

INSTITUTE OF CURRENT WORLD AFFAIRS

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Macao: Legal Fiction

10-B, 109 Chatham Road
Kowloon
Hong Kong

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Mr. Richard H. Nolte
Institute of Current World Affairs
366 Madison Avenue
New York, N.Y. 10017

Dear Mr. Nolte,

I have more than once had occasion to write of the curious system of political statics which maintains the equilibrium, at first sight so precarious, of Hong Kong. The riots (and their aftermath) which came close to upsetting the analogous, though not wholly similar, balance in Macao late last year provided a striking demonstration of the forces which bear on these last two European settlements on the China coast. I had intended to write a Newsletter setting out what happened in the Macao riots, with a brief analysis. In order to understand the situation there, however, and in particular the unusual legal problems which underlie it, I found it necessary to learn something of its history. The available information is so scanty, so hard to find, and in general so out of date that it seemed worth setting out what I was able to discover at some length. I shall confine myself in this letter to a discussion of the history of Macao since 1949, adding in an appendix a survey of the more important events in the longer history of its strange relationship with China. In my next Newsletter I shall try to analyse the causes and effects of the riots themselves.

Macao (Macau to its Portuguese inhabitants, Ao-men to the Chinese) rarely makes headline news, even in the local press of South East Asia. This seems surprising in view of its anomalous position - a tiny, indefensible fragment of right-wing Portugal flaunting its flag on the coast of People's China. Despite its colonial form of government, its separate currency (the pataca, normally at par with the Hong Kong dollar) and postage stamps, Macao is regarded in Portuguese law as a province of the Republic of Portugal, part of the metropolitan territory, returning delegates to the National Assembly. In Chinese law, on the other hand, Macao is viewed as part of China, returning delegates to the National People's Congress. Yet the inhabitants seem to be among the most unrepresented, forgotten people in Asia.

The main part of Macao is a city built on a hilly peninsula, joined by a spit of land to an island which also used to be called Macao. The island, formed by different channels of the Pearl River Delta, belongs to Chungshan County in the Province of Kwangtung, and although it used to be a very remote place, was joined to the County capital of Shekki, and thus to Canton, by a road built in 1928. Two offshore islands, Taipa and Coloane, of about $1\frac{3}{4}$ and $2\frac{1}{4}$ square miles respectively, complete the Portuguese settlement.

Macao has a population of about 250,000, of whom about two thousand are of wholly Portuguese origin. Of the remainder, some are Macanese - a mixture of Portuguese, Chinese, Japanese, and Malay, largely Roman Catholic, and regarding themselves as Portuguese - while the rest, a majority of the whole, are Chinese. Of these last, a large but indeterminable proportion have moved to Macao since the establishment of the People's Republic of China in 1949. The total number of these refugees is probably between one and two hundred thousand, but a large, unknown proportion of them have moved on to Hong Kong since arrival; a reasonable estimate of their numbers now in Macao would be 65,000.

To many people who have not been there, (unaware, perhaps of the titles conferred on the city by a grateful King of Portugal in the seventeenth century - "City of the Name of God, Unsurpassed in Loyalty"), Macao's name is synonymous with gold smuggling, the opium trade, and all the vaguely generalized vices of the East. Most visitors, though, would probably agree that this sleepy port, with its curious mixture of Mediterranean and Chinese influences, wears its infamy with an extremely relaxed air of unconcern. In fact, poverty, squalor and underemployment seem to be its principal social evils.

With no natural resources other than fish, Macao has come to rely heavily on its earnings from the semi-clandestine gold trade and from the tourists who flock there. The latter are of two kinds, some being visitors to Hong Kong who have the curiosity to make the trip for a day or so. Far more important, economically, are the thousands of Hong Kong people who migrate each weekend to bet at the dog-track and gamble at the casinos, and, perhaps, out of the sight of family and friends, to sample the delights of "Portuguese Chicken", in both of its senses rumoured to be a dish of special piquancy.

The profits of gold and tourism are not very widely distributed. The economy on which the majority rely for their livelihood is not a very vigorous one. Beyond its fish, Macao produces incense-sticks, fireworks, matches, and more recently, textiles and such garments as beaded sweaters. (Some Hong Kong exporters have found that goods made or finished in Macao are not subject to the quotas imposed on Hong Kong products). There is a possibility that other industries will set up factories in Macao for their labour-intensive processes, and shortly before the recent riots the Government announced plans for an anti-biotic factory.

Government planning has not so far been much of a success, though in such an unpromising situation not much could be expected. A development plan in the early fifties achieved little but the temporary employment of some labour on public works projects that the city could scarcely afford, though it also included some much needed dredging of the rapidly silting harbour. Many of the refugees and a certain number of residents of longer standing live entirely or substantially off relief from various sources, of which the most notable are the various Catholic charities, the United Nations High Commissioner for Refugees and, until recently, a few organizations supported by the Chinese Nationalists.

Economic depression is nothing new for Macao, as a careful observer might well guess from its architecture. It was already in decline by the end of the eighteenth century, when the East Indiamen and other European vessels began to trade regularly and in increasing numbers at Canton. The Portuguese merchants, having lost the initiative in the China trade, never regained it, and for a while the already well-established Portuguese community (it had its own nobility) lived mainly from housing and feeding the other European merchants during the part of the year when the Chinese would not let them reside at Canton. After the establishment of Hong Kong the economy deteriorated still further, and only the opium trade, smuggling and the notorious coolie traffic (abolished in 1873) made ends meet, though the opening of the Pearl River and its delta to steamers gave Macao a modest entrepot trade towards the end of the nineteenth century. Many of the Macanese left, to form an important clerical and professional class in Shanghai and the other Treaty Ports, as well as in Hong Kong, where the Government and many of the large European banks and "hongs" (trading houses), as well as the liberal professions, employ large numbers of Macao Portuguese.

Even in times of economic depression, individual fortunes were to be made in Macao, especially by officials. Like the mandarins with whom they had constantly to negotiate for the colony's continued existence, the Portuguese officials mastered the art of "squeeze", and many of them became wealthy men. (It is generally believed that the tradition still flourishes.) This may help to explain the extraordinary tenacity of the Portuguese in staying in Macao, in the face not only of economic adversity but also of an apparently untenable and intolerable political situation. During almost the whole of Macao's history, the Chinese have been able to conclude any argument with the little enclave merely by cutting off food supplies at the border. (A wall was built by the Chinese within thirty years of the establishment of the settlement, perhaps its first sign of permanence.) The combination of insecurity and economic stagnation might well have led the Portuguese to abandon Macao long ago, but they learned to accommodate themselves to their awkward circumstances.

The relationship of Macao to China - Macao's legal status, in other words - has always been highly ambiguous, in the sense that Portuguese and Chinese theories of the relationship have never coincided. In the West it is generally assumed that the matter now rests on the provisions of the Treaty of Peking (1887), but there are grounds for doubting whether this view is accepted in China. The question at issue is the extent of Portugal's rights in Macao, and whether these can be said to add up to that mysterious aggregate, sovereignty. While foreign states generally recognize Portuguese authority in Macao in a general way - a few states accredit their consuls in Hong Kong to act in Macao, and Britain maintains a consulate there - the terms of such recognition are not precise enough to add much definition or clarity to the status of the settlement. Foreign states regard Portugal as the responsible power, and Portuguese law regulates the life of the community, but in many respects Macao has a much more substantial and meaningful connexion with China than it does with Portugal, and there is little doubt that China maintains rather close control over policy there. Accordingly, Macao's status as a part of Portuguese territory takes on some of the character of a legal fiction. Analogies immediately suggest themselves - ships which sail under "flags of convenience" conferring the nationality of states with which their owners and activities have little connexion, as well as individuals permitted to assume the nationalities of states with which they are unconnected, for reasons of expediency.

An extended discussion of the historical and legal context in which Macao's status must be sought seems out of place in a Newsletter of this sort. However, I have attached an appendix in which I have tried to trace in outline the history of this strange relationship, up to the establishment of the People's Republic of China in 1949.

