《中国的呐喊》书评荟萃（中英双语）

Strong Resonances to *The Voice from China*: Leading Comments on the New Monograph

编者：陈欣、杨帆*

编者按：

陈安教授所撰《中国的呐喊》一书，自由德国 Springer 出版社向全球推出以来，已引起国内外学界同行的广泛关注，学者们纷纷撰文评论与回应，迄今已经陆续收到书评 24 篇，并已汇辑在一起，由北京大学出版社出版的《国际经济法学刊》第 21 卷第 4 期至第 23 卷第 3 期特辟《中国的呐喊》书评专栏，相继以中英双语集中发表，以飨全球中外读者；同时，也借此荟萃聚合，形成对外弘扬中华学术正气、追求国际公平正义的共鸣强音，从而进一步扩大其国内外的学术影响。

另者，其中第 22 篇书评，是日本东京大学中川淳司教授所撰，原为日文，现译为中英双语，同时保留日文，便于懂日文的读者参考。

2017 年 6 月 10 日

Editorial Note:

After the publication of Prof. An CHEN's monograph - *The Voice from China: An CHEN on International Economic Law* through world renowned Springer, it has attracted extensive attention and provoked intensive interest in the academic circles, both from domestic and abroad. Scholars have, in succession, responded with comments and reviews. As of today we have received 24 such book reviews.

For ease of reference for global readers, the bilingual (Chinese and English) versions of these book reviews have been consecutively compiled together and published in a special book-review column in the *Journal of International Economic Law (China)* through the Peking University Press. It is our wish that these leading comments will help to forge and converge a stream of strong resonances to advance and enrich the righteous viewpoints of Chinese scholars, and to pursue equity and justice at the international level.

It is to be noted that book review No. 22 by Prof. Junji Nakagawa of Tokyo University is originally drafted in Japanese. This collection has thus, except for the Chinese and English version, also retained the original Japanese version.

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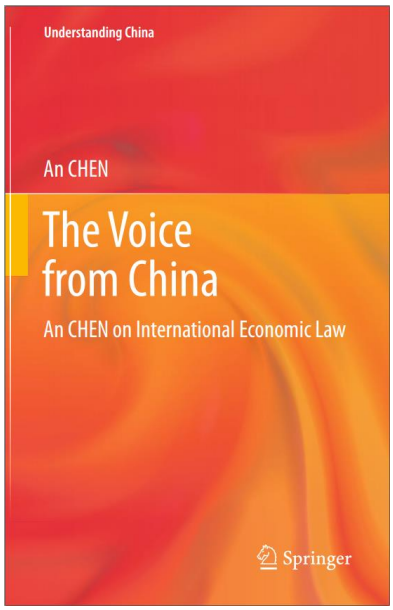
目录

1.1：中国呐喊 发聩振聋

耄耋高龄的厦门大学法学院国际经济法学教授、中国国际经济法学会荣誉会长陈安教授所撰英文专著《中国的呐喊：陈安论国际经济法》（The Voice from China: An CHEN on International Economic Law），新近由享有国际学术盛誉的德国权威出版社 Springer 向全球推出，在国际经济法学界引起广泛关注。



本书汇集作者自 1980 年以来三十多年不同时期撰写的 24 篇英文专论。全书 852 页，分为六部分，分别探讨和论证当代国际经济法基本理论和重要实践的学术前沿重大问题。这些英文专论原稿绝大部分发表于中外知名学刊，立足于中国国情，以马克思主义为指导，从当代国际社会弱势群体即第三世界的视角，有的放矢，针对当代国际经济法学科领域的基本理论以及热点难点实践问题，发出与西方强权国家主流观点截然不同的呼声和呐喊。在积极参与国际学术争鸣当中，大力宣扬众多发展中国家共同的正义主张和基本立场，有理有据地揭示某些西方主流理论误导之不当和危害，从而避免在实践上损害包括中国在内的国际弱势群体的公平权益。这也正是本书命名为《中国的呐喊：陈安论国际经济法》之由来。

这部英文专著文稿于 2013 年 11 月获得“国家社会科学基金中华学术外译项目”正式立项，据悉，这是我国国际经济法学界获得此立项的第一例。按照全国社科规划办公室文件解释，“中华学术外译项目”是 2010 年由全国社会科学规划领导小组批准设立的国家社科基金新的重大项目，旨在促进中外学术交流，推动我国社会科学优秀成果和优秀人才走向世界。主要资助我国社会科学研究的优秀成果以外文形式在国外权威出版机构出版，进入国外主流发行传播渠道，增进国外对当代中国、中国社会科学以及中国传统文化的了解，提高中国社会科学的国际影响力。

诚如《专家评审意见》所指出的那样，这部英文专著“**对海外读者全面了解中国国际经济法学者较有代表性的学术观点和主流思想具有重要意义。全书结构自成一体，观点新颖，具有中国风格和中国气派，阐释了不同于西方发达国家学者的创新学术理念和创新学术追求，致力于初步创立起以马克思主义为指导的具有中国特色的国际经济法理论体系，为国际社会弱势群体争取公平权益锻造了法学理论武器。**”

陈安教授《中国的呐喊》一书，在展现作者中国特色学术思想和创新成果的同时，也为中国国际经济法学界向世界发声搭建国际传播平台。本专著出版之后，反响强烈，国内外高端学者纷纷撰文评论与回应，迄今已经收到书评 14 篇，即将由北京大学出版社出版的《国际经济法学刊》第 21 卷第 4 期特辟专栏，以中英双语集中发表，荟萃聚合，形成弘扬中华学术正气、追求国际公平正义的共鸣强音。另一方面，鉴于此书出版后国际学术效应良好，德国 Springer 出版社又主动提出进一步开展学术合作的建议，要求陈安教授主持组织另外一

套系列英文学术专著，总题定名为“**当代中国与国际经济法**”（Modern China and International Economic Law），遴选和邀请一批中外知名学者围绕这个主题，撰写创新著作，提交该出版社出版，每年至少推出两部。经认真磋商，双方现已达成协议，正式签署合同，并已启动执行。相信此举将会为进一步提升中华法学学术在世界学术界的知名度和影响力，做出新的贡献。

中国国家主席习近平曾经指出，“文明因交流而多彩，文明因互鉴而丰富”；“文明是平等的，人类文明因平等才有交流互鉴的前提”。[1]近来他又强调我国在国际事务中应当积极“提出中国方案，贡献中国智慧”。[2]可以说，陈安教授上述力作向全球发行及其良好效应和后续举措，对于促进**中外不同特色**的文明在**平等前提下**交流互鉴，对于在国际事务中提出中国方案，提升中国的话语权，都将起到应有的积极作用。

（林伍/报道）

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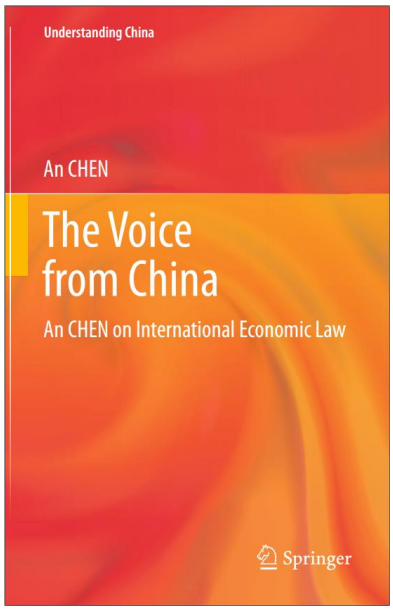
[1] 见新华网：《习近平在联合国教科文组织总部的演讲》，2014 年 3 月 28 日，http://news.xinhuanet.com/politics/2014-03/28/c_119982831.htm

[2] 见新华网：《习近平接受拉美四国媒体联合采访》，2014 年 7 月 15 日，http://news.xinhuanet.com/world/2014-07/15/c_126752272.htm

1.2：The Enlightening and Thought-provoking Voice from China

The English monograph of Prof. An CHEN, an octogenarian prominent professor at School of Law, Xiamen University and the Honorary Chairman of Chinese Society of International Economic Law (CSIEL for short, a nation-wide academic society), was recently published by Springer-verlag, a Germany-located yet world-renowned Publisher, under a broad title "*The Voice from China: An CHEN on International Economic Law*". It has now entered the main disseminating channel of academic works, arousing extensive attention in the circles of international economic law.



This monograph, with a total six parts and a colossal volume of 852 pages, has compiled within it 24 of Prof. Chen's articles written in English since early 1980s. These English articles were mostly published by well-known academic journals in and out of China. Guided by Marxism, they are all based on a common stand of China's national conditions and a consistent perspective of world weak groups, endeavoring to speak up a completely different voice from those of mainstream Western powers as regards the fundamental theoretical problems and hot or controversial issues in practice in the field of contemporary international economic law. During his active participation in world academic debates, Prof. Chen persistently advocates for the just proposals of the many developing countries, and tries his best to reveal the improperness and potential hazard of those misguiding mainstream theories from the West, so as to protect the equitable rights and interests of world weak groups including China. This is why the monograph is entitled "The Voice from China".

This English monograph has successfully won the support of the Chinese Academic Foreign Translation Project (CAFTP), making itself the first of such kind within the academic circles of International Economic Law in China. According to the official specifications from the National Social Science Fund of China (NSSFC), CAFTP is one of the major categories of projects set by the NSSFC and approved by the National Philosophy and Social Science Planning Leading Group of China in 2010. This Project aims to promote Sino-foreign academic exchanges, and to facilitate the outstanding works as well as prominent scholars in the field of philosophy and social science towards the world's academic stage. For this purpose, a major part of such funding is allocated to sponsor the aforesaid achievements to be published in foreign language through authoritative publishers abroad. It is expected that, by such way of accessing and participating in foreign mainstream distribution channels, foreigners could have a better understanding of contemporary China, its philosophy and social sciences and its traditional culture. It is also expected that

Sino-foreign academic exchange and dialogue would hence be more active, and the overseas influence of Chinese philosophy and social science would be enhanced.

In the Expert Review Report, some of the most professional peers opine that Prof. CHEN's book "contributes vastly in the sense of introducing onto the world arena a series of typical academic views and mainstream ideas of Chinese International Economic Law scholars. The whole book is well and uniquely structured, and loaded with creative points of views. With its obvious Chinese character and style, this book has illustrated various innovational academic ideals and pursuits that are different from those voices & views preached by some authoritative scholars from Western developed powers. The author has endeavored to create a specific Chinese theoretical system of International Economic Law under the guidance of Marxism, to further serve as a theoretical weapon for the weak groups of international society to fight for their equitable rights and interests."

Apart from spreading the China-specific academic thoughts and creative achievements, Prof. Chen's monograph has also set up an international platform for Chinese scholars in international economic law to disseminate their viewpoints to the world. With the publishing of Prof. Chen's monograph, scholars as well as practitioners from domestic and abroad have one after another responded with book reviews and relating comments, which have now converged into a strong resonating voice of advancing and enriching China's academic justice and righteous proposals on international issues. As till now, 14 such reviews have been received and are to be published by Beijing University Press as a special bilingual column in the forthcoming *Chinese Journal of International Economic Law* (Vol.21 No.4) . In light of this favorable and positive outcome, Springer offered to build a further cooperative relation, by asking Prof. Chen to preside and organize a whole series of English monographs entitled "Modern China and International Economic Law". This brand new series will select and invite a batch of well-known scholars from China and abroad to contribute their innovative works around the theme of this series, at least two volumes of which will be published by Springer per year. After conscientious consultation, the two sides have reached and executed the final agreement. It is believed that such cooperation will make new contributions to promote the popularity and influence of China's legal academic research.

China's President Xi Jinping once pointed out in his speech in the UNESCO (United Nations Educational, Scientific, and Cultural Organization), that "[I]t is through communication that civilizations can show their multicolor, and it is through learning from each other that civilizations can be abundantly enriched… All civilizations are equal, which forms the very premise for the communication and mutual learning." [3] He further emphasized that we should actively "raise Chinese proposals and contribute Chinese wisdom" in international affairs.[4] It could be predicted that, the above-referred book of Prof. An CHEN, together with its consequent influences and follow-up measures, will prove its positive utility in boosting the equal communication and mutual learning among civilizations of different characteristics, as well as in enhancing China's voice of contributing its own prescriptions as to world affairs. （By Wu LIN）

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[3] See：Xinhuanet, Xi Jinping 's Speech at UNESCO Headquarts,http://news.xinhuanet.com/politics/2014-03/28/c_119982831.htm

[4] See：Xinhuanet, Xi Jinping was Interviewed by the Media from Four Countries in Latin America, http://news.xinhuanet.com/world/2014-07/15/c_126752272.htm, July 15, 2014.

2.1：晨起临窗坐 书香伴芳菲

——喜览《中国的呐喊——陈安论国际经济法》

郭寿康*

昨天傍晚收到了一批书刊杂志的邮件，今晨逐件拆封、翻阅。忽然发现一本装帧精美的全英文书。书名很别致，“The Voice from China”（《中国的呐喊》或《来自中国的声音》）。初想，平日与新闻、文艺各界接触很少，刚要放在一边，忽然发现，本书作者的署名，是大名鼎鼎的陈安教授，翻阅内容，主要是 1980 年以来陈老在国外著名刊物上发表的 24 篇关于中国国际经济法学的论文集合，这又是陈老的一大创举。

陈安老先生是中国国际经济法学界驰名中外的泰斗和大师，而且是中国特色国际经济法学科的创始人之一，发表了一系列有分量的扛鼎之作。陈老也在国外著名刊物上发表了许多影响很大的学术论文。但是，用时却很难找到。这一次集 24 篇在国内外发表的中国国际经济法学方面的论文成卷出版，给国内外业界专家提供了很大方便，使人们更便于听到来自中国国际经济法学界的声音，功德无量。

陈老这个头带的很好。据我所知，国内专家也有在国外报、刊发表学术作品，但往往难于寻找。在中国出版的五卷本《陈安论国际经济法》以及笔者的《郭寿康法学文选》中，都包括一部分在国外发表的论文作品，但全书用英文出版的，尚属罕见。希望有更多的学者，用外语在国外权威出版社出版学术专著，从而进入国外学术著作主流发行传播渠道，以满足世界上迫切需要听到“来自中国的声音”的日益强烈的要求。

（编辑：龚 宇）

* [1] 作者系中国人民大学国际法学教授，法学界老前辈，2012 年曾获“全国杰出资深法学家”荣誉称号。

2.2：By the Casement at Dawn, in the Fragrance of New Book

-- A Joyful Browse of *The Voice from China: An CHEN on International Economic Law*

Guo Shoukang*

This morning when I was sealing off and leafing through a pile of newly received books, journals and magazines, a rather well designed English book suddenly caught my eyes. With its unconventional title: "*The Voice from China*", it first occurred to me that I seldom had contacts with media and literature circles. When I was just about to put it aside, I suddenly saw that the author of this book is Prof. An CHEN, a widely renowned scholar. After I skipped through the contents, I found it a compilation of 24 articles successively published by Prof. CHEN since 1980 in foreign journals, all with a focus on the topic of Chinese school of International Economic Law. This should be deemed as another pioneering work of CHEN.

Mr. An CHEN, an elderly gentleman, is a master of the discipline of International Economic Law, and has a worldly recognized reputation in this academic circle. He is also one of the founding members of the Chinese School of International Economic Law (IEL), or IEL with Chinese characteristics, for he has published a series of heavy-weight masterpieces, as well as a number of research papers in well-known journals. These journal articles are, however, not that handy when people feel the need to refer to. Now that Prof. CHEN's 24 articles on Chinese IEL are compiled into one volume, it will be bound to foster a more convenient way for peers, both from domestic and abroad, to hear a Voice from Chinese academic circle of IEL. The benefits that go along with this publication are definitely beyond measure.

Mr. CHEN has set a very instructive leading example. As far as I know, there are other scholars of China who have also published their research results in foreign journals. But these articles share a common deficit of being inconvenient to find and collect. In the domestically published works such as "*An CHEN on International Economic Law"* (Five Volume), and my "*Guo Shoukang's Selected Works on Law"*, there are some thesis written in English, too. But it is rather rare, at least for now, that a published book of Chinese scholar is all in English. It is my sincere hope, that more scholars of China can publish their works through authoritative foreign press, and enter the worldwide mainstream transmission channel of academic works, so as to fulfill the increasingly strengthened demands of world people to hear the "Voice from China".

* Senior Professor of International Law, Renmin University of China; widely recognized predecessor within jurisprudential circle, awarded with the honorable title "National Eminent & Senior Jurist" in 2012.

3.1：弘中华正气 为群弱发声

曹建明（国际经济法教授、原华东政法学院院长）

中华人民共和国最高人民检察院

弘中华正气　为群弱发声

尊敬的陈安教授：

当我收到您的英文专著《中国的呐喊：陈安论国际经济法》，欣喜之外，更是一种感动和震撼。多年来，您一直希望我们以文会友、以书会友。这些年我先后收到了您的《陈安论国际经济法》5卷本、《国际经济法学刍言》上下卷等鸿篇巨著。我的书架上，整整齐齐排列着您主编的《国际经济法学刊》，至今已是第21卷！打开您《中国的呐喊》，更是让我感到份量很重、很重……

这是您的又一部力作。这部专著不仅深刻阐述了当代国际经济法的基本理论问题，而且紧密结合国际经济法理论与实践，深入探讨了构建国际经济新秩序的热点难点问题，自成体系，兼容并包，翔集事理。我知道，字里行间，凝聚的都是您几十年潜心学术研究之成果，是您又一部研精覃思的著作。这本专著作为国家社科基金中华学术外译项目以英文正式出版，对于促进世界更加了解和理解当代中国必将产生重要影响，无疑是中国国际经济法学界的一件大事。

让我感动的是，您在国际经济法学方面的造诣很深，学术成

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就斐然。但是，耄耋之年，您至今仍在孜孜不倦，辛勤耕耘，不断深入思考国际经济法学特别是中国国际经济法学的发展，并为之奉献了自己的全部心血和智慧。先生的精神实乃难能可贵，足以让那些心浮气躁、急功近利的后辈晚生汗颜。我们年轻一代，无论是法学研究工作者还是司法工作者，都应当学习和弘扬您这种严谨治学、学为人师的学术品格和行为风范。

世界多极化、经济全球化和社会信息化的趋势深入发展，科技进步日新月异，各种文化碰撞交融，使当今世界正经历着前所未有的历史性变革。中国已经历了30多年的改革开放历程，中国比以往任何时候更加重视国际法的研究，更加重视国际规则的制定和运用。全面推进依法治国，离不开法学理论的繁荣发展。构建开放型新经济新体制，离不开国际经济法的研究。可以说，摆在我们面前的一系列国际法问题包括国际经济法问题，既是理论研究，更是应用研究，我们必须理论联系实际。我们需要学习借鉴外国法学先进理论，更需要立足于复杂多变的国际形势和国际关系，立足于国际经济法理论与我国对外开放实践的紧密结合，积极推动建立公正合理的国际政治经济新秩序，有自己的思考和建议，并且敢于发出中国声音。

在这本英文专著第一编里，我看到其中一篇熟悉的文章，即《“黄祸”论的本源、本质及其最新霸权“变种”：“中国威胁论”》。这篇专论我有幸在2012年就拜读过，它以史实为据，史论结合，深入剖析和批判“中国威胁论”的本质和危害，读了之后令人荡

气回肠、拍案叫好。这些年来，您始终立足中国国情和广大发展中国家的共同立场，始终秉持国家经济主权原则，强调维护发展中国家利益，倡导公平互利、南北合作、南南合作，探索建立国际经济新秩序的规律和路径，实事求是，与时俱进，不断探索，追求真理，特别是敢于提出与西方国家传统观点乃至主流观点截然不同的观点，真正响亮地发出了中国的声音，不断推动着中国国际经济法学的理论创新与实践创新。从您的身上，我更是深深感受到了我们每一个国际法学者和法律工作者义不容辞的责任和使命。

真诚感谢您为国际经济法学界奉献了又一部力作！衷心祝愿您健康长寿！

2014 年 9 月 16 日

THE SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA

3.2：Spreading China's Justice, Voicing for the Global Weak

Dear Esteemed Prof. An CHEN,

Upon receiving your recent published English writing monograph – *The Voice from China: An CHEN on International Economic Law*, I felt more touched and shocked than delighted. For decades, you have been encouraging us to meet friends through sharing our articles and books. I alone have successively received a number of big treatises of yours, such as *An CHEN on International Economic Law (Five Volumes)*, and *CHEN's Papers on International Economic Law*. On my bookshelf arrays neatly a complete serie of *Chinese Journal of International Economic Law* (from Vol. 1 to the present Vol. 21!). I can literally feel the heavy weight of your new book when I hold it in hand and turn over the cover…

Undoubtedly this is your another masterpiece. It has not only elaborated in depth the many fundamental theoretical problems of contemporary international economic law (IEL), but also deeply discussed some hot and controversial issues regarding the establishment of a new international economic order (NIEO), with a close integration of relating IEL theory and practice. By adopting an all-inclusive approach to synthesize facts and reasonings, this new monograph has created a unique system similar to no other. As I see, this new monograph, which is pervaded among the words and lines with all your hard work, condenses your meticulous research and thorough thinking, and embodies your decades' devotion to and fruits of this subject. Supported by the Chinese Academic Foreign Translation Project of the China National Social Sciences Fund, the publishing of this English monograph must bring significant influence on promoting the global understanding of contemporary China, and is with no doubt a major event in the Chinese academic circle of international economic law.

What moves me most is that, apart from your many academic accomplishments in the field of IEL, and despite of your eighties-odd age, you have not yet ceased in

thinking and writing on this subject, and still are tirelessly and entirely devoted your heart and wisdom to promoting the development of Chinese school of IEL. Such spirit of yours is quite rare and commendable, and can shame all the youngsters who are impatient and eager for quick success. We younger generations of legal researchers and practitioners shall learn and carry forward such academic personality and behavioral demeanor of yours, to carry out meticulous research and to disseminate righteous knowledge or ideals.

With the continuous deepening of world multipolarization, economic globalization and society informatization, as well as the fast innovation of science and technology, the collision and fusion of various cultures, contemporary world is now experiencing an unprecedented historical change. After over three decades of opening-up and reformation, China is now attaching importance more than ever before to the research of international law, and the making and application of international rules. The comprehensive promotion of managing state affairs according to law is indispensable to the prosperity of legal theoretical research. The establishment of a novel economic system that opens up to the world is indispensable to the research of IEL. A series of problems that we encounter, no matter regarding international law or international economic law, are of theoretical research as well as of practical one. We must thus link theory to practice. Also, we need to learn and benefit from the foreign advanced theories; especially need to base on the complicated and changeable international situations and international relations, as well as a close combination of international economic legal theory with our past open-up practices. Further more, we also need to actively promote the establishment of a fair and reasonable new international economic and political order, to form our own thoughts and suggestions, and dare to express our own Voice from China.

I have found a familiar article in Part I of your English monograph, namely *On the Source, Essence of "Yellow Peril" Doctrine and Its Latest Hegemony "Variant" – The "China Threat" Doctrine*, which I had the fortune to read when it first came out in 2012. This article has carried out a very thorough dissection of and pointed critique against the "China Threat" Doctrine. Based on historical facts and with a well-organized integration of history and theory, this article is soul-stirring, making readers can't help striking the table and shouting bravo. For the past decades, you have been consistently standing on China's situations and the common ground of the

vast developing countries, adhering to the principle of national economic sovereignty, emphasizing the preservation of national interests of the weak groups, advocating equity and mutual benefit, South-North Cooperation and South-South Cooperation, and exploring the rules and approaches to establish a new international economic order. You have been persistently advancing with the times, keep exploring and pursuing the truth from facts, and especially daring to express thought-provoking viewpoints that are different from or even contrary to traditional or mainstream views from the West. Such resounding Voices from China of yours have been keeping pushing forward the innovation of international economic legal theory and practice with Chinese characteristics. You have set up a model, from whom I have deeply felt the responsibility and mission that every international law scholar and practitioner is bound to and shall undertake.

I sincerely thank you for contributing another new masterpiece to the academic circle of international economic law, and cordially wish you good health and a long life!

CAO Jianming
(Procurator-General, PRC; Professor)
September 16, 2014

4.1：中国国际经济法学老艄公的铿锵号子[1]

——《中国的呐喊——陈安论国际经济法》读后的点滴感悟

曾令良*

金秋收获时节，欣悉《中国的呐喊——陈安论国际经济法》（“The Voice from China – An CHEN on International Economic Law”）（以下简称《中国的呐喊》）面世。这部新著集中了中国国际经济法学奠基人之一陈安先生近三十多年学术研究之精华，由举世闻名的国际权威出版社同时向全球推出纸质版精装本和电子版。晚辈获陈老前辈惠赠其巨著，受宠若惊，感激之余，不禁感叹如下数语，以飨读者。

陈先生不愧为学界泰斗，学术常青常新。他数十年如一日，研究不息，笔耕不止，出版和发表的著述字数以数百万计。根据晚辈初步观察，中国改革开放后的头 20 年，陈先生研究的重心主要是通过主编不同版本的《国际经济法》教材、创办和主编《国际经济法论丛》及其改版的《国际经济法学刊》，创立和不断完善中国的国际经济法学体系。此外，他还在国际商事仲裁和国际投资争端解决等领域著书立说。与此同时，陈先生在国（境）内外一系列重要学术刊物上就国际经济法基本理论和实践中的重大和热点问题分别用中文和英文发表了数十篇具有重要影响的论文。

进入 21 世纪，陈先生的学术成就集中体现在其先后出版的三部巨著之中。这三部代表作可谓是陈先生近十几年来学术创新的“三步进行曲”，节节攀升，直至巅峰。首先，由北京大学出版社于 2005 年推出《国际经济法学刍言》上、下两卷本，共计 210 余万字。三年后的 2008 年，在原有著述的基础上由复旦大学出版社推出了《陈安论国际经济法学》五卷本，共计 300 余万字。诚如先生自言：这部新著“并不是《刍言》的简单再版或扩容”，而是作者“针对本学科领域新问题进行探索的心得体会的全面增订和创新汇辑”。更令人震撼的是，如今，虽然先生已 85 岁高龄，但是追求学术之壮心不已，再次由国际权威出版机构向全球推出其英文巨著《中国的呐喊》。至此，“陈氏国际经济法”不仅深深扎根和流行于华

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[1] 号子，指集体劳动协同使劲时，为统一步调和减轻疲劳而唱的歌，通常由一人领唱，大家应和。参见《现代汉语词典》，商务印书馆 1997 年修订版，第 505 页。

* 作者系武汉大学资深教授、长江学者特聘教授、国际法研究所所长。

语世界，而且将在全球各种不同文化的国家和地区广泛传播和推广，必将产生深远的国际影响。

《中国的呐喊》重申和再现了“陈氏国际经济法”的“三性”理论。[2]上个世纪 90 年代初，陈先生率先提出了国际经济法学的“三性”基本特征，即“边缘性”、“综合性”和“独立性”，并将这一新的理论贯穿于此后他主编的教材、出版的著作和发表的论文之中。“三性”理论科学地揭示了国际经济学作为一门新兴学科的内涵和外延，阐明了国际经济法与其他相邻学科之间的区别与联系，论证了这一新兴学科体系上的综合性和相对独立性。如今，“三性”理论早已被国际经济法学界所普遍接受，广泛应用于中国的国际经济法教学与研究之中，结束了曾长期困扰学界的关于国际经济法学的定性之争。

《中国的呐喊》创造性地揭示了国际经济关系、国际经济秩序和国际经济法发展与更新“6C 律”。“6C 律”是陈先生通过洞察和总结数十年来围绕建立国际经济新秩序的南北斗争的历程而得出的规律性认识，并预言这一规律在全球化快速发展的当下和明天将持续下去。所谓“6C 律”，（依笔者看来，似乎是“7C 律”），就是描述国际经济秩序和法律规范破旧立新的螺旋式上升轨迹，即“矛盾”（contradiction)→冲突或交锋”（conflict）→“磋商”（consultation）→“妥协”（compromise）→“合作”(cooperation）→“协调”(coordination)→新矛盾(contradiction new)。[3]陈先生巧妙地运用七个英文单词的首字母予以概括和表述，既贴切，又便于记忆，其学术智慧可见一斑。

《中国的呐喊》向国际社会阐释中国对外经济交往的法理内涵和原则，揭露当今美国等国宣扬的“中国威胁”论是近代西方列强“黄祸”论的翻版，二者的 DNA 一脉相承，其本质是“政治骗术”，其目的是蛊惑人心，误导国际舆论，贬损中国。[4]陈先生锋利的言辞依据的是历史和事实，秉持的是正义和公理，捍卫的是中国的正面形象和正当合法的利益。

《中国的呐喊》先后三论中国在建立国际经济新秩序中的战略定位。陈先生主张“中国应成为建立国际经济新秩序的积极推手”，“南南联合自强的中流砥柱之一”；中国应“既坚持战略原则的坚定性”，“又审时度势，坚持策略战术的灵活性”。[5]依陈先生之见，正在和平

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[2] An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.3-29.

[3] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.207-239.

[4] An CHEN, 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, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.45-99.

[5] An CHEN, What Should Be China’s Strategic Position in the Establishment of New International Economic Order?

崛起的中国“不宜只是现存国际经济秩序的‘改良者’、南北矛盾的‘协调者’，而应是‘改革者’之一”。[6]我坚信，这一观点道出了中国和发展中国家及其国际经济法学界共同的心声，并且已经得到一些欧美学者的赞许。

旗帜鲜明、直抒己见，是陈先生为人、做事、治学的原则和特点，这同样贯穿于《中国的呐喊》之中。这里仅举一例。近年来，在改革现有国际经济法及国际经济秩序的问题上，西方国际法学界一度流行“新自由主义经济秩序”论、“WTO 宪政秩序”论、“经济民族主义扰乱全球化秩序”论。对此，陈先生告诫中国和广大发展中国家及其学人，不可盲从或附和，应实行有鉴别的取舍，尤其要警惕西方“淡化”、“弱化”主权和鼓吹主权“过时”的“理论陷阱”。[7]

《中国的呐喊》将广大发展中国家描述为“全球弱势群体”，强调这些弱势群体国家应“珍惜和善用经济主权”，呼吁“南南联合自强”，反对美国的单边主义和西方强势群体国家在国际经济和贸易关系中实行“双重标准”，坚持多边主义，以争取和维护全球弱势群体在国际经济秩序中的平等地位和公平权益。[8]

总之，《中国的呐喊》具有鲜明的中国风格和中国气派，代表着中国国际经济法学先进的理论，发出的是全球弱势群体国家强烈呼吁建立公平、公正的国际经济新秩序的共同心声。《中国的呐喊》的出版，再次体现了一代宗师非凡的学术气度和追求学术卓越的精神。陈先生不愧为中国国际经济法学的舵手和国际经济秩序“破旧立新”的旗手。更重要的是，陈先生学术成就的重大意义和影响已经超越了国际经济法学本身，正如有关国际机构的高级人士所评价的，“(《中国的呐喊》) 是对当代世界政治研究和认识的重要贡献”；同时，“应成为了解和研究中西关系人士的必读物，尤其是应作为发展中国家的领导人、高级经贸谈判官员培训的指导用书”，甚至作为这些国家高等院校的教材。[9]总之，《中国的呐喊》无疑是中国国际经济法学具有代表性的学术权威之音，是向世界发出的强音和高音。我坚信，这部巨著的出版将对国际经济法学的发展产生深远的影响！

With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.167-206.

