

1991

China after Tiananmen Square: An Assessment of Its Business Environment

Beverley H. Earle

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>

 Part of the [International Law Commons](#)

Recommended Citation

Beverley H. Earle, *China after Tiananmen Square: An Assessment of Its Business Environment*, 23 Case W. Res. J. Int'l L. 421 (1991)
Available at: <https://scholarlycommons.law.case.edu/jil/vol23/iss3/2>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

China After Tiananmen Square: An Assessment of its Business Environment

Beverley H. Earle*

I. INTRODUCTION

The People's Republic of China's (PRC) brutal military response, on June 4, 1989, to the two month old pro-democracy movement was neither surprising nor out of character with the country's policies and history.¹ However, Western journalists, enthralled with the optimism, bravery and symbols of the demonstrators, expressed disbelief at the predictable actions of the Chinese government. The Chinese leadership would not tolerate the "loss of face" and the challenge to their entrenched beliefs. Those in power ultimately suppressed what the aged leaders saw as a "counterrevolutionary rebellion" that threatened the country with chaos.² The PRC and its leadership was forged from a successful revolution over forty years ago, with a mentality of discipline and rigid allegiance that persists today.³ As Mao Tse-Tung wrote,

* Assistant Professor of Law, Bentley College. B.A. University of Pennsylvania, J.D. Boston University. The author recently returned from teaching at Yunnan University, Kunming, People's Republic of China on a U.S.I.A. grant. West published in May 1990, *International Business Law and its Environment* by Shaffer, Earle and Agusti.

¹ For a discussion and history of the pro-democracy movement, see J. ETHRIDGE, *CHINA'S UNFINISHED REVOLUTION: PROBLEMS AND PROSPECTS SINCE MAO* (1990); L. FEIGON, *CHINA RISING* (1990); I. HSÜ, *THE RISE OF MODERN CHINA* 923-38 (1990); *HUMAN RIGHTS IN CHINA, CHILDREN OF THE DRAGON: THE STORY OF TIANANMEN SQUARE* (1990); M. YI & M. THOMPSON, *CRISIS AT TIANANMEN: REFORM AND REALITY IN MODERN CHINA* (1989); A. NATHAN, *CHINA'S CRISIS* (1990); J. SPENCE, *THE SEARCH FOR MODERN CHINA* 712-47 (1990).

² *China Will Not Bend to Foreign Force*, China Daily, June 22, 1989, at 1, col. 1 [hereinafter China Daily, *China Will Not Bend*] (reporting on a speech by Premier Li Peng). See also *Restoring Order*, China Daily, June 17, 1989, at 2, col. 1 (editorial); *Deng Hails Martial Law Enforcement Armymen*, China Daily, June 10, 1989, at 1, col. 1 (account of Deng Xiaoping's speech to the army) [hereinafter *Deng Hails Martial Law*]. Cf. *Chinese Reformers, Soviet Upstarts*, N.Y. Times, Apr. 24, 1988, at E24, col. 1 (a prescient analysis of China's problems).

³ For a discussion and history of the revolution and its leaders, see I. Hsü, *supra* note 1, at 493-645; J. SPENCE, *supra* note 1, at 269-617. See also Sterba, *Long March: How the Twisted Path of China's Reform Led to Guns of Tiananmen*, Wall St. J., June 16, 1989, at 1 col. 1 stating:

To many Western minds, Deng was a cute koala-bear kind of Communist, a beguiling little fellow in a big cowboy hat at a Texas Rodeo. The gleam of the West would be China's gleam one day, he said. He talked quaintly of the color of cats China needed for good mousers of being pragmatic and seeking truth from facts. But . . . [Deng] reaffirmed another side of himself (—) - his old fashioned side. That side [of Mr. Deng]. . . was his

"Every communist must grasp the truth. 'Political power grows out of the barrel of a gun.'"⁴ Power, hard won, would not be lost to students without a struggle.⁵

Today, China's leaders want to ensure that the revolution is not lost. They remain faithful to Mao's rhetoric.⁶ As Mao stated in 1927:

A revolution is not the same as inviting people to dinner, or writing an essay, or painting a picture, or doing fancy needlework; it cannot be anything so refined, so calm and gentle, or so mild, kind, courteous, restrained and magnanimous. A revolution is an uprising, an act of violence whereby one class overthrows the authority of the landlord class.⁷

China's leaders are prepared to accept hardships. However, because of China's previous isolation, the Chinese government appeared unprepared for the intense public scrutiny of the Tiananmen incident.⁸ In the past, China was able to carry out its policies outside of the world spotlight. For example, the national coverage of the "cultural revolution" was minimal because China was closed to the West at that time.⁹

The Tiananmen Square massacre, though deeply disturbing, should not obscure the tremendous changes in the PRC. In 1978, after the Cultural Revolution, Deng Xiaoping announced the goal of "four modernizations" in the areas of agriculture, industry, national defense, and

abhorrence of chaos, forged through decades of struggle in China. This was the Deng on exhibit a year later in Tiananmen Square.

⁴ M. Tse-Tung, *Problems of War and Strategy*, in 2 SELECTED WORKS 224 (1954) [hereinafter SELECTED WORKS].

⁵ See also Sullivan, *A Government in Transition*, CHINA BUS. REV., July-Aug. 1989, at 8, 8-11 (analyzing China's rulers' obeisance to control). Cf. *Deng Hails Martial Law*, *supra* note 2.

⁶ See generally account of Party Secretary Jiang Zemin's remarks reported in *Jiang Hails Success of Party's Meeting*, China Daily, June 29, 1989, at 1, col. 1 [hereinafter *Jiang Hails*].

⁷ MAO TSE-TUNG, *Report of an Investigation into the Peasant Movement in Hunan* in 1 SELECTED WORK 27 (1954).

⁸ "Unprepared" in the sense that the general propaganda (e.g. *Rebellion is Basically Quelled*, China Daily, June 20, 1989, at 1, col. 2) was met with disdain by the international community. Cf. Lord, *China and America: Beyond the Big Chill*, 68 FOREIGN AFF. 1, 6 (1989), stating in part that "[t]he best way to understand the reality in China today is to turn the official line upside down." For "the situation is stable" read the situation is precarious. For "broad consensus" substitute fierce disagreement. For "the people love the army" understand that the people hate the army units engaged in suppression. "A small band" means massive numbers and "hooligans and ruffians" translates into law abiding citizens from all walks of life. When a handful of people are shown on television turning in their neighbors to the authorities, millions of others are refusing to do so or are helping the hunted escape. When Chinese are shown earnestly studying the chairman's speeches, they are really numb with boredom and cynicism.

⁹ For interesting narrative accounts of the Cultural Revolution, see L. HENG & J. SHAPIRO, *SON OF THE REVOLUTION* (1983); B. LORD, *LEGACIES: A CHINESE MOSAIC* (1990); L. ZI-PING, *A GENERATION LOST: CHINA UNDER THE CULTURAL REVOLUTION* (1990). For a historical account, see generally I. HSÜ and J. SPENCE, *supra* note 1.

science and technology.¹⁰ A major part of this initiative in the five year plan included the injection of foreign capital via newly permitted legal structures such as the joint venture.¹¹ This marked a dramatic turning point from the PRC's xenophobic past, toward the opening to the outside world by the adoption of an "open door policy."¹² It also ushered in the era of "market socialism" or the fusing of capitalist incentives onto a traditional socialist centrally planned economy.¹³ The reforms between 1978 and the end of the seventh five-year plan (1986-1990) were a radical socialist experiment.¹⁴ The Chinese leaders discovered the reality of the tension between opening the country for investment and retaining strict ideological controls. While historically there had been acceptance and understanding of "contradictions,"¹⁵ the open defiance of the students and workers, as they ostensibly protested corruption and expressed their

¹⁰ See NATIONAL COUNCIL FOR U.S. -CHINA TRADE, U.S. JOINT VENTURES IN CHINA: A PROGRESS REPORT 7-8 (1987).

¹¹ See Lubman, *Equity Joint Ventures in China: New Legal Framework, Continuing Questions*, in LEGAL ASPECTS OF DOING BUSINESS IN CHINA 801-21 (1986) (N.Y. PRAC. L. INST.).

¹² For discussion of this change, see Change & Pow, *Trade and Investment Law and Practice in the People's Republic of China*, 3 CHINA L. REP. 5 (1985); Cohen, *China Adopts Civil Law Principles*, CHINA BUS. REV., Sept. - Oct. 1986, at 48, 48-50; *The Emerging Framework of Chinese Civil Law*, 52 L. & CONT. PROB. (1989) [hereinafter *Framework*]; Epstein, *The Evaluation of China's General Principles of Civil Law*, 34 AM. J. COMP. L. 705-13 (1986); *International Business Law Conference: Investment and Trade with the People's Republic of China*, 12 LOY. INT. & COMP. L. J. (1989); Note, *Special Economic Zones in the People's Republic of China*, 13 SYR. J. INT'L L. & COM. 345 (1986); Silk, *Recent Efforts in China's Drive to Promote Investment Through the Protection of Intellectual Property Rights: The 1988 Trademark Rules and the 1988 Technology Import Contract Rules* 15 SYRACUSE J. INT'L L. & COM. 215 (1989); Vause, *China's Ideological Retrenchment - Can the Economic and Legal Reforms Survive?*, 23 GEO. WASH. J. INT'L L. & ECON. 112 (1989); Watson, *Business Law in the People's Republic of China: 1978-1988*, 27 AM. BUS. L. J. 315 (1989); Zhang, *Like Bamboo Shoots After a Rain: Exploiting the Chinese Law and New Regulations on Sino-Foreign Joint Ventures*, 8 NW. J. INT'L L. & BUS. 59 (1987); Zheng, *China's New Civil Law*, 34 AM. J. COMP. L. 669 (1986). Zheng, *Foreign Investment Law in the People's Republic of China: A 1986 Update*, 19 INT'L L. & POL. 269 (1987).

