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Foreword

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FOREWARD

The Editorial Board of the *Case Western Reserve Journal of International Law* deserves credit and applause for undertaking the production of an issue of the *Journal* devoted principally to legal issues arising out of the emergence of the People's Republic of China into the global arena. The decision to publish this issue, as well as the actual writing of articles by such recognized authorities as Hungdah Chiu, Radovan Pavelic and Shao-chaun Leng, was undertaken and largely executed prior to (although in anticipation of) United States recognition of China in 1979. Although I am both Professor of International Law at Case Western Reserve Law School and Faculty Advisor to its *Journal of International Law*, I can take no credit for the choosing of this issue's theme; the foresight of the student editors who selected this subject is surpassed only by events. These events have proved that in 1979 no international law subject is more significant in its impact on world affairs, and no single topic more timely.

In November 1978, I had the privilege and opportunity of being selected as one of four American law professors to accompany a small group of United States international law practitioners who visited China under the auspices of the International Section of the American Bar Association. Previously conceived expectations of Chinese development, organization and infrastructure, as well as Chinese attitudes and expectations regarding the United States, required substantial alteration. Earlier popular perceptions of a xenophobic super race of socialist zealots bear little relationship to reality. As a careful reading of the articles in this issue indicates, the more recent popular perceptions of an emerging powerful political and economic interdependence between our two countries proves almost equally inaccurate.

American recognition of the People's Republic of China did not come so swiftly or surprisingly as some would have us think. The issue of normalization was fought in the 1960's, but settled in the next decade after the 1971 and 1972 public visits of Henry Kissinger and Richard Nixon to China. The road to normalization has been followed with few detours through Republican and Democratic administrations since that time, and the "gate" through which President Carter took us on December 15, 1978, was merely another milepost along the same road. One should clearly understand that the recognition "gate" through which we passed in 1979 is not the end of a road which opens to a plaza of broad political and commercial interaction. Rather, it is

merely a milepost along a continuing road which, although professionally paved from this point forward, in nevertheless, not a final destination.

China has reentered the Western World, but not without some healthy caution as it carries forward the Chinese tradition, thousands of years old, of distrust for things non-Chinese. While revision of Chinese political relations along its northern and southern frontiers called for a corresponding alteration of its relations across the Pacific, that ocean will nevertheless provide China with the opportunity of maintaining political as well as geographic distance. Similarly, while the United States and China will move economically closer together the substantial difference in their levels of development will prevent them from establishing the predominant commercial relationships many American enterprises seem to expect.

Furthermore, normalization of relations with China does not mean that relations between the United States and Taiwan cease to exist. On the contrary, relations with Taiwan will remain largely unaffected. Taiwan is, and in the immediate future will remain, a significantly more important trade and financial partner of the United States than China, notwithstanding the current fascination and flirtation business interests now conduct with the latter. (Even if United States-China trade should double last year's record high of \$1.1 billion that would nevertheless constitute less than one third of current United States-Taiwan trade.) In the political arena, a careful reading of the Taiwan Relations Act of 1979 indicates that the American defense commitment to Taiwan under the new legislation is substantively similar to our commitment under the Mutual Defense Treaty of 1954. Finally, a close examination of the American statements relating to recognition seems to indicate that the United States does not recognize one China (which includes Taiwan) so much as it recognizes that China so asserts, thus leaving room for independent policy regarding a possible future state of Taiwan. (Certainly, the United States continues *de facto* to deal with Taiwan in this manner at the current time.)

Nothing stated herein should diminish in any way American interest in China or the validity of legal scholarship on issues relating to China. Indeed, scholars and practitioners should be called on in increasing measure to research, identify and clarify such issues and bring them into more acute focus. Furthermore, events in China call for a continuing and increasing need for information and analysis. The trade agreement signed by China and the United States in the Spring

of 1979, as well as the new and long awaited Chinese codes announced in July of 1979 (to become effective in 1980), require careful study and analysis by American legal scholars.

This issue of the *Case Western Reserve Journal of International Law* should be viewed not as a definitive work on our relations with China, but rather as a milepost along a continuing road of Chinese-American legal scholarship.

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