[6] *Ibid*.

[7] *Ibid*.

[8] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.207-239.

[9] See Branislav Gosovic, WTO Citadel Needs to be Challenged by the South; An Important and Creative Contribution from China to the Ideology of Third World; both compiled in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, Annex, pp.754-765.

（编辑：龚 宇）

4.2：The Sonorous Work Song of an Old Helmsman of International Economic Law

-- Some Reflections and Thoughts after Reading *The Voice from China--An CHEN on International Economic Law*

Zeng Lingliang*

In this golden harvest season, it is delighted to know that *The Voice from China -An CHEN on International Economic Law* (hereafter referred as *The Voice from China*) was published by Springer, the world-wide well-known publisher, both in paper and electronic versions. This new monograph collects the very essence of academic research achievements of Professor An CHEN for the past 30-odd years, who is one of the founders of Chinese international economic law. I, as a younger generation of the discipline and receiver of this great book, thank him for his kindness. In addition to gratefulness to him, I would like to make a few words of my superficial understanding of this book as follows:

Professor CHEN has proved himself to be a leading scholar of the discipline of Chinese international economic law. His academic research is evergreen and often up-dated. He has never stopped studying and writing for several decades, producing numerous publications both at home and abroad. According to my preliminary observation, his studies in the first twenty years after China engaged itself in "reform-and-open policy", focused on creation and completion of the Chinese discipline of international economic law by means of compiling international economic law textbooks in various editions and founding *Journal of International Economic Law* in Chinese as editor-in-chief. In addition, some parts of his writings relate to theory creation in the areas of international commercial arbitration and international investment dispute resolution. At the same time, he published quite a number of articles on key and hot issues both concerning basic theories and practices of international economic law in some important academic journals in Chinese or English.

Since the 21th century, Professor CHEN's academic achievements have been reflected intensively and respectively in his three masterpieces. These three magnificent masterpieces might be well-called as "trilogy" of his academic creation in the most recent twenty years, which steadily climbs up to the peak. He firstly published the monograph entitled *CHEN's Papers on International Economic Law* (two volumes) in Peking University Press in 2003. Three years later in 2008, he published the new expanded edition (five volumes altogether) entitled *An CHEN on International Economic Law* in Fudan University Press. This new edition, as its author described, "is not simply a re-edition or expansion in volume, but a collection of comprehensive revision and enlargement as well as creation made by the author after his continuous exploration of new issues arising in the discipline". Today, in spite of his age of 85, he continues pursuing his

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academic excellence by publishing his great work *The Voice from China* in English version through Springer who enjoys high international reputation. Hence, CHEN's doctrines of international economic law not only has been deeply rooted and popular in the Chinese society, but also will spread and extend globally, thus resulting in far-reaching international influence.

The Voice from China reaffirms and reproduces the theory of "three basic features"[1] persistently advocated by Professor CHEN for decades. This theory was first put forward by him in early 1990's, namely the marginality, comprehensiveness and independence of international economic law discipline. Since then on, he has penetrated and integrated the theory into his subsequent textbooks, monographs and published articles as well as various lectures on international economic law. This new theory scientifically brings to light the connotation and extension of international economic law as a newly-born discipline, and identifies the differences from and links to other neighboring disciplines. Nowadays, the theory of "three basic features" has been widely recognized by international economic law scholars and extensively applied in teaching and studying of international economic law courses in China's universities and colleges, thus ending the debates on definition of international economic law which had persecuted scholars ever before.

The Voice from China creates the "6C track" or "6C Rule" format embedded in the law-making process of international economic relations since the end of the Second World War. The "6C" means contradiction→ conflict → consultation → compromise → cooperation→ coordination → new contradiction.[2] It seems to be a "7C" process instead. This format description demonstrates via the author's critical eyes the track of struggles between the North and the South in establishing international economic order for the past several decades and expects that this track of development in spirals will be continuing in today's and future world of globalization. Professor CHEN skillfully uses the seven key English words which all share the first letter "C" to summarize this circle development tendency, which is both precise and easy for memory. We could appreciate the wisdom of an academic master underlying it.

The Voice from China explains to the international society the Chinese jurisprudence and legal principles in international intercourses, exposes that "China threat theory" advocated by the U.S. and a few other countries today is in essence the refurbished version of "yellow peril theory" advocated by the western powers in the past. He sharply observes that the DNA of the two theories is the same and their essence is a "political trickery".[3] His sharp words are based on history and facts, uphold the justice and generally acknowledged truth and maintain the positive image of China and its legitimate rights and interest.

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[1] See An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.3-29.

[2] See An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.207-239.

[3] See An CHEN, 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, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.45-99.

The Voice from China contributes a special Part (part III） to analyze China's strategic position on contemporary international economic order issues. It proclaims that China, as the biggest developing country, should "play an active part in promoting the establishing of the NEIO", "become one of the driving forces and mainstays of the South-South Coalition". [4] In the course of establishment the NEIO, China should adhere to the firmness its strategic principles on the one hand and tactical flexibility on the other hand. In the view of Professor CHEN, the peacefully rising China should not only be an "ameliorator" of the current international economic order and "intermediary" of the South-North contradiction, but also one of the "reformers" of the order,[5] which I believe expresses the common voice and wishes of the vast developing countries and their scholars and deserves the blessing of some European and American academics.

Up-holding clear-cut stand and speaking his mind is the principle and feature of Professor CHEN in his behavior, research and dealing with matters, which is also reflected in *The Voice from China*. For instance, in recent years, theories of "neoliberalistic economic order", "constitutional order of WTO" and "economic nationalism's disturbance of globalization" have been popular in western academics of international law. However, Professor CHEN warns China and vast developing countries and their international economic law scholars no to follow these theories blindly, but make choices identifiably, with special guard against "theories trap" which fades out and weakens sovereignty or claims sovereignty old-fashioned.[6]

The Voice from China describes the vast developing countries as the "global weak group" and stresses that these weak countries should "cherish and take a proper use of sovereignty". The author calls for the "South-South coalition and self-improvement" to oppose unilateralism of the U.S and " double standards" by the strong group of western countries and persist in multilateralism so as to strive for and maintain the equal rights and fair interests in the international economic order.[7]

In short, *The Voice from China* bears a distinctive Chinese-style ballet. The book represents the advanced theory of the discipline of Chinese international economic law and delivers the common voice of the weak group countries calling for the establishment of a new international economic order with fairness and justice. It reproduces a master's spirit of extraordinary academic tolerance and pursuing academic excellence. Professor CHEN deserves the title of "helmsman" of Chinese international economic law and "the flag bearer" of the international economic order who promotes to "destroy the old and establish the new". What is more important is that the significance of his academic achievements surpasses the discipline of

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[4] See An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.167-206.

[5] *Ibid*.

[6] *Ibid*.

[7] See An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.207-239.

international economic law itself. Just as a retired official of the UNATAD observed, Professor CHEN's work is "an important contribution to the study and understanding of contemporary world politics", and "should be made subject for required reading and study by leaders and policy makers in all developing countries" and "should also be part of the curriculum in developing countries' ministries, universities, and institutes of higher learning that prepare new cadres and officials for participating and work in the multilateral sphere".[8] In conclusion, *The Voice from China,* just like the sonorous work song of an old helmsman, is undoubtedly a representative academic voice of the Chinese academics of international economic law as well as its high and strong voice to the whole world. I am confident that the publication of this master work will produce a far-reaching significance for the development of international economic law studies.

[8] See Branislav Gosovic, WTO Citadel Needs to be Challenged by the South; An Important and Creative Contribution from China to the Ideology of Third World; both compiled in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, Annex, pp.754-765.

5.1：天下视野 家国情怀 公平秉守

——读《中国的呐喊——陈安论国际经济法》

车丕照*

由国际著名出版社 Springer 出版发行的陈安先生的英文著作《中国的呐喊——陈安论国际经济法》（“The Voice from China -- An CHEN on International Economic Law”）已经问世。该书汇集了陈安先生数十年来在国际经济法研究方面的重要学术成果，集中向世界展示了一位资深的中国国际经济法学者的立场、观点和方法。如果我们要对该书所反映出的陈安先生的学术思想与学术风格做一个简单概括，或许可以归结为这样三句话：天下视野、家国情怀和公平秉守。

一、天下视野

国际经济法学者原本就应具有观察问题的天下视野。但事实上，许多学者的学术视野局限于西方发达国家的国际经济法理论与实践，甚至完全唯西方标准马首是瞻。以至于“法律全球化”成了“美国法的全球化”。[1]

陈安先生的研究虽然仍关注美国等西方发达国家的理论与实践，但却具有更为广阔的视角，即国际经济秩序的视角。法律的首要价值是其秩序价值。“秩序构成了人类理想的要素和社会活动的基本目标。”[2]同样的道理，国际经济法的首要价值应该是其在确立国际经济秩序方面的功能。事实上，当今的国际经济秩序是在各种国际经济法律规范的共同作用下得以维系的。在这些法律规范中，既有国际法规范，又有国内法规范；既有私法规范，又有公法规范。陈安先生在 20 多年前即已为我们清晰地描绘出这样一个支撑国际经济秩序的国际经济法体系。[3]由于国际社会并不存在代表社会利益的“世界政府”，因此，国际经济秩序的形成，即国际经济法律制度的形成是各国及其他各类实体长期行为积累的结果。由此形成的秩序，尽管优于无秩序，但却可能并非公平。正因为如此，从上个世纪 60 年代起，世界上形成了以“公平”为价值追求的“建立国际经济新秩序”的思潮和运动。这场运动虽然尚未达到预期的效果，但仍旧取得了一些现实的成果。国际贸易领域中的“普惠制”和国际环境领

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1 高鸿钧：《美国法全球化：典型例证与法理反思》，载于《中国法学》2011 年第 1 期，第 5 页。

2 张文显著：《法哲学范畴研究》（修订版），中国政法大学出版社 2001 年版，第 195 页。

3 An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.27.

域中的“共同却有区别的责任”就是其中的代表。我国的国际经济法学者虽然也关注过国际经济新秩序的研究，但少有像陈安先生那样持续、深入地对国际经济新秩序加以探索和研究的。在我国老一辈国际经济法学者当中，陈安先生关于国际经济新秩序的研究应该是最具代表性的。尽管“建立国际经济新秩序”的运动在 20 多年前即已开始陷入低潮，但陈安先生的相关研究依旧势头不减，并鼓励大家继续深化该领域的研究。在《中国的呐喊》中，陈安先生高瞻远瞩地指出：“建立国际经济新秩序乃是数十亿人争取国际经济平等地位的共同目标和行动纲领。自通过南南合作而建立国际经济新秩序的方针形成以来，弱势国家争取平等国际经济地位的努力，虽历经潮起潮落，但不断冲破明滩暗礁，持续向前。因此，应从长远的战略视角对这场运动予以分析和评估，而不宜从短期战术角度考虑其得失。”[4]中国优秀知识分子历来就有“先天下之忧而忧，后天下之乐而乐”的价值取向，而这样一种以天下为己任的胸怀，对于当代知识分子来说，首先就应表现为学术研究的“天下视野”。

二、家国情怀

在以天下为视野的同时，陈安先生的学术研究也明显地表露出家国情怀。这种家国情怀主要体现为两个方面：一是对我国国家利益的深切关注，二是以国家为中心的研究进路。

陈安先生的学术研究始终表现出对我国国家立场和国家利益的关切。在《论中国在建立国际经济新秩序中的战略定位》（“What Should Be China’s Strategic Position in the Establishment of New International Economic Order”）一文中，陈安先生指出，“在建立国际经济新秩序的时代大潮流中，中国的自我战略定位理应一如既往，继续是旗帜鲜明的积极推动者之一，是现存国际经济秩序的改革者之一。不宜只是现存国际经济秩序的‘改良者’、南北矛盾的‘协调者’”。[5]在《中外双边投资协定中的四大“安全阀”是否应贸然拆除？》（“Should the Four “Great Safeguards” in Sino-foreign BITs Be Hastily Dismantled?”）一文中，陈安先生语重心长地建议：在中外双边投资协定谈判中，中国应坚持有关国际法授权的规定，善于掌握四大“安全阀”，[6]以有效保护我国的国家利益，并在确立合理的外国投资法律规范及建立国际经济新秩序的过程中发挥示范作用。[7]陈安先生的学术研究始终跟踪

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[4] An CHEN, What Should Be China’s Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism’s Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.203.

[5] *Ibid*., p. 204.

[6] 四大“安全阀”是指在处理东道国与外国投资者的关系时，有利于东道国的“逐案审批同意”权、“当地救济优先”权、“东道国法律适用”权和“重大安全例外”权。

[7] An CHEN, Should the Four “Great Safeguards” in Sino-foreign BITs Be Hastily Dismantled? Comments on Critical Provisions Concerning Dispute Settlement in Model US and Canadian BITs, *The Voice from China -- An CHEN on*

我国政府的相关实践。他所带领的学术团队与国家商务部等政府部门一直保持很好的互动关系。他的许多研究成果都得到我国相关政府部门的重视和采纳。陈安先生的学术研究中所包含的这份家国情怀令人感动、值得称赞。

陈安先生的学术研究中还表现出另外一种“家国情怀”，即以国家为中心的研究进路。如前所述，陈安先生很早就界定了国际经济法的范围，指出：“由于国际经济法是用来调整各种公、私主体之间跨国经济关系的法律规范。所以，它并非专属于单一的国际公法，不单纯是国际公法的分支，不仅仅是适用于经济领域的国际公法。恰恰相反，它的内涵和外延早已大大突破了传统的国际公法的局限，与国际私法和国际商法交叉，并及于国内经济法、民法和商法，从而构成了一个多门类、跨学科的边缘性综合体。”[8]尽管如此，陈安先生的国际经济法研究基本上是以国家为中心展开的，而几乎不涉足私人之间交易的法律问题。于是，在《中国的呐喊》一书中，我们看到陈安先生关于美国单边主义与 WTO 多边体制冲突的研究（“The Three Big Rounds of US Unilateralism Versus WTO Multilateralism During the Last Decade”）、对中国在建立国际经济新秩序中的战略立场的研究（“What Should Be China’s Strategic Position in the Establishment of New International Economic Order”）、对建立国际经济新秩序过程中南南合作的研究(“A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong”）以及关于中国的外资政策与法律的研究（“To Open Wider or to Close Again: China’s Foreign Investment Policies and Laws”）等。即使是就具体案例所进行的研究，陈安先生也是围绕着国家与私人的关系而展开的。陈安先生的这种研究进路反映出他对国家这一国际社会的基本主体的重视。尽管私人之间的国际经济交往是国际经济法的现实的和逻辑的起点：没有私人之间的国际经济交往，就没有国家对国际经济交往的管理；没有国家对国际经济交往的管理，也就没有国家之间的冲突、协调和合作。但与私人相比，国家是更为重要的国际经济法主体。在调整私人之间交易关系的民商法性质的规范逐渐趋同的情况下，国际经济法体系中更为活跃的部分是国际经济活动的国家管理制度及国家间的协调和合作制度。陈安先生归纳出的“6C”律：Contradiction（矛盾）→Conflict（冲突或交锋）→Consultation（磋商）→Compromise（妥协）→Cooperation（合作）→Coordination（协调）→Contradiction new（新的矛盾）

International Economic Law, Springer, 2013, p.273.

[8] An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p. 5.

[9]系统而准确地阐明了国家行为与国际经济法的关系及演变规律。

三、公平秉守

陈安先生学术研究的另外一个特色就是对公平的执着秉守。

如果我们从国家层面观察国际经济法，如果我们将国际经济法的形式限定为制定法和习惯，那么，当今的国际经济法从整体上看只能达到“互惠”（reciprocity），而无法达到“公平”（equity）。“互惠”是相互对等的让与，而“公平”则要求考虑特定情形下的利益分配，而这种分配并不要求是互惠和对等的。由于当今的国际经济法是历史上各类规则的积累，平等地适用这些规则，以致创设新的“互惠”规则，都无法在国际社会成员间实现真正的公平，因此，“建立新的国际经济秩序”也就是要“建立公平合理的国际经济秩序”。如前所述，陈安先生的研究所贯穿的一个基本思想，就是追求国际经济秩序的公平合理。“公平”是比“秩序”更高一级别的价值。人类社会中的“秩序”仅仅表明稳定的社会关系的存在，而“公平”则深入到对“秩序”内容的评判或“秩序”模式的选择。在《关于 WTO 的法治、立法、执法、守法与变法的法理思考》（“Some Jurisprudential Thoughts upon WTO’s Law-Governing, Law–Making, Law-Enforcing, Law-Abiding, and Law-Reforming”）一文中，陈安先生指出：“面对当今现存的各种国际经济立法，包括形形色色的国际经贸‘游戏规则’，国际弱势群体固然不能予以全盘否定，也无力加以彻底改造，但更不能全盘接受，服服帖帖，心甘情愿地忍受其中蕴含的各种不公与不平。”[10]关于建立公平合理的国际经济秩序的途径，陈安先生认为其根本途径在于弱小国家的团结合作。他认为：“在今后一系列全球性问题的国际论坛和多边谈判中，南方各发展中国家比以往任何时候都更加需要采取集体行动，才能赢得公平、公正和合理的结果。为了维护发展中国家共同的根本利益，必须适应形势的变化，通过精心研究和科学设计，调整和更新 77 国集团的纲领，协调不同的利益，以增强共识和内部的凝聚力。”[11]

陈安先生对国际经济秩序的公平与合理的不懈和热切的追求——无论建立国际经济新秩序的运动是处于高潮或低谷，除其他原因外，与其自身经历有关。他在《中国的呐喊》一

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[9] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.234.

[10] An CHEN, Some Jurisprudential Thoughts upon WTO’s Law-Governing, Law–Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.246.

[11] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.212.

书的前言中写道：“我年轻的时候，在学习中华灿烂文明的同时，也从教育中知晓并亲身感受到中华民族的悲惨危机。复杂的情绪逐渐培养起我强烈的民族自豪感和爱国主义的思想，我的反对国际霸权主义的决心，以及我的努力实现社会公正和支持世界上所有弱小国家的志向。”[12]

陈安先生与姚梅镇先生等一起在中国开创了国际经济法学这门学科，并继姚梅镇先生之后成为中国国际经济法学界的旗手。他在 90 年代初就系统地论述了国际经济法学的边缘性、综合性和独立性，[13]并对质疑国际经济法学的“不科学”或“不规范”论、“大胃”论或“长臂”论、“浮躁”论或“炒热”论以及“翻版”论或“舶来”论作出了系统的批驳，[14]为国际经济法学的发展奠定了坚实的基础。如今，陈安先生的英文著作又结集出版，在国际学界发出了中国国际经济法学者的声音。我们期待随着陈安先生的引领，中国学者将在国际社会发出更为响亮的和声。

（编辑：龚 宇）

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[12] An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p. v.

[13] An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p. 3.

[14] An CHEN, On the Misunderstanding Relating to China's Current Developments of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp. 32-43.

5.2：Global Perspective, State Position and Equity Pursuance

——Introducing *The Voice from China --An CHEN on International Economic Law*

Che Pizhao*

Professor An CHEN's book, *The Voice from China--An CHEN on International Economic Law*, newly published by internationally leading academic publisher Springer, contains representative articles written by the author over the past three decades, showing specific ideas of a senior and eminent Chinese scholar of international economic law. We may sum up the author's wisdom and style reflected in this book with several words, namely: the global perspective, the state position, and the equity pursuance.

I. Global Perspective

A scholar of international economic law is expected to observe issues with a global perspective. However, the views of many scholars are limited to the theories and practices of Western developed countries, and globalization of laws, for them, is the globalization of the laws of the United States.[1]

Although Professor CHEN has been paying close attention to the theories and practice of the United States and other developed countries, he insists on studying from a broader perspective--the international economic order. The primary value of law is order. "Order constitutes the ideal element of mankind as well as the basic target of social activities."[2] Similarly, the most essential value of international economic law is its function on establishing international economic order. In fact, the current international economic order is maintained by the co-function of various rules of international economic laws, which include both international law and domestic law, private law and public law. Such a system of international economic law maintaining the international economic order was first demonstrated to us by Professor CHEN as early as more than 20 years ago.[3] Due to the absence of a world government to represent the interests of the international society, the formation of international economic order, as well as the international economic legal system is a result of historically accumulated practices of states

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1 Gao Hongjun, The Globalization of American Law, *China Legal Science*, Vol. 1, 2011, p.5.

2 Zhang Wenxian, *Studies on Basic Categories of Legal Philosophy* (revised edition), Press of Chinese University of Politics and Law, 2001, p.195.

3 An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.27.

and other actors. Such an order, though better than disorder, may be far from equity. This is why a trend of thought and movement of the new international economic order aiming at achieving equity was radically developed since 1960s. There have been some fruits from this movement, such as GSP arrangements in international trade law and the principle of common but differentiated responsibilities in international environment law, although there is still a long road to achieve its expected objectives. There are Chinese scholars paying attention to the study of the new international economic order (NIEO), but few like Professor CHEN who keeps continuous and in-depth studies on the new international economic order. Among the senior generation of Chinese scholars in the area of international economic law, Professor CHEN's study on the new international economic order may be the most representative one. Although the movement of establishing the new international economic order began to hit its bottom about 20 years ago, Professor CHEN has never been disappointed; rather, he has consistently encouraged others to further study in this field. In *The Voice from China*, Professor CHEN shows great foresight that "the establishment of NIEO is the common goal and program of action of billions of people who are striving for equal international economic status. Since the formation of the policy of establishing the NIEO by way of South-South Coalition, the movement of striving for equal international status of the weak states has undergone ebb and flow, and kept on progressing in a spiral course in spite of layers of barriers. Therefore, the analyses and evaluation of the movement should be carried out from a long-term strategic perspective, not from a perspective of gains or loss in the short run."[4] "Feeling anxious before all the others and enjoying happiness after all the others" is the creed of outstanding Chinese scholars in history. For today's scholars，to have the world in mind, should firstly keep a global perspective in academic studies.

II. State Position

While taking a global perspective, Professor CHEN's book is an embodiment of the standpoint of the state. The state position is clearly expressed by his profound concern for China's interests and his state-centered research approach.

Professor CHEN's academic study always shows his profound concern for China's interests. In *What Should Be China's Strategic Position in the Establishment of New International Economic Order*, Professor CHEN points out that "in the course of establishing the NIEO, China should adhere to her self-positioning, i.e., an active promoter who takes a clear-cut stand and a reformer of the existing international economic order, but not just an ameliorator of the existing order or

[4] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.203.

an intermediary of the South- North Contradiction". [5]In *Should the Four "Great Safeguards" in Sino-foreign BITs Be Hastily Dismantled?*, Professor CHEN advises earnestly that China, in the course of negotiating BITs, should insist on stipulating in related BITs such rights authorized by the relevant international law, to well control the four "Great Safeguards",[6] so as to effectively protect China's national interest as well as to play a model role in the course of establishing reasonable legal norms toward foreign investment and the new international economic order.[7] Professor CHEN always combines his academic study with the practice of Chinese government, and his team has been working with the Ministry of Commerce of China and other governmental departments smoothly. Many of his suggestions in his studies have been adopted by relevant governmental agencies. Professor CHEN's patriotic ideas and feelings are really precious and deserve high praise.

Another embodiment of state position is Professor CHEN's state-centered research approach. As mentioned earlier, professor CHEN defined the scope of international economic law very early, saying that "as international economic law refers to legal norms that are used to adjust the cross-border economic relations of various public and private subjects, it can thus not be categorized solely to public international law and cannot be merely deemed as a branch of public international law that applies to economic issues. On the very contrary, its connotation and denotation have largely broken the constrains of public international law in its traditional sense and have crossed partially with private international law, international business law and relating domestic economic law, civil law, and commercial law. Thus, it formed an interdisciplinary marginal synthesis of multi-branches."[8] However, Professor CHEN's study seems always focusing on state, and seldom concerned with transnational business transactions among individuals. Thus, in *The Voice from China*, we can find Professor CHEN's analysis on the conflicts between US unilateralism and WTO multilateralism (*The Three Big Rounds of US Unilateralism Versus WTO Multilateralism During the Last Decade*) , his insight on China's strategic position in the establishment of the new international economic order (*What Should Be China's Strategic Position in the Establishment of New International Economic Order*) , the study on South-South

[5] *Ibid*., p.204.

[6] The four Great Safeguards include the four rights of the host country in its relations with foreign investors, namely, the right to "consent case by case", the right to require "exhausting local remedies", the right to "apply host country's laws" and the right to invoke the "exception for state essential security."

[7] An CHEN, Should the Four "Great Safeguards" in Sino-foreign BITs Be Hastily Dismantled? Comments on Critical Provisions Concerning Dispute Settlement in Model US and Canadian BITs, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.273.

[8] An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p. 5.

coalition in the process of establishing the new international economic order, （*A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong*）and his study on China's policy and law on foreign investment（*To Open Wider or to Close Again: China's Foreign Investment Policies and Laws*）. Even in the articles mainly adopting case-study, Professor CHEN's analysis is also developed around the relations between the state and individuals. This approach reflects Professor CHEN's attention on states, the basic actor of the international society. Admittedly, transnational business transaction between individuals is in fact the logical starting point, as without individuals' business transactions there would be no governmental administration on them, and no conflicts and coordination among states concerning international economic transactions. However, compared with individuals, the state is a more important actor. While civil law and commercial law regulating business transaction tend to converge, the law regulating governmental administration becomes a more essential part of international economic law. The "6C rules" concluded by Professor CHEN, namely Contradiction → Conflict → Consultation → Compromise → Cooperation → Coordination → Contradiction new[9], systematically and accurately expounds the relationship between state behavior and international law and their road of evolution.

III. Equity Pursuance

Another character of Professor CHEN's study is his pursuance to equity.

If we observe international economic law from a perspective of international relations, and confine the law to international convention and custom, we may find today's international economic law in general is a system in the nature of reciprocity, but not equity. Reciprocity means mutual and equal concession between countries, while equity requires specific allocation of interests under particular situations, which does not necessarily require reciprocity. Since current international economic law is a legal system containing historically accumulated rules, it is difficult to achieve equity among members of the international society by applying those rules equally or establishing new reciprocal rule. Therefore, to establish a new international economic order is to establish an equitable and reasonable international economic order. As mentioned earlier, an idea permeated through Professor CHEN's studies is pursuing the equity and

[9] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.234.

reasonableness of international economic order. Equity is a value of law superior than order. Order only means stable social relations, while equity requires the judgment on the content of order or the choosing of the pattern of order. In *Some Jurisprudential Thoughts upon WTO's Law-Governing, Law–Making, Law-Enforcing, Law-Abiding, and Law-Reforming*, Professor CHEN explains that "facing the existing IEL, including varieties of 'rules of game' for international economic and trade affaires, the international weak groups certainly cannot deny them all, nor are they capable of remaking the rules entirely. However, the weak groups cannot either accept all the therein embedded unfairness and injustice willingly, docilely, and obediently."[10] With respect to the road to establish an equitable and reasonable international economic order, Professor CHEN believes the fundamental way lies in the cooperation among the small and weak countries. He holds that "in the later international fora and multilateral negotiations on a series of global issues, it is more necessary than ever for the developing countries of the South to take actions to win an equitable, justified and reasonable outcome. To defend the fundamental common interests of developing countries, it is imperative for the South to adapt itself to the change of circumstances, through delicate research and scientific design, and to reorient and renew the guidelines of the Group of 77, harmonizing various interests and reinforcing common understanding and internal cohesion."[11]

Professor CHEN's unremitting pursuance to equity and reasonableness of the international economic order, no matter whether the movement for establishing the new international economic order is rising or falling, in addition to other factors, relates to his personal experiences. He recalls in the preface of *The Voice from China* that "when I was young, I was told 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."[12]

Together with other pioneers, such as professor Yao Meizhen, Professor CHEN created the discipline of international economic law in China, and succeeded professor Yao as the standard-bearer of China's international economic law academia. He expounded and proved systematically that international economic law "formed an interdisciplinary marginal synthesis of

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[10] An CHEN, Some Jurisprudential Thoughts upon WTO's Law-Governing, Law–Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.246.

[11] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.212.

[12] An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.v.

multi-branches" as early as in the 90s of last century. [13]He also argued convincingly against queries towards the discipline of international economic law including the queries of "nonscientific or nonnormative", "polyphagian or avaricious", "fickle fashion or stirring heat" and "duplication version or importing goods", [14] and laid firm foundation for the discipline of international economic law in China. The publication of Professor CHEN's works in English makes it more convenient for foreign readers to hear the voice from Chinese international economic law scholarships. We expect that following the voice from Professor CHEN, there shall be a loud and clear cantata by much more Chinese scholars in international stage.

[13] An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p. 3.
[14] An CHEN, On the Misunderstanding Relating to China's Current Developments of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp. 32-43.

