

# Preface

This is a monograph entitled *The Voice from China: An CHEN on International Economic Law*. It actually collects and compiles 24 representative articles written in English by me during different stages of the past 30-odd years since the early 1980s.

As known to all, China holds one of the most ancient and glorious civilizations in the world and has contributed immensely to human civilization. Most Chinese people are very proud of this. However, since the notorious Opium War in 1840, China has suffered from aggression and suppression of the Western powers and Japan for more than a century, which is a humiliation to all Chinese people. When I was young, I was taught of the glorious civilization of China, but I was also educated by and personally experienced the sad national crisis of China. Such complex emotions gradually nurtured my strong sense of national pride and patriotism, my determination to fight against international hegemonism, and my ambition to strive for social justice and to support all other weak countries in the world.

Shortly after New China was established in 1949, since the late 1950s, China suffered from a fragile social and political situation for 20 years. During this period, the legal research and the legal academic community in China also withered. As a junior teacher in the university at that time, I had to shift my teaching field from law to other disciplines, not to mention keeping my mind abreast with the progress of modern international law.

The resolution adopted by the Third Session of the 11th National Congress of the Chinese Communist Party in late 1978 is critical. This Congress corrected social chaos and restored social order and inaugurated the state policy of reform and opening up formulated by the late leader Xiaoping Deng. Without this policy, there would have been no revival of Chinese legal community. In the spring of 1981, Prof. Jerome A. Cohen from the United States visited Xiamen and expressed in one of his lectures his concern that China might arbitrarily confiscate foreign investment and property. Based on my knowledge of relevant Chinese laws and policies, I raised some opposing ideas against his and followed with my explanations. Then, with Prof. Cohen's kind invitation, I went to Harvard Law School to study and lecture between 1981 and 1983. During that time, I read many authoritative

books of international law and international economic law written by prominent US professors, such as Prof. Louis Henkin, Prof. Andreas F. Lowenfeld, and Prof. John H. Jackson, together with many other firsthand documents and records. This experience greatly broadened my insight and provided me with a great deal of fresh knowledge. In the meantime, however, I found that these books contained some opinions with a strong sense of colonialism and economic hegemonism reflecting the US-style double standards rooted in unilateralism and utilitarianism. Such opinions not only went against the just advocate of reforming the old international economic order (OIEO) and establishing the new international economic order (NIEO), but also were against the historical tide of the modern world. I think these opinions are misleading and with major deficiencies.

For this reason, we, Chinese law scholars, should not blindly follow and completely accept these Western opinions. Rather, a correct attitude is to contemplate independently and critically in order for us to be able to distinguish right from wrong. By holding such kind of attitude, in my later three decades of research and writing, I, together with my Chinese colleagues, have always been trying to analyze, distinguish, ascertain, absorb, or reject Western legal theories while steadily taking into account the national situation of China and the common position of the weak countries. In addition to “keeping the essence while discarding the dross” of the Western legal theories, we have raised a series of our own innovative ideas and actively participated in international academic debates, which have helped us to shape our systematic theories on various important legal subjects such as South–North Conflicts and Cooperation, reformation of the OIEO and establishment of the NIEO, as well as law-making, law-enforcing, law-abiding, and law-reforming of international economic law. Our theories are significantly and substantially different and independent from some of the existing Western ones.

Personally, I tried to put forward my independent opinions in each of my papers, and here I would like to just list half of them, which the readers might wish to read through:

1. On the Marginality, Comprehensiveness and Independence of International Economic Law Discipline
2. On the Misunderstandings Relating to China’s Current Developments of International Economic Law Discipline
3. On the Source, Essence of “Yellow Peril” Doctrine and Its Latest Hegemony “Variant”—the “China Threat” Doctrine: From the Perspective of Historical Mainstream of Sino-Foreign Economic Interactions and Their Inherent Jurisprudential Principles
4. To Close Again, or to Open Wider: The Sino-U.S. Economic Interdependence and the Legal Environment for Foreign Investment in China after Tiananmen
5. The Three Big Rounds of U.S. Unilateralism versus WTO Multilateralism during the Last Decade: A Combined Analysis of the Great 1994 Sovereignty Debate, Section 301 Disputes (1998–2000) and Section 201 Disputes (2002–2003)

6. On the Implications for Developing Countries of “The Great 1994 Sovereignty Debate” and the E.C.-U.S. Economic Sovereignty Disputes
7. A Reflection on the South-South Coalition in the Last Half-Century from the Perspective of International Economic Law-Making: From Bandung, Doha and Cancún to Hong Kong
8. Should the Four “Great Safeguards” in Sino-Foreign BITs Be Hastily Dismantled?—Comments on Critical Provisions concerning Dispute Settlement in Model U.S. and Canadian BITs
9. Distinguishing Two Types of Countries and Properly Granting Differential Reciprocity Treatment: Re-comments on the Four Safeguards in Sino-Foreign BITs Not to Be Hastily and Completely Dismantled
10. What should be China’s Strategic Position in the Establishment of New International Economic Order (NIEO)? With Comments on Neo-liberalistic Economic Order, Constitutional Order of the WTO and Economic Nationalism’s Disturbance of Globalization
11. Some Jurisprudential Thoughts upon WTO’s Law-governing, Law-making, Law-enforcing, Law-abiding and Law-reforming
12. Should “the Perspective of South-North Contradictions” Be Abandoned?—Focusing on 2012 Sino-Canada BIT
13. On the Supervision Mechanism of Chinese Foreign-related Arbitration and Its Tally with International Practices

In short, the 24 representative articles written in English by me during the past 30-odd years since the early 1980s, consecutively published mainly in some international leading journals and now being collected and compiled in this monograph, could be deemed as the products of international academic debates. They record, reflect, and embody my personal views on a lot of contemporary basic issues in international economic law and international economic order. These personal views with *Chinese characteristics* are deeply rooted in China’s specific national situation and the common position of the worldwide weak groups and are significantly and substantially different and independent from some existing *voices from Western* strong powers. That is why the book is entitled *The Voice from China: An CHEN on International Economic Law*.

According to their specific theme and content, the 24 representative articles are compiled into six parts:

1. Jurisprudence of Contemporary International Economic Law
2. Great Debates on Contemporary Economic Sovereignty
3. China’s Strategic Position on Contemporary International Economic Order Issues
4. Divergences on Contemporary Bilateral Investment Treaty
5. Contemporary China’s Legislation on Sino-Foreign Economic Issues
6. Contemporary Chinese Practices on International Economic Disputes (Cases Analysis)

The “Introduction” following the brief preface contains a related interview dialogue and a related book review. Both of them are selected from the *Journal of East Asia and International Law*<sup>1</sup> and set here for the convenience of readers to get an overview on my academic advocate in the recent 30-odd years.

The Annex of this Book consists of three articles and one letter, which were consecutively written by world renowned scholars, Prof. Gosovic Branislav and Prof. Lorin Weisenfeld. These articles and letter have all made profound comments on and have given objective valuation to some of my academic ideas and theoretical views. For comparison, the readers may probably wish to browse these comments and valuation. I take this chance to express my cordial thanks to both of them.

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<sup>1</sup> See: *The Journal of East Asia and International Law*, Vol. 4, No. 2, Autumn 2011, pp. 477–514; 533–536.

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