¹³ For general discussion, see articles cited *supra* note 12.

¹⁴ *Id.*

¹⁵ See generally M. TSE-TUNG, QUOTATIONS FROM CHAIRMAN MAO 25 (1967), stating: We are confronted by two types of social contradictions—those between ourselves and the enemy and those among the people themselves. The two are totally different in their nature. . . .

In ordinary circumstances, contradictions among the people are not antagonistic. But if they are not handled properly, or if we relax our vigilance and lower our guard, antagonism may arise. In a socialist country, a development of this kind is usually only a localized and temporary phenomenon. The reason is that the system of exploitation of man by man has been abolished and the interests of the people are basically the same.

Compare Jiang's speech reported in *China Daily*, *Jiang Hails*, *supra* note 6, wherein he stated:

[W]e must differentiate between two different kinds of contradictions and act according to the law and policies. For those who participated in parades, demonstrations and a hunger strike due to their ignorance of the truth, especially the young students . . . it was

frustration over the job assignment system, proved too much for the Chinese leaders to accept.¹⁶

The aftermath of Tiananmen Square was devastating to the PRC economy.¹⁷ Foreign businesses and investors concerned about the business climate and ultimate stability of the country put expansion plans on hold.¹⁸ This "unfortunate incident"¹⁹ further clouded the investment climate already injured by reports of problems well publicized by Beijing Jeep/AMC.²⁰ The economic problems of inflation and stagnation were compounded by the prospect of foreign sanctions, the threatened loss of Most Favored Nation (MFN) status and the immediate decline of tourist revenues precipitated by the demonstrations and the imposition of martial law.²¹

mainly a question of education. We should help them so that they will draw experience and lessons from the events (referring to Tiananmen).

See M. Tse-Tung, *On the Correct Handling of Contradictions Among the People*, in 1 SELECTED WORKS, *supra* note 4, at 57, for the role of contradictions within an uprising:

It [the 1956 counterrevolutionary rebellion in Hungary] was a case of reactionaries inside a socialist country, in league with the imperialists, attempting to achieve their conspiratorial aims by taking advantage of contradictions among the people to foment dissension and stir up disorder. The lesson of the Hungarian events merits attention.

¹⁶ See *Iron Fists Urged to Crush Rail Saboteurs*, China Daily, June 9, 1989, at 1 col. 1.

¹⁷ See Denny, *Balance of Payments after Tiananmen*, CHINA BUS. REV., Nov. - Dec. 1989 at 48; *Foreign Investors Shudder over China*, Wall St. J., June 6, 1989, at A25, col. 1.

¹⁸ Adams, *U.S. Lawyers in China: Slower Business Makes Some Put Off Expansion*, NAT'L L. J., Oct. 23, 1989, at 24, col. 1; Lord, *supra* note 8, at 5.

¹⁹ "Unfortunate incident" were the words used repeatedly by Chinese citizens the author met during her visit to China in May - June 1990.

²⁰ J. MANN, *BEIJING JEEP: THE SHORT UNHAPPY ROMANCE OF AMERICAN BUSINESS IN CHINA* (1989) (the author, by focusing on the experiences of a specific company [AMC], recounts the initial euphoria many Western businesses experienced when given the opportunity to invest in China in the 1980s and the subsequent disillusionment and frustration they felt when confronted with an alien culture).

²¹ PRC State Council, *Implementing Martial Law in Certain Parts of Beijing Municipality Order* was issued on May 20, 1989 and signed by Li Peng, Premier of the State Council, "PRC, Administrative Litigation Law," 3 CHINA L. PRAC. 37 (June 5, 1989) [hereinafter, "PRC," 3 CHINA L. PRAC.]. See also Weinraub, *President Spurns Other Sanctions*, N.Y. Times, June 6, 1989 at 1, col. 5; Ignatius, *China's Economic Reform Program Stalls*, Wall St. J., Sept. 1989, at A22, col. 1. For President Bush's determination of MFN status, see *Determination under Section 402(d)(5) of the Trade Act of 1974*, 54 Fed. Reg. 26,943 (1989). Note that this action was taken May 31, 1989, prior to the Chinese Government's military action. There were also almost twenty bills introduced in the aftermath of Tiananmen Square (H.R. 2966, 101st Cong., 1st Sess., 135 CONG. REC. 4078 (1989); S. 1370, 101st Cong., 1st Sess., 135 CONG. REC. 8488 (1989); H.R. 2915, 101st Cong., 1st Sess., 135 CONG. REC. 3817 (1989); S. 1288, 101st Cong., 1st Sess., 135 CONG. REC. 7657 (1989); HR. 2775, 101st Cong., 1st Sess., 135 CONG. REC. 3317 (1989); S. 1268, 101st Cong., 1st Sess., 135 CONG. REC. 7504 (1989); S. 1278, 101st Cong., 1st Sess., 135 CONG. REC. 7504 (1989); S. 1239, 101st Cong., 1st Sess., 135 CONG. REC. 7314 (1989); S. 1241, 101st Cong., 1st Sess., 135 CONG. REC. 7250 (1989); S. 1242, 101st Cong., 1st Sess., 135 CONG. REC. 7250 (1989); S. 1213, 101st Cong., 1st Sess., 135 CONG. REC. 7097 (1989); S. 1209, 101st Cong., 1st Sess., 135 CONG. REC. 6980 (1989); H.R. 2638, 101st Cong., 1st Sess., 135 CONG. REC. 2593 (1989); H.R. 2611, 101st Cong., 1st Sess., 135 CONG.

The year 1990 marked the end of martial law in China and the new leadership's efforts to return to normalcy.²² "Stability" was a buzzword of all speeches, as was "rectification."²³ However, the reality is still problematic. China in its efforts to modernize still faces enormous hurdles. The recent trend toward centralization has sent a confused message to potential and current investors.²⁴ President Bush's extension of MFN status in May 1990,²⁵ and the World Bank's resumption of some loans signified a positive step toward normalcy.²⁶ China's solidarity with the United States and the Soviet Union on the problem of Iraq's aggression against Kuwait in August 1990 has been significant.²⁷ By such steps, China may return to its previous standing in the world community. However, the momentum of the "China Syndrome" or the "Westchester

REC. 2521 (1989); H.R. 2613, 101st Cong., 1st Sess., 135 CONG. REC. 2521 (1989); H.R. 2624, 101st Sess., 135 CONG. REC. 2521 (1989); S. 1151, 101st Cong., 1st Sess., 135 CONG. REC. 6405 (1989); H.R. 2002, 101st Cong., 1st Sess., 135 CONG. REC. 1277 (1989)). However, only the *Emergency Chinese Adjustment of Status Facilitation Act of 1989*, H.R. 2712 101st Cong., 1st Sess., 135 CONG. REC. (1989), was passed. The Senate voted on this November 20, 1989, President Bush vetoed it and congress did not override the veto. However President Bush, in accord with his stated intentions, issued an Executive Order on the *Policy Implementation with Respect to Nationals of the People's Republic of China*, which allowed PRC citizens to extend their stay in the United States. The order also provided: "Sec 4. The Secretary of State and the Attorney General are directed to provide for enhanced consideration under the immigration laws for individuals from any country who express a fear of persecution upon return to their country related to that country's policy of forced abortion or coerced sterilization. . . ." The order was signed April 11, 1990. Executive Order No. 12, 711, 3 C.F.R. 12,711 (1990).

²² *Martial Law in Beijing Lifted as of Today*, China Daily, Jan. 11, 1990, at 1, col. 1 [hereinafter China Daily, *Martial Law*]; Hong, *Wang Maps Out Major Tasks for Rectification*, China Daily, Jan. 9, 1990, at 1, col. 7.

²³ *Jiang Stresses Stability, Unity as Decade Goals*, China Daily, Jan. 2, 1990, at 1, col. 1 [hereinafter China Daily, *Jiang Stresses Stability*]. It was reported that Jiang stated, "[S]ocial stability is a matter of prime importance in China. Only when society is stable can we concentrate our efforts on various tasks." See also Ignatius, *China Fires up Propaganda Machine to Halt Inroads of Western Influence*, Wall St. J., Aug. 23, 1990, at A10, col. 1 (report on use of propaganda to counteract influence of "bourgeois liberalism").

²⁴ See VAUSE, *supra* note 12, at 144-77; sources cited *supra* note 17 and accompanying text.

²⁵ *MFN Battle Takes a New Turn*, CHINA BUS. REV. July - Aug. 1990, at 4 [hereinafter *MFN Battle*]; *Determination under subsection 402(d)(5) of the Trade Act of 1974 - Continuation of Waiver Authority*, 55 Fed. Reg. 23, 183 (1990). The actual date was May 24, 1990. Prior to this President Bush had issued a Proclamation on May 12, 1990, declaring May 13, 1990 to be *National Day in Support of Freedom and Human Rights*, Proclamation No. 6134, 55 Fed. Reg. 20,259 (1990). He stated that the "[The] United States hoped that these steps [release of prisoners] will be followed by others that will demonstrate China's return to the path of reform." *Id.* But see *infra* notes 64 & 195 and accompanying text for discussion Congress' most recent attempt to place conditions on MFN status.