6.1：“提出中国方案、贡献中国智慧”[1] 的先行者

——评《中国的呐喊：陈安论国际经济法》

赵龙跃*

厦门大学陈安教授的英文专著《中国的呐喊：陈安论国际经济法》(“The Voice from China -- An CHEN on International Economic Law”)，近期由在国际学术界享有盛誉的德国出版社 Springer 在全球出版发行，令人非常钦佩。作为中国国际经济法学界的学术泰斗，陈安教授耄耋之年，笔耕不辍，知识报国，堪称楷模。《中国的呐喊》，顺应中国和平发展的要求，从积极参与国际规则制定和全球治理的角度，就国际经济法的基本理论、当代国家经济主权的论争、以及中国在构建国际经济新秩序中的战略定位等重大问题进行了独特的战略思考，提出了许多切实可行的政策建议。陈安教授立足中国国情和维护广大发展中国家合法权益的需要，学贯中西，独树一帜，从完善国际经济法的角度，为我国参与国际规则制定，建立国际经济新秩序发挥了重要作用，是中国为国际社会“提出中国方案、贡献中国智慧”的先行者。

随着经济全球化的深入发展，国际政治经济格局正在发生着深刻的变化，中国和广大发展中国家在国际舞台上的地位和作用日益重要。积极参与国际规则制定、参与全球经济治理，不仅是实现中华民族伟大复兴之中国梦的重要战略选择，而且也是满足国际社会希望中国在重塑国际经济新秩序过程中发挥更大作用的需要。

中国新一届党和国家领导人高度重视这项工作。习近平总书记在出任国家主席后的第一次对非访问中，就明确提出要推动建设全球发展伙伴关系、加强宏观经济政策协调、共同参与国际发展议程制定、推动国际秩序朝着更加公正合理的方向发展等倡议。[2] 并且之后在各种场合多次强调中国要全面参与国际规则制定、参与全球经济治理。

2014 年 7 月，在出席金砖国家领导人第六次会晤，对巴西、阿根廷、委内瑞拉、古巴进行国事访问并出席中国——拉美和加勒比国家领导人会晤的前夕，习近平主席接受了巴西《经济价值报》、阿根廷《国民报》、委内瑞拉国家通讯社和古巴拉丁美洲通讯社的联合采访，

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[1]习近平主席在接受拉美四国媒体的联合采访时表示，中国“将更多提出中国方案、贡献中国智慧，为国际社会提供更多公共产品”，详见新华网：《习近平接受拉美四国媒体联合采访》，at http://news.xinhuanet.com/world/2014-07/15/c_126752272.htm，2014 年 7 月 15 日。

* 作者系南开大学教授、美国乔治敦大学客座教授、世界银行咨询专家。

[2] 新华网:《习近平：携手合作，共同发展——在金砖国家领导人第五次会晤时的主旨讲话》，at http://news.xinhuanet.com/politics/2013-03/27/c_124511954.htm，2013 年 3 月 27 日。

就中国的国际作用回答记者的提问时，进一步承诺中国“将更加积极有为地参与国际事务，致力于推动完善国际治理体系，积极推动扩大发展中国家在国际事务中的代表性和发言权”，“将更多提出中国方案、贡献中国智慧，为国际社会提供更多公共产品”。[3]

2014 年 12 月，习近平总书记在中共中央政治局第 19 次集体学习中指出，中国“是经济全球化的积极参与者和坚定支持者，也是重要建设者和主要受益者”。对于参与国际经贸规则制定、争取全球经济治理的制度性权力，中国“不能当旁观者、跟随者，而是要做参与者、引领者”，“在国际规则制定中发出更多中国声音、注入更多中国元素”。[4]

从加入世界贸易组织以来，中国无论在学术研究方面，还是在政策实践方面，对参与国际经贸规则制定的认识和重视都还很不够，甚至还存在不同的看法，归纳起来可以分为“阶段参与论”、“能力不足论”和“避免麻烦论”等观点。[5] 陈安教授对于现行的世界贸易组织体制和规则，以及中国参与国际经贸规则制定的问题一直有他自己的独立思考和鲜明观点，早在 2010 年便在他纪念中国加入世界贸易组织 10 周年的论文中做了全面的阐述，提出了立法、执法、守法和变法的辩证关系。[6] 陈教授在坚持国际经济关系必须力行法治的基础上，深入地剖析了国际经济立法中决策权力分配不公的事实，指出由此而形成全球财富分配严重不公的后果，即发达国家主导国际经贸规则的制定权，发展中国家权益严重受损。所以中国和广大发展中国家弱势群体，既要在现行的多边贸易机制中“守法”和“适法”，熟悉运行规则，争取为我所用，最大限度地趋利避害；又要在实践中明辨是非，系统排查现行体制中对国际弱势群体明显不利和显失公正公平的条款、规则，研究探索变革方向，通过“南南联合”，推行“变法图强”，促使多边贸易体制和规则与时俱进，造福全球。

事实上，现行国际经贸体系主要是在 20 世纪 40 年代以后，在美欧等西方发达国家的主导下建立起来的，首先体现和维护的是西方国家的利益和价值。这些国际规则不仅没有考虑中国和发展中国家的实际情况，而且有些规则还是专门针对中国和一些发展中国家的，最为典型的例子就是所谓的“特殊保障条款”，以及在贸易补救条款下的“非市场经济”地位。

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[3] 新华网：《习近平接受拉美四国媒体联合采访》，at http://news.xinhuanet.com/world/2014-07/15/c_126752272.htm，2014 年 7 月 15 日。

[4] 新华网：《习近平：加快实施自由贸易区战略，加快构建开放型经济新体制》，at http://news.xinhuanet.com/politics/2014-12/06/c_1113546075.htm，2014 年 12 月 7 日。

[5] 赵龙跃：《中国参与国际规则制定的问题与对策》，载于《人民论坛•学术前沿》2012 年第 16 期，第 84～94 页。

[6] An CHEN, Some Jurisprudential Thoughts upon WTO’s Law-Governing, Law-Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.241-269.

随着经济全球化的深入发展，现行国际经贸体系已经不能很好地适应新的国际经济格局。中国与世界的关系在发生变化，中国同国际社会的联动更加密切，中国和平发展追求的不仅是中国人民的福祉，也是世界人民共同的福祉，所以必须统筹考虑和综合运用国际国内两个市场、国际国内两种资源、国际国内两类规则。

陈安教授心怀报国之志，以强烈的学术使命感，长期奋战在国际经济法教学和研究的道路上，独立思考，积极探索，先后在国内外发表了一系列重要的学术论文和论著，包括《国际经济法学系列专著》、《国际经济法总论》和《陈安论国际经济法学》等鸿篇力作，为发展完善具有中国特色的国际经济法学做出了巨大的贡献。英文专著《中国的呐喊》的出版，不仅让国际社会听到了中国的声音，而且也正式揭开了中国学者全面系统地参与国际经济法学研究交流的序幕。

在参与国际规则制定、构建新的国际经济秩序的过程中，发展中国家与发达国家必然会发生一些利益上的磨擦和碰撞。西方国家极力维护现存的体现其利益的经济秩序，发展中国家希望建立新的更加公平合理的国际经济秩序，改变全球资源和财富分配不合理的现状。围绕新制度的设计和相关规则的制定，南北方国家之间的斗争是非常激烈和复杂的，在国际经济法学界也出现了“新自由主义经济秩序论“、”WTO 宪政秩序论“和”经济民族主义扰乱全球化秩序论“等理论误区。陈安教授在《中国的呐喊》一书中，对这些西方理论界的误区，逐一地进行了分析批判，并呼吁中国在构建国际经济新秩序中要发挥领导作用，坚持和平发展、合作共赢的原则，推动国际经济新秩序和国际经济法体制的新老交替，实现世界共同繁荣。[7]

随着经济全球化的不断深化，国家主权原则是否过时，成为当代国际法学界另一重大的理论和实践问题。20 世纪 90 年代前后，西方国家凭借自身经济实力的优势，出现了种种否定和淡化国家主权的思潮，美国国际公法专家、曾任美国国际法学会会长的路易斯·汉金教授就曾提出主权过时论和主权有害论。世界贸易组织成立以后，美国国会担心加入世界贸易组织可能影响美国的国家主权，从而引发了美国法学界关于国家主权的大辩论。美国另一位国际经济法学专家、被誉为“世界贸易组织之父”的约翰·杰克逊教授则提出所谓的“现代主权论”，他认为传统国家主权的核心没有过时，现代国家主权的核心是权力的分配问题。[8]

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[7] An CHEN, What Should Be China’s Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism’s Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.167-206.

[8] 约翰·杰克逊著：《国家主权与 WTO： 变化中的国际法基础》，赵龙跃、左海聪、盛建明译，社会科

陈安教授对于美国的这场“主权大辩论”进行了深入的研究和分析，发现两位美国专家的“主权过时论”和“主权有效论”貌似相反，实则相成：都是为了限制其他国家的主权，而维护美国的霸权地位。[9]

当我看到《中国的呐喊》第四章的时候，就不由地想起陈安教授与约翰·杰克逊教授就国家主权问题的一次面对面的精彩辩论，那是 2005 年在美国首都华盛顿，美国国际法学会举办的“国际贸易与和平、自由、安全”国际研讨会上。陈安教授是受邀出席该研讨会的第一位演讲嘉宾，他提交的论文就是《综合评析美国单边主义与 WTO 多边主义交锋的三大回合》。[10] 陈教授从美国随意使用“201 条款”和“301 条款”等国内贸易法规出发，揭示了美国实行单边贸易保护主义不仅是 WTO 多边贸易机制所面临的挑战，而且直接影响世界的和平、自由与安全。美国 1994 年主权大辩论的实质就是维护美国的霸权主义，限制其他国家的主权，从而将美国的主权和利益凌驾于其他国家和国际组织之上。陈教授的精彩演讲给当时在美国乔治敦大学任职的我以及与会的各国专家学者留下了深刻的印象，也使我有幸与陈安教授结下了忘年之交的深厚友谊。

实现中华民族伟大复兴的中国梦，积极参与国际规则制定和全球经济治理，推动完善国际机制，建立公正合理的国际经济新秩序，需要中国社会各界的努力合作。陈安教授耄耋之年，笔耕不辍，博览中外，厚积薄发，向世界国际经济法学界发出了代表中国的呐喊，不仅为国际社会了解中国国际经济法学的主流思想和价值取向提供了途径；为传播中华文化的先进思想和理念、建立完善中国国际经济法学派做出了杰出贡献；而且也为促进中外学术交流、丰富完善国际经济法理论做出了杰出贡献，堪为我们晚辈努力学习的楷模。

（编辑：龚 宇）

学文献出版社 2009 年版，第 65～93 页。

[9] An CHEN, On the Implications for Developing Countries of “the Great 1994 Sovereignty Debate” and the EC–US Economic Sovereignty Disputes, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.159-163.

[10] An CHEN, The Three Big Rounds of US 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), in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.103-158.

6.2： A Pioneer in “Providing China’s Proposal and Contributing China’s Wisdom”[1]

-- Review on *The Voice from China: An CHEN on International Economic Law*

Longyue Zhao*

Professor An CHEN of Xiamen University has recently published an English book *The Voice from China: An CHEN on International Economic Law*, which is distributed globally by Springer, a Germany press with high reputation in the international academic circle. That should be greatly admired. As a leading magnate in China’s international economic law and jurisprudential circle, the octogenarian, Professor An CHEN has never stopped writing and been insisting on making contributions to our country with knowledge, who is an excellent model. The book complies with the requirements of peaceful development in China, particularly ponders such significant problems as the basic theory of international economic law, the debate on modern economic sovereignty and the strategic position of China in building a new international economic order, etc. and presents numerous feasible policy suggestions from the perspective of active participation in making international rules and global governance. Basing on the China’s national conditions and the requirements of maintaining legal interests of developing countries, Professor An CHEN is well versed in both Chinese and western learning, develops a school of his own and plays an important role in assisting China in participating in making international rules and building a new international economic order from the perspective of perfecting international economic law, who will be a Chinese pioneer in “Providing China’s Proposal and Contributing China’s Wisdom” for the international society.

In the wake of the in-depth development of economic globalization, international political and economic pattern is undergoing profound changes, China and other developing countries play an increasingly important position and role on international stage. The proactive participation in making international rules and global economic governance is not only an important strategic choice achieving Chinese dream of bringing about a great rejuvenation of the Chinese nation, but also a desire satisfying the international society that hope China to play a greater role in rebuilding a new international economic order.

The new Chinese Party and State leaders have attached great importance to the work. The Party General Secretary Xi Jinping explicitly put forward suggestions in the aspects of promoting and constructing global development partnership, strengthening macroeconomic policy coordination, jointly participating in making international development agenda and driving international order toward a more just and rational direction during his first visit to Africa after he was elected as the

[1] Xinhuanet, *Xi Jinping was Interviewed by the Media from Four Countries in Latin America*, at http://news.xinhuanet.com/world/2014-07/15/c_126752272.htm, July 15, 2014.

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president.[2] Afterwards, he has stressed that China should comprehensively participate in making international rules and global economic governance for several times in different occasions.

Chinese President Xi Jinping received the joint interview of Brazil "Valor Economico", Argentina "National Newspaper", Venezuela news agency and Cuba Latin America news agency on the previous day of attending the 6th summit of BRICS leaders for official visit to Brazil, Argentina, Venezuela and Cuba and attending the leaders' summit between China – Latin America and Caribbean countries in July, 2014. When answering the question of journalist about China's international role, he made a further commitment that China would further proactively participate in international affairs and perfecting international governance system, promote and enlarge the representative right and speaking right of developing countries in international affairs, present more Chinese schemes and contribute more Chinese wisdom and provide more public products for the international society.[3]

The General Secretary Xi Jinping indicated in the 19th collective learning of CPC Central Committee Political Bureau in December, 2014 that China is the active participant and firmed supporter and also the main constructer and beneficiary of economic globalization. China may act as a participator and leader rather than an onlooker and follower with regard to the institutional power participating in making international economic and trade rules and seeking for global economic governance. China may present more suggestions and implant more Chinese elements in making international rules.[4]

Since accessing to the WTO, China has not paid enough attention to the participation in making international trade and economic rules either in the aspect of academic research or policy practice. There were even various different views such as "theory of participation by stages", "theory of scarce capacity" and "theory of avoiding trouble", etc....[5] As for the existing WTO systems and rules and the problem regarding China's participating in making international economic and trade rules, Professor An CHEN has his own independent thoughts and distinct viewpoints. He has comprehensively expounded the dialectical relationship between legislation, enforcement, law-abiding and law-reforming in the paper in memory of 10th anniversary of China's accessing to the WTO as early as in 2010.[6] On the basis of performing laws in international economic relationship, Professor CHEN deeply dissected the fact of mal-distribution in decision-making power in international economic legislation and pointed out the consequence of serious mal-distribution in global wealth, namely the developed countries dominate the right of making international trade and economic rules and the rights and interests of developing countries are seriously damaged. China and the vulnerable groups in developing countries shall "abide by laws"

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[2] Xinhuanet, *Xi Jinping: Cooperate Jointly and Develop Jointly – Speech in the Fifth Summit of BRICS Leaders*, at http://news.xinhuanet.com/politics/2013-03/27/c_124511954.htm, March 27, 2013.

[3] Xinhuanet, *Xi Jinping was Interviewed by the Media in Four Countries from Latin America*, at http://news.xinhuanet.com/world/2014-07/15/c_126752272.htm, July 15, 2014.

[4] Xinhuanet, *Xi Jinping: Accelerate Implementing Strategy of Free Trade Zone and Building New Open Economy System*, at http://news.xinhuanet.com/politics/2014-12/06/c_1113546075.htm, December 7, 2014.

[5] Zhao Longyue, Problems and Countermeasures of China′s Participation in Making International Rules, *People′s Tribune • Academic Frontier*, No. 16, 2012, page 84-94.

[6] An CHEN, Some Jurisprudential Thoughts upon WTO's Law-Governing, Law-Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.241-269.

and “make laws” in existing multilateral trading system and use the operation rules for ourselves and draw on advantages and avoid disadvantages to the maximum extent. They shall also distinguish right from wrong, systematically survey the articles and rules obviously disadvantageous to international weak groups and losing just and fair in existing system, explore and study the reform directions and promote the multilateral trade systems and rules to keep pace with the times and benefit the world through “South –South” Coalition and “law-reforming”.

In fact, the existing international economic and trade system was built after 1940s under the leading of western developed countries inclusive of America and European countries, giving priority to safeguarding of benefits and value of western countries. These international rules do not take the actual conditions of China and developing countries into account, and also some rules especially direct at China and some developing countries. The most typical example is the so-called “special safeguards measures” and “non-market economy” position under trade remedy terms. Along with the in-depth development of economic globalization, the existing international economic and trade system can not well adapt to the new international economic pattern. The relationship between China and the world has been changing, and the linkage between China and international society is more frequent. What the peaceful development China pursues is not only the well-being of Chinese, but also the well-being of the world’s people. Therefore, it shall overall consider and comprehensively utilize international and national markets, resources and rules.

With the will of serving the country and strong academic sense of mission, Professor An CHEN has fought in the teaching and research road of international economic law for a long time. Upon independent thinking and proactive exploration, he has published a series of important academic papers and works successively at home and abroad, including *Monographs of International Economic Law Series*, *Pandect of International Economic Law* and *Theory of An CHEN on International Economic Law*, etc.... He has made great contributions to developing and perfecting international economic law with Chinese characteristics. The English book of *The Voice from China* not only makes the international society hear Chinese voice, but also officially ushers the Chinese scholars comprehensively and schematically in participating the research and communication of international economic law.

Some interest frictions and collisions will certainly occur between the developing countries and developed countries during the process of participating in making international rules and constructing a new international economic order. The western countries make an utmost effort to maintain the existing economic order representing their benefits, while the developing countries are willing to build a fair and rational new international economic order to change the unreasonable distribution of global resources and wealth. The Southern and Northern countries fight intensively and complexly centering about the design of new systems and the making of relevant rules. The theoretical misunderstandings of “Neoliberalistic Economic Order”, “Constitutional Order of the WTO” and “Economic Nationalism’s Disturbance of Globalization” also exist in international economic jurisprudential circle. Professor An CHEN seriatim analyzes and criticizes the misunderstandings in western theory field in this book, and appeals to China playing a leading role in building a new international economic order, insisting on the principle of peaceful development and win-win cooperation, driving the alternation of new international

economic order and international economic law system and achieving co-prosperity in the world.[7]

Along with the deepening of economic globalization, whether the principle of state sovereignty is behind the times has become another important theory and practice problem in modern international jurisprudential circle. Before or after 1990s, the ideological trend of negating and fading state sovereignty appeared in western countries by virtue of their own economic strength. Professor Louis Henkin, an expert in American public international law and the former president of American Society of International Law has ever presented a theory of sovereignty behind the times and a theory of harmful sovereignty. After setting up the WTO, United States Congress worried about influencing state sovereignty after accessing to the WTO, hereby giving rise to a mass debate about state sovereignty in American jurisprudential circle. Another American expert in international economic law, John Jackson with the reputation of "Father of the WTO" presented the so-called "modern theory of sovereignty". In his opinion, the core of traditional state sovereignty is not outmoded and the core of modern state sovereignty is the power distribution.[8] Professor An CHEN deeply researched and analyzed the "mass debate about sovereignty", discovering that "theory of outmoded sovereignty" and "theory of effective sovereignty" are opposite in appearance, while complementary in reality: both theories are presented to limit the sovereignty of other countries and safeguard the hegemony position of America. [9]

While reading Chapter IV of *The Voice from China*, I can't help thinking of the face-to-face and wonderful debate between Professor An CHEN and Professor John Jackson about state sovereignty in the international conference on International Trade and Peace, Freedom and Security held by American Society of International Law in Washington D .C. in 2005. Professor CHEN is the first speaker to give a presentation in the conference. The paper he submitted is *The Three Big Rounds of US Unilateralism Versus the WTO Multilateralism during the Last Decade*.[10] Professor CHEN revealed that the unilateral trade protectionism of the United States not only threatened WTO multilateralism trade mechanism, but also directly influenced the peace, freedom and security of the world by taking the random use of "Article 201", "Article 301" and other domestic trade laws. The essence of sovereignty debate in 1994 is safeguarding the American hegemonism, limiting the sovereignty of other countries and outmatching American sovereignty and benefits above other countries and international organizations. The splendid speech of Professor CHEN made a profound impression on me and the experts and scholars from different countries attending the conference. Since then, I have the honor to be a close friend of Professor An CHEN in spite of the big difference of age.

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[7] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.167-206.

[8] John H. Jackson, *Sovereignty, the WTO, and Changing Fundamentals of International Law*, Cambridge University Press, 2006. Chinese version *State Sovereignty, the WTO: Changing Fundamentals of International Law* is translated by Zhao Longyue, Zuo Haicong and Sheng Jianming. Social Sciences Academic Press, November, 2009, pp. 65-93.

[9] An CHEN, On the Implications for Developing Countries of "the Great 1994 Sovereignty Debate" and the EC–US Economic Sovereignty Disputes, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.159-163.

[10] An CHEN, The Three Big Rounds of US 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), in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.103-158.

All sectors of society in China shall cooperate to achieve the Chinese dream of bringing about a great rejuvenation of the Chinese nation, proactively participate in making international rules and global economic governance, driving the perfection of international mechanism and building a fair and reasonable new international economic order. The octogenarian, Professor An CHEN has never stopped writing whilst has been accumulating knowledge in China and foreign countries and uttering a voice to the circle of international economic law on behalf of China, not only providing channels for international society to understand the mainstream ideology and value orientation in China's international economic law and making great contributions to spreading advanced ideology and ideas in Chinese culture and to build China's own school of international economic law, but also making great contributions to promoting academic communication between China and foreign countries and enriching and perfecting the theories in international economic law. He is an excellent model from whom the young generations should learn.

7.1：追求全球正义，抵制国际霸权

Eric Yong Joong Lee*

导言

陈安教授经过长期刻苦钻研，完成了鸿篇巨著。邀请我撰写书评。对我而言，为这样一位令人敬仰的学者撰写书评，是喜出望外的殊荣。第一次见到陈安教授，可以回溯到 2011 年。当时，经蔡从燕教授推荐，我代表韩国《东亚与国际法学刊》(Journal of East Asiaand International Law），专程前往厦门采访陈安教授。采访在厦门大学法学院的大楼进行，厦门大学法学院靠近景色优美的海滨。我还记得，整个厦门大学法学院的气氛非常专业化，稳重温文，具有合作精神。陈安教授和厦门大学法学院的其他教师如陈辉萍教授，以及陈安教授亲切和善女儿陈仲洵的热情接待，给我留下深刻的印象，令我有宾至如归之感。我走进宽敞的会面房间，就看到陈安教授已经带着温暖的笑容在等我。我立刻意识到他是一位名副其实的学者，是一位具有深厚美德的“士”，善于以其无比顽强的力量对抗任何压制真理（veritas）的行为。在我诚挚问候之后，他谦逊且友好地说：“李博士！我们之间有两个共通之处。首先，中国和韩国都曾经遭受日本军国主义的侵略。其次，我和你都推崇孔儒之道，因为你的名字‘庸中’与一本儒家经典著作《中庸》密切相关。”确实如此，我们之间的会面访谈也正是在这些共识的基础上积极地展开。

陈安教授在采访过程中提到许多有趣的故事深深地吸引了我。（整个采访的问答记录刊登在《东亚与国际法学刊》第 4 卷第 2 期，并被辑入《中国的呐喊》这本书的导言部分[1]）。作为中国国际经济法的旗手学者，他具有卓越的才华和坚守的原则，思维清晰，博闻广识，、严谨缜密，充满智慧。他对国际法的重要性具有深刻厚实的理解。

在我回到韩国之后，我们之间一直保持频繁的联系。2014 年，陈安教授邀请我为《中国的呐喊》一书撰写书评。一开始我有所犹豫，因为我觉得我不够资格为这样一位我从心底深深敬佩的杰出学者的著作撰写书评，这将会是我要承担的最艰难的任务之一。然而，最后我还是接受了陈安教授的提议，因为我觉得我有责任祝贺他把自己的学术主张传播到国际社

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1 参见*A Dialogue with Judicial Wisdom, Prof. An CHEN: A Flag-Holder Chinese Scholar Advocating Reform of International Economic Law*, Journal of East Asia and International Law，Vol.4, No. 2, pp.477-502; *The Voice from China*, pp.xxxi-lviii.

会。我的评论本身也许并非对这一著作的确切评价，但我的粗浅评说却表达了一位年轻外国学者对作者的仰慕和敬意。

一、作者简介

陈安教授在 1929 年 5 月出生于福建东北部的一个小山村，在其成长过程中，很大程度上受到父亲的影响和教育，他的父亲是位儒家的学者和诗人，1945 年辞世。1946 年陈安教授 17 岁的时候，考进厦门大学开始学习法律。此后，由于历史的原因，自 1953 年起他的法学学习和研究令人遗憾地中断了 27 年，直到 1980 年厦门大学法学院重新建立。那时，陈安教授已经五十来岁。他敏锐地意识到中国不仅需要建立国内法律体系，而且，由于中国开始实施对外开放的战略，还需要有自己的国际经济法体系。陈安教授决定专注从事国际经济法的研究。然而，在那个时代，中国缺乏现代的法律教科书，更遑论有关国际经济法的各种文献。1981 年，一个偶然的机会，陈安教授遇到美国 Jerome Cohen 教授并与之就学术观点展开争论，最后，陈安教授被邀请到哈佛大学继续从事法学研究。从此之后，他利用所有到国外访问和参加学术会议的机会，带回大量相关的英文书籍和资料。辑入《中国的呐喊：陈安论国际经济法》一书的一系列专论就是其研究的主要成果。它反映了陈安教授严谨的学术素养、爱国主义情怀和历史责任感。陈安教授是“新中国国际经济法学的奠基人之一”，他的学术生涯和中国改革开放的国策息息相关。在法学实践中，他又是一名国际商事领域的律师，多家跨国企业的法律顾问，同时还是 ICSID、ICC、IAI 和 RIA 的仲裁员。

除了国际经济法，陈安教授还爱好诗歌、文学和书法艺术。在东亚，一名完美的学者通常都有这些方面的修养。他性格温和、热心，有勇往直前的信念。他曾经经历了中国被外国占领、内战和社会革命的历程。所有这些，都不能阻止他对人类社会真理、公平的追求。甚至可以说，这些磨难帮助他在中国学术乃至国际学术上达到难以超越的高峰。陈安教授经常论证对人类社会和平以及共同繁荣的崇高追求，不失为我们这个时代的一位杰出的良师益友。

二、著作内容

《中国的呐喊：陈安论国际经济法》这部专著，汇辑了陈安教授在过去 30 多年所撰写的 24 篇英文论文，是陈安教授从 1980 年开始多年从事国际经济法学术研究的代表作。这本书涵盖了中国所面临的有关国际经济法的许多疑难问题。在该书中，这 24 篇文章被分为 6 部分：当代国际经济法的法理；当代经济主权论；中国在当代国际经济秩序中的战略定位；当代双边投资条约；中国的涉外经济立法；当代中国在国际经济争端解决中的实践。各部分的内容相互联结并保持良好平衡。陈安教授的法理观念和学术见解在许多方面不苟同于美国

和欧洲国际法研究的主流观点。《中国的呐喊》这本著作的出版具有相当重大的意义，因为它打造了中国在国际经济法领域话语权的坚实基础。通过陈安教授周全深入的研究，中国开始在世界上发出自己的声音、表达自己的理念。从这个意义上说，《中国的呐喊》这一标题有相当深刻的蕴含喻义。除了学术内容精彩独到之外，这本书由一家久负盛名的斯普林格出版社负责出版，编辑加工也十分专业、装帧精美，封面设计也很典雅大方，值得称道。

三、“黄祸论”（Yellow Peril）

中国对于西方来说一直是个神秘的国度。其主要原因在于中国具有广阔的疆土，大量的人口，漫长的历史和古老的文明，现代的共产主义理念，而且在 1978 年之前一直坚持闭关锁国的政策。但是，更关键的是，在西方人思想的深处，曾经不知不觉地根植了的所谓“黄祸论”的传言。最近，这种思想又从他们的潜意识中悄悄爬出来，进入真实的世界，变成为一个恶毒的说法即“中国威胁论”。在《中国的呐喊》的第三章，陈安教授分析了“黄祸论”以及其现代变种的“中国威胁论”的起源、演变和在国际社会的法律意义。一些中国学者似乎也同样意识到这两个概念之间的历史联系。例如，中山大学陈东教授指出：“‘中国威胁论’并非是在过去二十年才出现的新的概念。它可以回溯到 19 世纪，例如，在沙俄时代米哈伊尔·巴枯宁撰写的《国家制度与无政府状态》一书中，就谈到了‘来自东方（中国）的巨大和可怕的威胁’。德皇威廉二世制作的形象漫画《欧洲人啊，保卫你们的信仰和家园》，就描述了 19 世纪末欧洲人对中国的普遍看法。”[2]

陈东教授还指出：“‘黄祸论’的根源在于一些欧洲人将黄色面孔的中国人视为‘不文明的’和愚蠢的破坏者，他们对西方的“文明社会”可能造成巨大的威胁。”[3]

然而，单凭这种历史回溯的方法，往往还不是认识现今“中国威胁论”的关键所在。当代美国霸权版的“中国威胁论”最早出现在 20 世纪 90 年代中叶，主要鼓吹者是布什政府下的美国政客和学者。到了 21 世纪的最初几年，这一谰言开始变得相当尖锐刺耳。当时布什政府看来是刻意地杜撰出“中国威胁论”这个口号，旨在阻止经济和政治影响力迅速增长的中国进一步扩展影响到亚洲-太平洋地区，以便于美国全盘统治东亚。对当时唯一的“超级大国”美国而言，中国可能是美国在这一地区军事和经济霸权主义的潜在威胁。“中国威胁论”看来正是在此种权力交替的国际环境中产生。“中国威胁论”可能不是“黄祸论”在当代的简单转型，因为“黄祸论”主要是欧洲人在特定环境下的看法。“黄祸论”的产生实际

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[2] Dong Chen, *Who Threatens Whom? The ‘Chinese Treat’ and the Bush Doctrine*, JOURNAL OF EAST ASIA AND INTERNATIONAL LAW, vol. 7(2014), p.32.
[3] *Id.*

上起源于 13 世纪蒙古人入侵欧洲后，欧洲人面对黄色脸孔的中国人和中国文明产生的根深蒂固的自卑情绪。因此，“黄色”一词可能不是指亚洲人皮肤的颜色，它指的是蒙古骑兵在入侵过程中掀起的黄色沙暴。对当时的欧洲人而言，他们是魔鬼，只有全能的上帝能战胜他们。

这一假设在陈东教授的《谁在威胁谁？“中国威胁论”和布什政策》一文中得到很好的论证。陈东教授认为，布什政府抱有“单极世界的梦想”可以解释“中国威胁论”的来由。[4]陈东教授引用伊肯贝利撰写的论文《美国的帝国野心》，指出，美国人将布什的政策视为“美国能保持单极世界从而没有任何竞争者的宏伟的战略”，但这有可能造成“世界更加危险和分裂，因此也会威胁到美国的安全”。[5]陈东教授还特别援引福音教派的理论作为论证布什政策的基础。他认为，“中国威胁论”是布什构建以美国为中心的单极世界的实用工具。[6]

陈安教授在《中国的呐喊》一书对前述布什政策下的种种“中国威胁论”做了概括总结。陈安教授认为：

> “它们是美国出现的层次最高、频率最繁、影响最大的美国官方版的‘黄祸’论——‘中国威胁’论。它们是美国国会、美国国防部、美国高层智囊 ‘三结合’产物。美国国防部门的部门利益昭然若揭…（前苏联解体）和冷战结束后，对于始终保持着‘古怪癖好’的惯性思维的美国人而言…他们需要找到（前苏联以外）另一个明确的、强大的新‘威胁’，而中国正好就是美国人一向极力虚构的危及美国安全的新的‘严重威胁’。”[7]
>
> 我十分赞同陈安教授对“中国威胁论”的看法，即“中国威胁”论就是“21 世纪美国霸权最新修订版的‘黄祸’论，它体现为美国‘鹰派’反华议员每年一度集中渲染‘中国威胁’的《中国军力报告》，美中经济与安全审议委员会的《审议报告》，以及各种媒体的呼应鼓噪。”[8]

四、经济主权

在《中国的呐喊》一书的第四章和第五章，陈安教授探讨了更为根本性的经济主权问题。随着经济全球化和各国间互相依存性的增强，单个国家的经济主权成为论战的焦点之一。陈

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[4] *Id*. pp. 39-40.
[5] G. Ikenberry, *America's Imperial Ambitions*, 81 FOREIGN AFFAIRS, VOL. 81, p. 44 (2002).
[6] Dong Chen, S*upra* note 1, pp. 42-43.
[7] An CHEN, *The Voice from China-An CHEN on International Economic Law*, Springer, 2014, pp. 64-65.并参见陈安：《评“黄祸”论的本源、本质及其最新霸权“变种”：“中国威胁”论》，载于《现代法学》2011 年第 6 期，第 20-21 页。
[8] *Id*. pp. 67-68.并参阅同上论文，《现代法学》2011 年第 6 期，第 22 页。

安教授对 WTO 的多边主义和美国的单边主义作了对比分析。他非常精彩地比较分析了美国汉金教授和杰克逊教授关于美国单边主义和 WTO 多边主义的不同观点。他引用许多相关案例批判美国单边主义凌驾于其他国家主权之上。他的分析和评论有意识的涵盖《美国贸易法》中的 201 条款和 301 条款，WTO 体系形成过程中的各种主权冲突，美国国内的 1994 年主权大辩论，美国的主权和其它国家的主权之间的关系，美国与欧盟之间经济主权的争夺，美国与日本之间的汽车争端，美国与欧盟之间香蕉争端，WTO 争端解决机构针对美国 301 条款的专家组报告等。

陈安教授探讨了多边体制时代各主权国家合作协调的问题。他的观点谅必建立在中国过往历史经验的基础上，包括被列强侵占的灾难和国内战争的痛楚，这些灾难和痛楚在陈安教授一生中都曾经亲身经历过。我完全赞同陈安教授的观点。绝大多数亚洲国家都曾经一度沦为殖民地，对亚洲人说来，“主权”不应该是个虚构的神话，它是民族自决的现实。

结论

陈安教授《中国的呐喊》一书，无论对中国、整个亚洲还是对国际社会，都是一项重大的成就和贡献。此书追求和论证的目标是，国家间应当在公平和均衡的基础上开展经济合作。这本著作的核心和焦点可以概括为 ：为世界群弱呐喊，追求全球正义，抵制国际霸权。

这也是“了解中国”系列专著的出发点，即从建立国际经济新秩序的角度来理解看待中国。对于今后愿意追随陈安教授的学术界人士和实务工作者而言，《中国的呐喊》将会成为杰出的范本。就我而言，我正处在陈安教授开始从事国际法研究的年龄。他不渝不懈的努力和学术热情会一直激励着亚洲乃至全球的国际法工作者。陈安教授的精神也一直鼓舞我保持永无止境的求知欲。无论何时，我都热切地期待未来新的一卷《中国的呐喊》问世。由于陈安教授老当益壮，依然矍铄健朗，我希望新书的出版不会等待太久。在这里，我再次对《中国的呐喊》一书出版，表达发自内心的深深的祝贺之忱。

（译者、编辑：陈 欣）

7.2： Pursuing Global Justice

Resisting International Hegemony

Book Review

The Voice from China: An CHEN on International Economic Law

(Understanding China, Springer, 2013)

Eric Yong Joong Lee*

Introduction

It is an incredible honor for me to have this opportunity to review the product of a long and painstaking research conducted by an honorable scholar like Professor An CHEN. My first encounter with Professor CHEN traces back to 2011 when I visited Xiamen in order to interview him for the Journal of East Asia and International Law with the recommendation of Professor Congyan Cai. The interview was held in the law school building of Xiamen University which is close to the coast of the beautiful ocean. The atmosphere of Xiamen law school was very professional, gentle and cooperative. I was fully impressed by the warmhearted hospitality of Professor CHEN and other staff members of Xiamen including Professor Huiping Chen and Professor CHEN's lovely daughter Carol. It made me feel at home. When I entered the wide room for the interview, Professor CHEN was waiting with his gentle smile. I could instantly recognize he is a true scholar and a man of immense virtue (士) with the invincible power against anything suppressing 'veritas' (眞理). After my deeply felt greetings, he modestly and friendly said: "Dr. Lee!

