

resistance effort against male oppressors, the archival narrative erased the experiences of those women who did not benefit from the white supremacist, colonial, and capitalist heteropatriarchy. Women are not impervious to the allure of power and access that often comes from the subjugation of more vulnerable communities, and Jacobs' and Piquet's narratives confirm this. It is the responsibility of historians to lift up and shine light upon the lives and records of these marginalized women, as our collective understanding of slavery's influence on the modern socio-political climate will remain incomplete otherwise. Only when the mistress' true identity as one who enforces and benefits from the horrors of slavery persists as the predominant narrative can historians proceed to fully comprehend and honor the sufferings of enslaved women within the plantation home.

About the author

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A PROBLEM OF PEOPLE*Displaced Chinese in Hong Kong and the Ambiguities of International Law, 1947-56**by Xiaoyu Huang**Abstract*

Between 1947 and 1956, and for some years thereafter, over one million Mainland Chinese migrated over the Hong Kong-Canton border into the former British colony. The situation aroused a confused response from the international community, which was marked by the ambiguous post-war codification of customary international law and emerging multinational alliances to confront the onset of the Cold War. Against this backdrop, the existence and subsistence of displaced Mainlanders in Hong Kong was legally ambiguous and elicited conflicting responses from state actors, the People's Republic of China, and the Nationalist Republic of China government-in-exile. The scant literature of the period is problematized by the lack of reliable data, and conflicting government and scholarly sources. This article outlines what is known about this understudied period and surveys two prevalent strategies for understanding it: one which studies the displaced Chinese through the lens of international law, and the other which elevates the importance of *realpolitik* and necessities on the ground to explain the phenomenon. The article concludes with an evaluation of the response of the United Nations and an exhortation for future studies of displaced populations on other premises than "a problem of people."

This article concerns the one million, possibly more, displaced Mainland Chinese who arrived in British Hong Kong between 1947 and 1956, and the broad international legal history within which this large but relatively understudied displacement was circumscribed, debated, and subsequently understood. These individuals were from continental China and predominantly of Han ethnicity. Having no prior long-term connection with Hong Kong, they crossed into the colony for the purpose of settling there semi-permanently or permanently following the Second Sino-Japanese War, the Chinese Civil War, and the establishment of the People's Republic of China (PRC). While the influx of Mainland Chinese also occurred in large numbers before and after this interval, the years 1947 and 1956 bookended a period in Hong Kong history characterized by interlocking practical and policy limitations and social circumstances that, working together, compelled an influential contemporary United Nations (UN) ethnographer to call the phenomenon of displaced Mainlanders "a problem of people."¹ Paradoxically, these individuals were both legally stateless persons and *de facto* colonial subjects, for whom benefits arising from both citizenship and subjecthood were systematically denied. Their movement coincided with the post-WWII realignment of the international legal regime, testing the ability of the newly formed United Nations to effect action among Member States. In the meantime, the émigrés' social and economic disadvantages were magnified even as local and international governments debated responsibility for their stewardship, a process that accentuated the need for such stewardship.

Categorizing the influx of displaced persons as a "problem," British colonial officials, the Republic of China (ROC) Nationalist government-in-exile, and the UN used terms such as "illegal immigrants," "economic migrant," and "refugee" to describe displaced Mainlanders in Hong Kong and to ascribe or, more commonly, disavow, political, jurisdictional, and legal responsibility for their welfare.² Curiously, while the large body of governmental and policy writings surrounding this displacement was deterministic in nature, there lacked a precise legal lexicon to categorize displaced Mainlanders in such a way as to effectuate existing protections under domestic and international law. When administrators, international bodies, and commentators took part in this lexical interchange, they often created contradictory implications that showed international law to be only weakly effective, if at all. The national and jurisdictional status of the displaced Mainlanders was both repeatedly reinforced by the casualness of the deployment referents and continuously attenuated because jurisdictions could not reach linguistic agreement. Far from being mere placeholders, the common nouns assigned to displaced Mainlanders created historical implications and withheld legal remedies.