While concessions had to be made to Portugal (which was backed by the looming image of the major Western powers, even if in general they gave little explicit support to Portuguese aspirations) in the nineteenth century, China always applied a very restrictive policy towards Macao. There was some evidence that the Nationalist Government, after its victory in 1945, had finally decided to press the liquidation of Macao as a Portuguese enclave; while it long predated the system of unequal treaties, the settlement was inextricably linked with that system in Chinese minds. Encouraged perhaps by United States support for its efforts to get Britain to renounce Hong Kong, the Chinese government-controlled Chungking Radio called for the return of Macao and denounced the Treaty of Peking as unequal. However, the British re-occupied Hong Kong, and nothing changed in Macao, indeed some agreements were concluded between its Governor and various Chinese authorities.

Despite the somewhat surprising refusal of the Portuguese Government to recognize the new regime (it has never done so), and the continued residence of a Nationalist Commissioner there, Macao coexisted without serious difficulty with the authorities of the new Central People's Government for two years. True, the Chinese Government said once or twice that Portuguese rule in Macao was illegal; they never sought to end it. The city's modestly prosperous transit trade as a distribution point for foreign imports into southern Kwangtung continued during this period, and the only economic setback was to the fishing industry, Macao's junks being compelled to join and contribute part of their catch to mainland cooperatives. With the Korean War, Macao became an important centre for the smuggling into China of raw materials and munitions proscribed by the United Nations embargo, and it may be assumed that Chinese plans to re-occupy Macao were shelved as it became obvious that the enclave could be of great value to a beleaguered country surrounded by a largely hostile world.

Considerable pressure was exerted in Lisbon to end this state of affairs, and it may well have been the introduction of measures to halt this contraband trade that provoked the first serious friction between Macao

and the People's Government. On 25th July 1952, just three weeks after the Minister for Overseas Possessions had said, during the first visit ever made to the settlement by a Portuguese Minister, that "Macao will always remain as it is today", the peace of early evening was shattered by bursts of machine-gun fire at the border. It appears that an African soldier of the Portuguese garrison, while closing the gate for the night, had been challenged by a Chinese sentry for having entered Chinese territory. The sentry charged towards him with a fixed bayonet, whereupon a Portuguese officer threatened the sentry with a tommy-gun. Other Chinese guards opened fire with machine-guns and grenades, and two African soldiers were either killed or seriously wounded (accounts varied in the newspapers; and the final figure for the casualties of the whole incident were very much lower). Both sides withdrew after about half an hour, but there were further short exchanges of fire early next morning, and at noon and again at 2 p.m. the next day. The border was sealed by both sides, and the Portuguese turned back the passenger ferry from Canton when she sought to berth. At a blow Macao had reverted to the political position she had occupied in the eighteenth century - a dependency of Kwangtung Province. Food prices in the city soared, and those who were able to leave for Hong Kong did so.

During the afternoon of 26th July a ceasefire was arranged, a curfew having been placed on Macao. The Portuguese authorities let it be known that "language difficulties" were at the root of the trouble, and in Lisbon it was immediately announced that the incident was of no importance. Meanwhile, following precedents which go back at least to the seventeenth century, a negotiating committee of prominent Macao residents was formed, and it made telephone contact with the Chinese military command at Shekki on the 29th July.

The membership of this committee is of some interest. Its leader was Dr. P.J. Lobo, who though of partly Chinese parentage (he was born in Portuguese Timor) may be regarded as representative of the Portuguese authorities. Dr. Lobo, after receiving a higher education in Lisbon, had spent most of his life in Macao, where he had become Chief of the Bureau of Economic Affairs, a position which he combined conveniently with that of acknowledged doyen of the business community. He was at the time the most obviously influential person in the community.

The second most prominent member of the group was Mr. Ho Yin, then, as now, chairman of the Macao Chamber of Commerce. Mr. Ho, a man of many connexions, had become

wealthy during the Korean War. Not a man of obviously Marxist-Leninist proclivities (indeed, a few weeks before the 1952 incident, the Portuguese Minister of Overseas Possessions had decorated him as a Commander of the Order of Christ) Mr. Ho nonetheless became intimately associated with Communist politics in Macao, and was thus a natural choice for the committee. Other members were Mr. Ma Man-ki, Vice-chairman of the Chamber of Commerce, who with Mr. Ho did most of the actual negotiating, Mr. Chu Chi-ping Director of the Chamber, and Mr. Kwok Siu-kan, of the Nam Ting Bank. It will be apparent that the Chamber of Commerce, besides its dominant position as an association of prominent businessmen, had already become an important political organization, acceptable to, if not closely linked with, the Chinese government.

It was reported that on the first day of the negotiations - over the telephone - the Chinese authorities claimed that there were over a hundred casualties on their side, of whom an unspecified number had been killed. Since, they said, the Portuguese had fired the first shot, a sum of HK\$5,000 in respect of each casualty, together with a lump sum of HK\$50,000 in respect of damage to property on the Chinese side, would be an appropriate settlement. The Portuguese must guarantee that such an incident would never occur again. Military manoeuvres would be stopped, and normal communications must be resumed.

Troops on both sides of the boundary began to withdraw, though there were rumours of the 14th Battalion of the 4th Field Army, with supporting artillery, being moved towards Macao, and twelve hundred men were embarked for the settlement at Goa. However, the Portuguese Government made a point of emphatically denying a Reuter report that the gunboat Goncalo Velho had been engaged in the fighting.

Any hopes of an early detente were dashed by two sharp exchanges of machine-gun and mortar fire during the night of 29th-30th July; this time there was no doubt that the Portuguese troops fired first - according to one report, at Chinese soldiers caught by searchlights as they were cutting through the Portuguese wire - and Chinese casualties were put at 39 dead. All communications were again severed, the port was closed to all Chinese shipping, and another wave of people left for Hong Kong, where (in striking contrast to Macao in 1941) the British authorities felt obliged to impose entry restrictions.

The return to normality only came after a further three weeks of negotiations, in the course of which Messrs. Ho Yin and Ma Man-ki crossed the border almost daily and drove to Shekki; (there was a curious break for a few days when Mr. Ho came to Hong Kong to attend the funeral of a friend). In the first two weeks, all supplies from China were cut off, and Macao was virtually blockaded, except for some fresh food, imported at relatively high prices, from Hong Kong - many of the barges in the coast trade belong to Mr. Ho. Gradually, however, the pressure was relaxed a little, and vegetables began to trickle in from neighbouring Lappa Island.

On 23rd August, agreement was reached, and Dr. Lobo, with the two conciliators, went to Shekki, where he concluded an agreement with the military authorities, acting on behalf of the Governor of Macao. Thereafter, normal communications were restored, and the enclave returned to its slumber.

Neither the Macao Government nor Mr. Ho gave any details of the settlement agreement, the text of which has apparently not been published. It is certainly not published among the international agreements made by the Chinese People's Republic. A New China News Agency press release from Canton said that "the Macao Government tendered a written apology and a guarantee against the recurrence of any similar events". The incident, it said, had been caused by Portuguese troops crossing the frontier: "A number of Portuguese troops pushed a few paces towards Chinese territory on the evening of July 25. One Portuguese crossed China's dividing line. When a Chinese guard went forward to check him, more Portuguese came up and attacked the guard with bayonets, wounding him in the left arm and right hand. Simultaneously Portuguese troops machine-gunned Chinese territory..... Some Portuguese army men opened fire on July 26, 29 and 30, killing a Chinese man and a Chinese woman by shell fire and injuring nine people. Several houses were destroyed, some farming implements damaged, and livestock injured". (It is not clear whether the great discrepancy between the casualties said to have been claimed by the Chinese earlier and the final figure agreed resulted from excited rumours or from exaggerated claims made in the course of bargaining.)

In addition to admitting their responsibility and guaranteeing that it would not happen again, the Portuguese evidently undertook to withdraw certain sentries from beyond the Barrier Gate, and to make other adjustments to their defences, including turning some ancient bronze cannon so that they no longer menaced China. As a Government communique said, "it was recognized that the system

of border vigilance contained deficiencies to which incidents like the one that occurred on 26th July may be attributed". The communique continued: "... there was damage to both sides and this will be carefully examined and considered in order to establish compensation within the great spirit of conciliation and understanding and by agreement between both sides". The exact amount paid was not announced, but (in view of the great reduction in the number of casualties apparently claimed by China) it would seem likely that it was only a fraction of the HK\$550,000 originally demanded.