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We are sharing two common things. First, both of us (China and Korea) have suffered severely from Japanese militarism. Second, we (Professor Chen and Lee) in common respect Confucius, considering that your name Yong Joong （庸中）is related to one of the holy books of Confucius. The relating specific holy book is named with '中庸'（Chinese pronounced as Zhong Yong）." Indeed，our interview started on a positive note based on these commonalities. Professor CHEN spoke about many interesting stories during the interview sufficient to enthrall me. (The transcript of the whole interview has been published in volume 4, number 2 of the Journal of East Asia and International Law as well as in the introduction section of *The Voice from China*[1]). As a flag-holder Chinese scholar of international economic law, he is a man of exceptional brilliance and principles with clear, broad, rigorous thinking and wisdom. He has a profound understanding of the importance of international law.

Since my return home, we have maintained frequent contact with each other. In 2014, Professor CHEN requested me to review *The Voice from China*. I was hesitant at first because I thought I was *not* entitled to comment on something by an outstanding scholar whom I respect from the bottom of my heart. It would thus be one of the most difficult tasks I have endured. However, I finally decided to accept his proposal because it would be my duty to celebrate his voice toward the global community. My review may not contain an evaluation *per se*, but my humble comments as a young foreign scholar admiring the author.

The Author

Professor Chen was born in May, 1929 in a small mountainous town in northeast Fujian Province, China and grew up there profoundly influenced and educated by his father who was a Confucian scholar and poet，dying in 1945. He began studying law at Xiamen University in 1946 when he was 17 years old. Due to historical reasons, his legal studies were unfortunately interrupted for 27 years until 1980 when the Law School of Xiamen University was reestablished. By that time, he was already in his fifties. He had the keen insight to recognize that China would

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[1] See：*A Dialogue with Judicial Wisdom, Prof. An CHEN: A Flag-Holder Chinese Scholar Advocating Reform of International Economic Law,* Journal of East Asia and International Law，Vol.4, No. 2, pp.477-502; *The Voice from China,* pp.xxxi-lviii 64-65.

need to establish not only its domestic legal regime, but also international (economic) law, especially when China opened up to the world. Professor Chen decided to focus on international economic law (IEL). At that time, however, there were few modern legal reference texts in China, not to mention IEL literature. In 1981, he occasionally met and argued with Professor Jerome Cohen and was finally invited to Harvard Law School to continue his legal studies. Afterwards, he took all opportunities of travelling abroad for conferences and visits to bring back relevant books and articles in English. The series works of *An CHEN on International Economic Law* is the main products of his research. It reflects his academic rigor, patriotism and historical responsibility. Professor Chen is "one of the founders of international economic law in new China" and his academic life is closely connected with reform and opening up. In his legal practice, he is also a concurrent lawyer of international business, legal adviser of several transnational corporations, as well as an arbitrator of the ICSID，ICC, IAI and RIA.

In addition to the IEL, Professor Chen likes poetry, literature and calligraphy, which are grounds to be an ideal scholar in East Asia. He is a true man of gentle, warmhearted and courageous personality. In his lifetime, China has experienced foreign occupation, civil war and the socialist revolution. All these, however, could not stop his longing for the truth and justice in human society. Rather, those trials have made him an insurmountable peak of Chinese as well as world academia. Professor Chen always tells his lofty messages and ideas for peace and co-prosperity of human society as a great mentor of our time.

Book

The monograph entitled, *The Voice from China: An CHEN on International Economic Law* is a collection of 24 English articles written by Professor An CHEN over the past 30 years. *The Voice from China* is a representation of his academic life of international economic law, starting from 1980. The book covers areas of international economic law questions that China has been asking. These 24 articles are divided into six parts in his book, namely: Jurisprudence of Contemporary International Economic Law; Contemporary Economic Sovereignty; China's Strategic Position on Contemporary International Economic Order; Contemporary Bilateral Investment Treaties; China's Legislation on Sino-Foreign Economic Issues; and Contemporary Chinese Practices on International Economic Disputes; which are all very well balanced. His jurisprudential idea and

academic opinions show different aspects of international law from those of the United States and Europe that were mainstream. This publication has great significance considering that it is the firm ground of Chinese discourse on international economic law. With his thorough research, China began expressing her ideas in her own voice. In that sense, the title, *The Voice from China* has deep implications. In addition to academic contents, the book is professionally edited and beautifully bound by a highly renowned publisher, Springer. The cover design is also appreciable.

Yellow Peril

China is a mysterious country to the western people. It is mainly due to her vast national territory, large population, long history and civilization, modern communism and her closed-door policy up until 1978. One more critical point is, however, the so-called 'Yellow Peril,' which is unconsciously rooted in the western mind. Recently, this 'Yellow Peril' began creeping out of their sub-consciousness into the real world as a poisonous concept of the so-called 'China Threat.' In Chapter 3 of *The Voice from China*, Professor Chen has analyzed the origin, evolution and international legal significance of the 'Yellow Peril' and the 'China Threat,' which is its modern style transformation. Some Chinese scholars seem to perceive these two concepts to be historically connected. For example, Professor Dong Chen at Sun-Yat-Sen University stated:

> The term 'Chinese Threat' has not been a novel wording for the past twenty years. Its references date as far back to the nineteenth century, *e.g.*, in Mikhail Bakunin's work entitled "On Statism and Anarchism," which implies the "tremendous and dreadful threat from the East." Wilhelm II von Deutschland's vivid cartoon "The Yellow Peril" (*Völker Europas, wahrt eure heiligsten Güter*) depicted a common European perception of China at the turn of the nineteenth century.[2]

He also added:

> The core of the 'Yellow Peril' theory lay in the fact that some Europeans regarded yellow-faced Chinese as 'uncivilized' and stupid locusts causing great, albeit potential, threats to the 'civilized (western)' world.[3]

Such a historical approach is, however, not always the key to understanding the current

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[2] Dong Chen, *Who Threatens Whom? The 'Chinese Treat' and the Bush Doctrine,* JOURNAL OF EAST ASIA AND INTERNATIONAL LAW, vol. 7(2014), p.32
[3] Ibid.

recognition of the contemporary US hegemonic version of 'China Threat,' which was firstly referred to in the mid-1990's, mainly by US politicians and scholars under the Bush administration. It became shrill in the early 2000s. The then Bush administration seemed to intentionally fabricate the political slogan, 'China Threat' in order to dominate East Asia by preventing China whose economy and political influence were fast growing from expanding to the Asia-Pacific region. For the US, who was 'the only superpower' at that time, China might be a potential threat to the American military and economic hegemony in the region. The concept, 'China Threat' seemed to be initiated under this global environment of power shift. The so-called 'China Threat' thus might not simply be a modern transformation of the 'Yellow Peril,' which was largely European oriented. The 'Yellow Peril' was actually coined because of the Mongol invasion of Europe in the thirteenth century which led to the deep-rooted inferiority complex of the Europeans toward Chinese (Yellow-faced Asian) people and civilization. Herewith, the word, 'yellow' might not mean the skin color of Asian, but the color of sand storms that the Mongol cavalry made while aggressing. For the then Europeans, they were evils that could be surmounted only by the omnipotent God.

This hypothesis is well evidenced by Professor Dong Chen's article, *Who Threatens Whom? The 'Chinese Treat' and the Bush Doctrine*. In his article, Dong Chen states 'Bush's dream for the unipolar world' to explain the 'China Threat.'[4] Citing Ikenberry's article, *America's* ***Imperial Ambitions***, he argues that Americans regard the Bush strategy as "a 'grand strategy' that "begins with fundamental commitment to maintaining a unipolar world in which the US has no peer competitor," and that threatens to "leave the world more dangerous and divided-and the US less secure."[5] Furthermore, Professor Dong Chen specially refers to evangelical Christianity as the basis of the Bush doctrine.[6] According to him, China Threat is an implementative tool of the Bush doctrine to build the unipolar world with the US in the center.

An abovementioned statement to that effect on 'China Threat' under the Bush doctrine may be wrapped up in *The Voice from China*. Professor An CHEN said:

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[4] Ibid. pp. 39-40.
[5] G. Ikenberry, *America's Imperial Ambitions*, 81 FOREIGN AFFAIRS, VOL. 81, p. 44 (2002).
[6] Dong Chen, supra note 2, pp. 42-43.

> They could be fairly deemed as the official American versions of "Yellow Peril" and "China Threat" on the highest level, at the highest frequency.... They are the outcome of the following triple sources: American Congress, the US Department of Defense, and various high-ranked think tanks... The departmental interests of American Department of Defense could be easily discerned in this regard... After the Cold War was over, it was always the inertial thinking of "curious" Americans ... to find a definite and powerful new "threat." And China is the new "serious threat" on security that Americans have been endeavoring to establish.[7]

I would fully agree with the position of Professor An CHEN that the China Threat is "the twenty-first century version of 'Yellow Peril' which has been repeatedly advocated by American hawkish anti-China congressmen, as evidenced in the annual Report of China's Military Power and in the annual Report of US-China Economic and Security, and the echoing of media along with them."[8]

Economic Sovereignty

In Chapters 4 and 5 of *The Voice from China*, Professor Chen discusses a more fundamental question of economic sovereignty. As the economic globalization and interdependency between nations are deepening, sovereignty of each nation State is getting to a point of controversy. Professor CHEN refers to the comparison between the WTO multilateralism and the US unilateralism. He compares the ideas of Professor L. Henkin to those of Professor J. Jackson with regard to unilateralism (US) and multilateralism (WTO) very well. Professor CHEN has cited pertinent cases in order to critically discuss the US unilateralism over the sovereignty of other states. His analytic statement purposefully covers Sections 201 and 301 of the US Trade Act, conflicts of sovereignties in the formation of the WTO system, the Great 1994 Sovereignty Debate, sovereignty of the US and other States, the US-EU economic sovereignty disputes, the US-Japan auto disputes, the US-EC banana disputes, the WTO/DSB Panel Report on the Section 301 case, etc.

Professor CHEN discusses the coordination of national sovereignty in the time of

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[7] An CHEN, The Voice from China-An CHEN on International Economic Law, Springer, 2014, pp. 64-65. See also, An CHEN, On the Source, Essence of "Yellow Peril" Doctrine and its Latest Hegemony "Variant"- the "China Threat", *Modern Law Science*, No. 6, 2011, pp. 20-21.

[8] An CHEN, The Voice from China, pp. 67-68; An CHEN, On the Source, Essence of "Yellow Peril" Doctrine and its Latest Hegemony "Variant"- the "China Threat", p. 22.

multilateralism. His idea might be set up based on the China's historical experience including horrible foreign occupation and the civil war that Professor CHEN himself got through in his lifetime. I fully second his opinions. For Asians, most of whom were once colonized, 'sovereignty' is not myth; it is the reality to self-determination.

Conclusion

The *Voice from China* is a great achievement and contribution by Professor An CHEN to China, to the whole of Asia, as well as to the global community, which is searching for a new discourse in the promotion of economic cooperation in a fair and balanced manner between states. The core and focus of this monograph could be summarized as *Voicing for Worldwide Weaks, Pursuing Global Justice，Resisting International Hegemony.*

It should be a triggering point for the series of 'understanding China' with a viewpoint of establishing a new international economic order. This publication will be an outstanding model of other academics and practitioners who are willing to follow him. Personally, I am now of the age in which Professor CHEN began studying international law. His constant efforts and enthusiasm is a consistent stimulant for the passion of international lawyers in Asia as well as the whole world. My eternally curious mind is also deeply inspired by Professor CHEN. I am eagerly awaiting a future volume of *The Voice from China*, whenever it is manifest. Since Professor CHEN is enjoying green old age, I hope it would not entail much waiting. Once again I extend the deepest and heartfelt celebration to the publication of *The Voice from China.*

8.1：国家主权等国际经济法宏观问题的深刻反思

--评《中国的呐喊：陈安论国际经济法》

Patricia Wouters*

《中国的呐喊：陈安论国际经济法》一书的作者是中国国际经济法学界泰斗厦门大学法学院陈安教授，该书汇集了作者自 1980 年以来三十多年不同时期撰写的 24 篇专论。该书的学术专论和案例分析论及国际法诸多议题，却又服务于一个共同的主题，即发出作者对国际经济法的独特的“中国声音”。

全书分为六部分：当代国际经济法的基本理论；当代国家经济主权的“攻防”战；中国在构建当代国际经济新秩序中的战略定位；当代国际投资法的论争；当代中国涉外经济立法的争议；若干涉华、涉外经贸争端典型案例剖析。该巨著共 789 页，含正文 24 章及参考文献和附录（包括对陈教授论著的各种书刊评论）。

读者开篇即可看出作者的主要意图----阐述自己对国际（经济）法的中国特色和独有路径的看法。《序言》开宗明义：

> ……中国学者不应盲目附和和全盘接受某些西方观点。正确的态度理应是独立思考，明辨是非，批判地吸收。 秉持这一态度，我和我的中国同仁在晚近 30 年的研究和著述中，一直立足于中国国情和其他弱小国家的基本立场，努力剖析、辨别 、探讨西方各种法学理论的真伪，从而决定取舍。除了对西方法律理论“取其精华，去其糟粕”外，我们还努力推陈出新，开拓创新，针对若干重大法律问题提出一系列自己的观点，积极参与国际学术争鸣，形成了自己的理论体系……我们的理论与现有的某些西方观点截然不同（第 vi 页）。

我的研究领域是国际水资源和国家主权理论，故急切想看看陈安教授在《中国的呐喊》一书中如何看待主权这一问题。本书索引列举了大量与主权有关的讨论，为探讨这一复杂问题提供了多种方便路径。例如，对**国家主权至上**这一问题，作者主张，“在当代国际法的规范体系和理论体系中，国家主权原则乃是第一性的、居于最高位阶的基本原则。”（第 326 页）为此，作者认为， “从这个意义说，MFN 待遇原则乃是国家主权原则的衍生物，它应当附属于、服从于国家主权原则。”（第 326-327 页）然而，“即使是居于最高位阶的国家主权原则，也可以依缔约主权国家的自由意志，通过平等磋商，作出适当的真正平等互惠的自我限制。”（第 327 页）虽然这一主张貌似夸大了国际法的基本原则，但作者以中国为例解释了为什么要对这些原则加以如此强调和全面阐释。在中国，“历史上丧权辱国的惨痛，人们记忆犹新””（第 327 页）。虽然作者在这里讨论的是国际

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经济法，其蕴意却是深远的，特别有助于人们充分理解和领会中国对国家主权的立场。“如今，已经站起来了的中国人民，已经恢复和强化了完全独立自主的主权国家身份……”（第 317 页）。

本书其他部分亦从不同角度探讨国家主权理论。由于本书主要论及国际经济法，大量论述的是“经济主权”（有 20 次之多），“单个国家的主权”讨论过一次，“永久主权”两次，“联合主权”两次，“国家主权”8 次。“主权”一词贯穿全书，通过剖析西方特别是美国的相关理论与实践，全面阐述中国对主权的立场。举例来说，陈教授质疑“跨国法”学说，认为这是一种否定弱国主权，鼓吹美国霸权的学说，是一种有毒的“舶来品”（第 38 页）。他认为，“杰塞普鼓吹的‘跨国法’，打着‘世界政府’、‘联合主权’、‘国际法’优先的旗号，为觊觎、削弱、否定众多弱小民族的国家主权提供‘法理依据’，其宗旨在于促使弱国撤除民族与国家藩篱，摈弃主权屏障，从而使美国的国际扩张主义和世界霸权主义得以“通行无阻”（第 38-39 页）。

本书附录收录了 Branislav Gosovic 的一篇论文，总结陈教授对国家主权的看法。他认为，国家主权理论是中国外交战略的基石（该战略在 1982 年宪法中确立，即“和平共处五项原则”：相互尊重主权和领土完整、互不侵犯、互不干涉内政、平等互利、和平共处）。Gosovic 认为，“今后若干年，学者们可以用实践来检验陈教授的论点和论据，如果证明他是对的，则可对抗西方凡夫俗子思想模式下广泛流传的观点”（第 773 页）。“‘西方’观点认定，中国的和平崛起会……演变为霸权主义、扩张主义和侵略主义，会仿效并追随过往的侵略者和殖民者，继而将全球瓜分为各自的势力范围。”（第 773 页）陈教授《中国的呐喊》一书则从中国的国际法观出发，作出了完全不同的论断。

换个角度说，陈教授的国家主权观是从中国实际出发，为我们理解中国的跨界水实践提供了新的洞见。跨界水问题是当今中国和亚洲地区迫在眉睫、亟待解决的问题。中国与 20 个主权国家和地区有 40 多条跨界河流，多数情况下中国处于上游，中国对这些河流的淡水使用和开发颇受质疑。争议的焦点是国家主权以及外交政策如何落实国家主权。具体而言，就是中国在管理跨界水资源时，如何根据国际法，既满足自身经济发展的需要，又考虑邻国的需求。虽然有不少外国研究者批评中国的跨界水实践有“霸权性质”，说中国是（无情的？）地区“超级大国”，只片面考虑自身利益；但是，如果仔细加以研究，会发现这些研究者大都犯有同样的重大疏忽，即没有探究中国的国际法观对对跨界水问题的内在影响。用跨界水涉及的国际法规则来评估和分析中国的相关条约和国家实践，我们发现中国一贯采取相当一致的立场（虽然该立场尚未得到充分研究），这一立场符合中国的国家主权观，反映的是领土主权有限论(Wouters and Chen, 2013; XUE, 1992; Saul, 2013)。陈教授在《中国的呐喊》中提出的强有力的法律论据，有助于人们更好地理解将来中国在跨界水实践方面的可能走向。的确，对于中国涉水行业的外国投资政策这一重要问题，现有研究极少(Chen, H. 2015)，今后需要更

多细致研究。《中国的呐喊》一书充分展现出来的跨学科新思维，为更多的创新思路提供了基础。中国需要新的法律思维来管理跨界水资源，从而平衡经济发展与环境保护问题，环境问题现在已成为国内的重要议题。当今全球自然资源过度开发，缺乏保护。中国在该领域的国家实践，不仅对其自身的国家资源，对地区和全球经济和环境资源，都有重大意义。如何以支持经济发展的方式来解决全球水/能源/食品/环境等问题，是一个热点问题，也是世界经济论坛热议的话题。世界经济论坛是全球思想家和政策制定者的重要年度会议。在最近一次世界经济论坛会议上（2015 年 1 月在达沃斯召开），中国总理李克强说，“文化多样性与生物多样性一样，是我们这个星球最值得珍视的天然宝藏。人类社会是各种文明都能盛开的百花园，不同文化之间、不同宗教之间，都应相互尊重、和睦共处。同可相亲，异宜相敬。国际社会应以海纳百川的胸怀，求同存异、包容互鉴、合作共赢。”（2015 年 1 月 23 日，达沃斯）“中国提出“一带一路”建设，愿与相关国家需求相结合，合作推进。”中国如何在实践中，尤其是在面临诸多复杂挑战时，根据中国的国家主权观和国际法，实施这一雄心勃勃的外交政策，人们拭目以待。也许陈教授的洞见能够指点迷津？

对于解决这些相当复杂又颇有争议的问题，本书极富启迪意义。本书详加探讨的是国际经济法理论与实践，作者却常将之归依为国际公法的普遍问题。因此，《中国的呐喊》具有更博大的魅力。本书还讨论了许多相互关联而又高度相关的国际法问题。诸如：南南合作发展战略（“发展中国家对自己的自然资源应该享有和行使永久主权；对发展中国家的经济援助应该严格尊重受援国家的主权，不附带任何条件，施援国不得要求任何特权”（ 第 176 页）----论邓小平对国际经济新秩序理论的贡献）；以理论联系实际的方法来研究国际经济法诸议题（包括外国投资），等等。作者反复呼吁并详细论证，国际（经济）法领域需要更加独立的研究和批判性思考。

对于那些对国际法感兴趣的人而言，《中国的呐喊》提供了广阔的天地，尤其是从中国的视角来看。以下前瞻性的论断，非常振奋人心，将激励学者们接受挑战：

“学术上原无什么绝对的“专属区”，更不该有什么“独家禁地”，不许他人涉足。因此，中国法学界的志士仁人，不论其擅长或专攻何门类、何学科，似均宜摒除、捐弃任何门户之见，从各自不同的角度，各尽所能，齐心协力，尽力地开拓和尽多地产出具有中国特色的法学硕果和上佳精品，共同为振兴中国法学，跻身国际前列，并进而为世界法苑的百花争妍和绚丽多彩，作出应有的贡献!”（第 42-43 页）

总之，我希望本书广传于世，激发更多人从更广阔的国际法维度研究国际经济法。此外，我们也需要更多人从事自然资源和涉水资源的研究，既考虑中国的见解，又参考国际最佳实践，综合评估各方意见。

来自中国的呐喊必须认真倾听。陈教授的专著及时问世，必将引发更多创新性的研究。

参考文献：(详见本书评英文版)

（ 译者：陈辉萍 ，校者、编辑：陈欣)

8.2 Reflections on State Sovereignty and other grand themes of international law

Book Review

The Voice from China - An Chen on International Economic Law

(Understanding China, Springer, 2013)

Patricia Wouters*

The monograph, "The Voice from China: An CHEN on International Economic Law" is a collection of some 24 papers written over 3 decades (from the 1980s) by China's eminent professor in this field – Professor An CHEN (Xiamen Law School). It includes scholarly writings and case analyses, which together aim at consolidating the author's views on the distinctive 'Chinese voice' in the area of international economic law, touching also on a range of related themes in international law.

Presented in six parts – Jurisprudence of Contemporary International Economic Law; Great Debates on Contemporary Economic Sovereignty; China's Strategic Position on Contemporary International Economic Order Issues; Divergences on Contemporary Bilateral Investment Treaty; Contemporary China's Legislation on Sino-Foreign Economic Issues; Contemporary Chinese Practices on International Economic Disputes (Cases Analyses) – the work comprises 24 chapters, with references and an Annex that includes comments about CHEN's writings. It is a large volume, covering 789 pages.

The reader quickly discerns the primary objective of the author – to present his personal views on the Chinese characteristics of, and approach to, international (economic) law. The preface provides:

> "… 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 colleague, have always bene trying to analyse, distinguish, ascertain,

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> 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 legal subjects…… Our theories are significantly and substantially different and independent from some of the existing Western ones" (p. vi).

As my own research looks at the notion of state sovereignty (in the context of international freshwater resources), I was keen to explore how Prof CHEN An addresses this topic in "The Voice of China". The index offers a list of sovereignty-related discourse, each providing diverse inroads on this complex notion. As just one example, on the particular issue of the *supremacy of state sovereignty*, the author asserts, "State sovereignty is still the primary rule and occupies the highest hierarchical position within the norm-system and theory-system of international law" (p. 326). In accordance with this view, the author holds that MFN treatment is "merely a derivative of state sovereignty", "which should be subordinated to and serve the supreme principle of state sovereignty" (pp. 326-327). He continues by observing, "However, even if the principle of state sovereignty occupies the supreme place, it can still be appropriately constrained by the states themselves on the basis of real equality, reciprocity, willingness, and equal negotiation" (p. 327). While such an assertion might seem to over-state these bedrock principles of international law, the author explains why, in China's case, these need to be reiterated and fully understood. "The serious consequences of humiliation of nation [sic] and forfeiture of sovereignty are unfaded bitter lessons in history" (p. 327). Although this passage deals ostensibly with international economic law issues, its relevance is more broad-based, especially when one tries to fully discern and appreciate China's approach to state sovereignty. "Nowadays Chinese people have stood up and recovered and have also intensified the sovereignty status of complete independence…" (p. 317).

Other parts of the book also explore the notion of state sovereignty, albeit in different contexts. Understandably, considerable reference is made to 'economic sovereignty' (with some 20 citations); 'individual sovereignty' is discussed once; 'permanent sovereignty', twice; 'united sovereignty', also with two entries. 'State sovereignty' garners some 8 mentions. A summary of these entries sprinkled throughout the book reveals a rather comprehensive elaboration of China's approach to sovereignty, discussed primarily vis-à-vis western thought and practice, especially US doctrine. As just one example, CHEN challenges the 'Transnational Law Doctrine' (TLD) as "a doctrine that negates the sovereignty of weak nations, while preaches the hegemony of the United States and is thus a poisonous imported product" (p. 38). He continues, "Jessup's TLD, by flaunting the banners of 'world government', 'united

sovereignty' and 'priority of IL' [international law], intends to provide the jurisprudential basis of coveting, weakening, and negating the state sovereignty of the vast nations. It purports to force the weak nations to discard the fence of nation and state sovereignty, so that the US expansionism and world hegemonism could go through without hindrance" (pp. 38-39).

Interestingly, Prof Chen's treatment of the theme of state sovereignty is summarised in a paper by Branislav Gosovic included in the Annex, where the notion is cast as the anchor for China's foreign policy strategy (defined in the 1982 Constitution – the so-called Five Principles of Peaceful Co-existence -- "the mutual respect to each other's sovereignty and territorial integrity, mutual nonaggression, mutual non-interference in each other's domestic affairs, equality and reciprocity, and peaceful coexistence". Gosovic argues that "In the years and decades to come, scholars will be able to test empirically Professor CHEN's thesis and arguments and, if he is proven right, counter the widespread view in the realist mode of thinking, especially in the West." (p. 773). The 'western' view is described as positing that China's declared peaceful rise will "….morph into a hegemonic, expansionist, aggressive mode of reasoning and planetary behaviour, imitating and following the former oppressors and colonizers with whom it will proceed to carve the planet into respective spheres of influence" (p. 773). "The Voice from China" suggests an entirely different outcome, based fundamentally on China's approach to international law.

In another vein, Professor CHEN's treatment of the notion of state sovereignty (unabashedly from a Chinese perspective) provides new insights for China's transboundary water practice – a contemporary pressing issue for the country and the region. China, upstream on most of its 40+ major transboundary waters, shared with more than 20 other sovereign nations and autonomous regions, is often challenged with regard to its international freshwater use and development. At the heart of this debate is state sovereignty and how it is implemented in foreign policy, generally, and more specifically, as regards China's management of these transboundary resources in ways that, not only meet its own national economic imperatives, but also take into account the needs of its riparian neighbours, in accordance with international law. While there is a significant body of research that refers to China's transboundary state practice as 'hegemonic', casting China as the regional (and ruthless?) 'super-power' that acts unilaterally in its own self-interests, upon closer scrutiny, most of these studies suffer the same glaring oversight – they fail to interrogate the integral role that China's approach to international law plays in this domain. A critical analysis of China's treaty and state practice, evaluated in the light of rules of international law in this field, reveals a rather coherent, albeit not yet fully developed approach, aligned with China's approach to state sovereignty, and reflected in the theory of limited territorial sovereignty (Wouters and Chen, 2013; XUE, 1992; Saul, 2013). Professor CHEN's "Voice of China" provides substantive legal arguments that contribute to a better understanding of how China might go forward with its transboundary water practice. Indeed, China's

foreign direct investment policy on water-related matters needs more rigorous study, with few writings on this important topic (Chen, H. 2015). Such cross-over connected thinking, richly demonstrated in "The Voice of China", provides a foundation for innovative approaches.

New legal approaches will be required in order to manage China's transboundary water resources in ways that balance economic growth with environmental issues is now high on the domestic agenda. As the world's natural resources continue to be over-exploited and under-protected, China's practice in this field will have a bearing, not only its national resources, but with respect to regional and global economic and environmental resources. Addressing global water/energy/food/environmental issues in ways that support economic growth is now a key topic debated at the World Economic Forum, the leading annual meeting of the globe's thinkers and policy-makers in this area. At the most recent meeting of the World Economic Forum (Davos, January 2015), China's Premier Li Keqiang stated that "Cultural diversity, like biodiversity, is a most precious treasure endowed to us on this planet. ….Like the vast ocean admitting all rivers that run into it, members of the international community need to work together to expand common ground while accepting differences, and seek win-win progress through inclusive cooperation and mutual learning." (Davos, 23 January 2015) "China has put forward the initiatives to build the Silk Road Economic Belt and the 21st Century Maritime Silk Road. China hopes to work with other countries to advance these initiatives and ensure that they are brought forward in ways that meet the actual needs of countries concerned." How China implements this ambitious foreign policy in practice, especially in the context of complex contemporary challenges, and in light of China's approach to state sovereignty and international law, will be watched closely. Will Professor Chen's insights offer guidance for the future?

The collected work sheds light on these highly complex and controversial topics through its elaborate discussion of international economic legal theory and practice, which the author often locates within more general themes of public international law. Thus, the "Voice of China" has broad appeal. A number of inter-connected (and highly relevant) international legal topics are touched upon – as just some examples: South-South development policies ("developing countries possess the right to exercise permanent sovereignty over their natural resources; economic aid to the developing countries should be strictly based on respect towards the aided countries' sovereignty, attaching with it no conditions or privileges for aiding countries' extra benefit", p. 176 – reviewing Deng Xiaoping's contribution to the notion of a New International Economic Order); theoretical and practice-based approaches to international economic law topics (including foreign investment); and other areas, always with repeated calls and detailed justification for more independent and critical thinking in the field of international (economic) law.