I begin with a narrative of the circumstances of the arrival of Mainlanders in Hong Kong in the wake of China's domestic wars. In the

analysis, I draw from two strands of historical inquiry into this period, one of which sees the indeterminate identity-making of the displaced Chinese as an outgrowth of international law, and another which emphasizes Cold War tensions and alliance politics as predominant animating factors that diminish the relevance of law. I will finish by presenting an alternative view that re-centers émigrés as the subject, not object, of international law. This reorientation, far from ignoring the State-centered approaches above, attempts to displace the trope of "problem of people" and revivify the purpose of law itself.

Background

The Sino-Japanese War broke out in 1937. At the time, British Hong Kong had offered asylum to Chinese nationals fleeing the Chinese Civil War.³ Before that pronouncement, movement across the Canton-Hong Kong border had no precise legal character and largely proceeded without impediment. Between 1931 and 1941, the period during which colonial Hong Kong data-keeping was most rigorous, the colony's population rose from 805,000 to 1,640,000, a 95 percent increase, suggesting a high number of permanent exogenous entries.⁴ Record-keeping faltered somewhat following Japanese occupation of Hong Kong in late 1941, but we still know reliably that between 1941 and 1951, the overall population increased to 2,318,000, a tamer increase of 30.4 percent since the beginning of that decade. This smaller increase was also inflated by the return of expatriate Hong Kongers who returned following the Japanese surrender of Hong Kong to Britain on 30 August 1945, after its defeat in the Pacific theatre.⁵ After the Communist victory at the Fall of Shanghai in May 1949 and the subsequent establishment of the People's Republic of China (PRC) in October, the influx of Mainland Chinese again became pronounced. Most scholars agree that one million unique Mainlanders entered Hong Kong between 1949 and 1955, a period during which only estimates are available.⁶ All things considered, the scant figures available to us suggest two bursts of intense emigration toward Hong Kong: during the height of the anti-Japan resistance, and during the founding of and early years of the PRC.

By late 1949, when a Communist administration became all but assured, Hong Kong authorities imposed the requirement that only "Cantonese" may enter the colony without special permission, but "other Chinese" (meaning the Mainland-born) must hold entry visas or permits.⁷ "Cantonese" was not defined in contemporary official documents. The word could refer both to people from Canton, an area including both Hong Kong and surrounding municipalities on the southeast Chinese Mainland, and Hong Kong residents carrying British papers. The latter meaning is more likely. However, this seemingly stringent regulation did little to regulate entry. Between 1954 and 1961, five years after the

- 1 Edward Hambro, *The Problem of Chinese Refugees in Hong Kong* (Holland: A.W. Sijthoff-Leyden, 1955): 3.
- 2 For an example of the general confusion surrounding the use of these terms, see *Hong Kong Annual Report* (Hong Kong, 1945): 1, where presumably all three of these designations apply to Mainland Chinese migrants.

- 3 Edvard Hambro, "Chinese Refugees in Hong Kong," *The Phylon Quarterly* 18, no. 1 (1957): 75.
- 4 Hambro, "Chinese Refugees in Hong Kong," 75.
- 5 John P. Burns, "Immigration from China and the Future of Hong Kong," *Asian Survey* 27, no. 6 (June 1987): 682.
- 6 Kowk Bun Chan, "Hong Kong's Response to the Vietnamese Refugees: A Study in Humanitarianism, Ambivalence and Hostility," *Southeast Asian Journal of Social Science* 18, no. 1 (1990): 98.
- 7 Hu Yueh, "The Problem of the Hong Kong Refugees," *Asian Survey* 2, no. 1 (March 1962): 29.

imposition of the entry limitation, more than 200 migrants were still entering Hong Kong per day, a figure which largely exceeds official counts.⁸ According to one calculation, over half of those who made their way in during this interval did not use regular legal channels.⁹ At this time, Hong Kong authorities had not made border control a significant part of colonial policy. Political scientist Hu Yueh wrote in 1962 that detainment and deportation were still more or less discretionarily in practice.¹⁰ These observations tell us that both policy and enforcement were uneven, for it could not have escaped the colonial administration that the population on the peninsula was increasing, on average, by at least 70,000 annually. The migratory movement finally waned around the first decade of PRC rule.¹¹

