



Department of Justice

ADDRESS

OF

THE HONORABLE EDWIN MEESE III
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE U.S. - CHINA JOINT SESSION
ON TRADE, INVESTMENT AND ECONOMIC LAW

MONDAY, AUGUST 17, 1987
GREAT HALL OF THE PEOPLE
BEIJING, CHINA

Minister Zou, Vice Minister Cai, Ambassador Lord, distinguished guests, and fellow delegates to this great Joint Conference:

Two years ago, the American Bar Association held its annual meeting at Washington. Many who are here today were present at that meeting, and heard Han Xu, the Ambassador of the People's Republic of China, tell a sizeable audience of American lawyers that "China's economy crackles with the dynamics of change."

This morning, a sizeable number of American lawyers have been honored to accept your gracious invitation, Minister Zou, to assemble here in the Great Hall of the People, in the heart of Beijing, the capital of this great nation. Permit me to tell you, sir, that Ambassador Han was correct: I can hear the crackle myself!

The crackle that we hear this morning, however, is not merely the ephemeral sound of hands working, wheels turning, and engines grinding simply to produce the goods and services that are needed for the day.

Now, let me hasten to say that, over the past few days, as it has been my privilege to be a guest in your country, I have truly been impressed by the energy and industry of China's people. My colleagues and I have taken note of a highly-charged spirit of economic advancement that is a match for the breathtaking natural beauty and the deep vein of civilized culture that are modern China's inheritance.

But we have observed something more, something with implications far beyond the contributions that any single

machine, or factory, or enterprise, or even an entire industry, can ever make.

This energizing, electrifying crackle that we hear is the sound of building an essential foundation of a nation's prosperity: The rule of law.

Law is the underpinning of civilization. It subdues the human impulse to destroy and it liberates the human desire to build. Many things can divide a people: Among them tyranny, bigotry, crime, and war. But law can unite a people. Whether motivated by reason, faith, patriotism, or sheer prudence, people will respect a legal system that is just, humane, knowable, and consistent. More than respect it, though, they will rally around it and make it their own. Having won the respect of a people, the law will encourage and stimulate them, and let them extract the best from themselves.

Law is the greatest of human inventions. All others give us mastery over the earth. Law gives us mastery over ourselves.

Minister Zou, I have spent my life in the law, and it is now my privilege to serve, at the call of the President of the United States, as the chief lawyer of the American government. I am therefore honored to have been invited by you to join with you as the co-chairman of this U.S./China Joint Session on Trade, Investment and Economic Law.

Only 15 years ago the United States and the People's Republic of China seemed to be separated by thoroughly insurmountable differences. Even today there is much that

divides us. We are separated by natural boundaries of time and distance. We speak different languages and hold to different cultural values. We have experienced different civilizational and national histories and, of course, our political systems are fundamentally different.

As President Reagan himself said during his visit to China three years ago, "it would be foolish not to acknowledge these differences. There's no point in hiding the truth for the sake of a friendship, for a friendship based on fiction will not long withstand the rigors of this world."

But, as President Reagan also said, "let us put aside the words that name our differences and think what we have in common. We are two great and huge nations on opposite sides of the globe. We are both countries of great vitality and strength. You are the most populous country on earth; we are the most technologically developed.... Neither of us is an expansionist power. We do not desire your land, nor you ours. We do not challenge your borders. We do not provoke your anxieties. In fact, both the United States and China are forced to arm themselves against those who do.... Both the United States and China are rich in human resources and human talent. What wonders lie before us if we practice the advice, tong li he zuo -- connect strength and work together."

We are here today to do just that: To connect our strengths and to work together.

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We do this against the background of 15 years of increasing contact and of nearly nine years of full diplomatic relations. Chinese and Americans have learned to work together in a wide variety of normal ways.

We have enjoyed regular exchanges of visits among senior governmental leaders. Knowing the world to be a dangerous place, we have established a limited bilateral military relationship that contributes to our common security. We are pursuing these relations through high-level visits, working-level exchanges, and limited defensive arms sales. We hold regular conversations on political and security matters of mutual interest. We work together in international bodies to strengthen peace and to seek ends to the tragic regional conflicts that scar the world.

As results of these ongoing official contacts we have stood together in condemning the brutal and unlawful foreign occupations in sad lands such as Kampuchea and Afghanistan. We have acknowledged that we share a stake in preserving peace on the Korean peninsula. We join together in desiring peace and stability throughout East Asia.