²⁶ *World Bank Program Continues at a Crawl*, CHINA BUS. REV., July - Aug. 1990, at 4 [hereinafter *World Bank*].

²⁷ Pace, *U.S. Calls on Navies to Block Iraq's Trade: Resolution Permits Use of Force, U.S. Says*, N.Y. Times, Aug. 26, 1990, at 1, col. 1.

County Syndrome"²⁸ is lost as there is a lingering concern over the succession of leadership and the future direction of the "open door policy" and market socialism if Deng Xiaoping dies.²⁹ The concern is timely since the question is not "if," but "when."³⁰

This article will examine the developments in the legal environment in the PRC since Tiananmen Square focusing on the political, legal and economic changes during the past twenty-five months. The article will offer an assessment of China's present condition and argue that revocation of China's MFN status by the United States or imposition of additional sanctions will be detrimental to China's economic, political and human rights efforts as well as to U.S. interests. The article will conclude with several suggestions to improve the business climate.

II. DEVELOPMENTS SINCE TIANANMEN SQUARE 1989

There is no disagreement that the business environment has changed in China since the Tiananmen Square demonstrations. However, the focus on the demonstrations obscures problems that existed in the business environment before the crackdown.³¹ The demonstrations catalyzed domestic dissatisfaction with living conditions, corruption and nepotism in government.³² To understand the current business environment in China, however, it is necessary to examine the political, legal and socio-economic areas.

A. Political

The death of former Communist Party Chief Hu Yao Bang on April

²⁸ "China Syndrome" was described by a businessman to the author as "the dream of selling one widget to each of the one billion Chinese once a year." An alternate appellation is the "Westchester County Syndrome," where business people rush over to China simply to score points at the country club. Pye, *The China Trade: Making the Deal*, HARV. BUS. REV. July - Aug. 1986 at 74, 74.

²⁹ See generally Kristof, *Is There a Reformer in China's Future?* N.Y. Times, June 17, 1990, at E2, col. 1 (discussing speculation about the succession after Deng).

³⁰ This statement is based upon Deng's age and his retirement from all official post. See *infra* note 53.

³¹ For a history of reporting on the economic problems see Ignatius, *Beijing, Faced with Economic Crisis, Draws Back from Liberalization Drive*, Wall St. J., Sept. 26, 1988, at 22, col. 5 [hereinafter Ignatius, *Economic Crisis*]; Ignatius, *China's Effort to Curb Economic Growth is likely to Damp Foreign Investment*, Wall St. J., Oct. 26, 1988, at A19, col. 5. See also articles cited *supra* note 12. However, despite the problems, 1988 was a very positive year for U.S.-China economic relations. Lord *supra* note 8, at 20.

³² See Vause, *supra* note 12, at 112-13; Lord, *supra* note 8, at 3 (noting that "[a]t the beginning no one attacked the leadership or called for Western-style democracy. For weeks the students' platform consisted of two concrete requests: an acknowledgement that the demonstrators were patriotic and a dialogue between genuine student leaders and the political leaders"). See generally M. YI & M. THOMPSON, *supra* note 1, at 155-236 (containing transcripts of student declarations and transcript of meeting with Li Peng).

15, 1989, touched off a demonstration which grew into the pro-democracy movement.³³ After apparent dissension in the ruling party about how to handle the demonstration and a tearful appearance by Communist Party secretary Zhao Ziyang pleading with the demonstrators to leave, the army moved in on June 4 to clear the Square.³⁴ Official accounts of the demonstrations called it a "subversive action, a state of anarchy and finally, bloody violence" noting that innocent citizens were led astray.³⁵ Jiang Zemin (former party chief in Shanghai) was voted to replace Zhao Ziyang as Communist Party Secretary.³⁶ It was also reported that an ongoing investigation into Zhao's activities would continue.³⁷ The Central Committee reportedly exhorted the faithful to "quell counterrevolutionary rebellion while making a clear distinction between [the] two types of contradictions."³⁸

During this immediate post-Tiananmen phase there were many public announcements by Premier Li Peng and Party Secretary Jiang.³⁹ The party stressed that Western capitalism was not China's model, reiterating the need to conform to the four cardinal principles of:

1. Socialist road,
2. People's Democratic Dictatorship,
3. Leadership of the communist party,
4. Marxism/Leninism and Maoist thought.⁴⁰

The leaders continued to stress that reform and the open door policy would continue, based upon five principles:

1. adherence to both the above four cardinal principles and the commitment to opening to the outside;
2. the "superiority" of socialism;

³³ For a history of recent dissident activity predating the 1989 events, see Gargan, *China's Cultural Crackdown*, N.Y. Times, July 12, 1987, at 25 (magazine); see also, sources cited *supra* note 1 (for discussion and history of 1989 events).

³⁴ For text of Zhao Ziyang's Farewell speech at Tiananmen Square May 19, 1989, see M. YI & M. THOMPSON, *supra* note 1, at 180-82.

³⁵ *Restoring Order*, China Daily, June 17, 1989, at 2, col. 1.

³⁶ *CPC Changes Top Leadership*, China Daily, June 26, 1989, at 1, col. 1 [hereinafter China Daily, *CPC*].

³⁷ The Central Committee reportedly exhorted the faithful to "quell counterrevolutionary rebellion while making a clear distinction between [the] two types of contradictions."

³⁸ *Id.* For a discussion of "contradictions," see sources cited *supra* note 15.

³⁹ China Daily, *CPC supra* note 36.

⁴⁰ *Editorial Points to the Basic Principles*, China Daily, June 24, 1989, at 1, col. 7. Also resurrected was an earlier emphasis on the ideal Chinese citizen. During the author's visit several officials had to excuse themselves from appointments because they had to attend to their Lei Feng commitment. Lei Feng was a selfless communist who died in 1962. He had also been a hero during the Cultural Revolution. See Ignatius, *China Turns Dead Hero of Radical Era Into Proponent of Capitalist Reforms*, Wall St. J., Apr. 5, 1988, at 3, col. 2. The Chinese have also imposed new political study requirements on all people. See WuDunn, *Chinese Submit to Analysis (the Political Sort)*, N.Y. Times, Feb 18, 1990, at 21, col. 1.

3. restructuring to "combine planned economy and market regulation";
4. policy of reform and opening to the world should be guided by stability;
5. new reforms should be experimented with but not implemented overnight.⁴¹

The government lifted martial law on January 11, 1990, and reiterated the main task: "to improve the economic climate, straighten out the economic order and deepen reform."⁴² However, economic prosperity and a stable social and political environment are inextricably linked.⁴³ Premier Li Peng also serves as a Minister of the State Committee to Restructure the Economy, an organization with a ten year agenda committed to reforming the economy.⁴⁴ Li stated that, "1990 will be a very important year for economic rectification and deepening of reform and it is also the beginning of the new decade. This year's achievements will be of great significance."⁴⁵ While the suppression of dissent was systematic and comprehensive, the Chinese government has tried in a limited way to respond to world concerns.⁴⁶ The government, in a publicized manner, ordered the release of prisoners in May 1990,⁴⁷ increased the number of bribery cases reported and prosecuted (from 35,000 to 100,000),⁴⁸ prohibited government officials from accepting gifts,⁴⁹ and instigated meas-

⁴¹ *Li Explains Principles of Reform, Opening Up*, China Daily, Jan. 10, 1990, at 1, col. 1 [hereinafter China Daily, *Li Explains*].

⁴² China Daily, *Martial Law*, *supra* note 22.

⁴³ See generally M. YI & M. THOMPSON, *supra* note 1, at 156 (quoting People's Daily, April 26, 1989 editorial which, as translated, states in part:

If unrest is given free rein, China will be thrown into confusion. The reform and opening up to the outside world, improving the economic environment and rectifying the economy, construction and development, price control, improvement of living standards, opposing corruption, and the building of democracy and legality which all Chinese people including young students desire will come to nothing and even the great achievements of the 10-year reform will all be lost. The nation's great desire to create a prosperous China will become impossible. A promising China will become a turbulent and hopeless one.

⁴⁴ China Daily, *Li Explains*, *supra* note 41.

⁴⁵ China Daily, *Jiang Stresses Stability*, *supra* note 23. See also, *Economic Efficiency Priority for Next Year*, China Daily, Dec. 18, 1989, at 1, col. 2, for discussion of the priority of economic efficiency.

⁴⁶ See *Li Describes SEZs as Part of Nation's Major Reform Plan*, China Daily, Feb. 10, 1990, at 1, col. 1, for a discussion of Special Economic Zones (SEZ) as indicative of the continuation of the open door policy. But see China Daily, *China Will Not Bend*, *supra* note 2 for discussion on the Chinese refusal to "yield" to any foreign pressure.

⁴⁷ Kristof, *China Announces Release From Jail of 211 Dissidents*, N.Y. Times, May 11, 1990, at 1, col. 1. The government also stated in its release that "431 lawbreakers involved in the turmoil and rebellion were still under investigation." *Id.*

⁴⁸ Hong, *More Cases of Bribery Uncovered*, China Daily, Nov. 22, 1989, at 1, col. 1. For a discussion of the problem, see Leung, *Greased Palms Lubricate Wheels in China*, Wall St. J., July 20, 1989, at A10, col. 1.