"The Voice of China" provides a fascinating backdrop for all those interested in international law, especially from the Chinese perspective. It is compelling

reading for scholars, who are wholeheartedly urged on by this forward-looking visionary to take up the research challenge:

> *"There is and shall be no 'exclusive zone' or 'prohibited area' for academic research, into which outsiders are forbidden to enter. As a result, all those Chinese scholars with far vision and lofty ideal [sic] shall discard any parochial prejudices, no matter which fields they are specialized in; shall do their best and make concerted efforts respectively from different fields; and coordinatingly endeavour to take exploration and produce as many china-specific research results as possible. In this way, we can make our significant contributions for the revival and prosperity of legal study in both China and the world" (p. 43)*

In closing, it is the reviewer's hope that this collected work will be read by a wide audience and lead to more academic research in this area, considered within the broader canvas of international law. In particular, more scholarship in the field of natural and water-related resources is needed, infused with Chinese approaches, building on international best practice, rigorously evaluated.
China's voice must be heard - Prof CHEN's book is a timely contribution that invites more innovative study in this field.

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9.1：精当透彻的论证 尽显大师的风采

——简评《中国的呐喊：陈安论国际经济法》

黄雁明*

捧读陈安教授的皇皇巨著“The Voice from China: An CHEN on International Economic Law”（《中国的呐喊：陈安论国际经济法》，以下简称《中国的呐喊》），不禁为他的学术硕果与驾驭英文的能力所折服。

陈教授是中国国际经济法学界的大师、旗手，笔者曾是其麾下的普通成员。作为从事国际商事仲裁的工匠，笔者希图以此视角对《中国的呐喊》中的两宗案件的法律意见书（第20、21、22、23章[1]）略作评述。

案一，英国X公司v.英国Y保险公司。X公司与中国B公司成为1996年12月成立的中国C电力公司的中外合作双方。Y公司作为X公司的担保人，承保的风险中包括政府征用险。因中国国务院[1998]第31号通知与国务院办公厅[2002]第43号通知（“两通知”），依Y公司对X公司的保单，后者要求前者赔偿在保险期内因中国政府（可能）的征收而发生的损失，Y公司拒绝，在仲裁案中列为被申请人。

陈教授应对的关键问题是“两通知”是否构成（中国政府）对C公司与对X公司在C公司的投资权益的征收；是否据此X公司可以向承保人Y请求赔偿，之后Y公司是否可以获得X公司的代位求偿权。或许还可以用另一种方式表述，在C公司的合作合同符合当时的《合作法》规定而获得批准的前提下，被国际普遍接受的“当事人意思自治”与“法无溯及力”原则是否在作为法治国家的中国存在。

案二，厦门买方Zhonghe v. Bunge Co(新加坡卖方)于2004年2月25日签订销售合同，标的物是5.5万公吨巴西大豆，准据法是英国法。合同规定Zhonghe要在Bunge所接受的中国一流银行开立以后者为受益人的信用证。

陈教授的法律意见书涉及的核心问题是中国国家质量监督检验检疫总局（“检验总局”）的禁令对中国进口公司、中国的银行及其海外分行是否具有强制性约束力；系争合同开立信用证义务的履行地是否在中国；系争合同的准据法是英国法，中国强制性规则对中国法人是否有约束力，上述禁令能否导致系争合同落空。

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[1] See An CHEN, The Truth Among the Fogbound “Expropriation” Claim: Comments on British X Investment Co. Versus British Y Insurance Co. Case; The Approach of “Winning from Both Sides” Used in the “Expropriation” Claim: Re-comments on British X Investment Co. Versus British Y Insurance Co. Case; On the Serious Violation of Chinese Jus Cogens: Comments on the Case of Importing Toxic Brazilian Soybeans into China (Expert’s Legal Opinion on Zhonghe Versus Bunge Case); Isn’t the Strict Prohibition on Importing Toxic Brazilian Soybeans into China “Illegal”?—A Rebuttal to Lawyer Song’s Allegation, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.635-716.

在法律意见中，陈教授对于以中国法为准据法的案件，关注从中国宪法的有关法条到与案件及争议问题密切相关的法律、法规、规章与行政命令等；对以英国法为准据法的合同，他根据《国际合同义务法律适用公约》（“罗马公约”），英国《1990 年合同法》、 英国法院在长期的司法实践中所确立的判例、英国权威学者提炼与归纳的为国际社会普遍接受的法律冲突规范，对它们的相互关系与不同效力，层层分析，透彻论证自己的见解与观点。

他的结论否定征收的构成与存在，确认法无溯及力等两项原则在中国同样有效；中国强制性命令对中国法人有约束力，中国是合同开立信用证义务的履行地，前述强制性命令导致系争合同落空。

拜读之，笔者不禁想起 1985-1986 年，中国改革开放与法制建设的初期，曾经协助某前辈出具法律意见书的经历。其中一份意见书是给香港的银团出具的，涉及银团向国内某公司的贷款，贷款合同的准据法是美国纽约州的法律。银团律师聘请中国大陆律师以查明与确认借款人与担保人的身份、营业范围、财政状况、关于借款与担保的偿还能力与各自董事会的决定、借款与担保获得国家外汇管理局批准的情况、各自委派的签约人，等等。两家担保人中的一家是非金融企业，其主营业地在香港，在香港拥有很高的商誉。但是我们获悉其注册地是北京，因而要求其向国家外汇管理局申请批准对外债的担保，提供批准文件。当时我国的法规有限，要适用内部文件所涉及的有关政策。可见，在贷款合同的准据法为美国纽约州法律的情况下，中国法律涉及中国当事人的权利能力和行为能力的规定关系到涉外合同能否顺利履行。银团及其境外律师希望中国律师查明有关中国当事人的问题与中国法律的相关规定，包括当时的内部（红头）文件所载的政策，在意见书出具后，贷款协议才能正式签署。

案一，Y 公司是明智的，及时请教中国法律专家为之提供有力的法律武器。若是 X 公司在怀疑所涉“通知”的溯及力以及“通知”对其在中国 C 公司的权益构成征收之时，在依据保险合同提请仲裁之前，同样请求陈教授为其出具法律意见书，那么效果是上佳的。毕竟若将争议提交仲裁，由于 X 公司的现金投资是 1.2 千万美元，保险额势必不少于该数额（可能另加 10%）；其仲裁请求断不少于此数额。而聘请律师要付费，向仲裁机构提请仲裁要交管理费（按请求金额的比例计算），指定仲裁员的费用与仲裁庭的费用，与中国专家出具法律意见书的费用相比，后者是最合算的。

案二，根据笔者在前文提及曾经参与出具法律意见的经历，在准据法是纽约州法律的情况下，对中国当事人的属人法，境外的律师从不敢掉以轻心，因为它关系到银团与借款人之间的贷款合同是否存在落空的危险；更不会如 Bunge 聘请的中国律师般漠视。

本案是国际货物销售合同的争议，双方均来自《联合国国际货物销售合同公约》（“CISG”）的签字国，CISG 成为新加坡与中国法律的构成部分。若不明确排除或减损其效力，那么保留部分除外，CISG 是否适用于本案？以英国法为准据法的合同争议是否排除 CISG 的适用？依据陈教授援引的《合同义务法律适用公约》（“罗马公约”）第 3.3 条：

“当事人选择外国法这一事实，无论其是否同时选择外国法庭，如在选择时一切与当事情况有关因素仅同一个国家有关，不应影响该国法律规定的适用， 即该国法律规定（以下称“强制性规定”）之适用不得以合同废除之。”

据此，上述法条表明，适用英国法不能构成对适用 CISG 的排除，那么 CISG 第 7（2）条规定：

“本公约未明确解决的属于本公约范围的问题，应当按照本公约所依据的一般原则来解决，在没有一般原则的情况下，则应按照国际私法规定适用的法律来解决。”

依照 CISG 的上述原则，系争合同 Zhonghe 的属人法，对其以及对中国的银行（包括它们的海外分行）的行为能力有约束力。在明知进口的食品（或食物的原料）被“检验总局”禁止的情况下，不得违反。对此陈教授已经援引法条充分论证。

此外，是否还可以提及中国《合同法》第 127 条：

“工商行政管理部门和其他有关行政主管部门在各自的职权范围内，依照法律、行政法规的规定，对利用合同危害国家利益、社会公共利益的违法行为，负责监督处理；构成犯罪的，依法追究刑事责任。”

上述法条从另一角度再次表明中国法律体系中强制性规定的约束力与违反的严重后果。

或许还可以告诉案二的当事人，如果仲裁庭漠视中国法律体系中的强制性规范,裁决可以向中国出口含有高毒性致癌农药的巴西大豆，或者裁决 Bunge 胜诉，中国法院可以不承认与执行被申请人的胜诉裁决。因为危害消费者健康的食品是不可接受的。裁决书中严重的错误构成对公共政策的违反。[2] 允许有重大缺陷的裁决书存在，不予更正,必将损害公众对仲裁整体的信赖。[3] 这是国际上日渐流行的准则。这里不妨援引一宗案例 *Telkon SA Ltd v. Anthong Boswood QC*，涉及仲裁员的处理不当（misconduct）导致裁决书的撤销或搁置（setting aside）：

“南非高级法院查明仲裁员出现（适用）法律的错误（to commit errors of law），构

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[2] See Michael Hwang and Amy Lai, Do Egregious Errors Amount to a Breach of Public Policy? *Arbitration*, Vol. 71, No.1, 2005, pp.1-24; Michael Huang, Do Egregious Errors Amount to a Breach of Public Policy? *Arbitration*, Vol. 71, No. 4, 2005, pp. 364-371.

[3] *Ibid*., p.24.

成仲裁的重大违法（或不当）行为（to amount to gross irregularities），而撤销（或搁置）裁决书。”[4]

从陈教授的法律意见书中，仲裁员还可以学到些什么？在裁决书的仲裁庭意见部分，仲裁员论述争议焦点，交代与揭示其所查明或确认的事实，要全面、详尽、条理清楚；要论述当事人的请求与反请求成立与否的理由。如果仲裁员具备这样的能力，裁决才有说服力。

陈教授的法律意见书出具时间是 2006 年，当时中国与改革开放和市场经济建设相配套的法律法规已经基本齐全。意见书中提及的所有法规均在阳光下，“红头文件”的效力逐渐消退。问题在于一个法律专家是否真的是行家里手；若没有深厚的理论功底与对所涉问题的深刻理解，又对所涉法规了然于胸、融会贯通，便不能多角度多层面地分析与论述，鞭辟入里，结论清楚，释疑解惑。

时代给他提供了机会，他无愧于时代赋予的使命。作为杰出法学家，他的声音在攀登的路上回响。

料想，陈教授必定熟知马克思所言“外国语是人生斗争的武器。”他的英文著作代表中国国际经济法学界与中国国际商事仲裁界在国际上发声。非经多年的苦读与苦练，不能以地道的英文撰写专业文章并在国际仲裁的权威刊物上发表，进而得以结集出版。

《中国的呐喊》中披露，陈教授从 1953 年起作为年轻的法学教员转入马列主义的教学领域。1980 年其年过半百后，因缘际会，才得以重回法学领域，研究国际经济法。盛年之时，在“应冲刺的年龄才起跑”，也可以视为幸运。在中国改革开放与法制建设的春天， 他“急起直追，以勤补拙”。据其弟子告知，陈教授往往工作到深夜或凌晨。30 余年中陈教授获得了宽阔的舞台，在流逝的岁月中留下了深深的足印，为光辉的时代留下了华章。

2005 年之际他已七十六岁，犹以自勖诗句[5]表达其永不止步的决心：

蹉跎半生，韶华虚掷。青山满目，夕霞天际。

老牛破车，一拉到底。余热未尽，不息奋蹄！

诵读此诗，令人不禁想起美国诗人 Robert Frost 的诗 Devotion—献身（汉蓉译）：

心灵视献身，不比海岸高。

守候岸曲线，永数潮涨消！

（编辑：龚 宇）

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[4] See Michael Hwang and Amy Lai, Do Egregious Errors Amount to a Breach of Public Policy? *Arbitration*, Vol. 71, No.1, 2005, p. 24. And the Note 21 on the same page: The errors considered material were that the arbitrator (1) ***failed to apply his mind properly to certain questions he had to decide*; …** (4) ***failed to decide another material question, which effectively resulted in a ruling favoring one party*** (emphasis added). paras. 10.8-10.84.

[5] 引自陈安著：《国际经济法刍言》，北京大学出版社 2005 年版，自序。

9.2：Precise and Thorough Analyses -- Illustrating a Guru's Profound Knowledge

-- A Brief Commentary on *The Voice Form China: An CHEN on International Economic Law*

Yanming Huang *

Opening this great monograph titled *The Voice from China -- An CHEN on International Economic Law* (*The Voice from China*), I am very delighted with and impressed by Prof CHEN's scholastic achievements on the subject and his skills in mastering English.

Prof. CHEN is an eminent jurist and the forerunner of China's international economic law discipline. He was the Chairman of the Chinese Society of International Economic Law in which I was once a member of the Society and a mere subordinate under his supervision. I wish to touch and simultaneously share my views on some aspects of the cases and the Legal Opinions in *The Voice from China* (Chapters 20, 21, 22 and 23[1]) from the perspective of a craftsman--an arbitrator. In order to save space, abbreviated case names and subjects related would be applied.

Case 1, *A UK Co X v. a UK Insurance Co Y.* In December 1996, an entity from Cayman Islands and Chinese Co. B entered into a contractual joint venture agreement ("**the Agreement**") and a contractual joint venture （"**the CJV**"）was established in China. Later Co X replaced the Cayman entity. Under the insurance policy issued by Co Y with Co X as the assured, the risks undertaken cover losses arising out of acts of expropriation occurring during the policy period of February 20, 2001 to February 19, 2004. Due to the issuance of **Circular No.31 [1998]** by the PRC's State Council and **Circular No.43 [2002]** by the General Office of the State Council ("**the Two Circulars**"), Co X claims that the Two Circulars constitute an **Act of Expropriation**, and

* Council member of the Chinese Society of International Economic Law; arbitrators with SCIA, CIETAC and Shanghai International Arbitration Centre.
The author is grateful to Brian C. W. Wong, Barrister of Hong Kong and Prof. Thomas Chiu of HKCT Institute of Social Science for their valuable pieces of advice, such as on idiomatical ways of saying things.
[1] See An CHEN, The Truth Among the Fogbound "Expropriation" Claim: Comments on British X Investment Co. Versus British Y Insurance Co. Case; The Approach of "Winning from Both Sides" Used in the "Expropriation" Claim: Re-comments on British X Investment Co. Versus British Y Insurance Co. Case; On the Serious Violation of Chinese Jus Cogens: Comments on the Case of Importing Toxic Brazilian Soybeans into China (Expert's Legal Opinion on Zhonghe Versus Bunge Case); Isn't the Strict Prohibition on Importing Toxic Brazilian Soybeans into China "Illegal"?—A Rebuttal to Lawyer Song's Allegation, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2014, pp.635-716.

therefore requesting compensation for losses from Co Y by reference to the insurance policy that stipulated about (possible) compulsory take over by the Chinese government. Co Y denies and Co X refers the case to arbitration in British.

The key issues before Prof. CHEN are whether the Two Circulars are of the nature or give such effects of an Act of Expropriation of the assets of the CJV; if the answer is affirmative, Co X could base on the alleged Act of Expropriation to claim the coverage under the insurance policy, thereafter Co Y would gain the subrogation (of insurer) form Co X. In another word, the said issues could be expressed in a manner to cover situations where an agreement is in line with the provisions of the Act of PRC on Chinese-Foreign Contractual Joint Venture ("**CJV Act**") and has received approval by some competent governmental authorities of China. Under such circumstances, have those internationally accepted basic legal principles, such as "***autonomy of the parties' will***" and "***no-retroactivity of law***", been fully accepted by or already taken root in China as a country ruled by law?

Case 2, *Xiamen Zhonghe Industry Co., Ltd (Zhonghe) v. Bunge Singapore Pte. Ltd (Bunge)*. Zhonghe as buyer and Bunge as seller on February 25, 2004 entered into the Contract S04-071("**the Contract**") with Brazilian soybeans of 55,000 metric tons as the subject matter. It is provided in the Contract that Zhonghe shall through a first–class Chinese bank acceptable by Bunge open a letter of credit in favor of the seller.

After the conclusion of the Contract, several shipments of Brazilian soybeans exported to China were found containing *germicide carboxin-processed* soybeans (or **Brazillian soybeans highly toxic carcinogenic pesticide** or **adulteration of red-coated Brazilian soybeans**) including a shipment under the Contract between Zhonghe and Bunge, therefore the General Administration of Quality Supervision, Inspection and Quarantine of China ("**AGSIG**") issued a Warning Notice and then some **Public Announcements** in a succession prohibiting the importation of Brazilian soybeans. Public Announcement 71 even declared that Bunge was temporarily revoked of the **capacity of exporting Brazilian soybeans to China**.

The kernel problems that Prof. CHEN are faced with are whether **the prohibitions** (or **administrative ordinances, administrative prohibitive orders** or **mandatory regulations or rules**) by AGSIG have comprehensive and powerful legal binding force over Chinese importers, Chinese banks and their respective branches overseas; whether China is the place of performance of the obligation to open the letter of credit under the Contract; **when English laws are applicable**, whether the mandatory rules or orders in Chinese legal system are of mandatory effects over Chinese legal entities and therefore the Contract was frustrated due to the said prohibitions and their binding force.

Bunge holds that the prohibitions by AQSIQ on soybeans adulterated with germicide

carboxin cannot be fully supported by Chinese laws. According to the provisions of the Act of PRC on Food Sanitation adulteration of the impurities or fake products therein had to be conducted with an intention, therefore the legislative authority for the decisions made by AQSIQ upon the soybeans is not sufficient. Further, Bunge is of the view that the Public Announcement 71 was temporary suspension and actually in existence for 9 days only and so it has not reached the point that it would frustrate the Contract as a whole. Zhenghe should have applied some Chinese bank or its branch overseas to open the letter of credit during the period of 23-25 of June 2004. Failing this, Zhonghe shall be responsible for the liabilities. "*According to the Contract,* ***English laws (shall) apply when a dispute is referred to arbitration*** (emphasis added). *English laws only recognize(s) that a breach at the place of performance of the contractual obligations can possibly lead to the frustration of contract.*" [2] Further, Bunge holds that pursuant to the Contract, China is not the place of performance of the obligation to open the letter of credit, and opening of the credit letter which is in violation of Chinese laws cannot be taken as the ground for frustration under English laws.[3] The Chinese lawyer engaged by Bunge holds the view that whether one corporate could apply for a letter of credit mainly depends on the applicant's status and financial standing, but no concrete negative evidence against Zhonghe is produced. The Chinese lawyer argues that the Public Announcement 71 had no material influence on the establishment of the letter of credit under the Contract.

In his Legal Opinions, when dealing with issues pertaining to Case 1, Prof CHEN has not overlooked or missed out any provisions concerned from the Constitution to all the laws, acts, regulations, rules, and administrative orders and even the promises by China when entering into WTO. For instance, he lists some facts that as a member of WTO, China has not only promised to "*ensure the full conformity of its laws, regulations, and rules with the provision of the WTO Agreement*," [4] but also taken measures in this regard.[5] When treating the problems relating to Case 2, he respectively identifies the Contract and the clause that "*English laws shall be applied*", and that the Contract was signed by Bunge's subsidiary Bunge International Trading (Shanghai)

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[2] See An CHEN, On the Serious Violation of Chinese Jus Cogens: Comments on the Case of Importing Toxic Brazilian Soybeans into China (Expert's Legal Opinion on Zhonghe Versus Bunge Case), in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.679. About this view point, Barrister Brian C. W. Wang from Hong Kong, who majoring in law for many years in British, is of the opinion: *This may not be an accurate position of English law*.

[3] *Ibid*.

[4] See An CHEN, The Truth Among the Fogbound "Expropriation" Claim: Comments on British X Investment Co. Versus British Y Insurance Co. Case, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.643.

[5] *Ibid*., pp.643-646.

Co., Ltd ("**Bunge Shanghai**") residing in Shanghai with Zhonghe.[6]

Revealing his deep knowledge of the Convention on the Law Applicable to Contractual Obligations ("**Rome Convention**"), the effective Contacts (Applicable Law) Act 1990 (of British), the precedents established by English courts in their long established judicial practice and conflict of laws rules which have been refined and summarized by authoritative English scholars and widely accepted by the international community, analyzing their mutual relations and different forces, step by step, Prof. CHEN discusses the issues and expounds his viewpoints by accurately referring to the relevant provisions of various acts or laws and legal theories.

Prof. CHEN reaches his conclusion that in Case 1 the Two Circulars and their provisions are of no **Expropriation** effects, and confirms that the two major principles of law, ie., "***autonomy of the parties' will***" and **"*non-retroactivity*"** have actually taken root in China and are applicable to the case. And in Case 2, he firmly believes that the **administrative prohibitive orders** or **mandatory orders** contained in the Publication Announcements, such as the Announcements 71 by AQSIQ are of binding effects over Chinese legal entities concerned, that China is the place of performance of the obligation to have the letter of credit opened and the Contract was frustrated due to the mandatory orders.

Perusing the Chapters, the author cannot help recall the days when China was at the initial period of reform and began to rejoin the international community. It was also the initial period of the rule by law in China. In 1985-86, I once assisted a senior superior in his rendering of legal opinions. One of the legal opinions was for a banking group of Hong Kong, relating to the banking group as lenders and a Chinese company as borrower and two Chinese corporations as guarantors to the loan agreement with the laws of New York State of the America as the governing laws. The lawyers engaged by the banking group had to engage some lawyer in the mainland China to carry out inquiries to identify and confirm the status, the business scope, the financial standing and other conditions of the borrowers and the guarantors; that the matters relating to the loan and guaranty were normal and in conformity with the laws, acts, regulations or policies of China; that the borrower and his guarantors had got consents from competent departments of China; and the decisions relating to the loan made by the boards of directors of the borrower and the guarantors and representatives who would sign the loan agreement and other documents concerned. The main business of one of the two guarantors had been in Hong Kong for over 100 years, nevertheless its registration place of the business was in Beijing. Though

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[6] See An CHEN, On the Serious Violation of Chinese Jus Cogens: Comments on the Case of Importing Toxic Brazilian Soybeans into China (Expert's Legal Opinion on Zhonghe Versus Bunge Case), in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013,pp.687-688.

it was of good credit in Hong Kong, it was required according to the regulations by the State Administrative Bureau of Exchange Control to apply for approval for the guaranty and to obtain the approval certificate. At that time, there were few statutes enacted or promulgated by National People's Congress or its standing committee, instead there were quite a lot internal documents or official documents of red colored titles ("hong tou wen jian" in Chinese). But it was obviously, while the applicable laws of the loan agreement were the laws of the New York State, the banking group and their lawyers relied expressly upon the provisions of the laws, acts, regulations or even the then popular internal documents of China containing some polices in this regard. All the legal issues or matters identified and confirmed in the legal opinions issued by the lawyer from mainland China were the pre-conditions for the finally conclusion of the loan agreement. The signing of the loan agreement was done upon the receipt of the legal opinions by the banking group and its lawyers.

In Case 1, Co Y acts in reasonable manner, timely asking a Chinese legal expert for advice which forms as his basis for defence. If Co X, when in doubt of the retroactivity of the Two Circulars and whether it is of the nature of expropriation, should have acted as Co Y in asking a Chinese legal expert for advice, Prof. CHEN's legal opinions would have been issued for him and such legal opinions would have even better effect. After all , Co X had referred the case to arbitration, as his sum of investment was USD12,000,000.00, the coverage of the policy would not have been less than that sum or probably plus 10 per cent and the sum claimed would have not been less than the sum either. In this case, Co X had paid fees for his lawyers, for the arbitration administrative charges closely relating to the time spent by the registrar and his deputies and the fees for the arbitrator(s). If Co X had asked for advice before referring the case to arbitration, the sum paid for a Chinese legal expert and his legal opinions would be a very small proportion comparing with the fees and changes that he would have paid for arbitral process.

Concerning Case 2, I have mentioned above that I was once an assistant to a senior superior in rendering legal opinions to a banking group from other jurisdiction. When the governing laws were those of the New York State, the banking group's lawyers had never overlooked the *lex personalis* of the borrower and guarantors of other jurisdiction. In contrast, in Case 2, the Chinese lawyer engaged by Bunge has given me an impression that he did not take proper notice or even probably turned a blind eye to the laws or mandatory orders of China.

The *lex personalis* of Zhonghe should not have been neglected, such as those pertaining to the capacity for private rights or duties, any Chinese legal entities should abided by them or the Chinese legal entities must be subject to those laws, acts, regulations or administrative orders. If there are any prohibitions on the importing or exporting to China food or material for food

processing with **pesticide**, knowledge about these prohibitions or the absence of such knowledge would have different serious consequences. Prof. CHEN has proved that he is well professed of all aspects of the matters concerned.

I would like to stress that the Contract is of an important feature in international trade. For example, parties are from the contracting states to the CISG, then the provisions of the CISG will be regarded as being integrated into their respective national law of P. R. China and Singapore. If the parties do not expressly exclude the application of the CISG or derogate from or vary the effect of its provisions,[7] save the reservations, doesn't the CISG apply to the case? When the governing law is of English law, does it mean that the CISG could be absolutely excluded?

I am fully accept that Prof. CHEN is correct in quoting Art 3(3) of the Rome Convention "*[T]he fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall* ***not****, where all the other elements relevant to the situation at the time of the choice are connected with one country only,* ***prejudice the application of rules of the law of that country which cannot be derogated from by contract, hereinafter called 'mandatory rules'***."[8]

It seems to me that the application of the CISG to the case could not be excluded. If the parties don't exclude the application of the CISG in the Contract, it will be necessary to look at Art 7(2) of the CISG:

"Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, ***in conformity with the law applicable by virtue of the rules of private international law****."*

If in the instant case the CISG could not be excluded, should we rely on the *lex personalis* of Zhonghe as Prof. CHEN does and we may further refer to Art 127 of the Contact Act of PRC:

"The Administration of Industry and Commerce and other relevant administrative authorities shall, within the scope of their respective the functions, supervise and deal with any unlawful conduct by way of contract prejudicial and detrimental to national or public interest. ***If such conduct amounts to a crime, criminal responsibility shall be pursued according to laws."***[9]

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[7] See Art 6 of the CISG.

[8] See An CHEN, On the Serious Violation of Chinese Jus Cogens: Comments on the Case of Importing Toxic Brazilian Soybeans into China (Expert's Legal Opinion on Zhonghe Versus Bunge Case), in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.687-689.

[9] Quoted from the English Edition of the Contract Act of PRC by Harmony Consultants Ltd.

The provision contained in Art 127 above, once more from another angel reminds anyone of the binding effects of Chinese mandatory orders or rules and serious consequence of being against them.

In addition, I guess it might be better to tell Bunge and his Chinese lawyer, if they insists on the view that the mandatory rules or orders in the Chinese legal system could be ignored and the award should be made in favor of Bunge that under the Contract Brazilian soybeans containing highly toxic carcinogenic pesticide could be exported to China, the award should be set aside or its enforcement be refused. Some lines on a case revealing that misconduct of arbitrator "*[W]hich justified setting aside an award Telkon SA Ltd v Anthong Boswood QC"* are as follows:

"*The South African High Court found that the arbitrator had committed* ***errors of law*** (emphasis added) *which amounted to gross irregularities in the conduct of the arbitration and set the award aside."* [10]

We should be aware that nowadays any awards tainted with extremely serious or egregious errors amount to a breach of public policy.[11] To allow such fundamentally flawed awards to stand uncorrected would undermine confidence in the integrity of the arbitral process.[12] That concept or principle is expressly reflected in the Arts 34 and 36 of the *UNCITRAL Model Law on International Commercial Arbitration*.

Form the Legal Opinions by Prof. CHEN, we arbitrators could get some enlightenment. In our awards under the subtitle "the Opinions of the Tribunal", the tribunal should ensure that no issue and claim is missed out, all matters, key issues, facts and the merits of the case should be thoroughly explored. If arbitrators are short of that ability, failing to explain why a claim or counter-claim is sustained or refused, their awards rendered would be far from convincing in giving reasons.

It is in the 21 century that Prof. CHEN issued his Legal Opinions. Sets of laws, acts, regulations or rules that are orientated towards the needs of a market economy have been basically enacted or promulgated. All the provisions he quotes are transparent in the sun. The effects of those "internal documents" are fading. Nevertheless, the problem lies in whether one is an old hand. Not familiar with all the aspects of the matters concerned, without profound

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[10] See Michael Hwang and Amy Lai, Do Egregious Errors Amount to a Breach of Public Policy? *Arbitration*, Vol. 71, No.1, 2005, p. 24. And the Note 21 on the same page: The errors considered material were that the arbitrator (1) ***failed to apply his mind properly to certain questions he had to decide*****; …** (4) ***failed to decide another material question, which effectively resulted in a ruling favoring one party*** (emphasis added). paras. 10.8-10.84.

[11] *Ibid*., pp.1-24.

[12] *Ibid*., p.24.

knowledge and deep understanding of all the issues concerned, without skills in mastering in one's mother-tongue and English plus its legal terminology, one could hardly deal with those hard-nuts properly.

The era of reform and opening to the international community has provided Prof. CHEN with a golden opportunity and in return for the era and on behalf of the discipline of the international economic law of China he advocates with admirable clarity and strength, his voice are echoing along the long road to the heights.

I guess Prof. CHEN must be familiar with the saying of Karl Marx, *"A foreign language is a weapon in the struggle of life."* No pains no gains. Without decades of hard working, reading, writing and studying, no one is able to write in idiomatic English.

His professional papers are carried in authoritative journals and then collected in this monograph. Acting as a distinguish representative of discipline of the China's international economic law and the circle of China international arbitration, he has made his marks on the international stage and added academic literature thereon.

It is revealed in *The Voice Form China*, that Prof. CHEN as a junior teacher in 1953 shifted from law to Marxism and Leninism. When over 50-year old, in his prime years, he at last got the chance to return to the law field as he says that "*Just stated to race at the age of spurt*". On the other hand, it could be regarded as lucky. In the spring of reform and opening to the outside, he has lost no chance to "*rouse to catch up, overcome shortage by diligence*". His doctorial candidates remember that he usually would not turn off his desk-lamp until midnight or early morning. In the past decades, he has never idled away. His brilliant works are reflecting the long road he has travelled.

In his poem of self-encouragement in 2005 even when he was aged 76, he revealed his determination that he would never stop in his academic researching and creating course:[13]

Regretfully it is so late in a daytime,
Half of a lifetime had been spent in vain,
Thanks to the setting sun so brightly shines,
The old ox insists in carrying a broken cart to the end,
Never stop in speeding up its hoof-pace in time,
As long as its surplus energy still remains.

That reminds me of the similar poem by an American poet Robert Frost:

Devotion

The heart can think of no devotion,

[13] An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2014, pp.li-lii.

Greater than being shore to the ocean,

Holding the curve of one position,

Counting an endless repetition.