I know that my good friend and cabinet colleague, the late Secretary of Commerce, Malcolm Baldrige, was a visitor familiar to you in China. His recent death was a great tragedy for us, but I am very glad that, before he died, he asked the General Counsel of the Commerce Department, Douglas Riggs, to assist me by participating in this conference. You will hear from Mr. Riggs this afternoon on recent developments in American trade law

and international trade agreements and on the efforts of our government to stimulate mutually advantageous business and trade between China and the United States.

Similarly, we have undertaken many exchanges by governmental leaders at the regional and local levels. I am delighted to be joined at this conference by four of my fellow Attorneys General:

- o Attorney General Neil Hartigan of Illinois, who has visited China before and who, in his private career as a banker, was instrumental in establishing one of the very first American commercial banking operations in the People's Republic of China;
- o Attorney General James O'Neil of Rhode Island, whose state is home to many of our major business corporations;
- o Attorney General Grace Berg Schaidle, of Alaska, literally the newest frontier of our nation and economic presence in the Pacific Basin; and
- o Attorney General Hal Stratton of New Mexico, a state which symbolizes the growth of new industry and technology in the southwestern area of the United States.

Their presence among us emphasizes the importance that Americans attach to principles of Federalism and state sovereignty. It shows, too, the vital interest that the people of all 50 American states have in encouraging the growth of strong and friendly relations between our two countries.

I should also note that, in America, state law is at least as important in matters of business transactions and commercial development as is federal law. I am therefore particularly pleased that Attorneys General Hartigan, O'Neil, and Stratton have graciously responded to my request that they conduct a seminar later during this conference on the significance of American state law and state legal and regulatory processes for the future of Sino-American economic activity.

Along these same lines, it is worth observing that most law enforcement in the United States is undertaken primarily at the state and local level. This is true with respect to efforts to combat crime directly related to business, such as fraud, embezzlement, larceny, and extortion, as it is to measures taken against violent crime in the streets. For this reason I am especially glad to note the presence at our conference of Richard Arcara, the elected District Attorney from Buffalo and Erie County, New York. Mr. Arcara has been chosen by his peers across the United States as the President of the National District Attorneys Association. Like me, he is interested in what we can do together to address transnational criminal activity that preys upon honest business. Again like me, he is also interested in how we can cooperate to meet the grave threats posed to human civilization by the viruses of terrorism and illegal drug trafficking. He will be reporting back on his observations and findings to his fellow district attorneys, and I hope that he will share that report with me.

These past 15 years have also seen an increasingly broad array of contacts between ordinary Americans and the people of China. More than 100 American universities have entered into more than 200 exchange agreements with Chinese educational institutions. More than 19,000 Chinese students are now enrolled in American schools. About 1,500 Americans now teach and study in China. Better than 250,000 American tourists, businessmen, and other private visitors thronged China last year. Americans routinely see news reports originating in China and the Chinese people are among the world's most faithful listeners to the Voice of America.

The Chinese and American peoples are increasingly interested in, and mutually fascinated by, each other's history, culture, traditions, books, periodicals, movies, radio broadcasts, television programs, fashion, art, sports, and music.

Contributing significantly to the success of such exchanges has been the outstanding work of People to People International, whose Chief Executive Officer, Tom Stillitano, has been kind enough to join our official delegation on this visit. Hundreds of teachers, scientists, physicians, engineers, artists, performers, athletes, and even a few lawyers from both countries have visited each other, often as "citizen ambassadors" under the auspices of People to People.

I would like to take this opportunity, on behalf not only of myself, but also of my many American colleagues present today, to thank

-- People to People International;

-- Tom Stillitano;

-- Norm Swanson, the Chairman of People to People's
Citizen Ambassador Program; and

-- all the hard-working men and women of their staffs.

They have done an extraordinarily good job in organizing and carrying-out this conference. It is thanks to their efforts, from the substantive arrangement of our seminars to the detail work of logistics, that we will be able to embark upon the productive debates and discussions of the next several days.