⁴⁹ *CPC Drives to Put an End to All Corruption*, China Daily, July 29, 1989, at 1, col. 1, stating

ures to revamp the personnel system to eradicate nepotism.⁵⁰ All these have been connected in some way to the students' original demands in 1989.⁵¹ More recently, in September 1990, the leadership made great efforts to assure that the Asian games held in Beijing would be successful and unblemished by difficulties.⁵²

Deng Xiaoping's retirement from the post of Chairman of the Military Commission was reported in November 1989 as having occurred in September 1989.⁵³ The stated purpose of his replacement by Party Secretary Jiang was to show that the cult of personality and lifelong tenure was no longer part of the Chinese process.⁵⁴ This move was designed to bring confidence to the foreign interests that succession upon Deng's death would no longer be an issue.⁵⁵ However, the critical question remains: what will happen when Deng Xiaoping dies? Although he has purposefully retired from his last post to blunt this speculation, it is difficult to avoid the issue. Both foreign investors and Chinese citizens discuss the inevitability of this issue and the likely outcomes.⁵⁶ Deng, the architect of the "open door" policy, still plays a strong role behind the scenes in reconciling the pace of economic change with the Four Principles.⁵⁷ Deng's death could bring a shifting emphasis. Winston Lord, a former ambassador, stated:

The current agony like the cultural revolution, may well propel China forward again. It is clear that political reform must accompany eco-

that it was strictly forbidden to entertain "guests and send gifts with public funds. Members of the Political Bureau and Secretariat of the CPC Central Committee and the State Council shall not entertain domestic guests at public expense. . .they shall not accept gifts." See also *Corrupt Senior Officials Sacked*, China Daily, July 10, 1989, at 1, col. 11; *Punishments set for Immoral Members*, China Daily, Jan. 18, 1990, at 1, col. 5.

⁵⁰ Changwen, *Testing to Replace Back Door in Hiring*, China Daily, May 10, 1990, at 1, col. 1. See generally, *Personnel Systems to Follow Economic Political Reforms*, China Daily, Apr. 17, 1990, at 1, col. 1, for a discussion of a personnel system to follow economic and political reforms.

⁵¹ For discussion of student demands, see sources cited *supra* notes 1-2.

⁵² See McGregor, *Goodwill Eludes China in Asian Games*, Wall St. J., Sept. 14, 1990, at A11, col. 1.

⁵³ *Deng Retires, Jiang Military Chief*, China Daily, Nov. 10, 1989, at 1, col. 1.

⁵⁴ *Id.*

⁵⁵ *Contra* U.S. NEWS & WORLD REP., Nov. 20, 1989, at 44. The column analyzes this transition and suggests Jiang has no personal power base and that he has no military background. The report also notes the hard liner Yang Shangkun, currently an Army General, was simultaneously named vice chairman and a brother, Gen. Yang Baibang, was named Chief Political Commissar of the Armed Forces. The column concludes by stating that "[a]s one pundit note[d], wherever Deng sits is the head of the table." For an interesting history of Deng's career, noting that he spent time during the cultural revolution as a "worker in a mess hall of a school for party officials, serving rice and vegetables to others members of the school," see R. GARSIDE, *COMING ALIVE: CHINA AFTER MAO* 55 (1981). This raises interesting possibilities that even Zhao Ziyang could resurface upon Deng's death. For discussion of this speculation, see Sterba, *supra* note 3, at A4, col. 1.

⁵⁶ Based upon discussions with individuals during the author's visit to China in 1990.

⁵⁷ See *supra* note 40.

conomic reform. We know now that it is too much to expect octogenarians to lead the country to new frontiers. It will require fresh vision and flexibility of a younger generation.⁵⁸

Precisely who will emerge as the leader or leaders following this event cannot be predicted upon title alone. It is not impossible to consider even that Zhao's career could be resurrected in light of other leaders', and Deng's, tortuous career paths.⁵⁹

China's Security Council support, in August and September 1990, for the United States' position of an embargo against Iraq because of its invasion of Kuwait, reenforced the mutuality of Sino-U.S. relations.⁶⁰ Although the United States may not approve of many Chinese domestic policies (for example: executions,⁶¹ trials without representation,⁶² and enforced birth control⁶³), the United States needs China's support. This showing of China's solidarity with the West and the Soviet Union will help smooth out China's external relationships, and improve the business climate.⁶⁴

⁵⁸ Lord, *supra* note 9, at 7.

⁵⁹ See *supra* notes 55 & 56.

⁶⁰ Pace, *supra* note 27 at 1, col. 6.

⁶¹ See 65 *Executed on One Day in China as a Part of Wide Crime Crackdown*, Boston Globe, Sept. 20, 1990, at 26, col. 3. See also, *Group Says China Killed 500 in '90*, Boston Globe, Sept. 13, 1990, at 37, col. 3, regarding Amnesty International Report. It was reported that over five hundred people were executed in 1989-1990 and some within two weeks of their arrest. The report also stated that "1,100. . . have been sentenced to death in the last 12 months." *Id.*

⁶² See Shum, *The Role of Chinese Lawyers in Criminal Proceedings*, 5 CHINA L. REP. 213 (1990); *But cf.* Ross, *The Changing Profile of Dispute Resolution in Rural China: The case of Zouping County, Shandong*, 26 STAN. J. INT'L L. 15 (1989) (explaining the use of dispute resolution and the growing importance of law). See generally Kim, *The Modern Chinese Legal System*, 61 TULANE L. REV. 1413 (1987) discussing the structure of the legal system); Kraus, *Legal Education in the People's Republic of China*, 13 SUFFOLK TRANSNAT'L L. J. 75 (1989).

⁶³ See J. ETHRIDGE, *supra* note 1, at 62-69; Zhu, *One Child Policy To Continue*, China Daily, Jan. 9, 1990, at 1, col. 3, stating that "China will firmly adhere to the country's family planning policy that encourages a couple to have only one child." Interestingly, one factory director lamented that his responsibilities included enforcing this policy and "persuading" individuals to have abortions.

⁶⁴ The actions of the U.S. Congress during the next year will indicate which direction the United States and China are moving toward. Bush's position is clear; he wants to impose no more sanctions. However, on October 18, 1990, the House of Representatives acted by passing a bill H.R. 4866, now called H.R.J. Res. 647, 101st Congs., 2d Sess., 136 CONG. REC. 2491 (1990) sponsored by Rep. Gerald Solomon, Republican, of New York. The bill "disapproved of the recommendations of the President to extend nondiscriminatory treatment (most favored nation treatment) to the products of the People's Republic of China." The vote was 247 to 174. The measure would revoke the MFN status extended by Bush in May 1990. Another measure, H.R. 4939, sponsored by Rep. Pease (Democrat, Ohio) and which passed 384 to 30, sets additional human rights as conditions for continuation of MFN next year. See also Farnsworth, *Assailing Beijing, House Votes A rise in China's Tariffs*, N.Y. TIMES, Oct. 19, 1990, at 1, col. 3; Kurkjian, *House Votes to Deny China Favored Trade Status*, Boston Globe, Oct. 19, 1990, at 3, col. 1. Both reports noted that action in the Senate was unlikely and Bush would certainly veto any similar piece. The Globe report noted that "[w]ith

B. Legal

The political and legal areas can be difficult to separate, since the political climate creates the conditions under which laws are enacted. However, there are results, new laws for example, which can be analyzed. Several legal enactments since June 1989 are noteworthy.

The Administrative Litigation Law, passed at the second meeting of the seventh National People's Congress on April 4, 1989, with an effective date of October 1, 1990.⁶⁵ The seventy-five articles in the Law, as reported in the *China Daily*, provide: "the overseas firms can sue the government for revoking their foreign trade rights, closing their business, seizing their goods, halting bank loans, freezing their foreign exchange earnings, refusing to give a license and defaulting on government obligations. . . forced purchase of products, forced firm mergers and transfer of trademark rights."⁶⁶ The Law was enacted in concert with Article 41 of the PRC's 1982 Constitution.⁶⁷ PRC citizens are given the right to use

Congress on the verge of adjournment, Bush could hold onto the Pease bill until the session ends, effectively killing it and denying Congress the opportunity to override." The H.R. 4939, as reported in the Congressional Record, was also amended:

Conditional MFN Treatment for the People's Republic of China: By a yea-and-nay vote of 384 yeas to 30 nays, Roll No. 486, the House passed H.R. 4939, regarding the extension of most-favored-nation treatment for the products of the People's Republic of China. Agreed to the committee amendment in the nature of a substitute.

The Pelosi amendment, as modified, that requires the President to certify that China has accounted for citizens detained or accused of acts regarding the Tiananmen Square massacre and released citizens imprisoned after such detention or accusation before MFN status can be granted; requires that the President verify that substantial progress has been made towards the other human rights goals detailed in the bill; and requires that "substantive progress" be made by the Chinese Government regarding the end of religious persecution in China and Tibet, and toward the release of the leaders and members of all religious groups detained (agreed to by a recorded vote of 347 yeas to 74 nays, Roll No. 484) and. . .

The Porter amendment, as modified, that requires the President, prior to the granting of MFN status, to include in his report to Congress that China is following the instructions of the 1984 Joint Declaration on Hong Kong between China and Great Britain regarding the transfer of Hong Kong to China by 1997; established certain human rights principles for United States businesses operating in China; and requires a report be submitted to Congress by the State Department regarding the level to which United States companies have adhered to those principles (agreed to by a recorded vote of 409 yeas to 7 nays, Roll No. 385).

H.R.J. Res. 647, 101st. Cong., 2nd. Sess., 136 CONG. REC. 2491 (1990). The debate on the issue did not divide along party lines. Representative Dan Rostenkowski spoke against H.R.J. Res. 647 and urged Congress not "to isolate China" and to "preserve America's influence in China." *Id.* (statement of Rep. Rostenkowski).

