice sought and given by the legal advisors of the FCO and the Hong Kong government in response to the positions and proposals advanced by the PRC, how they influenced the planning and decisions-making in relation to the policies within and toward Hong Kong, as well as how these government policies were justified to the PRC, the relevant stakeholders in Hong Kong, parliamentarians, journalists, and the public at large. Interestingly, several important figures in the British negotiation team of Thatcher's government were either lawyers or had studied law: Margaret Thatcher herself was a qualified barrister trained at the Inns of Court School of Law; Geoffrey Howe, the UK foreign secretary, read law at Trinity Hall, Cambridge and was called to bar in Wales; the chief British negotiator, Percy Cradock, also read law at St John College, Cambridge. As can be seen from Thatcher's vivid defence of the validity of three international treaties and

³⁶ See, e.g., 'The History of the Drafting and Implementation of the Basic Law of the Hong Kong Special Administrative Region by Albert H. Y. Chen :: SSRN' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4309562> accessed 23 August 2023; Michael Ng and Albert HY Chen, 'The Making of the Constitutional Order of the Hong Kong SAR: The Role of Sino-British Diplomacy (1982–90)' in Kevin Yi Tan and Michael Ng (eds), *Constitutional Foundings in Northeast Asia* (Hart Publishing 2022).

³⁷ See, e.g., Suzanne Pepper, *Keeping Democracy at Bay: Hong Kong and the Challenge of Chinese Political Reform* (Rowman & Littlefield 2007); Norman Miners, *The Government and Politics of Hong Kong* (4th ed, Oxford University Press 1986); Steve Tsang, *Democracy Shelved: Great Britain, China, and Attempts at Constitutional Reform in Hong Kong, 1945–1952* (Oxford University Press 1988); Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong* (University of Hawaii Press 1989); 劉兆佳, *香港的政治改革與政制發展* (廣角鏡出版社 1988).

³⁸ For the origin of discourse analysis, see Michel Foucault, *L'ordre du discours: Leçon inaugurale au Collège de France prononcée le 2 décembre 1970* (Impr, Gallimard 2009).

the adherence to the Lease of New Territories, international law has become an interwoven and indistinguishable part of British diplomacy on the Hong Kong Question, whereas Chapter II demonstrates that for China, history has not only influenced but also become interwoven with its approach to international law.

Since the PRC has not yet released its own side of the negotiation record, this chapter relies exclusively on the *mémoires* of important Chinese figures. This research took into account the official *mémoires* of Zhou Nan (周南)³⁹ and Lu Ping (魯平),⁴⁰ published by the Joint Publishing (Hong Kong) Company Limited (三聯書店). It also considered the *mémoires* of Qian Qichen (錢其琛),⁴¹ Huang Hua (黃華),⁴² and the official recount of Deng Xiaoping's statements during the negotiations,⁴³ as published by official mainland Chinese publishers. It is acknowledged that the abovementioned official or quasi-official *mémoires* largely corresponded with and reflected the official positions of the PRC. To reveal the blind spots in the official narratives, particularly in relation to the internal discussions and debates before the adoption of policies, this thesis relied on four personal accounts of the negotiation process that went beyond the official positions:⁴⁴ First, the recount of the history of Hong Kong Question written by Li Hou (李后),⁴⁵ the former Director and Secretary-General of the PRC's Hong Kong and Macau Affairs Office (HKMAO). Li Hou's book was published by the Central Literature Publisher Ltd (中央文獻出版社) and marked as 'internally published only' (内部發行). I considered this book, acquired from a confidential source, a quasi-internal declassification of the Chinese negotiation record. This is because the documents and conversations cited therein, such as Deng Xiaoping's conversation with MacLehose in 1979, and Deng's meeting with Lord Carrington in 1981, were highly corroborated with the British declassified documents.⁴⁶ Secondly, the oral account of the negotiation process by Deputy Secretary-General of the Xinhua News Agency, Huang Wenfang (黃文放), as recorded and summarized by the Lam Sze-chi Institute for East-West Academic Exchange of Hong Kong Baptist University (浸會大學林思齊東西學術交流研究所) in 1997 was considered as another

³⁹ 周南 and 宗道一, 周南口述 : 身在疾風驟雨中 (Xianggang di 1 ban, 三聯書店 (香港) 有限公司 2007).

⁴⁰ 魯平口述 ; 錢亦蕉整理, 魯平口述香港回歸 (Xianggang di 1 ban, 三聯書店(香港)有限公司 2009).

⁴¹ 錢其琛, 外交十記 (第一版, 世界知識出版社 2003).

⁴² 黃華, 亲历与见闻: 黄华回忆录 (第二版, 世界知识出版社 2008).

⁴³ 鄧小平 (n 1); see also 齊鵬飛, 鄧小平與香港回歸 =: *Deng Xiaoping and the Return of Hong Kong* (北京第1版, 華夏出版社 2004).

⁴⁴ Wei and Summers had considered the memoirs from Wu Jiping, Zhou Nan, and Li Hou (the externally published version, 回归的历程). However, they did not consider Li Hou's internally published memoir (百年屈辱史的终结: 香港问题始末) and Huang Wenfang's oral history, see Rong Wei and Tim Summers, 'The Chinese Government's Negotiating Strategy Over the Future of Hong Kong: Revisiting the 1984 Sino-British Joint Declaration' [2025] *The International History Review* 1.

⁴⁵ 李后, 百年屈辱史的終結—香港問題始末 (北京中央文獻出版社 1997).