The discrepancy between the extraordinarily large number of entrants and the relatively slow pace of population increase in Hong Kong is not irreconcilable. First, as the military and surveillance apparatus of Communist China matured, enforcement from the Guangdong (Canton) side could have become more robust. Second, the late 1950s marked the start of the Hong Kong exodus to such far-flung destinations as San Francisco, New York, and Toronto. In any case, in Hong Kong, both official counting and deterrence measures were far from rigorous. Detention and repatriation by Hong Kong authorities was much less common than deterrence measures by PRC authorities, at least through the 1960s.¹² After February 1952, Communist authorities strictly checked for entry and exit visas, issued by the State Department, a process enacted to discourage dissent and to curtail the draining of the workforce.¹³ The measure, especially, seems to be in response to possible Nationalist defectors. PRC authorities had long identified the Guangdong corridor, within which lies Hong Kong, as the only viable place of exit out of China's enormous landmass.¹⁴ China was circumscribed in the north by Soviet Russia's inhospitable hinterlands; in the west by towering Yunnan and Sichuan mountain ranges; and in the east by the Pacific Ocean. If they were to defect, disaffected or politically vulnerable Mainlanders could only hope to leave via the mountainous but passable terrains of the New Territories, which lie between Hong Kong and the PRC-controlled Pearl River Peninsula.

Discrepancy between the official daily entrance quotas and actual numbers of Mainland entrants had existed since the early years of the exodus. Some scholars, led by Agnes Ku, argue that immigration occurred mostly *outside* of the purview of Hong Kong authorities in the 1950s and 1960s.¹⁵ Ku believes that native Hong Kongers with Mainland ties or genealogical links tended to acquiesce to the influx without applying social pressures to colonial officials, sometimes even welcoming them.¹⁶ Had native Hong Kongers intended to apply pressure to deal with the influx, they had sufficient legal remedies to do so. Under the Emergency Regulations Ordinance of 1922, legislated in response to a strike of the Seamen's Union (SU) whose actions included marching inland *into*

Mainland China, the chief executive may unilaterally enact any regulation "desirable in the public interest" in reaction to any event they consider to be "an occasion of emergency."¹⁷ Sufficient location pressure would have compelled the use of the ordinance, but no regulations with regard to the influx of Mainlanders were made. The least that could be said, then, was that colonial administrators at least partially turned a blind eye to the rapidly evolving situation. Among other industries, Hong Kong's resurgent postwar entrepôt economy, which had demand for untold numbers of temporary laborers and seamen, could have accounted for at least a portion of the absorption of displaced Mainlanders. Today, these mainlanders are largely indistinguishable from native Hong Kongers, having integrated into the population of 7 million living densely in the semi-autonomous Special Administrative Region.

The Hambro study:

Regional and international law and their abeyance

On the side of British administrators, Hong Kong's treatment of incomers was determined not by regional law but *realpolitik*, since so many managed to stay despite the existence of bilateral immigration controls. As Raphael Jacquet has pointed out, there was pressure on the British side to not depend heavily on the PRC economy, since Britain took part in the UN action to embargo China for its alliance with North Korea in the Korean War.¹⁸ Long-term antipathy against Hong Kong was not only anticipated, but expected. Consequently, Hong Kong's reliance on domestic manufacturing and heavy industry deepened, and regions such as Kowloon rapidly developed maritime trade infrastructure such as the Hong Kong Harbour. The colony's increasing industrial self-reliance was exploited by the incoming Mainland Chinese, who were willing to accept any alternative to working in the PRC's system of statewide collectivization. Local officials plausibly would not have resisted the influx of a mobile, majority male workforce which was willing to apply itself to Hong Kong's growing heavy industrial sector without adequate social protections or even legal status. As mentioned previously, their ambiguous legal status, which depressed the opportunity cost of accepting short-term, fluid industrial employment, may actually have been welcome to growth-minded colonial administrators who saw no benefit in repressing the growth of domestic industry.