⁶⁵ "PRC," 3 CHINA PRAC., *supra* note 21, at 37-57. Interestingly, while the law passed on April 4, 1989, with an effective date of October 1, 1989, the date was changed to October 1, 1990.

⁶⁶ Zhou, *Mofert Sets Law Suit Defenses*, *China Daily*, Aug. 20, 1990, at 2, col. 2.

⁶⁷ See PEOPLE'S REPUBLIC OF CHINA CONST. art. 41:

ARTICLE 41

Citizens of the People's Republic of China have the right to criticize and make sugges-

the proceedings, as are foreigners. Article 71 states that “[f]oreigners, stateless persons and foreign organizations conducting administrative litigation in the People’s Republic of China shall enjoy the same litigation rights and be subject to the same obligations as citizens and organizations of the PRC.”⁶⁸ The Law also recognizes the principle of reciprocity, noting that if a foreign country restricts the rights of a foreigner, so too will China.⁶⁹ The parties have the right to “argue their case during administrative litigation.”⁷⁰

In part II, Articles 11 and 12 deal with the types of cases. People’s Courts cannot accept cases based upon “national defense or diplomacy, final adjudicative acts, or personnel decisions.”⁷¹ However, they do have jurisdiction over a range of cases dealing with administrative acts such as the revocation of permits or licenses, confiscation or sealing up property, failure of administrative authority to exercise its duty, infringement of personal or property rights, restriction of personal freedom, failure to allocate pension as well as other such matters as are provided for by law.⁷²

Part III addresses jurisdiction (Articles 13-20) and allocates jurisdiction among the four levels of courts; Base Level People’s Courts, Intermediate People’s Courts, Higher People’s Courts, and Supreme People’s Courts.⁷³ The two highest levels are reserved for “major and complicated cases” arising in either “. . . their area of jurisdiction” or arising “. . . throughout the country.”⁷⁴ There is no other specific guidance, leaving much discretion with the government.⁷⁵

tions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited.

In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them.

Citizens who have suffered losses through infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.

Id. The constitution may also be found in 25 BEIJING REV., Dec. 27, 1982, at 10; DOING BUSINESS IN CHINA: CONTRACT LAW AND BUSINESS (C. Kidregan & C. Dunn, eds. 1987).

⁶⁸ “PRC,” 3 CHINA L. PRAC. *supra* note 21, at 54.

⁶⁹ *Id.*

⁷⁰ *Id.* at 38 (referring to Article 9). For a discussion of the broader issue of the role of Chinese lawyers see articles cited *supra* note 62.

⁷¹ “PRC,” 3 CHINA L. PRAC. *supra* note 21, at 39 (Article 12).

⁷² *Id.* at 38 (Article 11).

⁷³ *Id.* at 40 (Articles 13-16).

⁷⁴ *Id.* (Articles 15-16).

⁷⁵ The issue of government discretion also pertains to a discussion of Hong Kong Basic Law. See generally *infra* note 137 and accompanying text.

Part IV (Articles 24-30) addresses the concept of proper parties, issues of joinder and the right to representation by a lawyer or relative.⁷⁶ All lawyers must be Chinese citizens.⁷⁷ Part V (Articles 31-36) defines evidence.⁷⁸ Part VI, Institution and Acceptance of Proceeding (Articles 37-42) concerns timetables.⁷⁹ Part VII, Trial and Adjudication (Articles 43-64) provide a public hearing,⁸⁰ unless state secrets or "private affairs of individuals" are involved.⁸¹ There is a three month time limit for hearing a case with a possible extension.⁸² An administrative act will be ruled invalid (Article 54) when evidence is "insufficient," laws were applied incorrectly, or the act was in excess of authority or where powers were abused.⁸³ Part VIII, Enforcement (Articles 65-66), gives the court the power to transfer money in bank accounts⁸⁴ to satisfy a judgement and allows criminal penalties where an authority refuses to abide by the decision.⁸⁵

Part IX, Tortious Liability (Articles 67-69), applies when "citizens and legal persons or other organizations suffer losses due to the violation of their lawful interests by specific administrative acts."⁸⁶ A damages remedy is provided.⁸⁷ There is also a provision that "[a]fter an administrative authority has paid damages, it shall order personnel who intentionally [caused damage] or who were grossly negligent to indemnify part or all of the damages [awarded by the court]."⁸⁸ There are also financial penalties for failure to perform.⁸⁹

Part X, Foreign-Related Administrative Litigation, states that foreigners shall enjoy the same litigation rights subject to the aforemen-

⁷⁶ "PRC," 3 CHINA L. PRAC., *supra* note 21, at 41-43.

⁷⁷ *Id.* Compare Article 29, which states, "Lawyers, societies, close relatives of citizens instituting proceedings or individuals recommended by the work unit of citizens instituting proceedings and other citizens approved by the People's Court may be appointed as agents *ad litem*," *id.* at 43, with Article 73 (dealing with "Foreign Related Administrative Litigation"). Article 73 states: "Foreigners, stateless person and foreign organizations conducting administrative litigation in the People's Republic of China who wish to appoint a lawyer as an agent *ad litem* shall appoint a lawyer from a lawyer's organization of the People's Republic of China." *Id.* at 54-55. Article 29 is less direct than Article 73, explicitly limiting the representation to Chinese lawyers but, by implication, the same result would be obtained for a Chinese citizen.

⁷⁸ *Id.* at 43-44.

⁷⁹ *Id.* at 44-46.

⁸⁰ *Id.* at 47 (Article 45).

⁸¹ *Id.*

⁸² *Id.* at 50 (Article 57).

⁸³ *Id.* at 49.

⁸⁴ *Id.* at 52-53 (Articles 65-66).

⁸⁵ *Id.* at 53 (Article 65(iv)).

⁸⁶ *Id.* (Article 67).

⁸⁷ *Id.* at 54.

⁸⁸ *Id.*

⁸⁹ *Id.*

tioned reciprocity requirement.⁹⁰ Article 72 acknowledges the supremacy of international treaties, subject to any reservations expressed by the government.⁹¹ Foreigners are restricted to appointing a PRC Chinese lawyer.⁹² Part XI, Supplementary, prescribes that the losing party shall bear the costs of litigation.⁹³ The effectiveness and usefulness of this law cannot be assessed on the date of its entry into force. However, it will be an important area to watch in the next year.

A second significant legal development was the creation of a committee under the National People's Congress (NPC) of the Basic Law of the Hong Kong Special Administrative Region (Basic Law), planned for July 1, 1997.⁹⁴ A committee was created to study the problematic Articles 17,⁹⁵ 18,⁹⁶ 158,⁹⁷ and 159.⁹⁸ The Basic Law creates a Special Administrative Region (SAR) in Hong Kong effective July 1, 1997.⁹⁹ There is an annex to the Basic Law dealing with the election of the chief executive of the SAR.¹⁰⁰

The preamble to the Basic Law notes that Hong Kong was part of China until the Opium War with Britain in 1840.¹⁰¹ In 1984, China and Britain agreed, via the "Joint Declaration on the Question of Hong Kong," to the return of Hong Kong to China in 1997.¹⁰² China acknowledges, in concert with its Constitution (Article 31), the principle of "one country, two systems."¹⁰³ Article 5 specifically guarantees that "the socialist system and policies shall not be practiced in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years."¹⁰⁴ This guarantee may be questioned and even if it is true that Hong Kong residents are concerned for their children and their childrens' children.¹⁰⁵ Chapter III outlines "Fundamental Rights and Duties" and lists many freedoms that

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* See sources cited *supra* note 77.

⁹³ "PRC," 3 CHINA L. PRAC., *supra* note 21, at 55.

⁹⁴ *Decisions Adopted on HK Basic Law*, China Daily, April 5, 1990, at 1, col. 1 [hereinafter China Daily, *Decision*]. The newspaper reported that the law passed at the National People's Congress (NPC) by a vote 2,660 to 16 with 29 abstaining and 8 to voting. *Id.*

⁹⁵ *Id.* at 3.

⁹⁶ *Id.*

⁹⁷ *Id.* at 6.

⁹⁸ *Id.* at 6.

⁹⁹ *Id.* at 1.

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Id.* at 3.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See *Hong Kong: Friend or Foe*, CHINA BUS. REV. Mar.-Apr. 1990, at 4. See also Horsley *Echoes from Tiananmen*, CHINA BUS. REV. Sept.-Oct. 1989, at 22 (noting that "[a]n estimated

the Hong Kong residents will have after 1977, including freedom of speech,¹⁰⁶ freedom of the press and publication,¹⁰⁷ freedom of association,¹⁰⁸ freedom of assembly, of procession and of demonstration,¹⁰⁹ and the right and freedom to form and join trade unions, and to strike.¹¹⁰ Other freedoms include freedom from arbitrary unlawful imprisonment,¹¹¹ and searches,¹¹² freedom and privacy of communication,¹¹³ freedom to travel,¹¹⁴ freedom of religion,¹¹⁵ of occupation,¹¹⁶ of research and artistic creation,¹¹⁷ and confidential legal protection.¹¹⁸

A separate governing structure is created while the judiciary (Section 4) remains unchanged with the addition of the Court of Final Appeal of the Hong Kong SAR.¹¹⁹ Judges from other common law jurisdictions may be invited to sit on this court.¹²⁰ Trial by jury¹²¹ continues and there is a presumption of innocence of the accused.¹²² Article 158 is problematic because it vests the power to interpret the law in the Standing Committee of the National People's Congress.¹²³ The section acknowledges that, while the Courts of the SAR have autonomy, there may be some issues which are the responsibilities of the Standing Committee of the National People's Congress.¹²⁴ Similarly, Article 159 vests power to amend the Hong Kong law in the National People's Congress.¹²⁵ The only guarantee that the Basic Law will not be frustrated is the last sentence, stating that "[n]o amendment to this law shall contra-

45,000 people, and perhaps more emigrated from Hong Kong in 1988. The numbers are predicted to rise to 50-60,000 annually over the next few years").