⁴⁶ Cf another memoir of Li Hou, published in Hong Kong, which largely conformed with the official PRC's narratives, see 李后, 回歸的歷程 (香港第一版, 三聯書店 (香港) 有限公司 1997).

authentic and yet uncensored account of the negotiations.⁴⁷ Since Huang Wenfang was part of the five-member working group led by Liao Chengzhi to draft the PRC's 12 Basic Policies toward Hong Kong, his records revealed a lot about the official thinking behind different departments and factions within the PRC and the CCP. Thirdly, the personal *mémoire* of Xu Jiatun (許家屯), the former Director of the Xinhua News Agency (新華社), was published by Taiwanese Linking Publishing Company Limited after Xu's exile to the US.⁴⁸ Xu Jiatun's book was particularly useful as it succinctly revealed the level, scope, and content of interaction between the *de facto* PRC representatives in Hong Kong with the major stakeholders of the city throughout the Sino-British negotiations and the drafting of the Basic Law, which was otherwise not available. Finally, Wu Jiping (吳吉平) also recounted the details of the Sino-British negotiations in his book, 'The Stories of Sino-British negotiations' (中英會談風雲錄).⁴⁹ Wu was employed as the translator of the Western Europe Department of the PRC's Ministry of Foreign Affairs during the Sino-British negotiations. Thus, Wu was the eyewitness of the negotiations, and his recounts were particularly helpful in revealing the tension between the bureaucratic machinery of the 'state' and between high-level CCP members. Wu also left the PRC for the US in 1989, and his book was published in Hong Kong via a Hong Kong newspaper, Xingdao Ribao (星島日報). Regarding the drafting history of the Basic Law, this thesis heavily benefits from Li Haoran (李浩然)'s helpful article-by-article summaries of the drafting history of the Basic Law,⁵⁰ and the Basic Law Drafting History Online (BLDHO), an online depository organized and maintained by the University of Hong Kong, which not only contained the official documents from the Drafting and the Consultative Committees, but also newspaper articles, LegCo debates, which were useful in reconstructing the public perception regarding the drafting process of the Basic Law.⁵¹

I recognise the inherent limitations of discourse analysis. The subjective nature of qualitative analysis means that interpretations may vary, and the selected texts may not represent all voices from the historical period. Efforts will be made to acknowledge these limitations and to triangulate findings with secondary literature where possible. By looking at the Hong Kong Question from an international angle, this research also corresponds to the recent 'global' turn in the Hong Kong studies.⁵² Thus, this thesis

⁴⁷ 黃文放, 中國對香港恢復行使主權的決策歷程與執行 (香港浸會大學林思齊東西學術交流研究所 1997).

⁴⁸ 許家屯, 許家屯香港回憶錄 (聯經 1993).

⁴⁹ 吳吉平, 中英會談風雲錄 (星島日報出版社 1997).

⁵⁰ 李浩然 (ed), 香港基本法起草過程概覽 (香港第1版, 三聯書店 (香港) 有限公司 2012).

⁵¹ 'Basic Law Drafting History Online@Digital Repository' <<https://digitalrepository.lib.hku.hk/bldho>> accessed 4 January 2025.

⁵² See, e.g., Tim Summers, *China's Hong Kong: The Politics of a Global City* (Agenda Publishing 2019); Michael Sheridan, *The Gate to China: A New History of the People's Republic and Hong Kong* (Oxford University Press 2021); Chi-Kwan Mark, *Decolonisation in the Age of Globalisation: Britain, China, and Hong Kong, 1979-89* (Manchester University Press 2023).

cross-referenced the works of various scholars, such as Steve Tsang,⁵³ Liu Shu Yong (劉蜀永),⁵⁴ Frank Welsh,⁵⁵ Rong Wei,⁵⁶ Tim Summers,⁵⁷ and John M. Carroll,⁵⁸ as well as popular publications by Robert Cottrell,⁵⁹ Mark Roberti,⁶⁰ Michael Sheridan,⁶¹ Louisa Lim,⁶² Shibani Mahtani, and Timothy McLaughlin.⁶³ Further, historians such as Matthew Hurst,⁶⁴ Milia Hau,⁶⁵ Chui Wing-Kin (崔永健),⁶⁶ Chaiwai Cheung (張家偉),⁶⁷ and Chi-kwan Mark (麥志坤)⁶⁸ have also written on various aspects with reference to declassified documents. This analysis was supplemented by the mémoires of important British official figures overseeing the Handover of Hong Kong, including Margaret Thatcher,⁶⁹ Edward Heath,⁷⁰ John Major,⁷¹ Geoffrey Howe,⁷² Percy Cradock,⁷³ and Chris Patten.⁷⁴ During my research, I gained access to the unpublished version of the history of the Sino-British negotiations, written by Sir Anthony Galsworthy, who was the Principal Private Secretary to the Foreign Secretary from 1986 to 1988 and the British Ambassador to

⁵³ Steve Tsang, *A Modern History of Hong Kong* (IB Tauris 2007) 211–228.

⁵⁴ See 劉蜀永 (ed), *簡明香港史* (香港第一版, 三聯書店 (香港) 有限公司 2009).

⁵⁵ See Frank Welsh, *A History of Hong Kong* (2nd edition, HarperCollins Pub Ltd 1997).

⁵⁶ Rong Wei, Peter Burnham and Peter Kerr, 'Reassessing Thatcher's Foreign Policy: The Sino-British Declaration 1984' (2024) 26 *The British Journal of Politics and International Relations* 848.

⁵⁷ See, e.g., Summers, *China's Hong Kong* (n 52); Wei and Summers (n 44); Tim Summers, 'British Policy toward Hong Kong and Its Political Reform' (2016) 52 *Issues & Studies*.

⁵⁸ See Chapter 7 in John M Carroll, *A Concise History of Hong Kong* (Rowman & Littlefield Publishers 2007).