10.1：独具中国风格气派　发出华夏学术强音

——评《中国的呐喊：陈安论国际经济法》

石静霞*　　孙英哲**

2014 年 3 月，中国国际经济法学界的前辈陈安先生的英文版新书《中国的呐喊：陈安论国际经济法》[1] 隆重面世。该书汇辑了陈安教授自 1980 年以来不同时期撰写的 24 篇精品专论，受国家哲学社会科学基金“中华学术外译项目”支持，由国际著名出版社斯普林格（Springer）出版。

陈安先生学贯中西，素养精深，他就中国国际经济法学的基本问题提出了许多真知灼见，并多次代表中国国际经济法学界赴国外交流讲学，被誉为“中国国际经济法学的奠基人之一”。陈安先生并未拘泥于国际经济法学的理论探讨，而是积极投身实践，代表中国参与多项国际法律实务。特别是，陈先生曾经先后于 1993 年、2004 年、2010 年三度受中国政府指派，就任“解决投资争端国际中心”（ICSID）国际仲裁员，并处理具体的国际投资争端。

陈安先生《中国的呐喊：陈安论国际经济法》一书共分六部分，系统梳理和分析了改革开放以来国际经济法学术前沿的重大热点和难点问题，在该书中，陈安先生将理论与实践紧密结合，始终坚持实事求是，并以公平正义作为自身观点的内在脉络。其中，以第十一章《对近期谢业深诉秘鲁政府案 ICSID 管辖权裁定的若干质疑：中国—秘鲁 BIT 是否应当适用于“一国两制”下的香港特别行政区》（*Queries to the Recent ICSID Decision on Jurisdiction Upon the Case of Tza Yap Shum v. Republic of Peru: Should China-Peru BIT 1994 Be Applied to Hong Kong SAR Under the “One Country, Two Systems” Policy?*）[2] 尤为突出。

近年来，国际投资仲裁发展迅速，中国企业的参与度正在逐步增长。中国大陆企业近年来提起了三起国际投资仲裁案，[3] 其中包括两件 ICSID 仲裁案。因此，ICSID 仲裁实践对于中

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[1] *The Voice from China—An CHEN on International Economic Law*, Springer, 2014.

[2] Id., pp.337-372.

[3] *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium*, ICSID Case No. ARB/12/29
China Heilongjiang International Economic & Technical Cooperative Corp., Beijing Shougang Mining Investment Company Ltd., and Qinhuangdaoshi Qinlong International Industrial Co. Ltd. v. Mongolia, PCA
Beijing Urban Construction Group Co.ltd. v. Republic of Yemen, ICSID Case No. ARB/14/30

国投资，尤其是中国对外签订的双边投资保护协定（BIT）的具体落实具有重要意义。这篇文章以中国政府签署条约首次在 ICSID 涉案的谢业深诉秘鲁政府案（Tza Yap Shum v. Republic of Peru）的管辖权裁定为中心，探讨了 ICSID 仲裁庭裁决的不当之处。案件的核心问题之一是，香港人是否可以援引中国大陆政府在香港回归之前与秘鲁政府签订的 BIT 来寻求投资保护。陈安先生对此持否定态度。陈安先生在着重分析《中英联合声明》、《香港特区基本法》以及《维也纳条约法公约》等相关规定的基础上，主要从两方面论证了其观点：首先，考虑到中国政府的“一国两制”的大政方针和《香港特区基本法》中的具体规定[4]， 中国－秘鲁 BIT 不应自动适用于香港。其次，中国－秘鲁 BIT 于 1994 年签订时，香港尚未回归，因此不能适用于涉及中国的争议。

Lao Holdings N.V. v. Lao People’s Democratic Republic 案[5]也涉及到类似问题，即澳门投资者是否可以援引中国－老挝 BIT 对老挝提起仲裁。Lao Holdings N.V.案仲裁庭在肯定了《关于国家在条约方面的继承的维也纳公约》（VCST）第 15 条“移动条约适用范围原则”(moving treaty frontiers rule)与《维也纳条约法公约》（VCLT）第 29 条均为国际习惯法，并对二者区别以及在此案中的联系进行分析的基础上，认为中国-老挝 BIT 应当适用于澳门特别行政区。[6] 该案裁决虽然与谢业深案的裁决思路存在差异，[7] 但在基本立场上继承了仲裁庭在谢业深案中的立场，值得注意。首先，仲裁庭运用 VCST 第 15 条[8]对于国家继承问题所发展出的分析框架进行了论证。第 15 条分为一般条款和例外条款，仲裁庭认为，如果适用一般条款，中国—老挝 BIT 可以对澳门适用；但是，如果第 15 条的例外条款的规定得以满足，则中国—老挝 BIT 不得对澳门适用。仲裁庭采用反推的方法，证明第 15 条 B 项中的 3 项例外条款中的规定均未在该案当中得到满足。其中，在论证“中国—老挝 BIT 是否在另外被证明不能适用于中国领土全境”时，仲裁庭继承了“谢业深案”的观点。在“谢业深案”中，仲裁庭认为在中国与第三国已经签订 BIT 的情况下，香港自行与第三国缔结 BIT 的权力并不必然多

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[4] 该法第 153 条规定：“中华人民共和国缔结的国际协议，中央人民政府可根据香港特别行政区的情况和需要，在征询香港特别行政区政府的意见后，决定是否适用于香港特别行政区”。

[5] *Lao Holdings N.V. v. Lao People’s Democratic Republic*，ICSID Case No. ARB(AF)/12/6

[6] Supra Note 5, ¶¶232-269

[7] “谢业深案”的裁定仅援引了 VCLT，并未引用 VCST 进行论证。

[8] 该法第 15 条“对领土一部分的继承”规定：

“对领土一部分的继承

一国领土的一部分，或虽非一国领土的一部分但其国际关系由该国负责的任何领土，成为另一国领土的一部分时：

(a)被继承国的条约，自国家继承日期起，停止对国家继承所涉领土生效，

(b)继承国的条约，自国家继承日期起，对国家继承所涉领土生效，但从条约可知或另经确定该条约对该领土的适用不合条约的目的和宗旨或者根本改变实施条约的条件时，不在此限。”

余（necessarily redundant）。[9] 该案中的仲裁庭认为，中国—老挝 BIT 与澳门—老挝 BIT 的立法目标都是保护外国投资者和东道国经济发展。两个 BITs 如果同时对澳门适用，不仅不会阻碍，反而会对实现这两个 BIT 的立法目标产生促进作用。[10] 除此以外，在对 BITs 重点概念的理解上，该案仲裁庭也基本认同“谢业深案”仲裁庭适用 VCLT 进行的论证分析。[11] “谢业深案”仲裁庭认为，根据《维也纳条约法公约》相关规定，[12] 在对中国—秘鲁 BIT 第 8 条第 3 款[13]中规定的“涉及”（involving）一词的“通常意义”（ordinary meaning）进行解释时，应当将“涉及”理解为“包含”（inclusive）而非“仅包含”（exclusive）。”因此，不能仅仅从表面上将第 8 条第 3 款中规定的“涉及”简单理解为对于仲裁庭管辖权的限制。[14]

由此看来，陈安先生的主张虽然理由详实，但并未受到国际仲裁实践的完全认可。陈安先生的论证重点在于《中英联合声明》以及《香港特区基本法》，但仲裁庭显然对中外联合声明以及特区基本法的分析着墨不多，而是着重于对 BITs 的分析。这启示我们，作为中国学者，应当对中外联合声明的国际法律地位以及特区基本法的内涵进行深入研究，从而能够引起国际关注。

陈安先生文章的最大特色在于论证充分，尤其是完整论证了 VCLT 第 31 条、第 32 条在具体适用中的问题。总体上看，陈安先生的论证不仅对后案有所影响，[15] 同时还留下了一些值得深思的问题。首先，中国－秘鲁 BIT 不能对香港特别行政区生效，是否可以直接等同于香港公民（Chinese nationals who hold a HKSAR passport）不能援引中国－秘鲁 BIT？中国－秘鲁 BIT 中规定的“投资者”的范围是所有“依照中华人民共和国法律拥有其国籍的自然人”。[16] 而根据中国《国籍法》相关规定，[17] 香港公民具有中国国籍，则香港特别行政区的“高度自治权”是否可以阻碍香港公民凭借中国国籍，获取中国－秘鲁 BIT 项下的投资保护呢？其次，作为一种法律论证技术（lawyering skill），如果谢业深不能获得中国－秘鲁 BIT

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[9] Tza Yap Shum v. Republic of Peru (ICSID Case No. ARB/07/6), ¶ 76

[10] Supra. Note 5, ¶295

[11] Supra. Note 5, ¶329

[12] 该法第 31 条第 1 款规定：“条约应依其用语按其上下文并参照条约之目的及宗旨所具有之通常意义，善意解释之。”

[13] 中国—秘鲁 BIT 第 8 条第 3 款规定：“如涉及征收补偿款额的争议，在诉诸本条第一款的程序后六个月内仍未能解决，可应任何一方的要求，将争议提交根据一九六五年三月十八日在华盛顿签署的《关于解决国家和他国国民之间投资争端公约》设立的“解决投资争端国际中心”进行仲裁。缔约一方的投资者和缔约另一方之间有关其它事项的争议，经双方同意，可提交该中心。如有关投资者诉诸了本条第二款所规定的程序，本款规定不应适用。”

[14] Supra. Note 9, ¶¶163-165

[15] *Id.* ¶77.

[16] 中国－秘鲁 BIT 第 1 条第 2 款第 1 项

[17] 该法第 3 条规定：“中华人民共和国不承认中国公民具有双重国籍。”第 4 条规定：“父母双方或一方为中国公民，本人出生在中国，具有中国国籍。”

项下的投资保护，他是否可以根据英国于 1993 年与秘鲁签订的英国－秘鲁 BIT（1994 年生效）来寻求投资保护呢？如果谢业深因为“旧法（1994 年生效的中国－秘鲁 BIT）不适用‘新情况’[18]”而不能获得中国－秘鲁 BIT 的保护，则其是否可以依据“旧法（1994 年生效的英国－秘鲁 BIT）应当根据‘过去的情况’[19]继续适用”的逻辑寻求英国－秘鲁 BIT 的保护呢？这些都是我们在陈安先生著作的启发下，可以进一步考察的重要问题。

此外，陈安先生在该文中还从中外投资争端的视角，详细论证了有关《中英联合声明》、《中国宪法》、《香港特区基本法》以及中外条约彼此之间的关系等问题[20]，明确指出，《中英联合声明》明文规定，中国政府决定于 1997 年 7 月 1 日对香港恢复行使主权，同日，英国政府将香港交还中国。从此时起，根据《中国宪法》第 31 条制定的“《香港基本法》构成管理香港特别行政区的宪政性文件”[21]，香港的一切事务均应按《香港基本法》行事。依据《中英联合声明》附件一第 XI 章以及《香港基本法》第 153 条规定，在“一国两制”的特定条件下，“中国与外国家签订的各种国际协定在 1997 年后并不能自动适用于香港。相反，这些协定只在中国中央政府征询香港特别行政区政府的意见，并决定适用于香港特别行政区后，才能适用于香港特别行政区。”[22]。这些论证，对于当前中国所面临的现实问题，包括任何人都无权借口《中英联合声明》干涉中国内政、应以法治方式解决香港“占中”危机等，均具有重大的现实参考意义。[23]具体说来，情况如下：

据香港《文汇报》2014 年 11 月 18 日报道，英国下议院外交事务委员会 17 日举行有关《中英联合声明》的听证会。[24] 香港《南华早报》前总编辑范力行(Jonathan Fenby)在出席“作证”时称，中国中央政府希望紧紧控制香港政治和经济，香港特区政府比较重视与内地的关系，忽略港人的民主诉求。在港参与“占领”行动的香港大学学生 Hui SinTung 及中文大学学生 Tang Chi Tak 则称，中国**中央政府多次违反《中英联合声明》，包括“剥夺”内文订明港人能继续**

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[18] 回归后的香港在国际法意义上成为中国领土的一部分，香港公民获得中国国籍。

[19] 在英国与秘鲁签订 BIT 时，香港仍然在国际法意义上是英国的领土。

[20] 详见 *The Voice from China—An CHEN on International Economic Law*, Springer, 2014，pp.341-348；并参见《中国—秘鲁 1994 年双边投资协定》可否适用于“一国两制”下的中国香港特别行政区》，载于《陈安论国际经济法学》（五卷本），复旦大学出版社 2008 年版，pp.1155-1162。

[21] *The Voice from China—An Chen on International Economic Law*, Springer, 2014, p.344.

[22] *The Voice from China—An Chen on International Economic Law*, Springer, 2014, p.343.

[23] 例如：由于《中英联合声明》并不对香港政府自动生效，因此香港政府的措施并不受《中英联合声明》的拘束，而只受到基本法及其项下法律法规的规制。因此英国下议院于 12 月 16 日对占中分子进行听证，并决定对香港政局作出调查的行为是于法无据的。“下议院听证占中分子”，详见 *Evidence session announced with protesters from Hong Kong*，http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/news/hong-kong-evidence-wprotesters/ ，访问时间：2014 年 12 月 20 日。http://club.china.com/data/thread/1011/2775/44/18/5_1.html。

享有的新闻自由、集会自由及普及选举权利，英国应该迫使中国“履行”《中英联合声明》并做出谴责，甚至重启《南京条约》及《天津条约》。此外，香港民主党主席刘慧卿 18 日也通过视像向英国国会“作供”，称英国有责任保障香港的自由和生活方式。另一方面，英美等外国势力一再插手香港内部事务，近来趁“占中”之机，插手频率更是有增无减。9 月底，英国首相卡梅伦称，“英国与中国达成的协议中提到了在‘一国两制’框架下，香港拥有民主对未来的重要性”，10 月中旬他又宣称“英国应为香港人的自由权利站出来”。 11 月，当“占中”行动在香港已陷入穷途末路之际，美国继“美中经济与安全审议会”年度报告用了 20 页篇幅对香港政改胡诌一通外，美国国会“中国问题委员会”又召开“听证会”，邀请“末代港督”彭定康在伦敦透过视像卫星越洋“作证”，称西方国家应公开对香港问题发声。英国外交事务委员会的议员则计划到港调查，结果被北京拒绝入境。对于英国的诸多谰言和花招，香港特区政制及内地事务局局长谭志源反驳说，英方对回归后的香港无主权，无治权，无监督权，不存在所谓“道义责任”。香港工联会议员王国兴说，香港部分反对派人员“应邀作证”，是**公然配合外国势力干预香港内部事务，是丧失国格的行为，对中国人民、香港市民构成极大伤害**。香港金融界立法会议员吴亮星也说，香港事务是中国内政，其他国家无权指指点点，有香港反对派议员“配合”出席听证会，明显是招引外国势力干涉中国国家内部事务。[25]

中国政府对英国下议院外交事务委员会举行有关《中英联合声明》的听证会的荒唐行径，也连续予以严词谴责。早在 2014 年 7 月 25 日，中国外交部发言人洪磊就指出，香港事务属于中国内政，英方的做法是干涉中国内政，中国对此表示强烈不满和坚决反对。中国政府反对任何外部势力以任何借口进行干涉。[26] 2014 年 12 月 3 日，外交部发言人华春莹更加明确指出，香港已于 1997 年回归中国，是中国的特别行政区。1984 年的《中英联合声明》就中方恢复对香港行使主权和过渡期的有关安排，对中英双方的权利义务作了清晰划分。英方对回归后的香港无主权，无治权，无监督权，不存在所谓“道义责任”。英方有些人企图用所谓“道义责任”混淆视听，干涉中国内政，是不可接受的，也不可能得逞。[27]

显而易见，中国政府 2014 年的上述表态以及香港爱国人士 2014 年的上述主张，与陈安先生早先在 2008 年作出的前述详细论证，可以说是完全契合和互相呼应的。

陈安先生博学强识，书中很多对于国际经济法学重要问题的观点均来自于其毕生孜孜不倦的研习以及他与国际学术界的对话。陈安先生先后与 Louis Henkin, Andreas F. Lowenfeld 以及 John H. Jackson 等著名国际经济法学学家进行过深入的研讨交流，不断更新自己的知识，并将中国国际经济法学界的新发展和新动向介绍给国外同仁。更可贵的是，在研究与实践的过程中，陈安先生深刻洞察到国外国际经济法学著作中所暗含的殖民主义气息和单边主义进路，尤其是美式双重标准（US-style double standards）等，因此他毕生以呼吁改造旧式国际经济秩序、建立新型国际经济秩序为己任，坚持实事求是的态度，不懈探索真理，三十年如一日，积累汇聚而成《中国的呐喊》一书。“全书结构自成一体，观点新颖，具有中国风格和中国气派，阐释了不同于西方发达国家学者的创新学术理念和创新学术追求，致力于初步

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[25] 参见《香港大学生赴英“听证” 声称英国应重启<南京条约>》 _中华论坛_中华网社区, http://club.china.com/data/thread/1011/2775/44/18/5_1.html

[26] 参见《英质询联合声明在港实施 中国强烈不满》http://es.miqisq.com/portal.php?mod=view&aid=2005

[27] 参见《外交部发言人华春莹主持例行记者会》，2014/12/03 http://www.fmprc.gov.cn/mfa_chn/fyrbt_602243/t1216342.shtml

创立起以马克思主义为指导的具有中国特色的国际经济法理论体系，为国际社会弱势群体争取公平权益锻造了法学理论武器。”[28]

党的十八届三中全会决议将“构建开放型经济新体制”上升到战略高度，加强中国国际经济法学研究、完善中国国际经济法治建设，已成为因应“一带一路”、“走出去”、创设金砖银行和亚洲基础设施投资银行的核心要求和必要保障。汪洋副总理撰文指出，应当加强涉外法律工作，积极参与国际规则制定。[29] 本书正是陈安先生植根于中华民族利益、中国特色社会主义制度以及中国作为发展中国家经贸大国的发展现状，对国际经济法基本理论和热点难点问题的重要回应。当前，多边贸易体系前行缓慢，双边、诸边贸易投资协定尤其是以跨太平洋伙伴关系协议（Trans -Pacific Partnership Agreement，TPP）、跨大西洋贸易与投资伙伴协议（Transatlantic Trade and Investment Partnership，TTIP）、区域全面经济伙伴关系(Regional Comprehensive Economic Partnership, RCEP) 等为代表的巨型自贸协定（Mega-FTAs）以及数百个包含投资规则的 FTAs，正成为国际经贸法重构的重要体现。陈安先生在书中指出，“中外双边投资条约中的四大‘安全阀’不宜贸然全面拆除”[30]，这对于在中美、中欧 BIT 谈判中，如何保护国家、民族利益等具有借鉴意义。此外，陈安先生在其著作中引经据典，从中国古诗词到外国学界大师名著，可以很好地帮助读者更深入地了解中国国际经济法学者的独特学术视野。

我们相信，陈安先生的巨著《中国的呐喊：陈安论国际经济法》一书，将乘着全球化浪潮和中国经济高速发展的东风走向世界，代表中国国际经济法学人，在国际法舞台上发出华夏学术的强音。

（编辑: 陈 欣）

[28] 全国哲学社会科学规划办公室下达“关于《中国的呐喊》书稿的专家评审意见”, 2013 年 11 月 22 日。
[29] 参见汪洋：《加强涉外法律工作》，人民日报，2014 年 11 月 6 日，第六版。
[30] Supra note 1, p. 273.

10.2：Academic Voice with Chinese Characteristics

—A Commentary on *The Voice from China—An Chen on International Economic Law*

By SHI Jingxia* & SUN Yingzhe**
Translated by ZHANG Chuanfang***

In March 2014, the English version of the book *The Voice from China—An Chen on International Economic Law,*[31] sponsored by Chinese Academic Translation Program, was published by Springer, a distinguished publisher across the globe. The book is a collection of the 24 papers written by An Chen, an emeritus professor of Xiamen University, the former chairman of the Chinese Society of International Economic Law, and one of the co-founders of the Society, in different times since 1980s.

An Chen, with profound attainments and a thorough knowledge of both western and Chinese law in the field of international economic law, has been honored as one of the founders of the discipline of international economic law in China. He has put forward a lot of insights on the basic issues in China concerning international economic law and, for many a time, he went abroad for international academic exchange and overseas lecturing. Not just limited to the theoretic exploration, he also devoted himself to the practice in the field of international economic law. In particular, he was designated by the Chinese government in 1993, 2004 and 2010 respectively as an international arbitrator in the International Center for the Settlement of Investment Disputes (ICSID) and engaged in the specific settlement of investment disputes.

The book, composed of six parts, systematically presented and analyzed the major heat issues and perplexities concerning international economic law faced with China since its Reform and Opening-up Program. In this book, Mr. Chen has combined theory with practice, insisted the principle of seeking truth from facts unswervingly, and regarded fairness and justice as the backbone of his arguments. In Chapter 11, the paper entitled *Queries to the Recent ICSID Decision on Jurisdiction Upon the Case of Tza Yap Shum v. Republic of Peru: Should China-Peru BIT 1994 Be Applied to Hong Kong SAR Under the "One Country, Two Systems" Policy?*[32] is a particular case in point.

In recent years, with the rapid expansion of international investment arbitrations, China has seen an increasing engagement in the settlement of investment arbitration. Enterprises in the Chinese

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31 An CHEN, *The Voice from China—An Chen on International Economic Law*, Springer, 2014.
32 *Id.*, pp.337-372.

mainland have in recent years initiated 3 international investment disputes,[33] two out of which involve ICSID arbitration. Therefore, the ICSID arbitration practice is of huge significance to China's overseas investment and, particularly, to the implementation of China's BITs negotiated with foreign countries or jurisdictions. This paper, revolving the decision on the jurisdiction issue in the case Tza Yap Shum v. Republic of Peru in which a BIT negotiated by China was involved in ICSID arbitration for the first time, has explored the inappropriateness of the ICSID arbitral tribunal's decision. One of the focuses in the case was whether Hong Kongese could seek investment protection under the BIT negotiated by the government of the Chinese mainland and that of Peru prior to Hong Kong's return to China. Mr. Chen adopted a negative attitude. After an analysis of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (hereinafter referred to as Sino-British Joint Declaration), The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China(hereinafter referred to as 'The Basic Law of the Hong Kong SAR') and the Vienna Convention on the Law of the Treaties (hereinafter referred to as 'VCLT'), he based his argument on the two following aspects. The first was that Hong Kong had not returned back to China when the Sino-Peru BIT was signed in 1994, thus the China-Peru BIT could not be applied to Hong Kong; and the second was that in accordance with China's "One Country, Two Systems" policy and the relevant provisions in The Basic Law of the Hong Kong SAR,[34] the China-Peru BIT could not be applied automatically to Hong Kong.

In the case Lao Holdings N.V. v. Lao People's Democratic Republic,[35] a similar issue also arose whether investors in Macau may institute an arbitration against Lao under China-Lao BIT. The tribunal in the Lao Holdings N.V. case acknowledged both the Article 15(moving treaty frontiers rule) of the Vienna Convention on Succession of States in Respect of Treaties (hereinafter referred to as 'VCST') and the Article 29 of the VCLT as customary international law and held the view that the China-Lao BIT should apply to Macau SAR after distinguishing the above-mentioned two articles and analyzing the association therebetween in the present case.[36] Although there existed differences in the jurisprudence between the two cases,[37] it was noteworthy that the Lao Holdings N.V. case generally followed the positions adopted by the Tza Yap Shum tribunal. The Lao Holdings N.V. tribunal first used the Article 15[38] of the VCST to

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[33] *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium*, ICSID Case No. ARB/12/29; *China Heilongjiang International Economic & Technical Cooperative Corp., Beijing Shougang Mining Investment Company Ltd., and Qinhuangdaoshi Qinlong International Industrial Co. Ltd. v. Mongolia*, UNCITRAL, PCA; *Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen,* ICSID Case No. ARB/14/30.

[34] Paragraph 1 of Article 153 of this Law provides: "The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the Circumstances and needs of the Region, and after seeking the views of the government of the Region."

[35] *Lao Holdings N.V. v. Lao People's Democratic Republic,* ICSID Case No. ARB(AF)/12/6.

[36] *Supra note* 5, ¶¶232-269.

[37] The tribunal of the Tza Yap Shum case only invoked VCLT in its decision, and did not mention VCST.

[38] Article 15 of the VCST: Succession in respect of part of territory

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State,becomes part of the territory of another State:

(a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

carry out the argumentation on the analytic framework developed by the state succession issues. Article 15 of the VCST includes general provisions and exceptional provisions. The tribunal observed that the China-Lao BIT may apply to Macau if the general provisions were applied; but otherwise if the exceptional provisions were satisfied. The tribunal backwardly demonstrated that none of the three circumstances listed in Sub-paragraph B of Article 15 had been satisfied in the present case. To demonstrate that "the China-Lao BIT could not apply to all the jurisdictions of China", the tribunal had followed the Tza Yap Shum case. In the Lao Holdings N.V. case, the tribunal believed that under the circumstances where China has concluded BIT with a third country, Hong Kong's power to conclude of itself BIT with this third country was not necessarily redundant.[39] In the tribunal's opinion, the legislative purpose of both the China-Lao BIT and the Macau-Lao BIT was to protect foreign investors and the economic development of the host state. If both of the above BITs could be applied to Macau, the legislative purpose, instead of being obstructed, may be otherwise facilitated.[40] Besides, in terms of the understanding of some of the key conceptions in BITs, the Lao Holdings N.V. tribunal also basically followed the Tza Yap Shum case which used the VCLT argument.[41] The tribunal of the Tza Yap Shum case believed that according to the relevant provisions of the VCLT,[42] when interpreting the ordinary meaning of the word "involving" in Paragraph 3 of Article 8 in the China-Peru BIT,[43] the word "involving" should be construed as "inclusive", but not "exclusive". Therefore, it would be inadvisable to simply take the word "involving" literally as a restriction to the tribunal's jurisdiction.[44]

It thus appears that despite that Mr. Chen had provided a detailed and accurate argument, his argument had not been fully acknowledged by international arbitration practice. Mr. Chen concentrated on the Sino-British Joint Declaration and The Basic Law of Hong Kong SAR, while the arbitral tribunal mainly drew on the BITs. It thus reveals that we as Chinese scholars need to delve into the international legal status of the Sino-British Joint Declaration and the intension of The Basic Law of Hong Kong SAR, so as to attract the attention of the international community.
Mr. Chen's argument was sufficiently presented in his paper, and the issues around the specific

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(b) treaties of the Successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States,unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

39 Tza Yap Shum v. Republic of Peru (ICSID Case No. ARB/07/6), ¶76.

40 *Supra note* 5, ¶295.

41 *Id.*, ¶329.

42 Paragraph 1 of Article 31 of VCLT provides: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

43 Paragraph 3 of Article 8 of the China-Peru BIT provides: "If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted at the request of either party to the international arbitration of the International Center for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington D.C., on March 18, 1965. Any disputes concerning other matters between an investor of either Contracting Party and the other Contracting Party may be submitted to the Center if the parties to the disputes so agree. The provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article."

44 *Supra note* 9, ¶¶163-165.

application of Article 31 and 32 of VCLT were fully discussed in particular. Generally speaking, not only has his argument created important influence on subsequent cases,[45] but his paper has also brought up quite some food for thought. To name a few. Is the fact that the China-Peru BIT cannot apply to Hong Kong SAR equivalent to that Chinese nationals who hold a HKSAR passport cannot invoke the same BIT either? The "investors" in the China-Peru BIT cover "all the natural persons who hold its nationality in accordance with the law of the People's Republic of China".[46] Pursuant to the Nationality Law of the People's Republic of China,[47]Hong Kongese possess Chinese nationality. Then, can Hong Kong's "high degree of autonomy" serve as an obstacle to Hong Kongese seeking investment protection under China-Peru BIT? In addition, as a lawyering skill, assuming that Tza Yap Shum cannot obtain the investment protection under the China-Peru BIT, whether there exists a possibility that it can get investment protection under the British-Peru BIT negotiated in 1993 (in force as of 1994)? If Tza Yap Shum cannot get protected under the China-Peru BIT because of the logic that "old law (the China-Peru BIT in force in 1995) cannot apply to 'new circumstances'[48]", can it seek protection under the British-Peru BIT by the reasoning that "old law (the British-Peru BIT in force as of 1994) should continue to apply to 'past circumstances'[49]"? These are all inspiring questions posed by Mr. Chen's paper that need to be further considered.

Moreover, Mr. Chen also, from the perspective of investment disputes between China and foreign countries, expounded the relationships between the Sino-British Joint Declaration, the Constitution of the People's Republic of China, The Basic Law of the Hong Kong SAR as well as a series of treaties negotiated by China with foreign countries.[50] He clearly pointed out that according to the Sino-British Joint Declaration, the Chinese government would resume the exercise of sovereignty over Hong Kong on July 1, 1997, and the British government would return Hong Kong back to China on the same day. Since then, "The Basic Law of the Hong Kong SAR formulated according to the Article 31 of the Constitution of the PRC would be the constitutive instrument governing the Hong Kong SAR",[51] and all the affairs in Hong Kong shall be subject to The Basic Law of the Hong Kong SAR. According to Chapter XI of the Appendix to the Sino-British Joint Declaration and Article 153 of The Basic Law of the Hong Kong SAR, under the policy of "One Country, Two Systems", "international treaties entered into by China with third countries would not automatically apply to Hong Kong after July 1997. To the contrary, they

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[45] *Id.*¶77.

[46] See Sub-paragraph 1 of Paragraph 2 of Article 1 of the China-Peru BIT: "The term "investors" means: in respect of the People's Republic of China:
(a) natural persons who have nationality of the People's Republic of China in accordance with its laws."

[47] Article 3 of this Law provides: "The People's Republic of China does not recognize dual nationality for a ny Chinese national." Article 4 of this Law provides: "Any person born in China whose parents are both C hinese nationals or one of whose parents is a Chinese national shall have Chinese nationality."

[48] Hong Kong has become a part of the Chinese territory in the sense of international law and all Hong Kongese have obtained the Chinese nationality since Hong Kong's return back to China.

[49] When Britain and Peru signed the BIT, Hong Kong remained part of the British territory in the sense of international law.

[50] See *supra note* 1, pp.341-348; see also Whether the China-Peru BIT(1994) Can Apply to the Hong Kong SAR under the policy of "One Country, Two Systems", An Chen on International Economic Law(5 volumes ed.), Fudan University Press, 2008, pp.1155-1162.

[51] *Supra note* 1, p.344.

would only apply to Hong Kong under the prerequisite that the Central Government of China decided to extend their application to Hong Kong after consultation with the Government of HKSAR."[52] These crucial arguments are of huge practical relevance to tackling the current problems faced with China, including the attempt of interference with China's internal affairs by using the Sino-British Joint Declaration as a pretext and the crisis of "Occupy Central", etc.[53] The specific circumstances are as follows:[54]

As reported by Shanghai Mercury, Hong Kong on November 18, 2014, the Foreign Affairs Commission of the House of Commons on November 17 conducted a hearing on the Sino-British Joint Declaration. Jonathan Fenby, the former chief editor of South China Morning Post, expressed when "testifying" that the central government of China wished to keep a firm hand on Hong Kong's politics and economy and the government of Hong Kong SAR prioritized its relationship with the mainland over the appeal of the Hong Kongese for democracy. Hui Sin Tung from Hong Kong University and Tang Chi Tak from Chinese University of Hong Kong, students who participated in the "Occupy Central" movement stated that **the central government of China had repeatedly violated the Sino-British Joint Declaration by depriving the Hong Kongese of the freedom of press and assembly as well as the universal voting rights as stipulated therein, and Britain should compel China to "honor" the Sino-British Joint Declaration, make condemnations, and even resume the Treaty of Nanking and the Treaty of Tientsin**. In addition, Liu Huiqing, the chairman of the Democratic Party of Hong Kong also "testified" to the British Parliament by video on November 18 that Britain should be responsible for the maintenance of the freedom and lifestyle of Hong Kong.