¹⁰⁶ *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, China Daily, April 5, 1990, at 3, col. 1 [hereinafter *China Daily, Basic Law*] (quoting Article 27 which states in full: "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike").

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* (quoting Art. 28).

¹¹² *Id.* (quoting Art. 29).

¹¹³ *Id.* (quoting Art. 30).

¹¹⁴ *Id.* (quoting Art. 31).

¹¹⁵ *Id.* (quoting Art. 32).

¹¹⁶ *Id.* (quoting Art. 33).

¹¹⁷ *Id.* (quoting Art. 34).

¹¹⁸ *Id.* at 4 (quoting Art. 35).

¹¹⁹ *Id.* at 4-5 (Arts. 80-96).

¹²⁰ *Id.* at 5 (quoting Art. 92).

¹²¹ *Id.* at 4 (quoting Art. 86).

¹²² *Id.* (quoting Art. 87).

¹²³ *Id.* at 6.

¹²⁴ *Id.*

¹²⁵ *Id.*

vene the established basic policies of the People's Republic of China regarding Hong Kong."¹²⁶

Article 17 vests the SAR with legislative power but provides a mechanism for laws to be reported to the NPC.¹²⁷ It does not have the power to "amend" said law,¹²⁸ but returning a law renders it immediately "invalid."¹²⁹ Article 18 reiterates Hong Kong's autonomy and limits the application of National [PRC] laws to those contained in Annex III (for example, Territorial Sea, and Nationality Law, National Anthem etc.).¹³⁰ The PRC may add to the annex in "defence (sic) and foreign affairs as well as other matters outside the limits of the autonomy of the region as specified by this law."¹³¹ The discretion vested in the PRC does not offer comfort or support to Hong Kong residents who have viewed with skepticism the government's handling of the demonstration in 1989.¹³² Most troubling to Hong Kong residents are the provisions in Article 18 that if the Standing Committee of the NPC decides that a state of emergency exists "the Central People's Government may issue an order applying the relevant national laws in the region."¹³³ Thus, in one stroke of a pen, the PRC government may act via the NPC to suspend all freedoms delineated in the Hong Kong Basic Law.¹³⁴ In light of the May 20, 1989 declaration of Martial Law in Beijing,¹³⁵ the prohibition of disruptive activities and the limitation on Chinese and foreign journalists from "[c]onducting interviews, taking photographs, and shooting films in government agencies, schools, enterprises and on the street"¹³⁶ (precipitated by mass student demonstrations and hunger strikes), the guarantees of Article 18 are of little solace to the people about to be absorbed by the PRC.¹³⁷

¹²⁶ *Id.* (quoting Art. 159). However, this article is designated, along with three other (17, 18 and 158), for further study. See *supra* notes 95-98 and accompanying text.

¹²⁷ *Id.* at 3 (quoting Art. 17).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* The section makes reference to Annex III "National Laws to be Applied in the Hong Kong Special Administrative Region." *Id.* at 6.

¹³¹ *Id.*

¹³² *But see* Ignatius, *China's Old Enemies Capitalist Taiwanese, Now Invest in Mainland*, *Wall St. J.*, Aug. 2, 1990, at 1, col. 1 for discussion of investment in the PRC by Taiwanese despite economic and political difference.

¹³³ *China Daily*, *Decisions*, *supra* note 94, at 3.

¹³⁴ *Id.*

¹³⁵ See sources cited *supra* note 21.

¹³⁶ *China Daily*, *Decisions*, *supra* note 94, at 3. See also, Horsley, *Echoes from Tiananmen*, *CHINA BUS. REV.* Sept.-Oct. 1989 at 22-25.

¹³⁷ *China Daily*, *Basic Law*, *supra* note 106, at 6. See also, Horsley, *supra* note 105, stating that, "[p]erhaps the most visible expressions of Hong Kong's shattered confidence are the lines of visa seekers that have increased exponentially since June 4 outside of Hong Kong's foreign consulates."

There is also a concern about the "brain drain" in Hong Kong precipitated by this law and clearly efforts are being made to attract and retain citizens in Hong Kong.¹³⁸ China may not want to lose such a thriving economic metropolis as Hong Kong and may adhere to the "one country two systems policy" in part because the geographic separation allows them to isolate the freedoms that people in Hong Kong have long enjoyed from "polluting" the mainland.¹³⁹

In a third legal change, the National People's Congress amended the law of the PRC on Sino-Foreign Equity Joint Ventures,¹⁴⁰ on April 4, 1990, with an effective date on the same day. The Amendment states that the government will not nationalize or expropriate equity joint ventures.¹⁴¹ There is a special proviso, however, that under "special circumstances" not defined, there may be expropriation "according to legal procedures and appropriate compensation shall be paid."¹⁴² Special circumstances must be "based on the need of the social public interest."¹⁴³ Foreigners generally do not believe that this change is significant, because of the discretion vested in the Government, yet it is an important symbol of China's attempt to allay fears about China's future.

Section 2 substitutes a new name or generic name "competent department" in order to avoid dating the law.¹⁴⁴ Section 3 eliminates the requirement that the Chinese party be chairman, and substitutes: "If the Chinese venturer or foreign venturer assumes the office of the chairman, the other venturer shall assume the office(s) of vice-chairman or vice-chairmen."¹⁴⁵ Section 4 broadens the scope of equity joint ventures that

¹³⁸ See Shelton & Adams, *Filling Hong Kong's Labor Pool*, CHINA BUS. REV. Jan.-Feb. 1990, at 50, 50-52.

¹³⁹ This is the author's conjecture.

¹⁴⁰ Amendment to the Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures, (April 4, 1990) (WESTLAW, International Library, CHINALAW, File No. 0489) [hereinafter *Equity Joint Venture Amendment*]. A definition of an Equity Joint Venture is "[a] limited liability corporation jointly invested in and operated by the Chinese and foreign partners. Profits, risks, and remaining assets upon expiration of the venture are shared according to the percentage of equity held by each party. The corporation has legal person status." U.S. CHINA BUSINESS COUNCIL, U.S. INVESTMENT IN CHINA 245 (1990). This is distinguished from a Contractual Joint Venture, which is also known as Cooperative Joint Venture:

1) a limited liability entity with legal person status that closely resembles the equity joint venture in structure and operation; 2) a business partnership in which the parties cooperate as separate legal entities and bear liabilities independently. In either case, profits and assets remaining after expiration are divided as specified in the contract and not necessarily according to investment shares.

Id. at 247.

¹⁴¹ Equity Joint Venture Amendment, *supra* note 140.

¹⁴² *Id.* For history of the debate about compensation, see R. SCHAFFER, B. EARLE & F. AGUSTI, INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT, 411-19 (1990).

¹⁴³ Equity Joint Venture Amendment, *supra* note 140.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

are eligible for favorable tax treatment and eliminates the two to three year limit on the period of favorable treatment.¹⁴⁶ Section 5 eliminates the restriction on bank accounts only with the Bank of China.¹⁴⁷ Section 8 allows some equity joint ventures to be silent on the length of the term.¹⁴⁸

Other official pronouncements indicate a positive trend. For example, there is a recognition that the government needs to protect private businesses from extortion.¹⁴⁹ A local restaurateur acknowledged that to keep his business going he was paying bribes to various officials.¹⁵⁰ Nevertheless, he was able to earn 600 renminbi a month, which is more than the average Chinese income.¹⁵¹ The National People's Congress is also considering passing a long awaited copyright law and laws dealing with the press and publication.¹⁵² The Ministry of Foreign Economic Relations and Trade (MOFERT) announced that China needed to declassify unpublished laws and regulations.¹⁵³ There is a substantial concern that actions taken on the basis of unpublished laws would be void. This condition also reflects poorly on the investment climate for China and the Government has acknowledged a desire to rectify it. While the activity in promulgation of new laws has not been at the level of the early 1980s, there has been some action.¹⁵⁴ The enactment of the copyright law in the fall of 1990, by the NPC again reflected momentum after ten years of drafts. However, it is clear that the real struggle lies in both the political and economic areas over the future of "market socialism."¹⁵⁵

C. Economic

Immediately after Tiananmen Square there was an evacuation of foreign company executives and a suspension of many projects.¹⁵⁶ However, prior to the crackdown, China was facing substantial economic problems which had dramatic impact upon foreign investment and

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Steps Taken to Protect Private Business*, China Daily, Aug. 17, 1990, at 1, col. 1.

¹⁵⁰ Based upon conversations during author's visit in May and June 1990.

¹⁵¹ *Id.*

¹⁵² Hong, *Draft Laws on Agenda for NPC Session*, China Daily, August 27, 1990, at 1, col. 1.

For discussion of Copyright Law, see Schloss, *China's Long Awaited Copyright Law*, in CHINA BUS. REV. 24 (Sept.-Oct. 1990).

¹⁵³ Zhan, *supra* note 66 (stating that MOFERT had begun to ready for the implementation of the new administrative procedure law on October 1, and anticipated suits by foreign firms).

¹⁵⁴ See sources cited *supra* note 152.

¹⁵⁵ For discussion of market socialism and conflict over it, see Gargan, *supra* note 33. For a discussion of the framework of law and its interrelationship with the economic conditions see *Framework*, *supra* note 12.