⁵⁹ Robert Cottrell, *The End of Hong Kong: The Secret Diplomacy of Imperial Retreat* (John Murray 1993).

⁶⁰ Mark Roberti, *The Fall of Hong Kong: China's Triumph and Britain's Betrayal* (J Wiley 1994).

⁶¹ Sheridan (n 52).

⁶² Louisa Lim, *Indelible City: Dispossession and Defiance in Hong Kong* (Riverhead Books 2022).

⁶³ Shibani Mahtani and Timothy McLaughlin, *Among the Braves: Hope, Struggle, and Exile in the Battle for Hong Kong and the Future of Global Democracy* (First edition, Hachette Books 2023).

⁶⁴ Matthew Hurst, 'Britain's Approach to the Negotiations over the Future of Hong Kong, 1979–1982' [2022] *The International History Review* 1.

⁶⁵ Milia Hau, 'The Official Mind of British Post-Imperialism: Influencing Parliamentary Opinions during the Anglo-Chinese Negotiations on the Future of Hong Kong, 1982–84' (2021) 43 *The International History Review* 1198.

⁶⁶ Wing Kin Chui, 'DEVELOPING A "BORROWED PLACE": THE SHADOW OF 1997 ON URBAN AND INFRASTRUCTURE DEVELOPMENT IN THE NEW TERRITORIES OF HONG KONG, 1925–1983' (Thesis, 2021) <<https://scholarbank.nus.edu.sg/handle/10635/186000>> accessed 28 March 2024.

⁶⁷ 張家偉, *英國檔案中的香港前途問題* (香港城市大學出版社 2022).

⁶⁸ Mark, *Decolonisation in the Age of Globalisation* (n 52).

⁶⁹ Margaret Thatcher, *The Downing Street Years* (Harper Press paperback ed, Harper Press 2011).

⁷⁰ Edward Heath, *The Course of My Life: My Autobiography* (Hodder & Stoughton 1998).

⁷¹ John Major, *John Major: The Autobiography* (Paperback ed, HarperCollins 2000).

⁷² Geoffrey Howe, *Conflict of Loyalty* (St Martin's Press 1994).

⁷³ Cradock (n 3).

⁷⁴ Chris Patten, *The Hong Kong Diaries* (Penguin 2022).

China from 1997 to 2002.⁷⁵ During my research stay in Cambridge, I also consulted Sir Percy Cradock's personal papers stored at St John's College Library Special Collections.⁷⁶ The thesis also took into account transcripts of interviews conducted by Hong Kong historian Steve Tsang with important figures, including Murray MacLehose, Donald Luddington, and David Akers-Jones, which were stored at the Bodleian Libraries, Oxford University.⁷⁷ This thesis also relied on the *Hansard* of the British Parliament and the Hong Kong LegCo to evaluate how parliamentarians in London and Hong Kong interpreted, understood, and approached the interlinked discourses of 'self-determination', 'self-government', 'democracy', and 'autonomy'.⁷⁸

Notwithstanding the existence of many works based on the discovery of Hong Kong archives, it is acknowledged that historical records regarding the Hong Kong Handover are still somewhat ambiguous and incomplete. First, this research is limited by various exceptions of the Freedom of Information Act (FOIA). Furthermore, I also failed to gain access to the files of the Hong Kong colonial government before 1997, which have been extraordinarily retained by the UK government at the FCO archives in the Hanslope Park facility in Milton Keyes until 2047.⁷⁹ As a result of the archival materials used, the current research focused mostly on the interactions between representatives of the Hong Kong community and the UK government at the metropolitan level, instead of between the Hong Kong representatives and the Hong Kong government at the local level.⁸⁰ While documents were constantly being declassified under various requests filed under the FOIA, I treat 1 January 2025 as the cut-off date, after which subsequent declassified documents would not be considered.

⁷⁵ Anthony Galsworthy, 'The Hong Kong Negotiations: A Critical History'.

⁷⁶ Cradock, Sir Percy (1923-2010) Knight and diplomat, Papers of Sir Percy Cradock, 1940-2012. St John's College Library Special Collections, University of Cambridge. GB 275 CRADOCK.

⁷⁷ I wish to again extend his gratitude to Matthew Hurst, who graciously shared the scanned copies available at 'Collection: Hong Kong Interviews | Bodleian Archives & Manuscripts' <<https://archives.bodleian.ox.ac.uk/repositories/2/resources/10341>> accessed 7 May 2025.

⁷⁸ 'Hansard - UK Parliament' <<https://hansard.parliament.uk/>> accessed 4 January 2025; 'Legislative Council of the Hong Kong Special Administrative Region - Database on Official Record of Proceedings' <<https://app.legco.gov.hk/HansardDB/english/Search.aspx>> accessed 2 May 2025.

⁷⁹ For a brief background and status of the files retained in Hanslope Park, see, generally, Matthew Hurst, 'Hong Kong Colonial Government Migrated Archives at Hanslope Park' [2025] *The Journal of Imperial and Commonwealth History* 1.

⁸⁰ The current research was thus distinguishable from the 'bottom-up' approach of Matthew Hurst (PhD candidate from the University of York), who focused on how Hong Kong public opinion leaders, civil society actors, and business leaders interacted with the governments of Hong Kong and the UK.