Long, pregnant silences and occasional, somewhat elliptical statements seem to be part of the formula worked out by the Macao Government for dealing with these embarrassing situations. The following is typical:

"In order to establish the truth of facts, confused by false reports, and to guide public opinion which has many times been disturbed by foreign influences, the Government of Macao desires to state that it believes it is its duty to make clear that negotiations with the Chinese military authorities at Tsinshan for the reestablishment of communications with the territories on our frontier have proceeded and are proceeding normally.... the Government will endeavour with dignity to solve the situation with a view to the welfare of the population in general.... Therefore, it is expected that there will be no more difficulties for a good term..... Calm serenity is advised, which is so important to the conclusion of good negotiations with dignity and within good and just principles."

Issued three weeks after the first outbreak of violence, this was the first attempt to keep the public informed about the negotiations. In a place of the size and character of Macao, of course, news passes effectively by word of mouth, intermixed with a good deal of rumour. Not that the disquiet was unfounded, at any rate for the politically more innocent; over the border opinion was rather less inhibited, and the local press of Kwangtung kept up a clamour for the return of Macao to China for several weeks before the settlement. The Lisbon press was also unrestrained. An official bulletin carefully referred to "the prudence of the Portuguese authorities, which had fought to assert firm intentions of pacific relations with China and had limited their actions to answering attacks made against them by the Chinese without any justifiable motives", but the Diario Popular had more fire in its belly: "It is certain that, strengthened by

the power of history and right, all Macao inhabitants of whatever race and not only the Portuguese will repudiate these attacks and will know how to defend by arms our sovereignty, which has always been recognized and desired by them all". Several other papers joined in castigating the London Times for its impudent suggestion that the Portuguese were only in Macao as the guests of the Chinese (it must be confessed that the British habit of sniping at Portuguese aspirations in Macao, dating back to the days of the East India Company, dies hard).

The hopes of the Portuguese authorities in Macao were justified in the years that followed, for there were no serious disturbances in their relations with China for some fourteen years. This is not to say that there was no friction, for reasons which will appear below. A steady influx of refugees arrived in the city from China, though it is estimated that 75% of them eventually went to Hong Kong. Despite a somewhat ineffectual development plan, referred to above, the internal economy stagnated. Even the modest transit trade with Kwangtung Province declined after the Chinese Government altered its pattern of foreign trade. Some effort was put into the tourist trade, which has slowly become a major industry for Macao. The traditional gambling saloons which had always attracted Chinese visitors from Hong Kong - and formerly Canton - and which had already gained from the closure of the casinos at Shumchun, just across the border from Hong Kong, in 1949, were augmented in 1961 by large casinos in the European style, as well as a "canidrome", or greyhound racing track. The Chinese authorities at Canton at first took discreet but strong exception to these establishments, concessions for which were leased on a three-year basis to syndicates of Macao and Hong Kong businessmen, but they contrived to see things in a much rosier light after the syndicates responded to hints that some of the hard-currency profits from the gambling could be invested in Chinese banks or Overseas Chinese Investment Companies.

With the gold trade, the weekly influx of gamblers from Hong Kong is now a staple of the Macao economy, and the large amounts of cash (in Hong Kong denominations for the most part) held by the casinos represent the settlement's reserves. When, for example, in the train of the Hong Kong bank crisis of 1965 one of Macao's banks suffered and withstood - a run, it was noticed that the notes paid out were still folded in the special way used by the croupiers.

The clandestine trade in strategic goods continued for a time to be of importance to some of Macao's taipans, though the gradual relaxation of the embargo by most Western countries reduced its importance. The smuggling was not all one way, either, for there was for a while a flourishing little trade in Chinese-made cigarettes, which were smuggled into Hong Kong duty free and sold.

Macao's position in the world gold trade is well known. It springs from an anomaly - doubtless well considered - in the banking regulations: while banks and bullion dealers must make returns for all gold imported and paid in, no returns are required for disbursements and exports. Import figures are published annually, and they make impressive reading. In 1965, for example, 44.8 tons of gold were imported, representing some HK\$325.5m (US\$56.9m or £20.3m), an increase of 100% on the previous year. Few would believe that much of the gold stays long in Macao, but it can legitimately vanish without trace. Contrary to the suggestions of some journalists, it is unlikely that much of it goes into China, though some of the charges made against officials of the Provincial and Municipal Governments at Canton in the early stages of the great proletarian cultural revolution related to gold hoarding. Smuggled back to Hong Kong, the gold can be used for many purposes. It is often supposed that the metal is used to finance the narcotics trade, but it is doubtful whether more than a small amount is used in this way (there are far more sophisticated and less risky ways of transferring money for illegal purposes). Probably most of the gold from Macao goes to quench the unending thirst that exists in Asia - and elsewhere - for a secure guarantee against the instability of currencies which have not yet gained the public confidence.

The gambling syndicates and the gold-traders greatly improved Macao's communications with the outside world, financing fast hydrofoils and, at one time, a small airline of four-seater aircraft. Faster and easier access led to further improvements in the tourist traffic, and Macao now claims a fair proportion of the tourists who flock to Hong Kong, as well as its old gaming clientele. Added attractions in recent years have been the annual Grand Prix and, starting last year, seasons of bull-fighting.

The Chinese Government maintained an effective suzerainty over the Colony (or Overseas Province, as it became in due course, when Portugal revised the nomenclature of her overseas empire in the face of the world-wide movement against colonialism). Mr. Ho Yin, in close

association with Dr. Lobo up to the latter's retirement, served as the chief intermediary, having the ear and confidence of successive governors. He also became delegate for the Macao Chinese to the National People's Congress in Peking. However, other channels of communication are sometimes used by the Chinese Government. For example, in 1956, after the Macao Government had spent a considerable amount of money on preparations and publicity for the celebration of the quatercentenary of the Portuguese foundation of the settlement, the British Charge d'Affaires in Peking was presented with a politely but firmly worded note for forwarding to Lisbon, in which it was made clear that such a celebration on China's doorstep would be inappropriate. Why it was sent in this way is not clear; it might have had to do with Mr. Ho's status in Macao, but it could also have been meant partly as a warning to Britain in respect of her activities in Hong Kong (though perhaps fortunately for the British authorities there, the centenary of Hong Kong's foundation passed during the Japanese occupation). Certainly a subsequent intimation of the same character - leading to the cancellation of the more spectacular, outdoor ceremonies for the 400th anniversary of the arrival of the Jesuits - was delivered, apparently, through the normal channel, Mr. Ho.

Chinese concern with the internal government of Macao is understandable. It is sometimes said by Western commentators that the primary reason for the continued tolerance of Macao by the People's Government is that it serves as not only a window, but a convenient door to the outside world. There may be some truth in this, but Macao has certainly been a two-way door. It has in general been part of Chinese policy towards both Hong Kong and Macao to keep the border open for Cantonese residents to return to their families and native villages, and thus Macao has probably been (as no doubt it always was) a channel for foreign influences unwanted by the Chinese authorities. More particularly after the authorities in Hong Kong took firmer steps to suppress clandestine political activities there in the wake of the Kowloon riots in 1956, Macao became a major base for Nationalist agents of various kinds. Despite the great difficulties, both men and materials have been infiltrated through Macao into China, where they could, and possibly did, cause considerable harm. Until 1965, indeed, an official Commissioner represented Nationalist interests in Macao. (He even survived rumours of impending Portuguese recognition of the People's Republic in 1962, after the latter had evinced some sympathy over the Indian seizure of Goa.) After the Commissioner was withdrawn at Portugal's request, a number of overtly pro-Kuomintang organizations continued to

flourish. These, with their counterparts in Hong Kong, have from time to time been blamed, no doubt with justification, when publicity has been given to the trials of secret agents and saboteurs in Canton. A bomb attempt on Mr. Ho's life last spring suggested that some of his rivals in Macao were determined, if not successful, men.