¹⁵⁶ See generally notes 17 & 18.

trade.¹⁵⁷ In 1988, the results of China's decentralization and easy credit policies surfaced in a super-heated economy with an inflation rate of twenty percent.¹⁵⁸ Price increases had triggered panic buying and sales of consumer goods were up by forty percent.¹⁵⁹ The Government's response was to announce a postponement of economic reforms for two years, a suspension of all but essential construction projects and clear, centralized control over credit.¹⁶⁰ Price reforms and the opening of a market for investors were delayed in 1989 because of the economic conditions.¹⁶¹ Yet some reforms went forward on an experimental basis with the trial sales of apartments in Beijing as well as in other parts of the country.¹⁶²

The reaction of the world community to Tiananmen Square was direct. On June 6, 1989, President Bush suspended sales of military hardware and suspended visits of military personnel.¹⁶³ This was a blow to China which had been trying to modernize its army and weaponry. The immediate effect of this action jeopardized over \$600 million of equipment already ordered from the United States, including a \$502 million order for Avionic kits to modernize jet fighters.¹⁶⁴ Export control "de-control" measures such as distribution licenses were placed on indefinite hold.¹⁶⁵ Cultural exchanges and professional meetings were canceled.

¹⁵⁷ For a discussion of problems in 1986 and the twenty-two article "provisions of the State Council for the Encouragement of Foreign Investments," see Cohen & Chang, *New Foreign Investment Provisions*, CHINA BUS. REV. Jan.-Feb. 1987, at 11, 11-15.

¹⁵⁸ Ignatius, *Economic Crisis*, *supra* note 31; Ignatius, *Beijing Faced With Economic Crisis, Draws Back From Liberalization Line*, Wall St. J., Sept. 26, 1988, at 22, col. 5 [hereinafter Ignatius, *Beijing*]. For the effect on foreign investment, see generally U.S. CHINA BUSINESS COUNCIL, *supra* note 140.

¹⁵⁹ Ignatius, *Beijing*, *supra* note 158.

¹⁶⁰ *Id.*

¹⁶¹ Ignatius, *Chinese Leaders Will Seek to Maintain Stability at Annual Parliament Session*, Wall St. J., Mar. 20, 1989, at A11, col. 5. The prescient analysis reported one month prior to the beginning of the pro-democracy demonstrations stated:

According to some diplomats, the paralysis in economic policy has strengthened the hands of those who oppose broad economic reform while weakening reform's main proponents, especially Party Secretary-General Zhao Ziyang. Disagreement among top leaders led to the postponement late last month of a plenum meeting of the party's central committee.

The country's economic problems have created volatile conditions that could lead to instability at the top, says a West European diplomat. There seems to be a feeling among many that the leadership is losing its grip on power.

While not all analysts share that view. . . .

¹⁶² Ignatius, *China's Sale of Apartments to Rich Marks Effort to Stem Housing Subsidies*, Wall St. J., Feb. 16, 1989, at A11, col. 2.

¹⁶³ Weinraub, *supra* note 21; *Suspension of Munitions Export to PRC*, 54 Fed. Reg. 37,638 (1989).

¹⁶⁴ *Id.* See also Ignatius, *supra* note 21.

¹⁶⁵ See generally *Export Controls Working Group Examines Cocom Changes*, CHINA BUS. REV. Jul.-Aug. 1990, at 21.

Other countries followed suit.¹⁶⁶

President Bush resisted efforts by various groups to revoke China's MFN status and extended it, on May 24, 1990, for another year.¹⁶⁷ The consequences of revocation to U.S. business interests were a significant factor in the President's decision. Had Bush not taken this action, the ramifications would surely have been felt. For example, of twenty-five different goods imported from China in 1989, with a value of \$4,043,534, the duty collected was 8.76% or \$354,160.¹⁶⁸ However, had MFN status not been extended, the duty would have risen to a prohibitive 50.49% or \$2,041,573.¹⁶⁹ Roger Sullivan, then President of the U.S. China Business Council, noted other likely results of U.S. action would include retaliation by the Chinese and termination of ExIm bank support for new ventures in China.¹⁷⁰ This move could significantly curtail U.S. participation in China which had already been impacted by the United States' delayed entry into China and the development of relations after Nixon's 1972 visit.¹⁷¹ Recently, the World Bank, using Basic Human Needs (BHN) guidelines, has resumed lending to China by extending \$30 million for earthquake relief in February 1990, and \$60 million in agri-

¹⁶⁶ Weinraub, *supra* note 21, at A15, col. 6. *But cf.*, *China: A Rotten Idea*, 313 *ECONOMIST* 22 (Dec. 16, 1989) discussing President Bush's decision to send a high ranking U.S. official to visit China. Brent Scowcroft, National Security Advisor and Lawrence Eagleburger, Deputy Secretary of State visited Beijing but the trip was not announced until December 9, 1989, after they had already arrived in China. The article noted that "[t]he press, liberal and conservative, is unanimous in condemning last weekend's visit. . . ." *Id.*

¹⁶⁷ *Determination under Section 402 (d)(5) of the Trade Act of 1974 - Continuation of Waiver Authority*, 54 Fed. Reg. 26,943 (1989) (signed by the President on May 31, 1989, prior to the massacre on June 4). For discussion of MFN status, see Sullivan, *Letter from the President*, *CHINA BUS. REV.*, May-June 1990, at 6, 6-9. *MFN Battle*, *supra* note 25, at 4. Sullivan, *Letter From the President*, *CHINA BUS. REV.*, Sept.-Oct. 1990, at 6. See generally Bezney, *GATT membership for China: Implications for United States Trade and Foreign Policy*, 11 U. PA. J. INT'L BUS. L. 193 (1989). See sources cited *supra* note 21 for discussion of bills introduced in 1989 before Congress.

¹⁶⁸ Sullivan, *supra* note 167, at 7.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ It is suggested that United States policy allowed West German, Japanese and other investors to enter the Chinese market first. However, based upon research by the U.S. - China Business Council, the United States is second only to Hong Kong in terms of investment dollars in China.

cultural development for the Jiangxi Province.¹⁷² U.S. ExIm Bank has also signaled a beginning of normalization by two loans — \$9.75 million for a gas processing project and \$23.1 million for signalling equipment in the Shanghai Subway project.¹⁷³ Other countries that have already extended credit to China include West Germany, Spain, Canada, Australia, Finland, Denmark, Sweden, and Japan.¹⁷⁴ However, Moody Investors Service shifted China's status from A3 to Baa1, a "new rating [which] puts China on a par with Malaysia and one step above Hungary."¹⁷⁵

To create momentum to revitalize the economy, China recently announced new investment incentives for the East Shanghai Foreign Investment Zone, also referred to as the Pudong area.¹⁷⁶ The area covers one hundred thirty-five acres of rural undeveloped land across the river from well developed Shanghai. The incentives include tax breaks (as much as fifteen percent) with exclusion for two profit-making years and a duty free zone to import goods used in export.¹⁷⁷ These incentives were

1983-1988

Country	No. of Contracts	Total Commitments (millions \$)
Hong Kong/Macao	12,694	13958.1
Japan	761	1555.8
U.S.	669	3034.7
Singapore	304	498.2
Thailand	74	348.8
Britain	70	190.0
West Germany	68	226.8
Philippines	67	192.0
Australia	64	172.7
Canada	63	470.8

U.S. CHINA BUSINESS COUNCIL, *supra* note 140, at 19.

¹⁷² *World Bank*, *supra* note 26, at 4. The Bank previously authorized 300 million dollars for a forestry project. *But see*, *Order Pursuant to Section 721 of the Defense Production Act of 1950*, 55 Fed Reg. 3,935 (1990), wherein the President exercised his authority, on February 1, 1990, to prohibit China's National Aero-Technology Import and Export Corp. (CATIC) from acquiring a U.S. corporation, MAMCO, and order CATIC to divest itself within three months to protect "national security." This deadline was later extended to August 1, 1990. Rosenthal, *Deadline Eased on Order Voiding Sale of U.S. Company to China*, N.Y. Times, May 2, 1990, at A6, col. 2. It was reported that "the President appears to have acted not because MAMCO itself owned sensitive technology, but because of . . . prior behavior in export controls area." This was the first time the President had exercised his powers under "Exon Florio" provisions. Coogan, *U.S. Takes New Approach to Regulation of Foreign Investment*, 10 BUS. LAW. UPDATE 3 (July-Aug. 1990) (No. 6).

¹⁷³ *New ExIm Loans*, CHINA BUS. REV., Sept.-Oct. 1990, at 5 (detailing 11.8 million dollars for an airport terminal in Shanghai and 5.1 million dollars for a plastic plant).

¹⁷⁴ *China Gets Some Credit*, CHINA BUS. REV., Mar.-Apr. 1990, at 5.

¹⁷⁵ *Moody Rating*, CHINA BUS. REV., Jan.-Feb. 1990, at 5.

¹⁷⁶ Kristof, *Showing the World that China is Still in Business*, N.Y. Times, July 15, 1990, at F10, col. 1; Leung, *China Keeps Investment Door Ajar*, Wall St. J., Sept. 11, 1990, at A18, col. 1.