With regards to the drafting of the Basic Law, the FCO/40 document also redacted the names of the Hong Kong drafters who were in constant contact with the British government. The UK government also retained important legal discussions, such as various meetings between Paul Fifoot and Shao Tainren from 1987 to 1988. To maintain the impression of unity, the Chinese official drafting records also omitted directly mentioning the names of those drafters who spoke at each meeting of the Drafting Committee.⁸¹ Thus, it was almost impossible to trace the influence of individual drafters throughout the drafting process. While this thesis benefited from the individual interviews conducted by Ma Ngok with Szeto Wah (司徒華) and Martin Lee (李柱銘),⁸² there has been, by far, no interview with other Hong Kong drafters, such as Maria Tam (譚惠珠), Dorothy Liu Yiu-Chu (廖瑤珠), Simon Li-Fook Sean (李福善), Li Ka-Shing (李嘉誠), and Cha Ji-Min (查濟民). As such, I acknowledge that there are blind spots in this research concerning the influence of Hong Kong's social-economic elites.

Lastly, I acknowledge the decentralised nature of the Hong Kong community. Unlike in many other claims of self-determination, there has been no unified body that could represent the 'general will' of the Hong Kong community. As stated, this research precisely aims to study how this diverse and vibrant discursive space outside of state control have used the languages of self-determination in shaping and justifying their different political demands. This thesis begins by focusing on the role of the Unofficial Members of the Executive and Legislative Councils (UMELCO), who were members of the two councils appointed by the Governor to represent the Hong Kong commercial, professional, and business communities. The term 'unofficials' is in contrast to the 'official members', who were colonial officials who sit in the two councils. To reconstruct this part of the history, I consulted the memoir of senior unofficial member Sir Chung Sze-yuen (鍾士元),⁸³ and the interviews conducted by Steve Tsang with several other unofficial members, including Sir Roger Lobo, Oswald Cheung (張奧偉), Li Fook-Wo (李福和), and Lee Quo-wei (利國偉).⁸⁴ Furthermore, this thesis looks at the role of Hong Kong activists, who were outside of the institutions but attempted to shape the narratives on self-determination at different periods. Benefiting from the HKRS files, this thesis also indirectly explores the political influence (or the lack thereof) of Ma Man Fai (馬文輝) and other members of the Hong Kong self-government movement in the

⁸¹ Martin Lee stated that, when the drafting record used the term some (有的) drafters, it meant Martin Lee alone; for a few (有些) drafters, it meant Martin Lee and Szeto Wah; for several (有部分) drafters, it meant there were at least five to six Hong Kong drafters expressing dissent, see 馬嶽, *香港80年代民主運動口述歷史* (香港城市大學出版社 2012) 145.

⁸² 馬嶽 (n 81).

⁸³ Sze-Yuen Chung, *Hong Kong's Journey to Reunification: Memoirs of Sze-Yuen Chung* (The Chinese University of Hong Kong 2001).

⁸⁴ 'Collection: Hong Kong Interviews | Bodleian Archives & Manuscripts' (n 77).

1950s,⁸⁵ and the New Left Movement in the 1970s.⁸⁶ In relation to the period of Sino-British negotiations, I am particularly interested in the debates between 'democratic reunionism' (民主回歸論) and 'self-determination' (自決論) within the university students' bodies. To reconstruct this debate, this thesis relied on the academic works of Ivan Choy Chi-keung (蔡子強),⁸⁷ Ma Ngok (馬嶽),⁸⁸ Edmund W. Cheng (鄭煒), and Samson Yuen (袁璋熙).⁸⁹ The focus on the debates among student bodies is justified by the fact that, during the Sino-British negotiations, most Hong Kong political groups had remained curiously silent owing to the sensitive nature of Hong Kong's sovereignty.⁹⁰ As such, as Ivan Choy pointed out, the students' movement took the forefront in the societal debates on the question of Hong Kong's future during the Sino-British negotiations, and as the modern predecessor of Hong Kong's counter-elites, the students indeed present an important alternative from the British and Chinese positions.⁹¹ With many student leaders entering Hong Kong politics and academia in the late 1980s and 1990s, the debates that occurred in the early 1980s also retained continuing relevance for the drafting of the Basic Law and Hong Kong's democratic reform in Chapters V and VI.

The more the world changes, the more it remains the same. The discourses on self-determination in and about Hong Kong are no exception. From a *longue durée*, the emergence of the nativist movements (本土主義) in the 2010s, and the challenge they posed to the 'democrat reunionists' could also be seen as a historical recurrence of the debates in the Hong Kong community in the 1950s and the 1980s. Regarding the former, this research focused on three major streams of nativist movements in reconstructing the re-emergence of the discourses on 'self-determination' in Hong Kong from 2014 to 2019: The first school was represented by Wan Chin (陳雲) and his 'city state camp' (城邦派), who advocated the preservation of Hong Kong's autonomy beyond 2047;⁹² the second stream, known was represented by

⁸⁵ 'HKRS935-1-4. UNITED NATIONS ASSOCIATION OF HONG KONG'; 'HKRS742-18-1, THE UNITED NATIONS ASSOCIATION OF HONG KONG'; 'HKRS869-4-54, THE UNITED NATIONS ASSOCIATION OF HONG KONG'; 'HKRS1238-2-33, UNITED NATIONS ASSOCIATION OF HONG KONG AND ITS TRANSPORT BRANCH'; 'CO 1030/1608, the United Nations Association of Hong Kong'; 'CO 1030/1607, Hong Kong Civic Association'; 'CO 1030/1611, Hong Kong Democratic Self Government Party, 1964-1965'.

⁸⁶ 'HKRS890-2-36, THE 'NEW LEFT' & HONG KONG'; 'HKRS890-2-37, THE 'NEW LEFT' & HONG KONG'; 'HKRS890-2-30, THE NEW LEFT'.

⁸⁷ 蔡子強. and others (eds), 同途殊歸: 前途談判以來的香港學運 (香港人文科學出版社 1998), 蔡子強 and others (eds), 叛逆歲月: 香港學運文獻選輯 (青文書屋 1998).