The steady flow of refugees to Macao over the past seven years must also have been a considerable irritant to the Chinese Government. Quite apart from the unfortunate publicity (played up by the Nationalist relief organizations, and also, in a discreet way, by the Catholic ones), the refugees have provided a happy hunting ground for interrogators and interviewers, by no means all of them innocent press men or scholars. Moreover, the existence of a known sanctuary for fugitives must have been annoying for the Chinese public security authorities.

Just as embarrassing, though, perhaps more so of late, is the equivocal position in which Macao's continued licence put Chinese foreign policy in the world as a whole. Mr. Khrushchev, in the early public stages of the Sino-Soviet dispute, did not scruple to compare China's militant espousal of anti-colonial movements in the world at large with her toleration of the "stench of colonialism" which rose to her nostrils from Hong Kong and Macao. Although not pressed too hard, until recently, such references have been made from time to time since then. They are clearly extremely embarrassing for a China which has adopted a militant posture towards imperialism and neo-colonialism as they affect other peoples of the world, and has advocated even greater militancy on the part of peoples still under colonial subjugation. Perhaps the most awkward situation was that in which the Chinese delegation to the World Peace Congress at Helsinki in July 1965 found itself. Communist delegates from Portugal and from Portuguese Africa joined in calling for the return of Macao to China as an act of liberation from imperialism. The Chinese, perhaps suspecting a Soviet hand behind this proposal, had some difficulty in having the question deleted from the agenda. They succeeded, however, on the grounds that Macao was not a colony in the ordinary sense (a proposition with which the Lisbon press enthusiastically agreed the next day), and that the question of the return, "when the time is ripe", of Hong Kong and Macao was a matter of Chinese internal policy.

When the disadvantages to China which must accrue from the continued presence of the Portuguese on China's doorstep are weighed up, it is perhaps puzzling that the status quo has been preserved for so long. In December

1961, a spokesman in Lisbon, denying that Chinese encirclement gave cause for alarm about the enclave, revealed his Government's views on the matter; having allowed the Portuguese to stay so long, the Chinese would continue to let them remain, he said, for they had found Macao a useful channel for strategic goods and gold. The indications are that the former is true; even if the embargo is relaxed, the value of Macao during the Korean War will not have been forgotten. As regards gold, though, the Portuguese Government's reasoning is doubtful; China has no difficulty in buying gold in the ordinary market, and in fact she did so on quite a large scale in 1965 and 1966, flying it from London to Shanghai in specially chartered Pakistani jet aircraft. It may be, then, that the Portuguese statement is partly designed to give some justification for their own policy of expediency as regards the Macao gold trade, a policy which a number of Asian countries, especially India, look upon as economically damaging to themselves.

It is possible that China makes a direct profit out of the gold trade, as she probably does from the casinos, either by direct subvention or by the prudent channelling of some of the profits into Chinese banks. Indirectly, gold, gambling and the tourist trade in all its diversity undoubtedly benefit the Chinese economy, inasmuch as they are the support of the Macao economy, and Macao, like Hong Kong though on a much smaller scale, is a buyer of Chinese goods for foreign exchange. In 1965 her imports from China amounted to HK\$106m - less than her purchases from Hong Kong to the amount of HK\$150.9m, but these are indirectly beneficial to China too; deducting a small sum for Chinese imports from Macao, China's visible trading balance for the year was over HK\$106m - some £6.6m or US\$18.57m - in foreign currency, a tidy sum even without various invisible earnings, including remittances from Macao Chinese to relatives in the mainland.

Regardless of how direct their participation in the profits, gambling and smuggling are activities to which the Chinese Government could not possibly give public colour or support in their own territory without seriously compromising their own ideological and moral position. Accordingly, the fiction of Portuguese "sovereignty" in Macao has become financially valuable to China. In fact, it might be thought to be of some importance that Portugal should continue to be internationally recognized as legally responsible for the gambling, the prostitution and the gold trade.

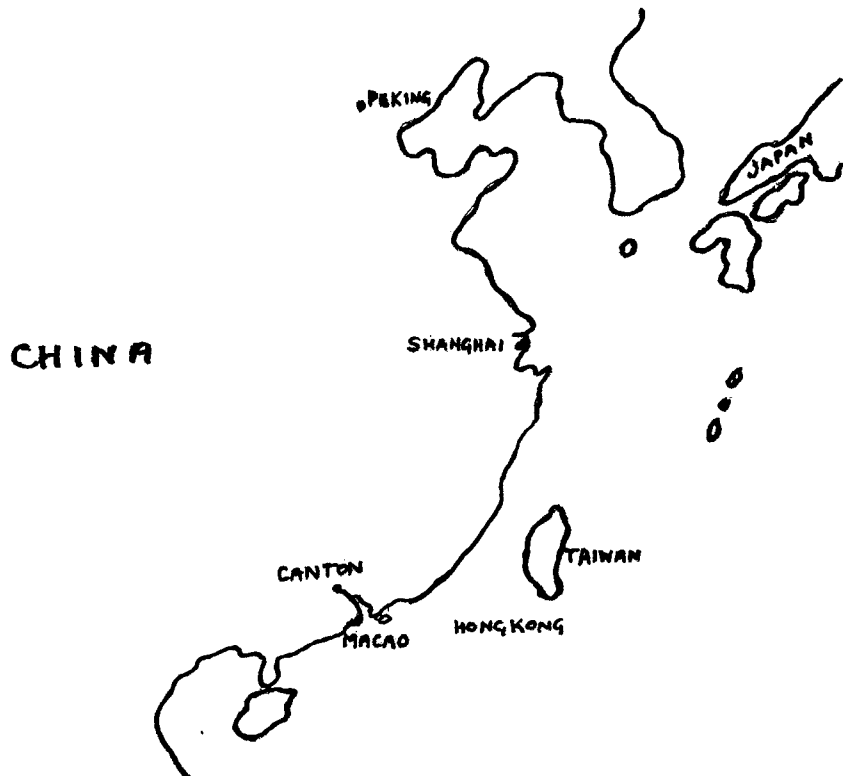
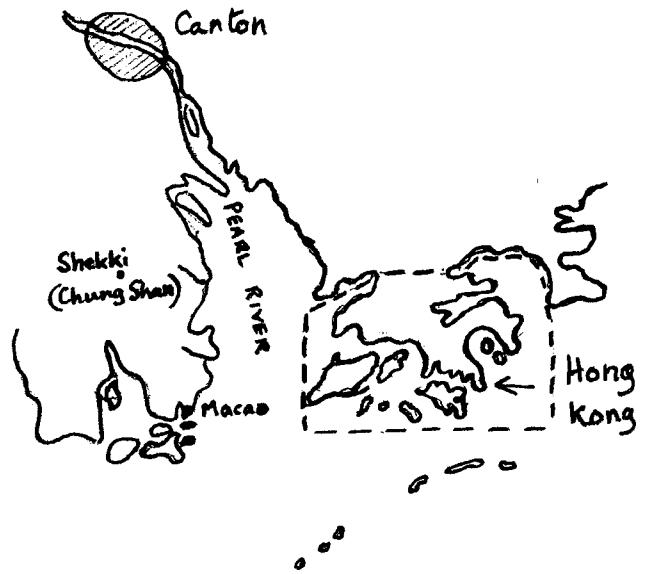
I have mentioned the two-edged advantage of having a discreet route to the outside world. A further, though minor, political advantage in the retention of Macao is that China thereby appears in a rather benevolent role - not least in the eyes of the Overseas Chinese, and those living in Hong Kong. Toleration of Hong Kong and Macao can always be pointed to as an example of politically and commercially successful peaceful co-existence. Though partly offset, no doubt, by the embarrassment to which I referred earlier, there are sometimes advantages in this image of toleration - when dealing with commercial interests, for example, or even when damning with faint praise the comic operatics of the Indian seizure of Goa.

