CHAPTER 5

Self-Determination in Schizophrenia

The fact that China, with the aid of international law, was reduced to a semi-colonial entity forced to cede parts of its territory and surrender certain sovereign rights to other States as a result of military losses during the nineteenth century, as Chapter 3 has detailed, has resulted in a constant state of anxiety on the part of the Chinese leadership whenever China’s territorial integrity is threatened or even questioned. As self-determination has evolved as ‘one of the essential principles of contemporary international law’ with ‘an erga omnes character’,¹ is mentioned whenever one argues for the demise or diminution of State sovereignty, and is construed as a right of a people and not of a territory, China’s unease with self-determination and how self-determination might potentially lead to its dismemberment, as happened in the Soviet Union and Yugoslavia, is further heightened. China also regards discourses of self-determination as renewed Western attempts to subvert its State sovereignty and territorial integrity, and has taken a strong position on how self-determination should be recognised and implemented in China and generally.

China’s strong position should not automatically be construed as its denial or rejection of self-determination as a normative principle or as a legal right. In fact, it has developed certain systems of autonomous governance within its territory in ways that complement and perhaps even augment self-determination in its current international content. While Judge Dillard in his separate opinion in the International Court of Justice advisory opinion in Western Sahara² stated that ‘[i]t is for the people to determine the destiny of the territory and not the territory the destiny of the people’,³ self-determination requires a delineated territory for it to be exercised and for the self to be determined, and there are criteria which a territory must fulfil in order to have a valid claim to self-determination. Self-determination in international law is still fundamentally statist.⁴ China’s approaches to self-determination in its exercise of

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¹ East Timor (Portugal v. Australia), Judgment, ICJ Reports 1995, 90, 102.
² Advisory Opinion, ICJ Reports 1975, 12.
³ Ibid., per Judge Dillard (sep. op.), 122. Marc Weller argues that ‘there has rarely been a pronouncement more dangerously mistaken than this one’: ‘The Self-Determination Trap’, 4 Ethnopolitics (2005), 3, 3.
State sovereignty illustrate how it may be capable of influencing the development of international law in an area that has received one of the most sustained concerns. As China defends its approaches to human rights and democratic norms and implements them domestically within the confines of Chinese culture, Party-state politics, and increasing local demand for political reform, as the preceding chapter has explored, the ways in which it has addressed some of its peoples’ claims to self-determination highlight that a universalist conception of international law may not reflect legal or factual reality.

This chapter first examines how self-determination has evolved as a principle and a right under international law and in Chinese laws and practices, including the manners in which it may be exercised as well as its ambiguity and fragility. In particular, it explores issues of self-determination that Hong Kong, Taiwan, and Tibet present and illuminate. It discusses how China, other States and the international community have facilitated or undermined self-determination in the three territories, and the roles international law has played in creating the situations in which these territories and their peoples now find themselves. In connexion with China’s approaches to self-determination within its territory, this chapter also explores its attitudes to self-determination in territories beyond its mountains and shores – notably, Kosovo and East Timor – that shed light on our understanding of self-determination, State sovereignty, and international law.

1 Self-Determination in International Law: Origins, Definitions, and Implications

A territory’s claim to self-determination must be established in law with reference to its historical context, and not through what one believes to be morally just or politically expedient. As John Dugard has noted, ‘[m]uch of the support for the principle of self-determination as a legal right and as a peremptory norm is couched in generalisations and little attempt is made to define the content of the right with any precision’. 5 Alfred Rubin argues that, on matters

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