⁸⁸ 馬嶽 (n 81).

⁸⁹ 鄭煒 and 袁璋熙 (eds), 社運年代: 香港抗爭政治的軌跡 = *An epoch of social movements: the trajectory of contentious politics in Hong Kong* (初版, 香港中文大學出版社 2018).

⁹⁰ 蔡子強. and others (n 87) 21-22.

⁹¹ *ibid.*

⁹² 陳雲, 香港城邦論 : 一國兩制, 城邦自治, 是香港生死攸關之事 (第二版, 天窗出版社有限公司 2012) 62-67.

Hong Kong Indigenous (本土民主前綫) and Hong Kong National Party (香港民族黨), who openly supported the secession of Hong Kong from China; the final stream was represented by a younger generation of moderate democratic activists, such as Demosisto (香港眾志), who supported the right of the Hong Kong people to hold a referendum in 2047. Despite their different approaches and aims, this thesis broadly group the three streams altogether as representing the local advocates of self-determination in Hong Kong, and their internal differences are examined in the context of the different discursive interpretations of self-determination as 'autonomy', 'nationalism', 'colonial independence', and 'freedom of choice'. By looking at the roles of non-state actors from various factions of Hong Kong, this thesis aims to avoid writing essentially a 'foreign office international legal history' that fails to consider the gaps, limitations, and nuances of the archive materials.⁹³

As stated, this research is limited in scope, and it only considers two state actors, the PRC and the UK. It did not, for example, consult the historical archives of other countries, including the United States, Taiwan (ROC), Japan, Portugal, and the Soviet Union/Russia, which have played important roles in influencing the outcome of the Hong Kong negotiations. The Portuguese primary material would be extremely useful in testing the thesis that the PRC did not originally intend to remove Hong Kong and Macau from the Chapter XI List in 1972. Generally, it is acknowledged that the records from these countries might further shed light on issues obscured by the retention of documents by the UK under the exceptions of the Freedom of Information Act, or the reluctance of the PRC to publish its side of the record. As such, this thesis does not claim to represent the complete story of Hong Kong's decolonisation. It would be for future historical researchers to supplement these blind spots.

1.5 Positioning the research

By tracing Hong Kong's autonomy and the Joint Declaration to the historical encounter of China with international law, this thesis is reflective of the general 'turn to history' in recent international legal scholarship.⁹⁴ Precisely because different lawyers and diplomats would bring in their backgrounds

⁹³ David J Bederman, 'Foreign Office International Legal History' [2005] SSRN Electronic Journal <<http://www.ssrn.com/abstract=756886>> accessed 14 September 2024.

⁹⁴ For the use of the term 'the turn to history', see Matilda Arvidsson and Miriam Bak McKenna, 'The Turn to History in International Law and the Sources Doctrine: Critical Approaches and Methodological Imaginaries' (2020) 33 *Leiden Journal of International Law* 37; George Rodrigo Bandeira Galindo, 'Martti Koskenniemi and the Historiographical Turn in International Law' (2005) 16 *European Journal of International Law* 539; Randall Lesaffer, 'International Law and Its History: The Story of an Unrequited Love' in Matthew Craven, Małgorzata Fitzmaurice and Maria Vogiatzi (eds), *Time, History and International Law* (Brill | Nijhoff 2007) <https://brill.com/view/book/edcoll/9789047411444/Bej.9789004154810.i-255_003.xml> accessed 13 September 2024.

and prejudices when dealing with international law, our discipline is more than just an ‘invisible college of international lawyers’⁹⁵ but encompasses a plurality of approaches and discourses as informed by the histories and cultures of non-European civilisations.⁹⁶ As stated, the research is interested not so much in whose approach or discourse is superior, but rather, the reasons behind the different approaches and discourses and how they shaped or influenced political decisions. Thus, the current thesis overlaps with the second and third generations of the Third World Approach to International Law (TWAIL),⁹⁷ to the extent that it questions the universality of ‘international law’ in light of the Euro-American dominance in shaping its formation and contemporary discourses. Anthony Anghie, in his book *Imperialism, Sovereignty and the Making of International Law*, shifted the focus of the study of international law from relationships between European states to the European and non-European peoples. Anghie argued convincingly that the colonial encounter was central to the creation of the idea of sovereignty, and hence, it was the colonial encounters that made modern international law.⁹⁸ Previously, I explored the historical nuances of his account with East Asia, where a stable international system had been in place that was capable of competing with and complementing its Eurocentric counterpart until the mid-19th century.⁹⁹ In this regard, the history of Hong Kong has been a history of a continuing ‘encounter’ between China and Eurocentric international law from the mid-19th to the 21st century. As such, the case of Hong Kong supplemented the historical turn toward colonial encounter in the TWAIL scholarship, which again highlights potential nuances regarding the hidden tension between China’s support for the Third World and its quest for national sovereignty. Situating Hong Kong as a community ‘trapped’ between the European colonial Empire and non-European Empire,¹⁰⁰ this

⁹⁵ Oscar Schachter, ‘Invisible College of International Lawyers’ (1977) 72 Northwestern University Law Review 217; Cf the famous work of Anthea Roberts, *Is International Law International?* (Oxford University Press 2017) which opened up ‘international law’ as a social sphere of interaction and competition between different agents.

⁹⁶ For recent research that looks at the different non-western approaches toward international law that challenge the ‘invisible college of international lawyers’, see Lauri Mälksoo, *Russian Approaches to International Law* (Oxford university press 2015); Socher (n 34); Chan, *China, State Sovereignty and International Legal Order* (n 15).