Macao's position as a sort of paradigm for Hong Kong is perhaps the most important factor in Chinese policy. As the riots of last December showed, the stability of Macao is seen by investors, both in Hong Kong and overseas, as a barometer of the security of Hong Kong. Resumption of the territory by China would without doubt lead to the flight of foreign and domestic capital from Hong Kong, and would in all probability have a disastrous effect on its economy. China's largest single trading partner, the source of at least 40% of her foreign exchange earnings, it is estimated, cannot be treated roughly. Indeed, the maintenance and expansion of Hong Kong's economy must be an important objective of Chinese policy, and in this Macao has a part to play.

Yours sincerely,

A handwritten signature in dark ink, reading "Anthony Richards". The signature is written in a cursive, flowing style. The first name "Anthony" is written in a larger, more prominent script, and "Richards" follows it. A horizontal line is drawn underneath the entire signature.

Received in New York April 13, 1967.



A State of Convenience

The symbol most often chosen to represent Macao on postcards and in tourist literature is a sixteenth century baroque facade, all that now remains of the Cathedral Church of S. Paul, built at the time of Macao's greatest prosperity and burnt down in the early nineteenth century. Behind the empty doors and windows of the facade, built on a dominating hill, is a view of the not so distant hills of China. A better symbol could scarcely have been found for this city, with its neat combination of the former grandeur and pretension of Portugal, the material insubstantiality of the enclave itself, and the looming, omnipresent reality of China. Yet, even if there is something a little pathetic about such a monument, the facade, like Macao itself, has remained standing, weathering the typhoons which periodically batter its exposed position.

In this appendix I shall try to outline the history of Macao's uneasy relations with China, insofar as it throws light on the curious political and legal status of the Portuguese settlement. In doing so I make no claim to completeness for the narrative, which is abstracted from a variety of sources, most of them secondary and some rather unsatisfactory. Moreover, this did not seem to be the place for an exhaustive legal analysis, and I have done no more in this direction than raise what I take to be the most significant legal issues, without trying to assess the merits of any particular point of view.

Macao's present status is usually said to rest squarely on the provisions of the Treaty of Peking (1887), but the relationship between Portugal and China is a much older one. For reasons which will become clear, the current effectiveness of the Treaty of Peking is not free from doubt, and it seems in any case proper to put it in its historical context.

The intrepid Portuguese explorers who reached the China coast in the early sixteenth century were regarded by the Ming Government as little better than the Japanese and Formosan pirates who caused the Chinese authorities such trouble up and down the coast. Allowed to establish a number of trading "factories" at various points along the coast between 1517 and 1532, they were driven away again in the 1540s after a series of violent incidents. Finally, in 1557 the Portuguese were given permission to erect matsheds to dry their cargo (before landing it at Canton) on the somewhat desolate peninsula now known as Macao. The matsheds became a factory, and before long

there was a permanent Portuguese settlement there. Originally the settlement occupied a good deal of Macao island, and the early settlers tried to make themselves self-sufficient by running a farm. In 1573, however, the Chinese authorities built a wall across the narrow isthmus near the boundary of modern Macao, and the Portuguese were confined inside. The keys to the gate in the wall were kept by a special magistrate at the nearby Chinese fort of Casa Branca.

The exact terms on which the original arrangement was made for the Chinese to live at Macao are not known. The Portuguese were not the first foreigners to live in China as a group for trading purposes, for in T'ang and Sung times communities of Arabs, Jews and Persians had lived in China, enjoying some sort of semi-autonomous legal status, though it seems that responsibility for these communities was assigned to imperial officials. In the case of Macao, such an official had been designated by 1587 at the latest. He resided at Macao at first, but his duties were later transferred to the magistrate of the district in which Macao lay, and only in 1800 was another Chinese official sent to reside in the city. The early official was specifically ordered to govern Macao in the emperor's name, and he seems to have decided all cases in which Chinese were involved.

The Portuguese have always maintained, as they do today, that Macao was acquired by them by right of conquest. I cannot do better than quote from a letter written by the Governor and Captain-General of Portuguese India at Goa in 1831 in reply to a protest by the British Governor-General in India in which the latter had asserted the right of British subjects to reside in Macao as "the spot set apart by the Imperial Government of China for the residence of Foreigners resorting to that Empire for Trade...". The Portuguese view was:

"The small Peninsula of Macao has not for ages been nor now is, a dominion of the Empire of China, but is a Territory and Colony belonging to the Crown of Portugal for three hundred years. It was not obtained as a favour or concession from the Emperor of China to that Crown, but acquired by right of conquest which the Portuguese arms then achieved of that colony and of nearly the whole Island of Ancam, in one of the extremities of which the small Peninsula of Macao is situated, a great part of which Island was, at that period, in the possession of a powerful potentate, who after a vigorous resistance was subdued, the Island conquered, and the victors subjects of the Crown

of Portugal, put in possession of it, after having cleared the adjacent seas of the pirates and Insurgents who were injuring and destroying the commerce and navigation of China. It was subsequent to the occupation of the Island that the Portuguese constructed at Macao a variety of large Houses, similar to those in Europe, a Cathedral, two parochial Churches, two Colleges, a Convent of Nuns, a Charitable Institution, and latterly fortified the City with four fortresses and two forts which exist to this day, stationed therein a military garrison, and appointed, for the administration of the Affairs of the City, Ecclesiastical, Civil, and Military Functionaries..... Under the above circumstances, it is manifest that the Imperial Government of China cannot dispose of a dominion which does not appertain to it, but to the Crown of Portugal, as well by the right of conquest, as by the long possession and occupancy of three centuries....."

The Select Committee of Supercargoes of the East India Company had already made it clear that they regarded this account of the origin of Macao as "a fiction". As they made it clear in their "brief notice of the nature of the Portuguese tenure of Macao and the system upon which its authorities have almost undeviatingly proceeded";

"A Chinese civil Magistrate or Governor resides in the Town of Macao, and issues Proclamations to the Portuguese authorities using the word employed to its own native subjects by the Government of China signifying 'Mandate'."

The "fictitious story" was also unimpressive for another reason; the Portuguese had always paid rent for their use of Macao - up to 1691 fixed at 1000 taels per annum, thereafter (until they seized control in 1849), 500 taels. As the bishop of Macao, when acting as Governor in 1777, wrote to the Senate: "By paying rent the Portuguese acquired the temporary use and profit of Macao ad nutum of the Emperor". It seems clear, in any case, that the Chinese authorities never intended to confer any wide powers on the Portuguese. Usually they did not interfere with Portuguese jurisdiction over Portuguese subjects (though there were exceptional cases when they did so, up to 1827), but in other respects the administrative, judicial and fiscal control (in the rather loose sense those terms connote referring to traditional China) was in Chinese hands. It is true that the Portuguese were allowed to build fortifications, which they armed with cannon, but any village of substance in Kwangtung

had walls and moats; and Chinese control over building was sometimes asserted. The Portuguese were content to secure their own highly profitable trade and, in the early days, the exclusion of all others, by a system of heavy gratuities to the local mandarins.

The first non-Chinese authority in Macao was in fact ecclesiastical, a See being created by Pope Gregory III in 1580. Perhaps as an answer to this challenge, the Portuguese established a Senate in 1583, apparently elected by the residents. It consisted of two "juizes" (judges), three "veredores" (assessors) and a procurator, whose functions were largely the administration of the Chinese residents, insofar as this was permitted by the Chinese authorities. It was only in 1628 that a royal Governor was appointed, as a subordinate of the Governor-General at Goa.

Quite how the Chinese authorities regarded these arrangements is not known in detail. An imperial edict of 1698 referred to Macao's dependence on Chinese jurisdiction and said that "well conducted visitors would be considered the children of the Emperor". Probably they intended to accord to the Portuguese an autonomy, greater in degree but similar in kind, to that which any clan or village in the area would have exercised over its members. Sir George Staunton, in his Notices of China (1850) translated a passage from an old local history of Kwangtung which gives a rather liberal Chinese view:

"In the district of Heang-shan-hien, and at the distance of about 100 lee from the city of that name, there is a promontory which runs out into the sea, and is connected with the mainland by a narrow isthmus only, as the leaf of the water-lilly is supported by its stalk. The town is built upon this promontory, and is wholly inhabited by strangers, without any Chinese at all amongst them; but at the barrier a custom house is established for the examination of all persons and goods that pass to and fro. The soil produces neither rice, salt, nor vegetables, all which are sent to them from the interior..... Within the town, a European officer presides, with a rank similar to that of our governors or provinces. All the government edicts and communications are explained to them through the medium of an interpreter. One of their peculiar customs is to salute by taking off the hat. We receive from them in trade the articles of ivory, amber, coarse and fine woollen cloths, red wood, sandal wood, pepper, and glass".