The subject of our work over the several days of this Conference is the future of the Sino-American economic relationship. Here, too, changes over the last 15 years have been dramatic. A decade and a half ago, trade between us was negligible. There was no American investment in China and no Chinese investment in the United States. There was no cooperation between us in fields of science and technology. We exchanged no students, no teachers, no tourists, no businessmen, and certainly no lawyers. For Americans, relationships with China were simply the stuff of rich historical memory, kept fresh mainly by the vitality of the contributions made daily to American life by the millions of Americans who were born in China or who descended from Chinese immigrants to our shores.

In sharp contrast with the state of affairs prevailing 15 and more years ago, economic relations between the United States and China are thriving today. Our bilateral trade is now more

than \$8 billion per year and is growing. Americans have by this point invested more than \$1.5 billion in China; only Hong Kong has invested more here. Close to 300 American firms have offices or other facilities in China. Our bilateral science and technology exchanges program is the largest and most extensive for each country. The Chinese-American community is once again in touch with the land of its heritage, to the cultural and economic advantage of all Americans. And even a few American lawyers are sustaining young law practices in China. This is a happy portrait of beneficial change, one for which I know both Chinese and Americans are grateful.

This is hardly to say, of course, that all problems have been solved and that no tests or challenges remain before us. Were that so, then there would be no need for this conference. Indeed, there might be no need for lawyers. It is worth reviewing a few of the key economic issues that are important for the development of Sino-American commerce, for they will necessarily receive a good deal of attention throughout the course of this conference.

- o Although trade between China and the United States has grown, there are disagreements about the balance of trade and we both face domestic protectionist pressures.
- o World market prices for petroleum and other commodities exported by China have fallen considerably in recent years.

- o Light consumer goods, always sensitive to economic fluctuations, are the staple export items of China's manufacturing sector. It is difficult to identify other Chinese manufactured goods that are, at the moment, attractive for export.
- o China has wisely decided to borrow foreign funds to finance economic development. But, concerned about foreign exchange and trade deficits, China remains cautious about incurring foreign debt.
- o American investment in China continues. But many American firms report frustration at high costs, arbitrary pricing, tight foreign exchange controls, limited access to Chinese markets, complicated bureaucratic procedures, shortages of qualified personnel, and unpredictable commercial practices.
- o China and the United States are still far apart in the negotiation of a bilateral investment treaty.
- o Significant questions still remain on civil aviation and maritime issues.
- o The United States and other western governments have substantially liberalized export controls. But the pace of appropriate technology transfer remains a question, and the delays caused by the sheer volume of control and licensing cases is undoubtedly frustrating to all involved.

This list of specific current concerns reflects a mix of both transitory economic factors and more fundamental questions about how we organize for economic life. By transitory factors I mean such matters as:

- o The current supply of needed raw materials, something that will vary over time as old sources are husbanded and exhausted and new sources are found and developed;
- o the current availability of technical know-how, something that will vary over time as students graduate to responsibility, intellectual property is shared, and new technological discoveries are made and harnessed; and
- o the current demand for capital, services, and finished goods.

All of these things are transitory in the sense that they are utterly impermanent. Tomorrow may see any one of them radically transformed, as populations fluctuate, human needs and desires change, and nature is more stinting or more generous with her bounty.

What is not transitory is the human hunger for freedom, for justice, for knowable rules, for predictable governmental behavior, and for a fair means of resolving disputes: In short, for law.

The fact of the matter is that, try as we might, we cannot regulate the subjective needs and desires of millions of

individual human beings. And we certainly have not learned to govern the forces of nature.

But it is within our power to establish legal systems that unleash the human potential for creativity and that channel human energies toward humane and constructive ends.

All of this may vaguely suggest the age-old conundrum, "which came first, the chicken or the egg?" In this instance, the question is, "which comes first, economic development or legal maturity." Forgive me if I leave eggs and chickens to be sorted out another day. But there can be no doubt about the relationship between development and law. Law is not a luxury that a society can defer until it is prosperous enough to afford it; law is the indispensable precondition of development, growth, commerce, and prosperity.

The explanation is simple: people will not produce or trade, or will not produce and trade beyond that which is absolutely necessary for mere subsistence, unless they are confident that they will enjoy, in a form they will acknowledge and at a time they will recognize, the fruits of their labors and investments.

This is as true for commerce and trade among nations as it is for economic relations among individuals within a nation.

Over the course of the last eight years, with a notable acceleration in just the last year or so, China has engaged in an exciting process of inquiry aimed at shaping a modern legal order.