Local acquiescence notwithstanding, the problem of Mainland Chinese immigrants in Hong Kong was made known in the UN at a time of burgeoning codification of the customary international law of displaced persons into treaty language, although it took place within the context of post-WWII displacement of European nationals. In 1951, the Convention relating to the Status of Refugees was adopted by a conference of the UN and subsequently entered into force on 22 April 1954, following ratification. Although the Convention applies only to European refugees,

8 *Report*, 15-16.

9 Yueh, "The Problem," 36.

10 Yueh, 36.

11 Yueh, 31.

12 Burns, "Immigration from China," 662.

13 Hambro, "Chinese Refugees," 71.

14 Hambro, "Chinese Refugees," 71.

15 Agnes S. Ku, "Immigration Policies, Discourses, and the Politics of Local Belonging in Hong Kong (1950-1980)," *Modern China* 30, no. 3 (July 2004): 336.

16 Ku, "Immigration Policies, Discourses, and the Politics of Local Belonging in Hong Kong (1950-1980)," 336.

17 Hong Kong E-Legislation, "Cap. 241. Emergency Regulations Ordinance," Art. 2(1).

18 Raphael Jacquet, "From Refugees to Citizens: An Identity is Born," *China Perspectives* 12 (July/August 1997): 26.

States could declare that it applies to refugees from other regions. The definition of refugee, proffered for the first time in international law, is set as any natural person

[as] a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁹

Britain, a Signatory Party to the Convention, elected not to extend the Convention's applicability to its colonies, including Hong Kong.²⁰ Recognizing that the Convention is binding for all signatories, and that perceived violations could not only attract rebuke from other Member States but may even be litigable, Britain chose to avoid testing the definition of "refugee" on its Hong Kong population. By Convention definition, however, if a State applies the Convention to the case of the displaced Chinese, any could ostensibly claim to have fled the PRC due to "well-founded fear of being persecuted for reasons of . . . political opinion." Such a definition would thrust the responsibility of their economic guardianship into British hands. In any case, for non-Signatory jurisdictions, the Convention only applied as evidence of customary international law and created no immediate legal responsibilities, since the Convention had no case law or arbitration history before international courts and tribunals. As the following will show, the definition of "refugee" creates ambiguities for categorizing the displaced Mainlanders.

The UN itself took up interest in the Hong Kong situation after the adoption of the Convention. In 1952, the UN High Commission for Refugees appointed Dr. Edvard Hambro, a former registrar of the International Court of Justice (ICJ), to lead a Hong Kong Refugees Survey Mission in a comprehensive study of Mainland immigrants in Hong Kong.²¹ The result was the report *The Problem of Chinese Refugees in Hong Kong*. The text's entire tenor was affected by the stated reasons for the convening of the Mission—to determine to which extent the UN High Commissioner for Refugees was obliged to intervene. Hambro dedicated the meat of his text to explaining "the political character for the reason for . . . expatriation," if there existed one at all.²² This approach seemed to imply that Hambro intended to close to the language of the Convention. Would its recent passing allow Hambro to conclude that the immigrants were legal refugees?

Hambro's formulations were complicated. In *The Problem*, Hambro

did not so much as refer to the possibility of prosecution under "political opinion." Instead, he undertook a legal innovation to negate the possibility of classifying the displaced Chinese as refugees under the "nationality prosecution" protection of the Convention. He first outlined what he calls the "Two Chinas problem," stemming from the fact that the Communist Party was the governing power in the PRC while the ROC, then a government-in-exile in Taiwan, was a founding member of the UN.²³ The ROC government, prior to the founding of the PRC, occupied a seat on the UN Security Council (UNSC) and acted internationally as the sole government of Mainland China. Hambro then posited that the High Commissioner must "act as if the [PRC] Government had a seat in the UN. . . [It] is the legal government of the country in question." If the displaced Mainlanders held ROC citizenship, and had not attempted to resettle to Taiwan, then they could have been understood as "unwilling to avail themselves [of] the protection" of the ROC.²⁴