As Staunton pointed out, the passage was inaccurate in denying that Chinese lived in Macao. It was also ambiguous as to the status of the Governor; was his rank supposed to correspond to that of a Chinese governor in the Chinese system, or was the description an attempt at a comparative view of his position in the Portuguese hierarchy? If it was the former, it seems clear by the way in which officials of lower rank than the Governor of Kwangtung habitually addressed the Governor of Macao that the ascription of rank was inaccurate in Chinese terms.

Apart from receiving the rent, the Chinese authorities exercised fiscal powers in Macao throughout the eighteenth century, requiring the arrival of foreign ships to be reported, and levying taxes on all persons and goods landed. On at least two occasions, in 1717 and 1727, the Chinese informed the Senate of Macao that it was for the Chinese, and not the Portuguese, to decide which foreigners could reside in Macao, and the Portuguese were thereafter unable to exclude other nations from the use of their port.

The not infrequent conflicts of jurisdiction between the Portuguese and Chinese authorities were not always resolved according to any fixed principle - suggesting that such questions were very much a matter of negotiation, in which, no doubt, money often changed hands. There is little doubt, however, that the Chinese magistrates regarded the city as very much part of China, and when the occasion arose they did not hesitate to assert themselves. In 1749 one of the most important jurisdictional disputes took place; the Portuguese refused to surrender certain Chinese, allegedly criminals, who had taken refuge in a Convent, on the grounds that they were converts to Christianity. The Chinese officials thereupon closed the barrier, stopped all supplies, and ordered all Chinese traders to leave the city, whereupon the Portuguese surrendered the wanted men. They also agreed to sign an agreement to regulate future relations, and a council of citizens of Macao was formed for the purpose. A "conventional pact" was drawn up in Portuguese and Chinese, and signed on both sides. It is said that the fifth article provided for all cases of homicide (i.e. including those in which foreigners were accused) to be tried by a Chinese magistrate in Macao, with the eventual decision to be referred to the authorities at Canton for confirmation. The seventh article provided that no houses, quays or forts should be built without a permit from the magistrate at Casa Branca; and the twelfth article (which appeared only in the Chinese text) prohibited the conversion of Chinese to Christianity.

The Chinese, then, reserved important rights to themselves, and it was hardly surprising that foreign states found it hard to accept the Portuguese view of the matter. It was true that the Portuguese sometimes exercised wide powers in Macao over their own people, and sometimes over other Europeans also. A traveller there reported in 1834:

"But the fact undoubtedly is, that landed and other property at Macao is bought, sold, and possessed, by virtue of, and according to, the laws of Portugal. Civil, ecclesiastical, and criminal proceedings are also carried on according to Portuguese jurisprudence; and a case occurred, only a few years ago, in which a foreigner was tried, condemned and executed at Macao under the sanction of, and in obedience to, those laws, the Chinese neither complaining nor interfering on the occasion..."

The notion of territorial sovereignty was alien to China, though, and not much significance can be attached to the fact that Portuguese law was applied in this way in Macao. The land was leased to the Portuguese, after all, and provided they did not erect unauthorised buildings, the Chinese authorities were unlikely to worry about how they dealt with the land between themselves. The assertion of criminal jurisdiction over a non-Chinese, moreover, hardly supports the author's assertion that the Portuguese had in Macao a possession that they could transfer to the British crown without Chinese consent (a proposal which the British authorities never took seriously). The true position of Portuguese authority in Macao seems to have been summed up rather well by the Select Committee of the East India Company when they reported that the Portuguese had developed a system of self government in the city that saved the Chinese the trouble of administration. On the basis of such reports the British Government formed the view that sovereignty over Macao did not rest with Portugal, a view expressed in the early legislation and judicial practice of Hong Kong, and maintained, even after the events of 1849, until the Treaty of Peking was signed in 1887.

The establishment in 1843 of a British colony at Hong Kong, after the absolute cession of the island in the Treaty of Nanking, led to the hope in Macao that similar freedom from imperial power would be conferred on the Portuguese settlement. Negotiations were opened with the authorities at Canton, but they were unsuccessful in securing any concessions over jurisdiction, and the abolition of the rent was refused. The system of control over building was abolished, but Chinese taxes continued to be levied, Macao being brought approximately within the tariff structure created for the Treaty Ports by the Treaty of Nanking.

In 1848 the Portuguese decided to take the matter of free trade into their own hands. While the Viceroy was away from Canton in the north, the Governor of Macao, Joao Maria Ferreira do Amaral, issued a proclamation, on March 5th, 1849, closing down the Chinese custom house and offering to make fresh terms of trade. The authorities in charge at Canton made no reply, but sought to undermine Macao economically by exerting pressure on Chinese merchants there to leave the city, whereupon Governor Amaral ordered the confiscation of their property if they did so. Three months later, Amaral was assassinated while out riding. The murderers were apparently peasants who had been angered by his neglect of their geomantic beliefs in planning new roads, but it was generally supposed that they received every encouragement from Canton. Amaral's head and only arm were cut off and taken across the border; demands for their return having been met with silence, Colonel Mesquita marched out with 120 Portuguese troops and seized the fort which controlled the barrier gate. The Chinese magistrates in Macao were expelled, and the territory was declared entirely independent of Chinese control. Lengthy negotiations finally secured the return of the late Governor's head and arm, but only at the price of surrendering to Chinese justice the three suspected assassins.

The assassination gained the Portuguese a great deal of sympathy that would otherwise not have existed, and the Governor of Hong Kong even sent two men-of-war to Macao to protect it. The Chinese thus lost an important diplomatic advantage, and with it any immediate hopes of recovering control of Macao. While Hong Kong had been lost through the fortunes of war, and military potential had been the decisive factor in the treaty settlements with the French and Americans, the Chinese were well aware of Portugal's low status as a European power, and the situation must have been very irksome for them. The status quo brought about by the events of 1842 was never recognized by either the Chinese or the foreign powers in China, until it was replaced by the provisions of the Treaty of Peking.

In 1862, when imperial power was at a low ebb during the T'ai-p'ing Rebellion, the Portuguese made an effort to gain recognition for their position. The Governor of Macao, with full powers as an envoy from Lisbon, negotiated the Treaty of Tientsin, which was signed on 13th August. By its terms the Portuguese secured all the diplomatic and commercial privileges given to Russia, France, Britain and the United States by the treaties of 1858, as well as a "most favoured nation" clause. The treaty also provided in a rather oblique way for the recognition of the status quo in Macao. Article II reads:

"It is entirely annulled and held as never existed by this Treaty everything that down to this day, at whatever place or epoch, may have been written or printed or verbally agreed with respect to the relations between Portugal and the Empire of China and between the Governor of the City of Macao (formerly in the province of Canton) and the Chinese authorities; as henceforth the present Treaty, concluded and signed by the plenipotentiaries of the two States, duly provided with their respective credentials, will serve as the only valid regulation of the said relations."

The treaty contains no explicit declaration of Portuguese sovereignty in Macao, though there are one or two references to the competence of Portuguese administrative authorities there. Evidently the Portuguese were unable to secure such a declaration, or perhaps they were content with a recognition of the actual status quo in Macao, which was at that time very much in their favour. In the event, the treaty, which called for ratification within two years, never came into force, for in 1865 the Chinese government had recovered its diplomatic poise and felt able to refuse ratification.

It is particularly noteworthy that the Portuguese wished to expunge all previous transactions and precedents regarding the status of Macao. It would seem that they were in some difficulty over the wording of a treaty that was to give them the sovereignty they wanted; they apparently wished to avoid any formula which would suggest that a fresh cession was required, or that existing Portuguese title was less than perfect, while at the same time they were anxious to ensure the general recognition of their status by third states, which was only likely to spring from a formal Chinese acknowledgement of their position.