¹⁷⁷ Leung, *supra* note 176.

not generally well received because they are already available in other parts of China.¹⁷⁸

In addition to industrial revitalization, agricultural problems are gaining considerable focus. The lack of capital led to the payment of farmers with IOUs.¹⁷⁹ This practice has created animosity, unrest and rumblings about recollectivization of the farms.¹⁸⁰ However, because China went from being a grain exporter in 1986 to becoming an importer in 1989 (in grain as well as in cotton), a sense of crisis exists.¹⁸¹ The state has exercised control over key items needed to ensure supply (for example, fertilizer).¹⁸² This emergence of state control has threatened the farmers, who made impressive gains in the early 1980s.

Although experts suggest that China's financial position is still sound, some figures pose grounds for concern.¹⁸³ China's debt grew from \$7.8 billion (representing sixty-nine percent foreign exchange reserves in 1989).¹⁸⁴ However, China's debt to export ratio is still one to one.¹⁸⁵

China's economic future hinges on the ability to raise exports and to continue to build its own economy. Although the economy has been able to provide abundant food and consumer goods to its population, in contrast to the Soviet Union, the housing provided is inadequate by modern standards.¹⁸⁶ Yet, China remains ostensibly committed to the open door policy as a way to facilitate technology transfer and the modernization of the Chinese economy and infrastructure.

III. CONCLUSION

The Chinese road to modernization, although impressive, has not been a smooth one. The decade of reform from 1978-1988 saw the infusion of capital and technology.¹⁸⁷ Deng Xiaoping's oft-quoted statement,

¹⁷⁸ *Id.* See also Givant, *Investing in Shanghai*, CHINA BUS. REV., Mar.-Apr. 1990, at 28, 28-30. Gelatt, *New Rules For Investors*, CHINA BUS. REV., Mar.-Apr. 1990, at 30, 30-39.

¹⁷⁹ Crook, *Sources of Rural Instability*, CHINA BUS. REV., Jul.-Aug. 1990, at 12, 13.

¹⁸⁰ *Id.*

¹⁸¹ Travers, *Reemphasizing Agriculture*, CHINA BUS. REV. Jul.-Aug. 1990, at 12, 13.

¹⁸² *Id.* at 6.

¹⁸³ See Simon, *Beyond Tiananmen: The Future of Foreign Business in China*, in 14 F. FLETCHER, WORLD AFFAIRS 44 (1990).

¹⁸⁴ *Id.* See also Denny, *Balance of Payments After Tiananmen*, CHINA BUS. REV., Nov.-Dec. 1989, at 48-52. *But c.f.* U.S. CHINA BUS. COUNCIL, *supra* note 140, at 48 stating that . . . by late summer 1990, there were signs of renewed investor interest in China . . . preliminary 1990 half year investment figures compared favorably to pre-Tiananmen levels in the first half of 1989 with almost 2.4 billion in new investment pledge to China by June 1990.

¹⁸⁵ *Id.* at 50.

¹⁸⁶ Based upon the author's personal observations and generally confirmed in the literature.

¹⁸⁷ See sources cited *supra* notes 10-12.

“it does not matter whether a cat is black or white so long as it catches mice,” underscored China’s willingness to embrace Western/Asian capital market reforms to achieve its economic goals.¹⁸⁸ Not surprisingly, however, along with economic and legal reforms, came the people’s increased desire for freedom in general and specifically freedom to choose jobs and freedom to choose the number of children.¹⁸⁹ As one Chinese professor said, “people’s minds have changed in the last ten years. No central authority can change that. We can never go back to the way we were before 1978.”¹⁹⁰ The “unfortunate incident” on June 4, 1989, was a marker, and the incarnation of many investor’s fears about the volatility of the contradictions generated by grafting market reforms onto a socialist economy without accompanying political reforms. Many of the reformers are now gone — Hu Yo Bang is dead and Zhao is in disfavor.

Despite significant upheavals, there are some signals of China’s return to normalcy or at least the maintenance of stability. A host of anniversaries were passed this year without significant incident.¹⁹¹ Yet, China’s history of executions, sixty-five in one day in Guangzhou, are a stark and chilling reminder of the chasm of differences between the countries.¹⁹² China will not return to the economics of the past. The simple fact is that modernization will not occur without capital and the sources of capital are outside the country.¹⁹³ However, on the pessimistic side, if the Soviet Experiment should end in a debacle, it is conceivable that, just as the cultural revolution was declared a mistake, so too could the “open

¹⁸⁸ TIME, Jan. 6, 1986, at 29. This issue named Deng “Man of the Year.”

¹⁸⁹ China Daily, Nov. 29, 1989, at 1, col. 1 (stating that “more emphasis is being given to the interests of individuals”); China Daily, Jan. 9, 1990, at 1, col. 3 (discussing the “one child policy,” the author was asked questions about reproductive freedom in the United States).

¹⁹⁰ Quotation from anonymous Chinese citizen during author’s 1990 visit to China.

¹⁹¹ For a recounting of all the anniversaries and their historic significance, see Ignatius, *As Anniversaries of Dissent Draw Near, China Moves to Prevent a Repeat*, Wall St. J., Mar. 30, 1990, at A14, col. 1, noting:

Qingming, April 5 referring to 1976 a spontaneous march honoring Chou-En-Lai

April 15 — Hu Yao Bang’s Death

April 27 and May 4 — Significant marches in 1989

May 13 — Hunger Strike

May 20 — 1st anniversary of Martial Law

June 4 — Armed forces march or demonstrators

Interestingly, while staying in Kunming China, the author heard on a BBC radio broadcast that, on June 4, 1989, all the buses in Beijing were called to Tiananmen Square for inspection (thus avoiding the possibility of any demonstrations).

¹⁹² It was reported that Peter Drucker, Management Professor, in response to a question about an East Asia trade bloc, said, “If China breaks up under regional warlords, then we’ll see an East Asian bloc.” *Reality Check*, Wall St. J., Sept. 21, 1990, at R7, col. 1 (Magazine) [hereinafter *Reality Check*].

¹⁹³ See *supra* note 167-71 and accompanying text.

door.”¹⁹⁴

President Bush's extension of MFN in 1990 and the extension of credit have helped ease China's isolation. If the U.S. Congress insists upon sanctions in disagreement with President Bush, it will only isolate China and assist those in China who argue for strict adherence to rigid anti-West dogma.¹⁹⁵ This policy would also injure U.S. business interests as well as U.S. interests in keeping China as an ally in the power politics of shifting allegiances.

Iraq's invasion of Kuwait and China's support of the United States' position at the Security Council may help facilitate the transition of China back to its prior world standing.¹⁹⁶ Today, China must compete with the new Eastern European and Soviet markets for foreign investment dollars, a markedly different situation from 1978.

China's undertaking is of immense magnitude. Today, investors in China are more realistic concerning business ventures. Some ventures are profitable, while others are unrealistic. To be successful, business needs an infrastructure, including reliable transportation and telecommunication systems. The ability to make a domestic or international phone call is not yet guaranteed. Businesses need a reliable, continuous supply of electricity to maintain refrigeration, computers and a source of water supply. For China to attract more investment it needs to:

1. continue on the path of substantive legal reform;
2. move its economic reforms forward;
3. continue education and preparation of the work force;
4. address problems of the infrastructure;
5. deal with bureaucracy;
6. revitalize agricultural production;
7. resolve long-term stability issues; and
8. resume the process of loosening of controls, travel, exchanges, etc.¹⁹⁷

¹⁹⁴ See McGregor, *supra* note 52.

¹⁹⁵ See sources cited *supra* notes 21, 64 & 172 for discussion of legislative activity regarding China in 1989 and 1990.

¹⁹⁶ See generally Pace, *supra* note 27 (discussing United Nations Security Council action calling upon naval forces to “use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to insure strict implementation of the provisions related to such shipping”). That China stood side by side the Soviet Union and the United States in voting 13 to 0 (with Cuba and Yemen abstaining) illustrates how instrumental China was in supporting the U.S. position.

¹⁹⁷ See also Liberthal & Oksenberg, *Understanding China's Bureaucracy*, CHINA BUS. REV., Nov.-Dec. 1986, at 24: Recently the U.S.-China Business Council Report identified the bureaucracy as a possible “stumbling block,” stating:

The bureaucracy remains firmly entrenched in all aspects of commercial and industrial operations, fostering delays and irrational decisionmaking. Prices are administratively determined, allocations of goods and services are only partially market directed, and factor

As the memory of Tiananmen Square fades, it could become an aberration or a precursor of new purges.¹⁹⁸ China has learned that it is a world member; TV cameras and fax machines are not easily controlled. In the next decade, China's assumption of control over Hong Kong will pose significant challenges. China and its leaders face a choice between moving forward with economic and legal programs to attract business or closing the door. For the Chinese people, for business and for the future of China-U.S. relations, one hopes they choose the former.

POSTSCRIPT

Since this article was written in October 1990, there have been a number of significant events. On November 29, 1990, the Security Council of the United Nations voted 12-2 with one abstention (China) to adopt Resolution 678 which demanded that Iraq comply with the previous resolutions and authorized

. . . Member states co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and subsequent relevant resolutions and to restore international peace and security in the area.

China abstained on this vote, but this allowed the Resolution to go forward without veto by the Permanent Members (U.S., Britain, France, Soviet Union and China). Thus, President Bush was able to invoke this vote as a clear interpretation of International Law. The Gulf War and its quick military end has engendered much discussion about a "new world order" wherein law is respected. As of May 1991, President Bush has signaled his intention to renew MFN status for China and Congress is currently discussing the issue again.

markets remain underdeveloped, further distorting investment decisionmaking in the absence of trustworthy market signals.

U.S. CHINA BUSINESS COUNCIL, *supra* note 140, at 56.

¹⁹⁸ See *Reality Check*, *supra* note 192. See also Denny, *supra* note 17.