Under this formulation, all Mainland Chinese, displaced or otherwise, were considered to have ROC citizenship prior to the founding of the PRC, which was converted to PRC citizenship upon its founding on 1 October 1949.²⁵ The formulation does not explain how this theory applies to Mainlanders who left before that date, or how the legality of ROC citizenship documents was extinguished. Importantly, Hambro's theory relies on the assumption that if displaced Mainlanders in Hong Kong considered themselves citizens of the ROC, they could have sought the protection of the government-in-exile in Taiwan. This theory, possible as a thought experiment, was not a realistic option in the interwar context of Hong Kong-bound migration; the ROC also did not present such an option for political defection, which Hambro did not consider a possibility.

Hambro's team surveyed a sample of over 170,000 individuals who had entered Hong Kong between 1947 and 1954. The survey included questions for motivation for departure and willingness to return to the Mainland.²⁶ Views of (usually male) heads of families were assumed to represent that of all dependents. Although he did not consider political refugeehood to be a viable category, Hambro found that 61.8 percent of the Mainland immigrants considered themselves "political refugees," although "from a strictly legal point of view the Chinese refugees may fall outside the High Commissioner's mandate."²⁷ In a later piece, writing outside the context of the Commission, Hambro conceded that he had difficulty distinguishing "economic migrants" from "political refugees," and acknowledged that survey responses may not have been completely candid.²⁸ Having scoured neighborhoods in which displaced Mainlanders were expected to congregate through pure word of mouth, Hambro's team arbitrarily identified and surveyed individuals without a method for assessing the veracity of their accounts. Selective disclosure or outright lies could have skewed Hambro's result significantly, although in the context of *ad hoc* postwar

23 Hambro, 32.

24 Hambro, 34.

25 Hambro's formulation also disregards the possibility of classification as a "particular social group". Granted, that definition had not yet gained traction in the practice of international law until the late 20th century, but it is possible to articulate the displaced Mainlanders, as a "group," disagreed Communist governance and would be "persecuted" for that disagreement due to membership in that group. This formulation overlaps with the theoretical underpinning of classification on the basis of "political opinion," which could be the reason Hambro did not attempt it. To emphasize, Hambro used the words "political refugee" in the *Report* but not in a legal sense.

26 Hambro, "Chinese Refugees," 75.

27 Hambro, *The Problem*, 37.

28 Hambro, "Chinese Refugees," 75.

19 *Convention relating to the Status of Refugees* (189 U.N.T.S. 150, entered into force April 22, 1954), United Nations, 1951, Art. 1(A)2.

20 Burns, "Immigration from China," 670.

21 Hambro, *The Problem*, 3.

22 Hambro, 32.

*The ROC and PRC:**International recognition and its ramifications*

administration and interjurisdictional research, there was hardly an alternative.

In February 1950, Britain officially recognized the PRC, which handcuffed its policy options in Hong Kong. For a time, London wrestled with whether to repatriate the Mainland migrants, which would have almost certainly faced international condemnation from UN Member States and Commonwealth democracies. The other option was to relocate the migrants to Taiwan—at least those who professed ROC citizenship. According to ROC data, 150,000 went through Hong Kong to voluntarily resettle in Taiwan.²⁹ Such “repatriation” was the favored outcome of British officials, as a population shock to an island of 10 million was preferable to increased influx to Hong Kong, whose population *doubled* in the 1940s.³⁰ Most displaced Mainlanders in Hong Kong thought of themselves as citizens of the ROC, according to Hambro’s commission, but relatively few chose to “repatriate,” and many presumably had no such means.³¹ Taipei likely knew that any policy response would straitjacket Taiwan into accepting a larger number of the displaced Chinese. In the frenetic post-Chinese Civil War atmosphere in Taiwan, in which the ROC’s main objective was an eventual retaking of the Mainland, such a refugee influx not only was a logistical vexation but also posed economic and social costs that it was not ready to bear.