After the refusal of China to ratify the Convention, the Chinese government consistently refused to recognize Portuguese claims over Macao and its waters, an attitude in which they were encouraged by Sir Robert Hart, the British Inspector-General of the Imperial Maritime Customs. It is also said that there was considerable support for this policy of non-recognition on the part of the people and officials of all ranks. If this is true, it helps to explain the bitterness felt in China about the events of 1887.

In 1887, for perhaps the first time in the whole history of Macao, the Portuguese had a valuable bargaining point, and they put it to good use, though perhaps not with maximum effectiveness, as will be seen. Portuguese

willingness to apply the system to Macao was made the condition of British acceptance of a regime for the better supervision of the coastal junk trade in South China by the Chinese customs to prevent the smuggling of opium. It was a matter of considerable financial importance for China, and Hart, very much concerned with the revenue, pressed the Chinese government to comply with Portuguese demands over Macao, in order to secure their consent to the new arrangements (it is said that his closest Chinese friends never forgave him for inducing China to give in to the demands of such a petty state as Portugal). It was an officer of the Imperial Maritime Customs who signed the short Protocol of Lisbon on 26th March 1887. (It is also said that the British government put pressure on China in this matter, a plan to exchange Macao for some territory in Africa belonging to France having been proposed in Lisbon.) Being negotiated overseas, without the participation of Chinese officials, there was not even a Chinese text, English and Portuguese alone being used. After the preamble and recital of the full powers, the Protocol reads as follows:

"ARTICLE 1st. A Treaty of friendship and commerce with most favoured nation clause will be concluded and signed at Peking.

ARTICLE 2nd. China confirms perpetual occupation and government of Macao and its dependencies by Portugal, as any other Portuguese possession.

ARTICLE 3rd. Portugal engages never to alienate Macao and its dependencies without agreement with China.

ARTICLE 4th. Portugal engages to co-operate in opium revenue work at Macao in same way as England at Hong Kong."

Later the same year the Treaty of Peking was drawn up in Chinese, Portuguese and English and signed; ratifications were exchanged on 28th April 1888. It did not restate, amplify or in any way clarify the somewhat amateurish terms of the Protocol of Lisbon, but simply incorporated them with an additional provision for future boundary demarcation;

"ARTICLE II

"China confirms, in its entirety, the second Article of the Protocol of Lisbon, relating to the perpetual occupation and government of Macao by Portugal.

It is stipulated that Commissioners appointed by both Governments shall proceed to the delimitation of the boundaries, which shall be determined by a special Convention; but so long as the delimitation of the boundaries is not concluded, everything in respect to them shall continue as at present, without addition, diminution, or alteration by either of the parties.

ARTICLE III

Portugal confirms, in its entirety, the third Article of the Protocol of Lisbon, relating to the engagements never to alienate Macao without previous agreement with China."

Other terms of the Treaty provided for extradition arrangements between Macao and Kwangtung. Portuguese legislative authority in Macao was implicitly recognized in a Convention appended to the Treaty to regulate the Opium trade.

Apparently the Portuguese have never foregone their earlier claims to sovereignty over Macao based on force of arms. However, it would seem that, in view of the slender evidence in favour of that claim, the strong evidence against Portugal having exercised anything like sovereign powers before 1849, and the lack of recognition of such a claim by the international community, any claim to sovereignty in Macao on the part of Portugal must rest principally on these two instruments. It is therefore worth examining them briefly, though an exhaustive legal analysis will not be given.

First, the Portuguese either abandoned or failed to secure their earlier objective of annulling all previous dealings and transactions affecting Macao, the very basis of their legal position in the unratified Treaty of Tientsin. Rather, the protocol of Lisbon, which "confirms perpetual occupation and government of Macao" seems to provide explicitly for the perpetuation of the status quo, which, of course, the Chinese and Portuguese sides interpreted very differently. The former had never accepted the legality of the events of 1848 and 1849. Accordingly the formula chosen seems to leave the door ajar to any arguments or interpretations based on the earlier history of the status of Macao which the Chinese might care to advance.

If we assume, from the strength of their bargaining position, as well as the place of negotiation, that the Portuguese had a good deal of control over the drafting of the Protocol of Lisbon, the use of such imprecise language seems puzzling. It is conceivable, though unlikely, that the English Customs Commissioner who represented China was precisely instructed to avoid the use of the word "sovereignty". It may also be that pride got the better of prudence and that a formula was again deliberately chosen which avoided giving the impression that China was making a fresh cession de novo to Portugal, thus admitting that Macao was hers to give. On the other hand the text gives the impression of having been drafted with considerable haste, and it may have been a rapid improvisation; it was almost certainly not the work of a lawyer. (We can assume that the officials of the Ts'ung-li Yamen, the Chinese foreign ministry founded in 1861, were well aware of the implications of the wording when it came to settling the terms of the Treaty of Peking; Article II of the latter, as noticed above, does nothing to clarify the words of the Protocol, and doubtless any formula that did so would have been unacceptable to Peking).

Taking the Article for a moment without its subordinate clause "as any other Portuguese possession", the words "occupation and government" can scarcely be said of themselves to connote Portuguese sovereignty. "Occupation" is at best a mere factual description rather than a term of art, and "government" can refer to the exercise of powers of less than sovereign extent. The Portuguese text refers to "ocupacao e governo"; the Chinese to "yung chü kuan-li", which could be translated as "perpetual (or "very long term") residence and administration". In case of any dispute as to the meaning of the Treaty, it is provided that the English text shall be authoritative. The word "kuan-li" at least supports the ambiguity in what otherwise might seem the "plain meaning" - usually a chimera - of the English text, for while it can be translated, without undue strain, as "government" or "rule", it ordinarily refers to the exercise of control by a subordinate authority. These words in the Protocol, then, can be construed reasonably so as to accord with the traditional Chinese, as well as the traditional Portuguese, view of Macao's status, for the Chinese could accommodate Portuguese internal government of the city to their own political theory without too much difficulty.

We must assume, of course, that the Portuguese relied on the subordinate clause, which appears in the English text of the Protocol as "as any other Portuguese possession", preceded by a comma. In Portuguese it appears as "como qualquer outra possessao portugueza", while an

unofficial translation into Chinese (it will be remembered that there was no Chinese text) is "yü p'u-kuo kuan-li t'a-ch'u wu-i" - "no differently from the other places controlled by Portugal". (It is not clear when this unofficial translation was made, and whether it was made under government auspices; it is worth noting that an entirely different expression is used in a subsequent treaty with Portugal to refer to Portuguese "possessions and colonies"). At first sight this clause would seem to be conclusively in favour of Portugal having at least as full a sovereignty as she enjoys in her other possessions, (or enjoyed at that time, for, ironically, there is hardly a single remaining Portuguese overseas possession where her sovereignty is not now disputed either by indigenous peoples or neighbouring states). On careful inspection, though, it is not quite free from ambiguity - does the clause refer to the perpetual nature of the occupation and government, or to the scope of the occupation and government, or to both?

The Portuguese undertaking not to alienate Macao without Chinese agreement does not take us much further towards a clear definition of Portuguese rights and powers there; it simply limits the power of disposition in the future. Such a provision has not been uncommon in the cession or lease of territory in international legal practice, but it does not appear to have been regarded by states as imposing such a limitation on the rights of the transferee as of itself to impair its sovereignty.

The purpose of pointing out these questions that might arise from the texts of the two instruments is not to endorse any particular theory, or to judge the merits of any argument that might be based on them, but rather to suggest that these apparently simple documents might be the subject of considerable disagreement. There could also, of course, be disagreement about the proper canon of interpretation that ought to be applied to such apparently ambiguous texts. If the texts ever came before an international tribunal, much might turn on whether the tribunal adopted the rule whereby ambiguities are construed in the least burdensome way for the parties, or so as to detract least from their sovereignty and territorial integrity, or whether it preferred the rule of effectiveness, whereby the object of the treaty as a whole is examined and ambiguities resolved in accordance with the requirements of that object. In the absence of third-party adjudication, each party is likely to prefer the rule most favourable to its interests. Accordingly, it would seem that there is a good deal of scope for argument over the precise effect of these two treaties on the status of Macao.