⁹⁷ For a brief summary of the history of TWAIL, see Antony Anghie, ‘Rethinking International Law: A TWAIL Retrospective’ (2023) 34 European Journal of International Law 7.

⁹⁸ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

⁹⁹ See, e.g., the criticism of the ‘impact-response’ dichotomy in Sze Hong Lam, ‘The Gentle Civilizer of the Far East – A Re-Examination of the Encounter between “China” and “International Law”’ (2024) 26 Journal of the History of International Law 1.

¹⁰⁰ Anghie referred to China as ‘founded in many ways on ancient Empires’, who is ‘now in a position to deploy for their own purposes those instruments of which they had previously been victims’, see ‘Comment on Simon Chesterman, ‘Asia’s Ambivalence about International Law and Institutions: Past, Present and Futures’’ (*Opinio Juris*, 16 January 2017) <<https://opiniojuris.org/2017/01/16/comment-on-simon-chesterman-asias-ambivalence-about-international-law-and-institutions-past-present-and-futures/>> accessed 6 May 2025.

thesis corresponded to the shift of attention by TWAIL scholars toward China as a potential 'empire'.¹⁰¹ One could consider this thesis as a temporal extension and theoretical elaboration of the groundbreaking work of Sri Lankan scholar, Dr. Kalana Senaratne, who wrote a chapter in 2019, amidst the ongoing anti-extradition protests, on how different actors in Hong Kong have utilised the different interpretations of internal self-determination in their political claims.¹⁰² It could also be a legal-historical response toward Kashmiri scholar Fozia Nazir Lone's TWAIL approach toward Hong Kong's 'One Country Two Systems'.¹⁰³

This thesis is further informed by the definition of 'Empire' by American historian Alexander J. Motyl:

What distinguishes empires from centralised multinational political systems... is structure. The normative state's elite, located in the core coordinates, supervises and protects the peripheral native societies, which...interact with one another only via the core. Empires, then, are structurally centralised political systems within which core states and elites dominate peripheral societies, serve as intermediaries for their significant interactions, and channel resource flows from the periphery to the core and back to the periphery. As structured systems, empires need not have emperors, ideologies, and exploitative relationships to be empires; by the same token, non-empires may have these features without being empires.¹⁰⁴

In Yale Ferguson's words, Motyl's definition is 'probably as close to a consensus definition as exists in the literature'.¹⁰⁵ Indeed, analysts across different disciplines have highlighted that the essence of an 'empire' is the domination of a 'core' over 'periphery'.¹⁰⁶ From an anthropological point of view, the distinctions between 'core' and 'periphery', 'metropole' and 'colonies', 'heartland' and 'hinterland' also meant that the domination and subordination must have certain trans-territorial or inter-cultural dimensions.¹⁰⁷ By defining 'empire' as 'a sociopolitical formation wherein a central political authority (a king, a metropole, or imperial state) exercises

¹⁰¹ See, Anghie, 'Rethinking International Law' (n 97) 46–50.

¹⁰² Hong Kong was used as one of the case studies by Senaratne. The other case study was in relation to the discourses of internal self-determination in Sri Lanka, see, generally, Kalana Senaratne, *Internal Self-Determination in International Law: History, Theory, and Practice* (2021).

¹⁰³ Fozia Nazir Lone, 'The "One Country, Two Systems" Model and Political Reform in Hong Kong: A Twail Approach' (2018) 21 *Max Planck Yearbook of United Nations Law Online* 404.

¹⁰⁴ See, e.g., Ho-fung Hung, 'From Qing Empire to the Chinese Nation: An Incomplete Project' (2016) 22 *Nations and Nationalism* 660; Prasenjit Duara, 'The Multi-National State in Modern World History: The Chinese Experiment' (2011) 6 *Frontiers of History in China* 285.

¹⁰⁵ Yale H Ferguson, 'Approaches to Defining "Empire" and Characterizing United States Influence in the Contemporary World' (2008) 9 *International Studies Perspectives* 272, 275.

¹⁰⁶ Stephen Howe, *Empire: A Very Short Introduction* (Oxford University Press 2002) 18.

¹⁰⁷ ibid 13; see also Michael W Doyle, *Empires* (Cornell University Press 1986) 19.

unequal influence and power over the political (and in effect the sociopolitical) processes of a subordinate society, peoples, or space',¹⁰⁸ Julian Go, further distinguished 'empire' from 'great powers'.¹⁰⁹ However, for the purpose of this thesis, 'empire' and 'great powers' are used interchangeably. This is because, in the context of international law, the essence of imperialism is well-captured in the UNGA's definition of 'Non-Self-Governing-Territory' as 'the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination'.¹¹⁰ Since the relationship of a cross-territorial 'subordination' was at the core of defining 'empire', what was perhaps worth mentioning is also the fact that 'empire' could take different forms and modalities. Apart from the 'formal empire' in the traditional sense, in which the imperial state annexed a territory and directly exercised control over the 'colonies', there is also the 'informal empire', in which the imperial state indirectly exercised domination over foreign territories.¹¹¹ As Chapter II demonstrates, the Chinese colonial experience was mostly influenced by the 'informal empire', and thus, 'sovereignty' in the Chinese context has been conceptualised as a shield to preserve the 'formal' Chinese Empire from 'informal' western imperialism.¹¹²

Given that each colonial encounter is fundamentally different from the others, I do not consider the Marxist dependency theory or the neo-Marxist 'World-system' theory, commonly employed by TWAIL scholars, as a suitable explanatory framework applicable to small colonial trading posts like Hong Kong,¹¹³ a micro-colonial system situated at the 'double-periphery' of two empires. Instead, the thesis adopts the methodology of studying the empire from the frontier, as famously employed by Dr. Owen Lattimore in 1988.¹¹⁴ Indeed, the 'frontier' approach is not foreign to the study of

¹⁰⁸ Julian Go, *Patterns of Empire: The British and American Empires, 1688 to the Present* (Cambridge University Press 2011) 7.