Britain’s aversion to classifying the displaced Chinese as refugees is consistent with contemporary envisionments of the international legal regime. Historian Glen Peterson has formulated postwar Chinese migrants as excluded parties in the context of an “European international law,” following the writings of jurist Antony Anghie, who understands the international humanitarian regime as “deeply informed by histories of colonialism, racial inclusion, and Western inclusion of non-European Others,” which in this context applies to the decision of European colonial administrations to exclude the Chinese from its colonial territory.³² Their formulation is legible considering the history of the Convention, which goes to not inconsiderable length to circumvent direct applicability to potential non-European refugees.

Most crucially, Peterson points to a line buried deep in Hambro’s report, referring to Hambro’s (unadopted) recommendation for Britain to impose “contractual immigration” measures upon the Chinese “to various British territories” such as the “most sparsely populated areas of Asia and Oceania.”³³ This astounding requirement that the displaced Mainlanders be first subsumed under British subjecthood, and then have their personal liberties curtailed. In this formulation, Peterson finds that “Hambro... [views] refugee resettlement... in terms of older colonial strategies involving the use of contract labor and the mandated relocation

of ‘surplus populations’ to serve the needs of distant economies,” embedding a strategy of forced relocation of non-white colonial subjects into a strategy of population containment and disposal of undesirable or legally ambiguous natural persons.³⁴ Taken together, to Peterson, this proposal harkens back in international legal history to “the confinement of feudal obligations.”³⁵

Elsewhere, Hu Yueh has argued that British Hong Kong’s sealing of the border and disallowance of entry without necessary paperwork in 1950 violate Article 14(1) of the 1949 Universal Declaration of Human Rights (UDHR), which most jurists agree constitutes customary international law.³⁶ Although the definition of “persecution” has not yet then been articulated in the decisions of international tribunals (and the persecution-based definition of “refugee” not yet codified by 1950), Yueh sees the closing of the border in terms of a decision by colonial officials to exclude possible refugees from its geographical confines.³⁷ Yueh’s reading of the decision of colonial administrators in 1949 is essentially identical to Peterson’s. Both suggest that colonial Britain acted to exclude Chinese from Hong Kong, deploying instruments of international law to deny rights of displaced non-whites which the instruments ostensibly uphold. To extend Yueh’s formulation, restricting potential subjects of persecution within particular geographical confines would upset another provision of the UDHR: “Everyone has the right to life, liberty and security of person.”³⁸ Given the applicability of the UDHR as customary international law to which Britain’s signatory status does not include an opt-out provision for its provisions, Britain could be held in violation. In these formulations, Britain’s ambivalence toward displaced Mainlanders can be taken as a rejection of nascent codified international law.

An alternative view of the period decentralizes international law, holding that its nascent codifications and enactment paled in importance to realities on the ground. Historian John Burns focuses on the fact that the Convention, after all, did *not* have force and effect in Hong Kong, conjecturing that Britain did not extend it to the colony to avoid provoking the PRC over its insistence that Hong Kong was a part of the PRC and should be immediately repatriated despite its 100-year lease to Britain.³⁹ Applying the Convention to Hong Kong would take on the tricky corollary that the displaced Mainlanders could be considered “outside of their country of nationality,” reaffirming Hong Kong’s possession by Britain and risking remonstrance from the PRC. Burns’ view emphasizes geopolitical expediency over the wording of international law. Focusing on family reunion and availability of informal labor arrangements as possible reasons for the entry of Mainland immigrants, as well as the benefits accruing to Hong Kong’s new labor-intensive economy offered by a flexible and eager workforce, Burns rejects the view that international law was the primary animating factor in the considerations of any party.

²⁹ Hambro, 75.

³⁰ Hambro, 71.

³¹ Hambro, 75.

³² Quoted in Glen Peterson, “Sovereignty, International Law, and the Uneven Development of the International Refugee Regime,” *Modern Asian Studies* 49, no. 2 (2015): 445.

³³ See generally Hambro, *The Problem*, 129–189.

³⁴ Peterson, “Sovereignty,” 466.

³⁵ Peterson, 464.

³⁶ UDHR, Art. 14(1): “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

³⁷ For a full elaboration, see Yueh, “The Problem,” 29.