External influences from Britain and America keep interfering with the internal affairs of Hong Kong and this has become more frequent since the "Occupy Central". In late September, the British Prime Minister Cameroon said, "the agreement between the UK and China mentioned the importance of Hong Kong's democracy under the framework of 'One Country, Two Systems'."[55] In mid-October, he once again proclaimed that "Britain should stand up for the freedom of the Hong Kongese."[56] In September, when the "Occupy Central" movement met the dead end, the United States used 20 pages in the annual report of the U.S.-China Economic and Security

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[52] *Id.*, p.343.

[53] For example, the Sino-British Joint Declaration shall not automatically become effective to the Hong Kong government, so the measures adopted by the Hong Kong government would not be restricted by the Sino-British Joint Declaration, but subject to The Basic Law of the Hong Kong SAR and the laws and regulations thereunder. Therefore, it was untenable for the British House of Commons to conduct a hearing attended by those "occupying central" and decide to make investigations into the political situation in Hong Kong. "The British House of Commons Conducted A Hearing Attended by Those 'Occupying Central'", for more details see *Evidence session announced with protesters from Hong Kong,* at , accessed on December 20, 2014.

[54] See University Students of Hong Kong to the British Hearing, Claiming the British Resumption of Nanking Treaty, at http://club.china.com/data/thread/1011/2775/44/18/5_1.html.

[55] John Hall, HONG KONG'S LEADER CALLS FOR PROTESTERS TO LEAVE THE STREETS, MAIL ONLINE (2014), at http://www.dailymail.co.uk/news/article-2774671/Hong-Kong-s-leader-calls-protesters-leave-streets-pro-democracy-campaigners-continue-bring-parts-region-standstill.html (last visited Feb 20, 2017).

[56] William James, PM CAMERON SAYS BRITAIN SHOULD STAND UP FOR HONG KONG RIGHTS, REUTERS (2014), http://uk.reuters.com/article/uk-hongkong-china-britain-idUKKCN0I41C620141015 (last visited Feb 20, 2017).

Council to fabricate wild tales on the political reform of Hong Kong. After that, the Congressional-Executive Commission on China conducted a "hearing", during which Peng Dingkang, the "Last Governor of Hong Kong" made an overseas "testification" in London through video satellite, claiming that western countries should speak out on Hong Kong issues. When the British MPs planned to conduct investigations in Hong Kong, Beijing denied their entry. Tan Zhiyuan, director of the Constitutional and Mainland Affairs Bureau refuted the British slanders and tricks, arguing that Britain has no sovereignty, nor administration and supervision powers over Hong Kong, and the so-called "moral responsibility" is nothing but nonsense. Wang Guoxing, a representative of Hong Kong Federation of Trade Unions, stated that the testification of the oppositionists in Hong Kong, **overtly assisting foreign forces to interfere with the internal affairs of Hong Kong, was an act of losing national dignity and caused huge harms to Hong Kongese and the Chinese people at large**. Wu Liangxing, a member of the legislative council on banking industry in Hong Kong, said affairs in Hong Kong belong to China's internal affairs with which other countries have no power to interfere, and the oppositionist senators who "cooperated" in the hearings conducted by foreign countries were obviously incurring foreign forces to do so.

The Chinese government also consecutively condemned the ridiculous hearings on the Sino-British Joint Declaration by the British House of Commons. As early as July 25, 2014, Hong Lei, the spokesman of China's Foreign Ministry, pointed out that affairs in Hong Kong belong to China's internal affairs with which the British hearings were interfering, and China would like to express strong dissatisfaction and resolute opposition to its actions. The Chinese government would oppose to any foreign forces interfering by any pretexts in China's internal affairs.[57] On December 3, 2014, Hua Chunying, the spokeswoman of China's Foreign Ministry claimed in a more definite manner that Hong Kong had already returned back to China since 1997. Hong Kong is a special administrative region of China. It had been made clear on China's resumption of the exercise of sovereignty over Hong Kong and the relevant arrangements during the transition period in the Sino-British Joint Declaration of 1984. The respective rights and obligations of both China and Britain were also clearly defined. Britain had no sovereignty, nor administration and supervision powers over Hong Kong, and the so-called "moral responsibility" did not exist at all. It was unacceptable and untenable for Some British people attempted to use "moral responsibility" to confuse the public and interfere in China's internal affairs. This was unacceptable and untenable.[58]

It is obvious that the statements made by the Chinese government and the patriots in Hong Kong in 2014 coincide perfectly with the detailed arguments brought up by Mr. Chen as early as 2008.
Mr. Chen is fast-learned and wealthy in knowledge, and many of his views in the book on international economic law come from his sedulous research and persistent dialogues with the international academia. He once had in-depth discussions about academic issues with distinguished scholars in international economic law, such as Louis Henkin, Andreas F. Lowenfeld and John H. Jackson. He keeps renewing his knowledge and trying to introduce the new

[57] See China's Strong Dissatisfaction with the British Hearing on the Implementation of the Sino-British Joint Declaration in Hong Kong, at http://es.miqisq.com/portal.php?mod=view&aid=2005.
[58] See The Spokeswoman of China's Foreign Ministry Hua Chunying Meets the Press, 2014/12/03 http://www.fmprc.gov.cn/mfa_chn/fyrbt_602243/t1216342.shtml.

developments of the international economic law in China to international peers. What's more commendable is that Mr. Chen has detected the colonialism and unilateralism, especially the U.S.-style double standards, in the books written by foreign scholars in international economic law. Therefore, he devoted all his life to the reform of the old international economic order and the establishment of a new international economic order. He insists the approach of seeking truth from facts and finished the book *The Voice from China—An Chen on International Economic Law* after 30 years of hard work. "With an even structure and novel views, this book features Chinese styles and characteristics by expounding innovative academic ideas distinct from those of the developed countries in the west. Dedicated to the initial establishment of the theoretic system of international economic law with Chinese characteristics under the guidance of Marxism, this book has forged a theoretical arm for the international underprivileged to struggle for equitable interests."[59]

In the third plenary session of the 18th National Congress of the CPC, "to construct a new open-style economic system" has been promoted to a strategic level. To strengthen the research on, and to improve the rule of, international economic law has become the core requirements and necessary guarantees for the strategies of "One Belt, One Road" and "Going global", and the establishment of the BRICS Development Bank and the Asian Infrastructure Investment Bank. Wang Yang, the vice premier of the state council of China, pointed out in an article that we need to intensify the foreign-related legal work and proactively engage in the formulation of international rules.[60] Deeply rooted in the national interests of the Chinese people, against the backdrop of the socialist system with Chinese characteristics, and based on the status quo of China as a developing economic and trade power, this book has served as an important response to the heated and difficult issues on the basic international economic law theories. At present, it has been dragging on over the multilateral trading system and, the mega-FTAs such as Trans-Pacific Partnership Agreement, Transatlantic Trade and Investment Partnership and Regional Comprehensive Economic Partnership and hundreds of FTAs with investment rules have reflected the reconstruction process of international economic and trade rules. Mr Chen pointed out in his book that "the four 'safety valves' in China's BITs with foreign countries should not be rashly dismantled",[61] which is of critical relevance to protecting China's national interests in the negotiation of BITs with the United States and the Europe. Viewing the classics and ancient works cited in the book, no matter the ancient Chinese poetry or the masterpieces from the west, the readers can have a better appreciation of the peculiar perspective of a Chinese scholar in the field of international economic law.

Thus, we firmly believe that the book *The Voice from China—An Chen on International Economic Law*, the monumental work of Mr. Chen, will surely be able to go global under the background of globalization and China's soaring economic growth, and the voice from China can certainly get heard in the international arena.

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[59] China's National Planning Office of Philosophical and Social Sciences, The Experts' Evaluation Opinions on the Manuscript of *The Voice from China*, November 22, 2013.
[60] See Wang Yang, To Intensify the Foreign-Related Legal Work, *People's Daily*, November 6, 2014, sixth edition.
[61] *Supra note* 1, p. 273.

11.1：把准南方国家共同脉搏的学术力作

——评《中国的呐喊：陈安论国际经济法》

孔庆江*

陈安先生的皇皇巨著“The Voice from China: An CHEN on International Economic Law”（《中国的呐喊：陈安论国际经济法》，以下简称《中国的呐喊》）已由世界著名学术出版社 Springer 出版，此乃学界幸事。陈先生是中国国际经法学界的前辈，长期以来一直担任中国国际经济法学会会长（1993—2011）和荣誉会长（2012—），领导中国国际经济法学界同仁，引领中国国际经济法学研究的风气。陈先生大作刊行于世，我等晚辈同侪无不奔走相告，以先睹为快。

《中国的呐喊》由多篇专论构成，既独立成章，又相互支撑配合，形成一个相互关联的体系。纵览全书，主旨鲜明突出，即批评当今尚存重大合理性问题的现有国际经济秩序，并在此基础上，为构建著者心目中的更公平合理的国际经济法律新秩序提供建言。

2007～2008 年全球金融危机后，旧的全球经济秩序的弊端凸显，如何重构全球经济秩序已经成为刻不容缓的问题。对此，大国之间也立即开展了新的国际经济规则主导权的竞争。中国作为最大的发展中国家和崛起中的大国，自当发出自己的声音，而《中国的呐喊》在此时代背景下应运而生，无论批评还是建言，都体现了著者对国际经济秩序推陈出新和破旧立新的人文关怀。在一众中外学者满足于貌似完美的以“自由主义”为基石的现存国际经济秩序的背景下，著者毫不隐晦其中国学者的身份，强调中国在国际经济秩序重构过程中应该有的大国责任和大国风范，即应积极参与到全球国际经济新规则的制定过程中。其视野其观点，都不脱著者心目中不可或缺的中国视角和中国利益。这一切，反映出著者作为国际经济法学家拳拳的爱国之心；著者的赤子之心，在字里行间呼之欲出。

值得一提的是，著者绝非狭隘的民族主义者，其观点无不浸润着对发展中国家弱势群体数十亿大众的利益关切和广阔视角。从全球范围内看，著者的这一巨著，不啻是在国际经济秩序推陈出新和破旧立新方面，体现南方国家共同立场的学术力作。无论是对于现存国际经济秩序的理论剖析还是对于各方观点的细致评判，都见解独到而又发人深省。而在批判现存国际经济秩序的基础上提出的构建国际经济新秩序的视角，则体现了一个心怀天下的国际经

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济法大师的胸怀，为全球南方国家在这个破而后立的时代，点明了参与国际经济规则制定的方向。

《中国的呐喊》的学术价值，还在于勾勒了塑造中国国际经济法学发展面貌的诸多因素，丰满了中国国际经济法学发展维度的诸多细节，特别是指出了中国国际经济法学发展的方向。这不但对于国际学者正确全面理解中国特色的国际经济法学，而且对于中国国际经济法学者反思自己的研究路径，都具有指导性的意义。

我相信，《中国的呐喊》，一方面将与任何严肃著述一样，经得起历史风雨的考验，另一方面，该书的出版将使著者成为南方国家中有代表性的、有重大影响的国际经济法学家。

（编辑：龚 宇）

11.2：A Highly Recommendable Monograph that Senses the Pulse of the South

Book Review

The Voice from China: An CHEN on International Economic Law, by An CHEN

(Understanding China, Springer, 2013)

Qingjiang Kong*

The Voice from China: An CHEN on International Economic Law (herein referred to as *The Voice from China*), which was recently published by Springer, one of the world's leading academic publishers, is a dear gift for the academic society. Professor CHEN, who served as the President (1993-2011) and is acting as the Honorary President (2012-) of the Chinese Society of International Economic Law (CSIEL), is a pioneering explorer of international economic law in China. He helps inspire the researchers in this new discipline and guide their academic pursuits. It is no exaggerating to say that the academia, particularly the young generation was jubilant to learn of the publication of this brilliant monograph.

The Voice from China is composed of several chapters. These chapters-- either concerned with investment regime or trade issues-- are independent yet mutually supportive and therefore form an integrated academic work. Throughout the book, outstanding is the theme, which mainly purports criticizing the existing international economic order for its lack of rationality, and, proposing the establishment of a fairer and more reasonable international economic order.

In the aftermath of the global financial crisis of 2007/08, the old global economic infrastructure turned out to be defective, making the reform of the infrastructure a pressing issue. Hereto, the world powers are found to engage in a new round of competition to grab the leadership of international economic rule-making. As the biggest developing country and a rising power, China has to make her voice be heard. Under this circumstance, *The Voice from China* came out timely to reflect the author's humanistic concerns over innovative international economic order regardless of critics and disagreements. Where an array of scholars, home and abroad, are comfortable with and boasting the existing international economic order that is based on the seemingly perfect "liberalism", the author is not shy to disclose his identity as a China-born-and-bred scholar, advocate China's responsibility to contribute to the emerging new international economic order, and call for a China active in participating the international rule-making process. The author's perspectives and opinions, which originate from China' indispensable national interest, reflect nothing but the author's true patriotism as an international economic law scholar.

It is worth noting that the author is not a narrow-minded nationalist at all. His publication is a best

* Professor of Law，Dean of International Law School, China University of Political Science and Law. An initial English version, which is primarily based on the Chinese version, was prepared by Tianqi Yu.

example of how international economic law can be full of humane concerns on the interests of developing countries and the breath of billions of vulnerable people therein. From the global perspectives, *The Voice from China* insightfully presents and addresses the common concerns of the South in fighting for a fairer international economic order, thus making itself a great contribution. The meticulous theoretical analysis of international economic order and blatant critics of various parties' arguments are both highly relevant and thought-provoking. From the criticism of existing international economic order, to the proposal to have in place a brand new international economic order, what is evident is the image of a compassionate master in the realm of international economic law, who has great care about the whole world. At a time of setting up new rules after breaking down the olds, *The Voice from China* helps guide the South as a whole how to get involved in the rule-making for international economy.

Another academic value of *The Voice from China* lies in that it either sketches or details the development of Chinese international economic law, especially in that it points to the direction of how to advance the Chinese international economic law. It is of instructive significance to help international law scholars fully and properly understand the international economic law with Chinese characteristics, as well as to sharpen their research skills for the studies of Chinese international economic law.

I firmly believe that *The Voice from China* will, like any solemn monograph, undergo harsh testing of history and moreover, make the author a representative authority with significant contribution to the studies of international economic law.

12.1：国际经济法研究的“中国立场”

——读《中国的呐喊》有感

李万强*

厦门大学法学院陈安教授以“余热未尽，不息奋蹄”的精神与斗志，在八十五岁高龄推出英文学术专著《中国的呐喊——陈安论国际经济法》（以下简称《中国的呐喊》），令人可叹可佩！该书是继 2009 年复旦大学出版社出版的中文五卷本《陈安论国际经济法学》之后，面向国际学术界对陈安教授学术成就以及学术生活的一次全景式、立体化展现。

陈安教授是我国最早从事国际经济法研究的学者之一。过去三十多年，陈安教授一直在这一领域辛勤耕耘，为中国国际经济法学学科地位的巩固与夯实做出了重大贡献。他以一家跨国公司的投资项目为例，从六大方面释明了国际经济活动所需依赖和遵守的国际法律规范与国内法律规范、公法性规范与私法性规范、程序性规范与实体性规范以及贸易法规范、投资法规范与金融法规范等，指明国际经济法是应客观现实之急需，不拘泥于传统法学分科，在学科交叉渗透的基础上形成的独立的、有机的边缘性综合体。[1]不仅如此，面对其他一些学者对初创的国际经济法学的四种误解与非议，即“不科学”或“不规范”论、“大胃”论或“贪食”论、“浮躁”论或“炒热”论以及“翻版”论或“舶来”论，他撰文一一澄清或驳斥，进一步论证了这一学科定位的“科学性、合规律性和旺盛活力”。[2]

国际经济法作为一种法律现象，可以有不同的研究视角和方法。陈安教授则“一贯坚持”南北矛盾的研究方法，“独树一帜”，形成并引领了颇具中国风骨与特色的国际经济法学流派。这一立场，由于两个方面的原因而对中国具有独特的意义：一方面，崛起的中国已经触碰到了某些发达国家“脆弱的神经”，他们对中国极力遏制；另一方面，中国由于实行不同的政治制度，被某些西方国家另眼相加，列入另册，他们对中国严加防范。因此，建立国际经济新秩序（NIEO），并在其中发挥积极的、建设性的作用，是陈安教授立足于中国实际所确立的国际经济法研究的指导思想。为贯彻这一指导思想，《中国的呐喊》在学术层面进行了充分的论证与法理构建：

（1）身份：关于中国的国家“身份”问题，陈安教授的认识是一贯的。长期以来，他

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1 An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.8-12.

2 An CHEN, On the Misunderstanding Relating to China’s Current Developments of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.34.

对国际经济法中的经济主权原则、南北矛盾与南南合作等问题倾注极大的心力进行研究，就是基于中国“作为全球最大的发展中国家以及全球弱势群体的一员”这一认识。[3]

（2）定位：陈安教授提出，中国应当立足于自身的历史，把握现有国际经济秩序的大局，科学地、合理地从长远角度确立自己在建立国际经济新秩序过程中的战略定位。具体说来，中国理应成为建立国际经济新秩序的积极推手，在国际经济旧秩序尚未完全退出历史舞台的背景下，为了实现南北公平，中国作为发展中的大国之一，理应以公正、公平、合理的国际经济新秩序作为长远奋斗目标，积极倡导和参与建设和谐世界；中国理应致力于成为南南联合自强的中流砥柱之一，作为当代奉行和平发展方针的大国，应当具有大国的意识和风范，勇于承担，与其他发展中国家一起联合行动。[4]

（3）目标：陈安教授认为，中国与全球弱势群体共同参与建立国际经济新秩序的战略目标，理应坚定不移，始终不渝。面对当今现存的各种国际经济立法，包括 WTO 法制下的种种“游戏规则”，国际弱势群体固然不能予以全盘否定，但是显然也不能全盘接受，心甘情愿地忍受其中蕴含的各种不公与不平。对待当今现存的各种国际经济立法，正确态度理应是：以公正、公平为圭臬，从争取与维护国际弱势群体的平权利益的视角，予以全面的检查和审查，实行“守法”与“变法”的结合。凡是基本上达到公正公平标准，符合改造国际经济旧秩序、建立国际经济新秩序需要的，就加以沿用、重申，就强调“守法”；凡是违反这种需要的，就要强调“变法”，并通过各种方式和途径，据理力争，努力加以改订、废弃或破除。[5]

在国际弱势群体争取建立国际经济新秩序的过程中，国际学界也出现了一些颇为流行的理论，比如“新自由主义经济秩序”论、“WTO 宪政秩序”论、“经济民族主义扰乱全球化秩序”论等。陈安教授研究指出，这些理论各有其合理内核，但其副作用亦不可小觑。“新自由主义经济秩序”论、“WTO 宪政秩序”论可能是一种精神鸦片，会麻痹、瓦解国际弱势群体的斗志与信心；“经济民族主义扰乱全球化秩序”论可能是一种精神枷锁，会压制国际

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[3] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.204.

[4] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.174-175.

[5] An CHEN, Some Jurisprudential Thoughts upon WTO's Law-Governing, Law–Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.245-248.

弱势群体的斗志与信心。要警惕这些“时髦”理论取代“建立国际经济新秩序”论！[6]

（4）途径：面对当代国际社会“南弱北强”、实力悬殊的战略态势，面对国际强权国家集团（七国集团之类）在国际经济领域中已经形成的“长达三十余年的霸业”格局，国际弱势群体要求“变法”图强，不应该单枪匹马，各自为政。实践反复证明：唯一可行和有效之途径就是南南联合，动员和凝聚集团实力，不渝不懈，坚持建立国际经济新秩序、“变法图强”的理念和目标，一步一个脚印地迈步前进。也正是由于中国等发展中大国的综合国力和国际影响的逐步提高，在WTO多哈会议、坎昆会议、香港会议、华盛顿会议、首尔会议的全过程中，中国与印度、巴西、南非和墨西哥等“BRICSM”成员曾多次通力协作，折冲樽俎，使得国际霸权与强权不能随心所欲，操纵全局，从而为国际弱势群体争得较大的发言权、参与权和决策权。[7]

对于南南联合自强及其成功经验，陈安教授进行了历史的考察。从历史上看，通过南南联合自强，逐步建立国际经济新秩序的战略主张，最初开始形成于1955年的万隆会议，此后，建立国际经济新秩序的进程，迂回曲折，步履维艰，尽管经历了多次潮起潮落，但其总趋向是始终沿着螺旋式上升的“6C”轨迹或遵循“6C律”，即Contradiction(矛盾)→Conflict(冲突或交锋)→Consultation(磋商)→Compromise(妥协)→Cooperation(合作)→Coordination(协调)→Contradiction new(新的矛盾)……每一次循环往复，都并非简单的重复，而都是螺旋式的上升，都把国际经济秩序以及和它相适应的国际经济法规范，推进到一个新的水平或一个新的发展阶段，国际社会弱势群体的经济地位和经济权益，也获得相应的改善和保障。当然，盲目的乐观也是有害的。陈安教授提醒，建立国际经济新秩序的前途，依然漫漫而崎岖，而要使它进一步发展成为康庄坦途，则坚持南南联合自强和南北合作，仍是不二法门。必须假以时日，必须坚持韧性，二者不可缺一。[8]

《中国的呐喊》不单是不畏国际强权、力争国际公义的呐喊，更是陈安教授赤诚的现实关怀与报国情怀的完美结合。陈安教授“蹉跎半生而重返法学殿堂”（先生语），却思想活跃，能紧跟形势，与时俱进。面对中国的实际问题，陈安教授殚精竭虑，奉献了超凡的智

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[6] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.190-204.

[7] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.207.

[8] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.233-238.

慧。无论是在改革开放之初还是在“八九“政治风波之后，陈安教授都及时撰文，宣讲中国的开放政策，澄清事实，消除误解。[9]在中国对外开放的复杂形势面前，一些学者和官员在国际投资法重大问题的立场方面，出现了疑虑与彷徨。陈安教授多次著文条分缕析，周密论证，阐述中国应当采取的立场与做法，提出四大“安全阀”不宜贸然拆除等真知灼见。[10]在中国仲裁法颁布之初，陈安教授即对中国的涉外仲裁监督机制进行了批判分析。[11]在WTO运行一段时间后，陈安教授以其学术敏感，撰文综合评析十年来美国单边主义与WTO多边主义交锋的三大回合，揭示美国学者主权观的两面性以及当代条件下经济主权原则之不可动摇，为国内学界再次敲响警钟。[12]……总之，作为中国国际经济法学界的泰斗级人物，在关涉中国国际经济法研究与实践的重大问题与重大事件时，几乎都有陈安教授振聋发聩的“呐喊”！

（编辑：龚 宇）

[9] An CHEN, To Open Wider or to Close Again: China's Foreign Investment Policies and Laws; To Close Again or to Open Wider: The Sino-US Economic Interdependence and the Legal Environment for Foreign Investment in China After Tiananmen, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.407, 453.

[10] An CHEN, Should the Four “Great Safeguards” in Sino-foreign BITs Be Hastily Dismantled? Comments on Critical Provisions Concerning Dispute Settlement in Model US and Canadian BITs; 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; Should “The Perspective of South–North Contradictions” Be Abandoned?: Focusing on 2012 Sino-Canada BIT, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.273, 309, 373.

[11] An CHEN, On the Supervision Mechanism of Chinese Foreign-Related Arbitration and Its Tally with International Practices, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.581.

[12] An CHEN, The Three Big Rounds of US 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); On the Implications for Developing Countries of “the Great 1994 Sovereignty Debate” and the EC–US Economic Sovereignty Disputes, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.103, 159.

12.2：A Chinese School of Jurisprudence on International Economic Law

-- A book review on *The Voice from China: An CHEN on International Economic Law*

Li Wanqiang*

It is admirable that Professor An CHEN finished his monograph in English at the age of 85. This monograph, titled as *The Voice from China: An CHEN on International Economic Law*, is a quintessence of his five-volume book series published by Fudan University Press five years ago and some of his articles thereafter. Nevertheless, it reflects a three-dimensional panorama of Professor CHEN's academic achievement and activities to the international academia.

Professor CHEN is one of the rare pioneers in the research field of international economic law (IEL). Since the inception of China's policy of reform and openness (CPRO), he has been concentrating his energies on the IEL and the CPRO. As a founding member and former Chairman of Chinese Society of International Economic Law, he has played a leading role in the establishment and enhancement of the discipline of the IEL in China. He takes an international investment project as an example to show how an international economic transaction may be governed by international law and domestic law, public law and private law, substantive law and procedural law, as well as trade law, investment law, tax law and financial law etc. Based on this practical analysis, he points out that IEL is a novel branch of legal discipline in response to the objective reality. This legal discipline adopts an interdepartmental and interdisciplinary approach of investigation and is an organic marginal independent synthesis. [1] Facing some misunderstandings and suspicions to the IEL, such as so-called "nonscientific or nonnormative", "polyphagian or avaricious", "fickle fashion or stirring heat", and "duplicating version or importing goods", he wrote an article to rebut or correct these opinions one by one, which prove the scientific and normative nature and the strong vitality of the IEL from different perspectives.[2]

As a legal phenomenon, the IEL can be reviewed and treated from different approaches. What Prof. CHEN has been taking consistently is the "South-North Contradiction" approach. Thanks to his achievements and influence, a Chinese School of Jurisprudence on the IEL featured by this approach has come into being in China. Based on two factors, this school of jurisprudence on the IEL is of special significance to China. One is that some developed countries adopt "containment strategy" in response to China's rise. The other is that some western countries treat China in an alien way because of China's political system. According to Prof. CHEN, establishing New

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[1] An CHEN, On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.8-12.

[2] An CHEN, On the Misunderstanding Relating to China's Current Developments of International Economic Law Discipline, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.34.

International Economic Order (NIEO) is a way for developing countries like China to be treated justifiably and China shall play an active and constructive role in this process. In checking and reshaping the IEL, the following points shall be adhered to:

Firstly, the identity of China as a developing country must be recognized. Prof. CHEN holds it is a fact that China is one member within the disadvantaged groups as well as one of the biggest developing countries in the world.[3] Based on this standpoint, he has attached great importance to the study of the basic issues in IEL such as economic sovereignty, South-North conflicts and South-South cooperation.

Secondly, the goal China shall firmly pursue is the establishment of a just, fair and reasonable NIEO. Facing the existed IEL, including varieties of "rules of game" for international economic and trade affairs, neither "accepting all" nor "denying all" is a right attitude. Prof. CHEN holds a full review and investigation shall be carried out from the perspective of campaigning for and maintaining the equal rights and interests of the international weak groups, and law-abiding and law-reforming shall be combined together. For each and every rule which is in violation of justice and fairness, the weak groups shall seek to reform, abolish, or eradicate it through all possible ways and approaches.[4]

Accompanying the advocacy for the NIEO, some other theories have prevailed to some extent, such as "Neoliberalistic Economic Order", "Constitutional Order of the WTO", and "Economic Nationalism's Disorder of Globalization". Although the core of these theories is reasonable in some sense and could be utilized critically, Prof. CHEN reminds that the former two can be a kind of mental opium and disintegrate the unions of the weak states, while the latter one can be a kind of mental shackles and prevent the weak states from establishing the NIEO.[5]

Thirdly, the role China is playing in the course of establishing the NIEO shall be one of the driving forces. China shall act ideologically and in style as a large nation, be brave in assuming responsibilities, and join force with all other weak states in advocating and participating in the establishment of a harmonious world.[6]

Lastly, the pathway to achieve the goal of establishing the NIEO is South-South Cooperation. Since

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[3] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.204.

[4] An CHEN, Some Jurisprudential Thoughts upon WTO's Law-Governing, Law–Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.245-248.

[5] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.190-204.

[6] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.174-175.

the South is far weaker than the North in contemporary international society and the group of international powers (such as G7) has maintained the dominant position for as long as over 30 years in international economic fields, the international weak groups' demand for law-reforming to strengthen themselves up shall not be expected to be accomplished once and for all, nor shall they take actions dividedly and single-handedly. Prof. CHEN points out the only feasible and effective way is through South-South Coalition to keep mobilizing and agglomerating the collective power unswervingly with the aim to establish the NIEO.[7]

The significance of the South-South Coalition has been embodied in the South-North Contradiction. For over 60 years, the struggles between the South and the North usually temporarily paused when the two sides reaching a compromise, after which new conflicts would arise from new contradictions. As for the historic course and practice of South-North struggle, Prof. CHEN proposes a generalization of the "6C Track" or "6C Rule": Contradiction→Conflict→Consultation→Compromise→Cooperation→Coordination→new Contradiction. . . But each new circle is on a spiral upper level rather than on an exactly repetitive old one, thus pushing IEO and the relating IEL towards a fairer level at a higher development stage. Consequently, the economic status and rights of the international weak groups are able to acquire corresponding improvements and safeguards.[8]

The Voice from China is not only an advocacy of struggling against international hegemony and striving for international justice, but also a convergence of Prof. CHEN's patriotism and realism. Although starting his legal research as late as the inception of China's Openness Policy, Prof. CHEN has endeavored to keep pace with the times. He has dedicated vast energy and wisdom to the research of Chinese reality. He wrote papers to eradicate the misunderstandings and suspicions to China's Openness Policy both at the earlier stage of 1980s and 1990s.[9] Facing the complicated issues in international investment law, he presented constructive suggestions to the decision makers through his painstaking research work. For example, his viewpoint that the "Four Safeguards" in Sino-foreign BITs can not be hastily and completely dismantled is of great importance to the protection of China's economic sovereignty.[10] Soon after the enactment of China's Arbitration Law, he did a critical research on the law and proposed suggestions on how to reshape it.[11] He made an analysis on how America interacted with the WTO in the first decade of

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[7] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.207.

[8] An CHEN, A Reflection of the South-South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancun to Hong Kong, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.233-238.

[9] An CHEN, To Open Wider or to Close Again: China's Foreign Investment Policies and Laws; To Close Again or to Open Wider: The Sino-US Economic Interdependence and the Legal Environment for Foreign Investment in China After Tiananmen, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.407, 453.

[10] An CHEN, Should the Four "Great Safeguards" in Sino-foreign BITs Be Hastily Dismantled? Comments on Critical Provisions Concerning Dispute Settlement in Model US and Canadian BITs; 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; Should "The Perspective of South–North Contradictions" Be Abandoned?: Focusing on 2012 Sino-Canada BIT, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.273, 309, 373.

[11] An CHEN, On the Supervision Mechanism of Chinese Foreign-Related Arbitration and Its Tally with

this organization and revealed America's "double standards" to the sovereignty. It is a reminder that the sovereignty shall be stuck to for developing countries at any time[12]… To sum up, as an authority in Chinese academia of international economic law, Prof. CHEN's voice can always be heard at each critical moment or about each critical incident concerning the IEL, which has always been an advocacy for the rights and interests of the international weak groups.

International Practices, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, p.581.