The implications of this process for international trade and investment were described for me in February of this year when Chen Zhuo, ministerial leader in China's Ministry of Justice and Vice President of the Chinese Bar Association, did me the honor of calling on me in my office in Washington. He explained to me that China's leadership understands that the key to success in attracting foreign trading partners and investors is instilling confidence in them -- and, importantly, in their lawyers -- that their rights and interests will be respected. What, he wanted to discuss, are the characteristics of a legal system that will instill such confidence.

That question, of course, is the principal business of this conference. It is a question that runs in both directions. Confidence must be mutual.

As an American lawyer, I have thought long and hard about the essential character of the American legal system. There can be no doubt that a legal system reflects the values and other characteristics of the culture that spawns it. The American legal system clearly reflects an important fact about American culture: For Americans, the rights to own, use, and convey property are not marginal matters. Americans view property as extensions of personality. Indeed, the United States Constitution's Bill of Rights explicitly forbids the government from taking private property for a public use, without paying "just compensation." For Americans, therefore, property rights are fundamental human rights. Anyone who seeks to do business

with Americans and who ignores that crucial fact is missing a vital American attribute.

Consequently, what Americans look for in a legal system when contemplating the transaction of business are considerations such as these:

- o How are property rights recognized? How is ownership of real property and personal property, of tangible property and intangible property, evidenced? How is ownership conveyed?
- o What are the respective rights, duties, and remedies of debtors and creditors? How can interests in property be secured? How are priorities of creditors' claims determined?
- o What protections are afforded to intellectual property, in all its various forms?
- o How are businesses organized? How are ownership interests in business evidenced and conveyed?
- o How are businesses licensed, regulated, and taxed?
- o What are the respective rights and duties of employers and employees?
- o How are profits recognized? What are the rules governing the repatriation of profits and other property?

And, perhaps most important of all:

- o What procedures are available for the resolution of disputes? Are those procedures fair, regular, uniform,

and knowable in advance? May one be represented in such proceedings by counsel or other representatives of one's own choosing?

The American participants in this conference are eager to learn about the dramatic legal developments that have taken place in China since the adoption of the "open door policy" in 1978. We are glad to join with you in celebrating the quickly-approaching eighth anniversary of the establishment of the Ministry of Justice. We look forward to learning of China's experience to date with implementation of the Constitution of 1982. We are keen to explore with our Chinese colleagues the intentions and effects of the approximately 200 laws and regulations relating to economic life that have been adopted over the past six or seven years. We shall be greatly interested in any fresh legal developments in China that may be laid before this conference for discussion and friendly critiques.

At the same time, speaking for all the American participants, I assure our Chinese colleagues that we shall be most pleased to explore with you all aspects of the American legal system that you find relevant to your interests. We shall particularly welcome your thoughts on how our system, and on how the practices of the American bar in delivering legal services, can best serve our mutual interests.

The immediate goal of our meeting is to exchange legal knowledge and experience. Through this undertaking we hope, together, to advance, on a broad and general front, the rule of

law. Such advances, we can be confident, will help remove obstacles to international commercial relations. More, they can stimulate the mutual trade and investment that are the predicates of prosperity.

I understand that the China Daily recently referred to this meeting as "the most significant legal exchange in history between China and the United States." China Daily is correct that the significance is not for China alone. I am convinced that there is no better, no deeper, way for two peoples to understand each other than by understanding each other's laws and by ensuring ongoing contact between their lawyers.

President Reagan might have been speaking precisely of our present undertaking when, three years ago in Shanghai, he said:

"This process will continue, and it will flourish if we remember certain things. We must neither ignore our problems nor overstate them. We must never exaggerate our difficulties or send alarms for small reasons. We must remember that it is a delicate thing to oppose the wishes of a friend, and when we're forced to do so, we must be understanding with each other.

"I hope that when history looks back upon this new chapter in our relationship, these will be remembered as days when America and China accepted the challenge to strengthen the ties that bind us, to cooperate for greater prosperity among our people, and to strive for a more secure and just peace in the world."

Minister Zou, you see before you the response to our invitations. Here is gathered one of the most impressive arsenals of legal brainpower and lawyerly firepower ever assembled in one place. Let us have confidence that, in creating this great, joint force of Chinese and American lawyers, we have unleashed an awesome army in the service of prosperity and peace.

Thank you.