¹⁰⁹ *ibid* 8–9.

¹¹⁰ See Principle V in UNGA Resolution 1541, Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, UN. Doc. A/1541 1960.

¹¹¹ The distinction between 'formal' and 'informal' empires was best illustrated by the comparison between the Roman Empire and the Delian League, in which Athen exercised only informal control, see Go (n 108) 11.

¹¹² See section 1.3 The cession of Kowloon Peninsula in 1860.

¹¹³ See, e.g., Alvin Y So, 'The Economic Success of Hong Kong: Insights from a World-System Perspective' (1986) 29 *Sociological Perspectives* 241.

¹¹⁴ For the origin of the 'frontier' discourse, see Owen Lattimore and Alastair Lamb, *Inner Asian Frontiers of China* (Oxford University Press 1988); for the application of the frontier discourse in China's maritime frontier, see Hugh R Clark, 'Frontier Discourse and China's Maritime Frontier: China's Frontiers and the Encounter with the Sea through Early Imperial History' (2009) 20 *Journal of World History* 1.

international law.¹¹⁵ 'Frontier' could be compared with what Lauren Benton and Adam Clulow referred to as the 'interpolity zone', a region marked by interpenetrating power and weak or uneven claims to territorial sovereignty.¹¹⁶ Finally, the novel 'frontier' approach to international law could also be compared to the emerging 'Second World Approaches to International Law', which highlighted the different approaches of Eastern European states toward international law due to their unique historical experiences inhabiting the geographical crossroad between Europe and the Eurasian steppe.¹¹⁷

Further, the present research uses the rare example of a colony on the periphery of two empires to reveal how self-determination as a discourse has been appropriated, interpreted, and reinvented by different empires, states, and non-state actors in their encounters.¹¹⁸ In this regard, the interrelationship between self-determination and Great Powers' politics has been explored by Milena Sterio in her phenomenal book, *'The Right to Self-determination Under International Law: "Selfistans," Secession, and the Rule of the Great Powers'*.¹¹⁹ There, Sterio argued that the successes of self-determination claims ultimately depended on the Great Powers' rule, which required the presence of four criteria: (1) the showing of severe oppression

¹¹⁵ See, e.g., the notion of 'peripheries', in Liliana Obregón, 'Peripheral Histories of International Law' (2019) 15 Annual Review of Law and Social Science 437; '2025 International Law Conference: The Peripheries of International Law' (Harvard Law School) <<https://hls.harvard.edu/events/2025-international-law-conference-the-peripheries-of-international-law/>> accessed 10 April 2025.

¹¹⁶ Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Harvard University Press 2010); This perspective was, to a certain extent, incorporated in Lauren A Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800-1850* (First Harvard University Press paperback edition, Harvard University Press 2018); Lauren Benton, Adam Clulow and Bain Attwood, *Protection and Empire* (Cambridge University Press 2018) 1-9.

¹¹⁷ 'In Search of Second World Approaches to International Law' (Central European University, 21 February 2025) <<https://events.ceu.edu/2025-02-21/search-second-world-approaches-international-law>> accessed 10 January 2025; This thesis could be compared to the 'Estonian School of International Law', as pioneered by Lauri Mälksoo, an Estonia scholar who focused on the distinct Russian approach to international law, which is understandably motivated by the Baltic historical experiences as locating also in the 'frontier' between Russia and Europe, see, e.g., Mälksoo, *Russian Approaches to International Law* (n 96); Lauri Mälksoo, 'The History of International Legal Theory in Russia: A Civilizational Dialogue with Europe' (2008) 19 European Journal of International Law 211; Mälksoo's approach was described by Johannes Socher as a successor of the discipline of Ostrecht, developed in pre and post-Second World War Germany, which also located in the 'frontier' between the West and Russia, see Socher (n 34) 5-6.

¹¹⁸ International legal scholarship is familiar with regional-specific narratives of international law, see Carl Landauer, 'Regionalism, Geography, and the International Legal Imagination' (2011) 11 Chicago Journal of International Law <<https://chicagounbound.uchicago.edu/cjil/vol11/iss2/22>>.

¹¹⁹ Milena Sterio, *The Right to Self-Determination under International Law: 'Selfistans', Secession, and the Rule of the Great Powers* (Routledge 2013).

and abuse of the people by its mother state; (2) the demonstration of weakness of the mother state's central government; (3) the presence of some form of international administration of the disputed territorial entity; and, (4) finally and most importantly, the support of the majority of the great powers.¹²⁰ As such, she claimed that '*[a] people may draw a circle around its feet and proclaim a "selfistan" if the great powers condone such a result. The great powers' rule has become a de facto norm of external self-determination.*'¹²¹ The case of Hong Kong supplemented Sterio's analysis by taking her theory further into the self-determination claim of a community trapped between two permanent members of the United Nations Security Council. Through the study of the inter-imperial legal dynamics in Hong Kong, the thesis reveals: (1) how Empires regulate their *inter se* relationships; (2) how the nature of such inter-imperial relationships differs from the conventional legal relationship between non-empire states; (3) how the inter-imperial relationship affects and shapes the 'people' inhabiting the frontier; and (4) whether international law provides any room for such 'people' to maneuver 'between' the empires. In the end, the case of Hong Kong contributes to emerging scholarship that aims to understand the relationships between 'Empires' and international law.¹²²

1.6 Structure of the thesis

Chapter I sets the conceptual foundation for this thesis. It identifies seven distinct but overlapping discourses of self-determination: (1) nationalism, (2) self-government, (3) colonial independence, (4) freedom of choice, (5) sovereignty, (6) democracy, and (7) autonomy. The chapter critiques the existing explanatory frameworks that revolved around self-constructed legal dichotomies and introduces a more flexible, multi-faceted discursive framework that better explains the different approaches of the UK, the PRC, the elites, and counter-elites of the Hong Kong community toward the question of self-determination in Hong Kong.