³⁸ UDHR, Art. 3.

³⁹ Burns, “Immigration from China,” 670.

- 40 Chi-Kwan Mark, "The 'Problem of People': British Colonials, Cold War Powers, and the Chinese Refugees in Hong Kong, 1949-62," *Modern Asian Studies* 41, no. 6 (November 2007): 1179.
- 41 Mark, "The 'Problem of People,'" 1165.
- 42 Mark, 1157.

In this reading, the political expediency of allowing the emigres to exist in a citizenship limbo but participate in local high-need industries, to the satisfaction of both British colonial administrators and implicitly the UN, outweighed the need to determine their status under international law.

Elsewhere, Chi-Kwan Mark also finds international law to be of secondary importance to State practice: "the Cold War powers saw the Chinese refugees within the context of their foreign policy objectives and rivalries."⁴⁰ In this view, colonial administrators had to attempt an equilibrium in which Beijing had disproportionate power in setting the tenor of British engagement, so as to avoid the "refugee questions" in order to not upset the delicate Cold War equilibrium.⁴¹ In this formulation, the larger picture of global instabilities and ideological realignments subsumed a "problem of people." For example, the United States broadly disfavored the entry of Chinese to the continent US until well into the 1960s, using the Chinese Exclusion Act of 1882—the first piece of legislation in US history to ban an entire ethnic group—to withhold Chinese entry. In 1952, Washington called the Mainlanders in Hong Kong "defectors," which is farther than Hambro or the UN ever went. However, the US did not legislate to assist in the resettlement of the displaced Mainlanders, but instead used the Europe-based Escapee Program to establish a new Far East Refugee Program, allowing American and international volunteer agencies to help the Chinese resettle, in very limited cases to the US.⁴² In the case of the displaced Chinese, the US government effectively contracted out its foreign policy.

In the historical milieu of the indeterminate "Two Chinas" and entrenched international coalitions of "Democratic West" and "Communist East" plus Cuba, the role of international law to these theorists and their sympathizers is one that upsets, not stabilizes. There was deep-rooted fear of an overt PRC reaction to the categorization of Mainlanders in Hong Kong. Importantly, whether historians prioritize international law, in the vein of Peterson and Yueh, or *realpolitik*, in the vein of Burns and Mark, the role of international law is seen to be receding, not ascending; not protective, but exclusionary; and not dominant, but subservient to either colonial legal conception or political contestation. Either way, the displaced Chinese was a "problem of people," a phrase Hambro adopted for his report. International bodies were vexed and unwilling to afford concrete protections, although the need for such protection was ambiguous and uneven.

The Hong Kong government never accepted that there was a "a problem of people" at all. British archival sources used the words "refugee," "squatterer," and "illegal immigrants" interchangeably until the late 1950s.⁴³ Towards the end of that time, official wording became more

standardized, with "refugee" being the preference.⁴⁴ The trend could be explained by the increasing prominence of the Convention in international use, although British adoption of the word "refugee" did not enact legal responsibilities due to the inapplicability of the Convention in Hong Kong. Strains started to emerge in the latter part of the 1950s: mainland immigrants had stretched government resources and there was visible poverty in the streets and palpable incoordination of third-party assistance agencies.⁴⁵ Despite its prevalence in international documents and especially in the report of the Hambro commission, submitted to the UN to fade into obsolescence.⁴⁶ All in all, Mainland immigrants were doubly denied legal protections by legal as well as colonial institutions, dehumanized and submerged by the ostinato of "a problem of people." The phrase appears prominently in Chapter 1 of the 1956 *Hong Kong Annual Report*, the only significant colonial document on the matter.⁴⁷ The document attacked the situation from the perspective of sanitation, overcrowding, and reduced social order, but no solution was forwarded. In fact, by the following decades, the million-plus cohort of displaced Mainlanders seemed to have merged into the Hong Kong population without significant government action, and no subsequent Annual Report mentioned such a "problem." Nevertheless, the articulation of the situation at the time serves as useful historical evidence for how administrators constructed and understood the phenomenon in the broader context of the postwar international legal regime.