It is of course of some importance that the majority of states that have had occasion to deal with Macao - by accrediting consuls, for example - have followed Portuguese practice in assuming that the article as a whole confirmed (or to be more precise, for these states did not recognize it earlier, conferred) the sovereignty of Portugal in Macao. It is hoped that enough has been said to suggest that a contrary interpretation in favour of residual Chinese sovereignty would not be unreasonable and would certainly derive support from one of the rules of treaty interpretation, that which restricts the derogation of sovereignty.

If the legal nature of Portugal's rights in Macao under the treaties are not free from doubt, the same may be said of the territorial extent of the settlement. Immediately following the Portuguese seizure of Macao in 1849, the frontier was extended some distance beyond the old barrier. During the nineteenth century, the Portuguese began to pay attention to two islands, Taipa and Coloane, first occupying them for security reasons in 1846, and thereafter exercising jurisdiction over them, in a somewhat desultory way. It is significant that while the unratified Treaty of Tientsin speaks of "the city of Macao", the Protocol of Lisbon refers to "Macao and its dependencies". Almost needless to say, the Chinese were unwilling to recognize Portuguese claims to these islands, as also to the territory added to the main city after 1849. The expression "dependencies" in the Protocol would, according to the Chinese theory, refer to nothing of significance.

Another notable omission from the treaties was any mention of territorial waters. There is some authority for the view, as a matter of general international law, that the failure to include specific mention of territorial waters in a treaty of cession results in the territory ceded passing without them. In the present case, the omission was in all probability accidental, unless it sprang from Portuguese reluctance to make the Protocol and Treaty appear as a fresh cession. It is unlikely that the matter was discussed, though it is one of importance to a place with the geographical position of Macao.

Steps were taken to implement the provision of the Treaty of Peking which called for boundary delimitation, but they were not successful. In 1901 an envoy was dispatched from Lisbon for the purpose, but the boundary which he submitted included Taipa and Coloane, and the Chinese government refused to entertain such claims. Senhor Branco returned home with a concession for a railway from Canton to Macao (it was never built) but no boundary

settlement. He also took back a convention for the establishment of a Chinese custom house in Macao, but this was unacceptable to the Cortes in Lisbon. In 1904 he returned to China and concluded a further agreement on customs, which was again rejected by Lisbon, though in one sense it contained terminology very favourable to Portuguese claims in Macao; not only was reference made to "the territory and waters of Macao", but the convention referred to the need to avoid injury to "the sovereign rights" of the two parties in arranging for customs control there. Moreover, there was implicit recognition in the text of the Portuguese power to legislate concerning the nationality of persons born in Macao. Even in its unratified form, the convention might be taken as some evidence of Chinese recognition of the Portuguese position, though once again the question is an arguable one.

In 1908 there was a serious controversy, which threatened to become quite dangerous, over the extent of Macao's waters, caused by a gun-running incident which involved a Japanese vessel, the Tatsu Maru, which was supplying the southern revolutionaries. The Portuguese felt obliged to invoke the aid of the British, under the provisions of the celebrated old "Port Wine" Treaty (1715) between the two countries, whereby Britain undertook to defend Portuguese colonies; (it was again invoked, without success, when India invaded Goa). The British urged arbitration and the appointment of a boundary commission, and when China refused to agree to this, warned that she would be obliged to intervene should China adopt aggressive measures, thereby agreeing, it would seem, to treat Macao as a Portuguese colony for all purposes. Eventually, China agreed to the appointment of the boundary commission under the Treaty of Peking.

After four months of negotiation at Hong Kong, the Portuguese proposed referring the dispute to the Permanent Court of Arbitration at The Hague, but China again refused to agree, and the boundary issue was in fact never settled. One of the matters in dispute was the island of Coloane. In 1910 the Portuguese again asserted their jurisdiction there by clearing it of what a reporter referred to as "a piratical horde which had terrorised the whole delta".

Portugal was a signatory of the Nine Power Treaty in 1922, thus binding herself to the principle of maintaining the territorial integrity and commercial and economic equality of China. Subsequently, in pursuance of this policy, she concluded a short preliminary Treaty of Amity and Commerce with China in 1928, renouncing Portuguese extraterritorial privileges as well as abolishing the entire tariff structure of the previous treaties in

favour of equal treatment and tariff autonomy. The treaty makes no mention of Macao or Portuguese rights there, but at least one Chinese commentator (the editor of a collection of treaties published in Taipei in 1964) suggests that the Treaty abrogated the Treaty of Peking as a whole, since it abolished the tariff structure which was the whole basis for it. The clear implication is that the Chinese undertaking with regard to Macao perished together with the provisions for extraterritoriality and tariffs. I am not yet able to say how far this view is widespread among Chinese international lawyers. A more orthodox view in the West would probably be that the various sections of the 1887 Treaty were severable, so that some could stand when others were rescinded, unless the Treaty as a whole were clearly abrogated; but the matter is not free from doubt.

During the Japanese war, the neutrality of Macao was respected by Japan, though the Japanese had no difficulty in asserting themselves in the city's internal affairs, not least by their control of the rice supply. Even after the Portuguese leased bases in the Azores to Britain, inviting charges that they had forfeited their neutrality, the Japanese stayed outside Macao, leaving a British consul and many tens, or even hundreds, of thousands of refugees in the safety of the enclave.

I have not been able to discover the details of Chinese policy towards Macao in the immediate post-war period. In 1945 an ominous broadcast from the government-controlled Radio Chungking denounced the Treaty of Peking of 1887 as "unequal" and called for the return of Macao, but the British re-entry into Hong Kong doubtless put an end, temporarily at least, to any thoughts of forcing such a return. British support could have been expected, for a number of reasons - gratitude both for Portugal's wartime stance in general and for its reception of refugees from Hong Kong in particular; the proximity of Macao to Hong Kong and the analogy between the two; and the obligation already undertaken in 1908.

In 1948, two agreements were made between the Macao Government and the Chinese authorities, covering exchange control and customs administration. The first was signed on the Chinese side by a representative of the Bank of China, the second by a Western official of the Chinese Customs, while the Governor signed for Macao. This suggests that the Chinese may have been reverting to their old policy of dealing with Macao through non-diplomatic agents, thus implying that they were not really dealing with a foreign country at all, though there is no suggestion that the competence of the Macao Government was not recognized, indeed the reverse was true.

A similar policy apparently underlay the failure of successive Chinese Governments to avail themselves of the provisions in the Treaty of Peking allowing them to be represented in Macao by a consul. The Chinese have evidently never wished to be represented in Macao in such a way as to suggest that it was foreign soil. Instead, a commissioner of customs was the senior Chinese official present there, and since Portugal never withdrew recognition from the Nationalist regime, a commissioner was resident in Macao right up to 1965, when he was asked to leave.

The main features of the relationship - a pragmatic one - between Macao and the People's Republic are set out elsewhere. It is perhaps worth mentioning, however, that the legal position has never been clarified on the Chinese side, beyond occasional statements in the early days to the effect that Portuguese presence in Macao is illegal. (Even now, the Governor of Macao is always referred to in Chinese news media as "the 'governor'", as though he was a pretender.) The status of the Treaty of Peking has apparently not been publicly discussed. Unlike the treaties which govern Hong Kong, it has not been relied on to assert a point, with a consequent implied recognition of its validity. Curiously enough, the provisions on treaty revision of the Common Programme of the Chinese People's Political Consultative Congress (which served as a provisional constitution) refer only to the treaties concluded by the immediately previous government:

"ARTICLE 55. The Central People's Government of the People's Republic of China shall examine the treaties and agreements concluded between the Kuomintang and foreign governments, and shall recognize, abrogate, revise or re-negotiate them according to their respective contents".

The principle to be applied in respect of older treaties has never been stated, but it is significant that the only treaties of importance which appear to be even potentially still in force from the early period are those which govern Hong Kong and Macao, the main fabric of the pre-1928 treaty system having been terminated by the abolition of extraterritoriality and tariffs.