Chapter II contextualises Hong Kong's geopolitical position as a territory and community trapped between the British and Chinese empires. Highlighting Hong Kong's status as a mix of leased and ceded territories governed as one colonial entity, and the unique colonial experience of China that shaped its distinctive approach emphasising sovereignty over independence, the chapter positions Hong Kong as a 'hard case' where legal rules

¹²⁰ *ibid* 180.

¹²¹ *ibid* 183.

¹²² See, e.g., Martti Koskenniemi, Walter Rech and Manuel Jiménez Fonseca (eds), *International Law and Empire: Historical Explorations* (First edition, Oxford University Press 2017); John Reynolds, *Empire, Emergency and International Law* (1st edn, Cambridge University Press 2017); Amy Bartholomew (ed), *Empire's Law: The American Imperial Project and the 'War to Remake the World'* (Pluto ; Between the Lines 2006).

are indeterminate and political discretion prevails. Thus, the case of Hong Kong challenges conventional understandings of self-determination, such as internal and external self-determination, and the arbitrary separation between international law, history, and international politics, which as this chapter shows, are closely intermingled.

Chapter III argues that the status of Hong Kong as a *de facto* Condominium renders it unfit for the UNGA rules of decolonisation. This chapter challenges the dominant narrative that the delisting of Hong Kong from the Chapter XI List of Non-Self-Governing Territories in 1972 was a turning point in Hong Kong's claim to self-determination. Drawing on declassified archival materials, UN debates, and contemporaneous legal discourses, the chapter demonstrates how Hong Kong has already been led astray from the general practices of decolonisation through the Sino-British tacit agreements during the Cold War prior to 1972. What really happened in 1972 was that the UK and the PRC had all sought to preserve their existing understandings and avoid the disruptive implications of the UNGA's discourse of self-determination from affecting the status of Hong Kong. Ultimately, delisting marked not a decisive legal shift, but a moment of discursive closure in which the local narratives of self-determination were increasingly severed from the evolving legal discourse at the UN.

Focusing on the Sino-British negotiations leading to the Joint Declaration, Chapter VI explores how the UK, the PRC, the elites and counter-elites of Hong Kong had selectively appropriated competing discourses of self-determination to maintain, challenge, and shape their *inter se* relationships. It highlights how the elastic concept of 'autonomy' emerged as a compromise language that fused incompatible discourses on self-determination: Chinese sovereignty, British trusteeship, Hong Kong's elites' desire to maintain the *status quo*, and the counter-elites' desire to advance democratic development. Contrary to the dominant practices, the 'freedom of choice' interpretation was rendered symbolic in Hong Kong's decolonisation, as the decisive negotiations were elite-driven, bilateral, and exclusionary. This chapter argues that the Joint Declaration only institutionalised a fragile consensus, with 'autonomy' being a placeholder to substitute UN practices of decolonisation without resolving questions of legitimacy or historical subordination, as a result of which, deeper contradictions between the parties were deferred to the drafting of the Basic Law.

Chapter V examines the drafting of the Basic Law as a continuation of the legal-political settlement initiated by the Joint Declaration. Drawing on recently declassified UK documents and the Basic Law drafting history, the chapter shows how legal and political discourses of 'sovereignty', 'self-government', and 'democracy' continue to influence and shape the debates regarding the power to interpret the Basic Law, the design of Hong Kong's future political system, and the relationship between Hong Kong and the

Central People's Government. This chapter challenges the traditional narrative that sees the drafting of the Basic Law as a process of constitutional making between the local and central authorities. Instead, it argues that the Basic Law was in effect an 'internationalised' constitution that is comparable to constitution-making in the context of peacebuilding, which follows a 'top-down' instead of 'bottom-up' approach. As a result, although Hong Kong's autonomy was anchored in treaty and domestic constitutional law, it was subjected to overriding sovereign discretion, particularly the NPCSC's power of interpretation.

Covering the period from 2011 to 2021, Chapter VI demonstrated how the lack of legal clarity and division of competences left Hong Kong's autonomy vulnerable to reinterpretation and erosion. It then proceeds to analyse the re-emergence of self-determination discourses in Hong Kong's public sphere, particularly among student activists, democratic oppositions, and localist movements. It highlights how the feelings of exclusion and disempowerment drove the new generation of Hong Kong activists and politicians to re-embrace 'freedom of choice' and 'colonial independence' in their slogans, which in turn led to more forceful intervention from Beijing. The response from the PRC from 2020 to 2021 was to reassert its sovereignty in Hong Kong by criminalising the countervailing discourses, which put an end to Hong Kong's political autonomy, not just institutionally, but also discursively.

The thesis ends with a conclusion that aims to answer the three research sub-questions. In the conclusion, the main findings from the previous chapters are recapitulated. With the elasticity of self-determination in the context of Hong Kong as an entry point, the conclusion offers some final reflections on the definition of autonomy in international and comparative law, the utility of calling self-determination a *jus cogens*, and the contemporary relevance of the Hong Kong experience to contemporary territorial situations of Gibraltar, Chagos Archipelago, and Western Sahara. This thesis ends with a call to decentre the 'state-centric' narratives in international law and its history, and to take seriously the voices from the frontiers, where law, politics, and identity are the most contested.