Indeed, Hambro himself came up with the most accurate way to characterize the status of the Mainland immigrants: "chronic marginality."⁴⁸ Because international actors refused to acknowledge that the Chinese migrants were refugees under the international humanitarian regime, and the Hambro report insinuated that they were colonial subjects, liable to be relocated at the whims of British colonizers, they held no firm place in any society. They were persistently and irrevocably marginal. Nevertheless, the rhetoric of "chronic" still conjures overtones of prognostication.

Outside of the context of his commission report, Hambro wrote quite differently. He rightly recognized that the displaced Mainlanders existed both at the periphery of local and international law and were in limbo with regard to recognized and perceived nationality. Neither the international law nor *realpolitik* formulations considered the displaced Mainlanders to be a homogenous group that was in interaction with State actors as well as international bodies, when in fact the designation was only a placeholder for a collective of highly differentiated individuals acting with various restraints and motivations with little coordination. However, State actors inflicted daily tragedies along the Hong Kong-Canton frontier throughout the 1950s and into the 60s, with Communist border guards indiscriminately shooting border crossers, and British authorities prosecuting, apprehending, and deporting illicit emigres back to the PRC.⁴⁹

43 Mark, 1148.

44 Mark, 1148.

45 Hambro, "Chinese Refugees," 70.

46 Hambro, 70.

47 Government Press, *Hong Kong Annual Report* 1956, 3.

48 Government Press, 3.

49 Yueh, "The Problem," 31.

"A Problem of People":
Characterizations from within

On the part of the UN, it took almost a decade for the body to issue a recognition of the displaced Mainlanders. In January 1958, at the 7th session of the Executive Committee of the UN Refugee Relief Foundation, a body of the UN formally classified the situation in Hong Kong as an “international concern.”⁵⁰ The declaration had no legal force and created no obligations. As it turned out, it took almost a decade for the UN to take responsibility for an event that to modern eyes was altogether within its purview. The Charter of the United Nations states that its purpose is to “achieve international cooperation in solving international problems of a... humanitarian character,” but the UN’s delayed and attenuated response contradicted its own Charter.⁵¹ In the same document, the UN also avoided the word “refugee” and avoided specifying to whom the displaced Mainlanders were concerned, making its response quite weightless indeed.

Conclusion

The issue of displaced Mainlanders in Hong Kong was not adequately addressed by the emergent international legal regime or State actors. Edvard Hambro, outside of the *Report*, was ready to concede that “some refugees” existed in Hong Kong “not in the legal sense but in the humanitarian or social sense.”⁵² The ambiguous and sometimes conflicting conclusions of his report and other writings point to the difficulty of enacting systematic protections under an international law which allowed State actors to opt out of international instruments, creating tiered and contradictory legal obligations. Although the dissolution of the “class” of displaced Mainlanders into Hong Kong society prevented this “problem of people” from enjoying extensive attention in the subsequent literature, it is important to not forget that this first test of codified customary international law ended, quite arguably, in a forgettable failure.

British colonial administrators, the US, and the UN (among others) have all attempted to construct official identities for the Mainland immigrants in Hong Kong in order to create categories of inclusion and exclusion, while shedding State responsibility for the plight of individuals for whom international legal obligations likely existed. The governmental literature was subsequently influenced by the same jurisdictional and discursive formulae which drove the political and legal exclusion in international discourse as well as in Hambro’s report, classifying the existence of displaced Mainlanders in Hong Kong as a “problem of people.” Future contributions to this small literature could rely on primary accounts, which with the passing of time could rapidly become unrecoverable, to supplement the limited and often unreliable government sources that are currently our only window into this period beside secondary historiography. It is perhaps heartening that since the late 1950s, the maturation of the international legal regime has involved more rigorous understandings of populations in flux, reshaping State actors’ view of itinerant peoples as something more than a “problem of people.”

50 Yueh, “The Problem,” 34.

51 *Charter of the United Nations*, Art. 1(3).

52 Hambro, “Chinese Refugees,” 74.

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