[12] An CHEN, The Three Big Rounds of US 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); On the Implications for Developing Countries of "the Great 1994 Sovereignty Debate" and the EC–US Economic Sovereignty Disputes, in An CHEN, *The Voice from China -- An CHEN on International Economic Law*, Springer, 2013, pp.103, 159.

13.1：不为浮云遮眼　兼具深邃坚定

——评《中国的呐喊：陈安论国际经济法》

韩立余*

收到陈安教授惠寄的 Springer 出版的“The Voice from China: An CHEN on International Economic Law”（《中国的呐喊：陈安论国际经济法》），不禁心潮澎湃。为其观点，为其成果，为其精神！

初次面见陈安教授是在 1998 年于深圳大学召开的中国国际经济法年会上。其时，陈安教授力倡“以文会友、以学报国”，那铿锵有力的声音和抓铁留痕的信念深深地印记在我的脑海里。此后，几乎在每次年会上，或听取陈安教授的大会报告，或参与陈安教授主持的讨论，或是私下里的交流，我都沐浴在陈安教授的思想光圈中。作为后学，自己取得的些许研究成果，一定程度上与陈安教授的影响、关怀和鼓励是分不开的。虽由于生活经历、成长年代、求学背景、研究兴趣等的不同，也有与陈安教授不同的具体想法，但那份尊重和敬佩深植心中、依然如故。

如陈安教授自己所言，其英文巨著是在其五卷本中文版《陈安论国际经济法学》的基础上进一步修订、更新、补充而完成的。今将其思想、观点、成果以“The Voice from China”为题出版英文版，陈安教授在国际层面进一步践行了“以文会友、以学报国”的信念和追求。陈安教授的思想独树一帜，且一以贯之，不为浮云遮眼，兼具深邃坚定。这一特点在国内如此，在国际上亦如此。其思想观点并非一时心得，而是建立在扎实的历史事实和教训之上。正因为如此，其声已超出个人之音，而具有历史和现实之义，理应向国际传播。

由于多方面的原因，特别是由于历史和语言的原因，中国学者对中国社会的描述，对国际社会的看法，不能尽达于国际社会。即便有些著述，或因篇幅所限，或因渠道所困，或因话语语境，不能充分而全面地阐述中国学者的立场观点。国际上一些汉学学者，由于经历、环境不同、兴趣所限，亦不能很好地反映中国的情况和观点。陈安教授立足中国，放眼国际，不满足于国内取得的学术成就和影响，志在基于中国现实和视角向国际社会表达中国学人的立场和观点，努力地有计划地在国际刊物、国际场合发文出声。在年届耄耋之际，陈安教授

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深耕细作，集其观点大成，推出 800 多页巨著“The Voice from China”，向世人展示其中国观和世界观，学术生涯达到新的高度。令人敬佩的是，陈安教授在坚持自己观点的同时，积极倡导、推动学术争鸣，提携后进进行独立研究。虽德高望重，但平等待人、平等交流；坚持一家之言，鼓励百家之说。笔者个人认为，其英文著作名称取“The Voice from China”，而没有选取“The Voice of China”，亦体现了其虚怀若谷的风范。

作为中国国际经济法学的奠基人之一，陈安教授对国际经济法的诸多领域均有很深的造诣，并且以学者、律师和仲裁员三栖身份，言行一致地践行其观点。“The Voice from China”收录的文章，既有对建立中国国际经济法学科的详细论证，也有对国家经济主权理论和国际经济新秩序的深刻剖析，还包括亲身参与国际仲裁和诉讼的睿智实录。透过各种重大议题，如国家主权、南北关系、国际秩序、国际投资、一国两制等，再现了中国改革开放以来的激荡历史和中国人民参与国际事务的伟大实践。有的文章成文虽早，但仍不失其现实意义，这进一步体现了陈安教授所见所期之远之大，亦为后学所敬仰追随。

“The Voice from China”，洋洋巨著，洒洒数百万言。任何介绍或评论性的文字都无法充分展示其丰富的内容和精髓。笔者在此也不作该等无谓努力，相信读者会从中见仁见智、相遇金屋玉颜。

最后，想对国家社会科学基金中国学术外译项目致以敬意，感谢其立项资助陈安教授将中文著作推广到英语世界，让英语世界的读者认识、分享其思想观点，并引发对中国问题的更深入、全面的认识。没有这一资助，陈安教授的“以文会友、以学报国”的理念或许无法实现到今天这样的程度。

（编辑：龚 宇）

13.2：Never Covered by Cloud, Insisting Profound Insight

- Comments on *The Voice from China*

Han Liyu*

On receiving the monograph *The Voice from China: An CHEN on International Economic Law* of about 800 pages written by Prof. An CHEN, published in 2014 by famous publisher Springer, I could not help being moved by the book, the opinions, and the spirit of Prof. An CHEN.

It was in 1999 when the annual meeting of Chinese Society of International Economic Law(CSIEL） was held in Shenzhen University that I first met Prof. CHEN. This was also the first time I attended the activities of CSIEL, almost every attendants of the meeting being stranger to me, but I was deeply impressed by Prof. CHEN, then the President of CSIEL, when he gave a speech in his characteristically robust style, calling for "meeting friends with writings and rewarding home country with knowledge". Since then, either during the annual meetings of CSIEL or in other occasions, it was normal to listen to speeches of Prof. CHEN, seek advices from him, and discuss with him. To some extent, what I have achieved in my legal research should be attributed to the influence, care and encouragement of Prof. CHEN, though he was not my academic adviser in strict sense. This does not mean that I fully agree with all opinions of Prof. CHEN owing to diffident ages, education backgrounds, life experiences and research interests etc. between us, but my respect for Prof. An CHEN lasts forever.

Just as Prof. CHEN said himself in his book, *The Voice from China* was a updated English version of his five-volume *An CHEN on International Economic Law* in Chinese published by Fudan University Press in 2008. The English version not only reflects Prof. An CHEN's deeper thoughts on International Economic law, but also his effort to voice Chinese message on international plane, which in broader extent puts into practice his belief "meeting friends with writings and rewarding home country with knowledge". Prof. CHEN is determined and thoughtful, and his thoughts on International Economic Law are consistent, neither blocked by intricate developments nor for occasions. He has supported his conclusions with good reasons and facts. Readers, either domestic or international, will find perfect combination of historical lessons and modern thinking in *The Voice from China*.

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For some time Chinese scholars' views on domestic issues and international affairs have been not easy to be heard and understood by international community because of various reasons, including factors of language, history, media, and cultural context. On the other hand, Sinologists, owing to lack of rich experience in China and having their own special research interests, cannot accurately and fully reflect the real views of Chinese scholars and the complex reality in China. Born in Old China, experiencing the invasion of Japan, witnessing the change and development of China, and trained in Harvard Law School, Prof. CHEN is in a good position to tell China's story to international community. Not satisfied with the reputation of one of most famous scholars in China, Prof. CHEN has broken through and made his academic career to a new height at the age of more than 80, with *The Voice from China*, which is based on China's perspective and world outlook. As a matter of fact, this is not the first time for Prof. CHEN to voice his views in international forums. For many years Prof. CHEN has been doing his efforts to hold or attend international conference, to publish articles in international journals, so as to make voice from China to be heard by international community.

As one of noble character and high prestige and one with own special perspective on International Economic Law, Prof. CHEN has been paying due respect for different opinions of different people in different ages. "Respect for different opinions" is his long-held belief. Prof. CHEN has always encouraged younger scholars to express their own views, and the more difference from his the more encouragement from him. As far as I know, many Chinese young scholars pay high respect for Prof. CHEN, though they don't agree with Prof. CHEN in some points. Prof. CHEN is always modest, and in my judgment his book titled *The Voice from China,* not *The Voice of China,* also show his modesty.

Being one of the founders of CSIEL, Prof. CHEN has an extremely good knowledge of International Economic Law. Besides a professor of Law, Prof. CHEN is also an arbitrator and a lawyer active in the field of international transactions. The essays collected in *The Voice from China* include different focuses, not only arguments for separate status of International Economic Law discipline in China's law education system, theoretical analysis of state sovereign and the new international economic order, but also arguments with wisdom for international cases he handled. With discussion of important topics such as state sovereign, South-South or South-North relationship, international order, international investment, and one country two system etc., Prof. CHEN has revealed the surging history of opening-up and reform in China and active practice of China's participation in international affairs since 1979, and made his own contribution in his own way as a Chinese scholar to the new international economic order. Some essays, though finished long time ago, still have inspirational implications for current international affairs, with deep insights into future. This also implies that the academic style of Prof. CHEN sets an example for younger

scholars.

It says that there are a thousand Hamlets in a thousand people's eyes. So I won't attempt to make detailed comments on the contents of *The Voice from China* of about 800 pages, and I know my any effort of this kind would be an effort in vain. I encourage readers themselves to read *The Voice form China*. I'm sure readers all over the world would find his own Hamlets from *The Voice from China*.

Last but not least, I want to express my own appreciation for the work of the Chinese Found for the Humanities and Social Science. Without its project, i.e. the Chinese Academic Foreign Translation Project (CAFTP), *The Voice from China* would not, I guess, been published in English by international famous publisher; readers in English world would not have this privilege to have a better understanding of modern China through the lens of Prof. An CHEN; and the dream cherished by Prof. CHEN of "meeting friends with writings and rewarding home country with knowledge" would not come true so soon.

14.1：任你风向东南西北 我自岿然从容不迫

——国际经济新秩序的重思：以陈安教授的国际经济法研究为视角

何志鹏*

一、国际经济法研究的两大流派

作为法学的一部分，国际经济法的研究显然不可能完全脱离法学研究的主流路径而完全独树一帜。法学的主流研究模式分为实证法学派和自然法学派，[1]因而国际经济法的各种研究手段也可以大略总结为描述性研究和规范性研究两大流派。描述性研究主要是对既有的国际经济法律规范和组织、运行进行说明，通过语义分析阐释规范的含义，通过数据统计分析揭示实际运行的状况，或者通过案例研究研讨规范在实践运行中取得的成就和存在的问题。[2]这种研究是作为一般法学方法的实证主义研究在国际经济法中的体现。规范分析一般前设一套正当性原则，通过批判性、反思性地考察相关的规范或者实践，或者比较不同的规范、不同的实践或者进程，来判断相关的规则和实践是否正当，或者说明相关的国际经济法进步的领域和方向何在。[3]这种研究方法是作为法学方法的自然法学派在国际经济法领域的具体体现，是一种显在的价值分析的研究方式。

这两种方法虽然表面上并不相同，实质上有很多联系。一个令人信服的价值分析必须建立在扎实的实证研究基础之上，很多实证研究在背后也都隐藏着一些基本的价值判断。[4]进而言之，偏好实证分析的学者和偏好价值分析的学者有必要保持相互尊重和欣赏，而不必偏执地认为，只有自己才是正确的，另一种方法则是错误的。所以，好的法学研究虽然会在研究手段上有所侧重，但二者不可偏废。

陈安教授作为中国顶级的国际经济法学者，不仅在国际投资法的实证研究上作出了很多重要的努力，而且在国际经济法的发展方向的批判研究上也进行了卓有成效的尝试，提出了很多发人深省的观点。其中，关于国际经济新秩序及中国的立场的研究就是非常具有代表性

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* 作者系 2011 计划 • 司法文明协同创新中心成员，吉林大学法学院、公共外交学院教授。

1 Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th ed., Routledge, 1997, pp. 15-18.

2 E.g., Andreas F. Lowenfeld, *International Economic Law*, 2nd ed., Oxford University Press, 2008.

3 E.g., Andrew Land, *World Trade Law after Neoliberalism: Re-imagining the Global Economic Order*, Oxford University Press, 2011.

4 John Finnis, *Natural Law and Natural Rights*, 2nd ed., Oxford University Press, 2011, pp. 27-29, 281-285; Robert George, *In Defense of Natural Law*, Oxford University Press, 1999, pp. 108-109.

的部分。

二、国际经济新秩序的兴衰

陈安教授从历史实证的角度考察了建立国际经济新秩序的背景与进程，同时也探讨了现代社会中倡导国际经济新秩序的重要性。起源于 20 世纪 60 年代的国际经济新秩序运动，可以理解为殖民时期基本结束后自决权的延续和拓展。新独立的发展中国家不仅在历史上受到侵略和盘剥，在现实中也被国际经济体系所伤害。[5]原来的宗主国、继而成为国际经济体系的主导者、国际经济法的主要制定者的发达工业国家确立起一套国际经济规则体系，继续将利益输送到发达国家，却使得多数发展中国家积贫积弱，这种法律体制很难说是公正的。[6]正如陈安教授所揭示的，国际经济法立法过程最常见的三大弊端是：少数发达国家密室磋商，黑箱作业，缺乏国际民主；国际经济组织体制规章中不公平、不合理的表决制度；全球唯一的超级大国在世界性经贸大政的决策进程中，其历来奉行的“国策”是“美国本国利益至上”和“对人对己双重标准”。[7]

国际经济新秩序的主张就是一种试图除旧布新、继往开来的努力。但是这种努力显然会影响到发达国家的短期、局部利益，所以它们对于国际经济新秩序的主张反应并不积极。[8]来自发达国家的学者也更倾向于论证载有国际经济新秩序主张的国际文件不属于国际法、没有约束力，不能确立国际义务。在很大程度上是由于 20 世纪 70 年代初能源危机的压力以及冷战政治平衡的需要，[9]发达工业国家才允诺了包括普惠制在内的一些推进国际经济新秩序的条件。

在冷战结束以后，发展中国家追求国际经济新秩序的声音马上被新自由主义和全球化这

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[5] 陈安主编：《国际经济法学专论》，高等教育出版社 2002 年版，第 31~32、38~39 页。

[6] Phillippe Sands, *Lawless World: Making and Breaking Global Rules*, Penguin Books, 2005, p. 95.

[7] An CHEN, Some Jurisprudential Thoughts upon WTO's Law-Governing, Law-Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China-- An CHEN on International Economic Law*, Springer, 2013, pp. 243-244.

[8] “第二次世界大战结束以来，众多发展中国家强烈要求彻底改变数百年殖民统治所造成的本民族的积贫积弱，要求彻底改变世界财富国际分配的严重不公，要求更新国际经济立法，建立起公平合理的国际经济新秩序。但是，这些正当诉求，却不断地遭到了在国际社会中为数不多的发达强国即原先殖民主义强国的阻挠和破坏。它们凭借其长期殖民统治和殖民掠夺积累起来的强大经济实力，千方百计地维持和扩大既得利益，维护既定的国际经济立法和国际经济旧秩序。由于南北实力对比的悬殊，发展中国家共同实现上述正当诉求的进程，可谓步履维艰，进展缓慢。”参见陈安：《中国加入 WTO 十年的法理断想：简论 WTO 的法治、立法、执法、守法与变法》，载于《现代法学》2010 年第 6 期。

[9] John W. Yound and John Kent, *International Relations Since 1945*, 2nd ed., Oxford University Press, 2013, pp. 274, 303.

两个相互联系的浪潮所淹没。去除管制、私有化、自由市场成为压倒性的声音。以世界贸易组织、世界银行和国际货币基金组织为代表的国际经济体制也主要以这些自由主义的理念为尺度去确立新的国际经济法，国际经济法的发展似乎走向了自由主义一枝独秀的“历史的终结”。建立国际经济新秩序的努力进入了消沉的阶段。

实践是检验真理的唯一标准。历史显然没有终结，自由主义的普世宣讲不仅在很多时候没有造福于发展中国家，而且“金融创新”的泡沫使发达国家自己也陷入了麻烦之中。

国际经济法的未来，究竟何去何从？

三、国际经济法的中国立场

国际法的变化，既可以从实体规范的层面进行，也可以从程序规范的层面进行；既可以是全局层面的变化，也可以是局部领域的变化。但所有的变化，归根结底来自于行为体层面的推动。这种行为体，虽然包含国际组织、非政府组织、企业和个人，但最有力量、最有影响、行动方式最为方便的，显然是国家。如果一个国家不能够明确地形成自己的立场，并以学术、政治和法律的方式表述自身的观念，则国际体制的变革就会失去该国家的话语，不仅有可能有害于该国的利益，而且有可能影响整个国际法的发展进程。

正是站在不同的利益取向上，带有不同的国际机制设计观念的国家在一起通过协商、谈判而形成的国际法律机制才能在多样化的基础上做到相对均衡。当然，绝对的平衡是不存在的，只有相对的平衡。这是因为，即使在所有国家都表述自己观点的前提下，作为一种国际博弈，强国与弱国之间的力量差异会转化成谈判过程中的讨价还价能力的对比，并最终在国际法律体制中表现为绝对的不平衡。

在中国与国际经济法的发展互动进程中，中国面临着多重任务。在很多学者看来，融入现有体系、了解现有体系、参与现有体系就已经很不容易了，甚至是值得称道的成就，但是在陈安教授看来，中国还有一项更为艰巨、复杂，同时也非常伟大的任务，那就是变革现有体系。这项任务在有些学者看来似乎是不必要的，如果将 WTO 这样的国际经济法体制视为“模范国际法”，或者国际法治的典范，那么变革现有体系的正当性就不明显。同样，如果认为中国的国家利益在当今的国际体制中并没有受到重大影响，那么中国自身要求变革的动力就不大。如果我们认为中国还不是一个具有话语能力和话语影响的国家，那么中国要求进行变革的影响也不大。

陈安教授显然不是这么认为的。他强调：“作为全球最大的发展中国家和正在和平发展

中的大国，在建立国际经济新秩序的历史进程中，中国理应发挥重要作用。[10]具体说来：首先，中国应成为建立国际经济新秩序的积极推手。……其次，中国理应致力于成为南南联合自强的中流砥柱之一。……第三，中国与全球弱势群体共同参与建立国际经济新秩序的战略目标，理应坚定不移，始终不渝。……第四，中国在建立国际经济新秩序进程中自我定位，理应旗帜鲜明，和而不同。”[11]

WTO 这样的国际经济法体制较之以往的体制，诚然取得了长足进步，但是至少就发展中国家的利益而言，其公平性仍然不足。[12]乌拉圭回合之后对于发展中国家确立的一系列特别待遇，多为“软措施”，或者予以“过渡期限”，难以达到提升发展中国家发展能力的目标；[13]中国的入世议定书中存在着对于中国非常不利的条文，以往的一些案例已经展现了这些条文对中国的损害。而中国已经跃升为全球性的经济和政治大国，此时，如果仍然不能展现出一个大国的风范，担负起一个大国的责任，不能代表如中国一样科技、产业不够发达，人均 GDP 较低的众多国家，去争取更好的国际体制，则不仅中国自身的发展会受到负面影响，国际社会的公正、稳定、健康、持续发展也无以维系。

所以，中国必须有所作为。以陈安教授为杰出代表的学者们所提出的宏观立场和具体建议，恰恰是中国在国际经济法和国际经济秩序破旧立新进程中理应有所作为的学术表现和实践基础。

四、陈安教授的学术贡献

陈安教授勤于研究、认真思考，心怀理想、硕果累累。陈安教授在国际经济法基本理论、国际经济法的中国立场、国际投资法、仲裁法等领域都出版了大量的著作，其中既包括高水

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[10] 陈安：《论中国在建立国际经济新秩序中的战略定位——兼评“新自由主义经济秩序”论、“WTO 宪政秩序”论、“经济民族主义扰乱全球化秩序”论》，载于《现代法学》2009 年第 2 期，第 4 页。

[11] 陈安：《论中国在建立国际经济新秩序中的战略定位——兼评“新自由主义经济秩序”论、“WTO 宪政秩序”论、“经济民族主义扰乱全球化秩序”论》，载于《现代法学》2009 年第 2 期，第 7~8 页；《再论旗帜鲜明地确立中国在构建 NIEO 中的战略定位－－兼论与时俱进，完整、准确地理解邓小平“对外 28 字方针”》，载于《国际经济法学刊》2009 年第 16 卷第 3 期；陈安：《三论中国在构建 NIEO 中的战略定位：“匹兹堡发轫之路”走向何方——G20 南北合作新平台的待解之谜以及“守法”与“变法”等理念碰撞》，载于《国际经济法学刊》2009 年第 16 卷第 4 期；An CHEN, What Should Be China’s Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalist Economic Order, Constitutional Order of the WTO, and Economic Nationalism’s Disturbance of Globalization, in An CHEN, *The Voice from China-- An CHEN on International Economic Law*, Springer, 2013, pp. 169, 174-175.

[12] M. Matsushita, T. J. Schoenmaum, and P. C. Mavoidis, *The World Trade Organization: Law, Practice, and Policy*, 2nd ed., Oxford University Press, 2006, pp. 912-913.

[13] E.-U. Petersmann (ed.), *Reforming the World Trade Organization: Legitimacy, Efficiency, and Democratic Governance*, Oxford University Press, 2005, pp. 233-274.

平的论文，也包括很多教材和专著。

从这些研究可以看出，陈安教授在对国际经济法进行价值分析方面提出了很多具有启发性的观点。对于那些认同和高度评价现有国际经济法体制的专家和学者而言，这些观点未必能获得他们的赞同，但应当是可以激起进一步思考和讨论的重要阐释。其中体现的对国家利益的关切、对国际经济法发展方向的关切、对国际社会未来的关切，既有着一个学者追求学术真理的理想成分，也有着对于国际社会格局坚实认知的现实基础。

陈安先生的研究成果是国际法律文化的重要组成部分，这些著作是他贡献给中国学界和国际学界的宝贵财产。作品中不仅相关的内容和论断值得我们一再学习，而且其显示的独立学术品格，深切民族关怀，以及批判的研究方法也值得我们认真对待和深入借鉴。换言之，陈安先生放眼全球，立足中国，任你风向东南西北，我自岿然从容不迫，坚毅探求国际经济秩序之公正合理发展，由此鼓呼中国之立场方向，此一大端，中外学人已受益或将受益者必多。

（编辑：龚 宇）

14.2：Disregarding Whither the Wind Blows, Keeping Firm Confidence of His Owns

- A Revisit to Prof. CHEN's Research on NIEO

He Zhipeng*

I. Two Mainstream Approaches of International Economic Law Research

As a part of the science of law, the studies on international economic law cannot really deviate from mainstream approaches of legal studies and create something totally new. Since the mainstream approaches of legal studies may be categorized into positivism and natural law theory,[1] the means of studying international economic law may also classified into two streams, namely, descriptive studies and normative studies. Descriptive studies mainly try to illustrate existing rules, organizations, and operation, to explain the meaning of rules through semantic analysis, to discover the status of operation by analyzing statistics, or demonstrate achievements and problems arising from the enforcement of rules in practice based on case studies.[2] Normative studies need a set of principles of justice as prerequisite, and then, their main task is to make judgments on whether relative rules and practices may be regarded as legitimate through a critical, reflexive examination of such rules and practices, or to specify the area and direction of international economic law for improvement.[3] This approach is the specific embodiment of natural law approach from the field of legal theories into the field of international economic law, and should be regarded as an express value analysis.

Although at the superficial level these two approaches are different, they are closely related in many ways. A convincing value analysis must be based on solid positive studies, and many positive studies may implicitly include some basic value judgments behind it.[4] Thus, those who prefers positive studies and those who prefers values analysis should respect and appreciate each other instead of regarding implacably their own studies as the right approach and the other approach as wrong. Therefore, a good legal study may emphasis in a certain approach, but not choose one and abandon the other.

Professor An CHEN, as one of the top scholars in international economic law in China, has not only achieved a lot in positive studies in international investment law, but also tried much in critical studies in the orientations of international economic law, and put forward many inspiring points of view. The research on new international economic order (NIEO) along with the position of China in the process of it is a typical and representative part.

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1 Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th ed., Routledge, 1997, pp. 15-18.

2 E.g., Andreas F. Lowenfeld, *International Economic Law*, 2nd ed., Oxford University Press, 2008.

3 E.g., Andrew Land, *World Trade Law after Neoliberalism: Re-imagining the Global Economic Order*, Oxford University Press, 2011.

4 John Finnis, *Natural Law and Natural Rights*, 2nd ed., Oxford University Press, 2011, pp. 27-29, 281-285; Robert George, *In Defense of Natural Law*, Oxford University Press, 1999, pp. 108-109.

II. The Rise and Fall of NIEO

Professor An CHEN examined the background and history of setting up NIEO, and probed into the importance of NIEO in international society even in the 21st century. The NIEO movement, originated in the 1960s, may be understood as the continuation and upgrading of self-determination after the end of colonial times. The new independent states were not treated fairly since they had been invaded and exploited in the history and were still harmed by the international economic system at the time being.[5] The former suzerains, now acting as the promoter of international economic system and the creator of international law, took welfare and interest to their own territory by the rules they established, and made the developing states poor and weak. Such system cannot be legitimized. [6] According to Professor An CHEN, there are three most commonly observed defects of international economic law-making process: 1) It is up to the heads or representatives from several most developed countries to consult and manipulate secretly before a basic framework is determined. 2) Unfair and unreasonable voting mechanisms are enacted into the regime of global economic organizations in advance. 3) US, as the only superpower of the world, has been constantly pursuing the policy of "the superiority of US national interests" and "double standards towards itself and others " in her participation in the decision making process of global economic issues.[7]

The proposition of NIEO should be regarded as efforts to get away with the old and set up the new, as well as a critical examiner of past traditions and a trail blazer for future generation. However, these efforts would definitely influence short-term and local interest of the developed countries. Hence, the developed countries' reaction towards NIEO was far from enthusiastic.[8] Some scholars from developed countries are inclined to argue that the documents proscribing the advocates of NIEO are not legally binding and cannot establish international legal obligations. The developed industrialized states reluctantly accepted some conditions such as the Generalized System of Preferences (GSP) to carry forward NIEO, to a large extent due to the pressure of Energy Crisis during the 1960s-1970s, plus the need for political balance during the Cold War. [9]

As soon as the Cold War ended, the voice of developing countries seeking for NIEO was submerged by two interlinked waves, namely neo-liberalism and globalization. De-regulation, privatization, and free market became overwhelming voice in the world. Main international economic institutions in the world, such as the WTO, the World Bank, and IMF, engaged in the establishment of "new" international economic laws based on the liberalist notions. It seemed that the development of international economic law was in the track of unilateral hegemony of liberalism and went directly to the "end of history", meanwhile, the striving for NIEO was in a depressed stage.

Practice is the sole criterion for testing truth. The history has not meeting its end. The

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[5] An CHEN (ed.), *Problems of International Economic Law* (in Chinese), Higher Education Press, 2002, pp. 31-32, 38-39.

[6] Phillippe Sands, *Lawless World: Making and Breaking Global Rules*, Penguin Books, 2005, p. 95.

[7] An CHEN, Some Jurisprudential Thoughts upon WTO's Law-Governing, Law-Making, Law-Enforcing, Law-Abiding, and Law-Reforming, in An CHEN, *The Voice from China-- An CHEN on International Economic Law*, Springer, 2013, pp. 243-244.

[8] Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th ed., Routledge, 1997, pp. 27, 233-235.

[9] John W. Yound and John Kent, *International Relations Since 1945*, 2nd ed., Oxford University Press, 2013, pp. 274, 303.

universal dissemination of liberalism, in many occasions, has not made benefit for developing countries, and even made developed countries themselves in trouble by the bubbles named "financial innovation".

What should the future of international economic law be?

III. China's Position in International Economic Law

The change of international law may occur in substantive matters, or in procedural matters. The change may be in a general and overall dimension, or may be in a specific and regional level. However, all changes must be initiated by the will and activities of actors. Such actors, although including intergovernmental organizations (IGOs), non-governmental organizations (NGOs), multi-national companies (MNCs), and individuals, mainly appear as states. Since states are the most powerful, most influential, and most convenient to appear in international stage. If a State cannot form its own status clearly, and demonstrate it by academic, political, and legal means, the change of international regime may lose discourse of that state. This circumstance may not only affect the interest of a state, but the whole developing process of international law.

A comparatively balanced international legal system may only be possible based on the negotiation of states with various preference of interest and various idea of international mechanism, and such a negotiation may create deliberate democracy in international society. It is necessary to mention that an absolute balanced mechanism in international law never existed. Even in the case that all states have the opportunity to express their views, as a type of international game, the asymmetric powers of states may change into the contrast of bargaining power in international negotiation, and then result in a status that could be unfavorable for the weak parties.

During the course that China interacts with the current system of international economic law, China is faced with many tasks. For many scholars, it is a demanding mission, or even a considerable accomplishment for China to be involved in the current system, to understand the current system, and to participate in the current system. But for Professor An CHEN, this is not adequate. China still faces a more arduous, complicated, and significant task, that is to change the current system. This task seems to be unnecessary to some scholars because they regard international economic law regimes like the WTO as "model of international law", or a perfect example of international rule of law. If it is really so, the change of the current system is not so desirable. Moreover, if the national interest of China is not substantially influenced by today's international regimes, China would not have the initiative to demand changing the present system. Further, if China is not a country with negotiation power and discourse influence, the impact of China's efforts on changing the present system would not be significant.

Surely, Professor An CHEN doesn't think so. He stresses: "As the largest developing country peacefully rising in the world, China should play an important role in the historical course of establishing the NIEO.[10]

"Firstly, China should be the driving force of the establishment of the NIEO. …Secondly,

[10] An CHEN, "What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalist Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization", in An CHEN, *The Voice from China-- An CHEN on International Economic Law*, Springer, 2013, p. 169.

China should dedicate herself to becoming one of the mainstays of 'South-South Self-reliance through Cooperation'…. Thirdly, China should adhere firmly to her strategic objectives and principles accompanied by cooperating with all the weak states in the course of the establishment of the NIEO. …Fourthly, China should take a clear-cut stand and be in harmony with other countries while reserving differences in the course of establishing the NIEO."[11]

It is true that international economic regimes like WTO has made substantial progresses compared with what we had before. However, judging from the interest of developing countries, they still lack fairness.[12] The special treatment for developing countries in the WTO after the Uruguay Round cannot really achieve the goal of capacity building for developing countries since most of them are just "soft measures" or merely setting up period of transition. [13] There are provisions in the Protocol on the Accession of the People's Republic of China which are obviously unfavorable for China, and cases have already shown that such provisions may take disadvantages to China. Now, China has already gained the position of a political and economic great power in the global scale, if she cannot show the image as a great power, assume the responsibility of a responsible states, cannot endeavor to establish a better international regime on behalf of a great number of states who, like China, are not advanced in science and technology, and not developed in industries, has a low GDP per capita, the development of herself would be negatively affected, and a just, stable, healthy, and sustainable development of international society would be difficult.

Therefore, China must take some positive actions. The position and specific suggestions that submitted by scholars of whom Professor An CHEN is a distinguished representative, may lay a solid foundation in academic and practice level for China's discourse in the evolution and innovation of international economic law & international economic order worldwide.

IV. Professor An CHEN's Academic Contribution

Professor An CHEN is very diligent in making research, he thinks about legal issues critically with a set of ideal based on third world interests, and has contributed a lot in fundamental theories of international economic law, the position of China in international economic law, international investment law, arbitration law and many other fields, by many works including high level articles as well as textbooks and monographs.

From these research works, it is not hard to find out that Professor An CHEN has provided many inspiring views in critical analysis on international law. These works embodied the author's concerns on national interest, concerns on the orientation of international economic law, concerns on the future of international society. They expressed the ideals of a scholar's seeking for academic truth, as well as a solid realistic basis for the constellation of international society. For those who agree with international economic law mechanism *status quo* and highly endorse it, these views may not be acceptable; however, they definitely present important discourse

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[11] An CHEN, What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalist Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization, in An CHEN, *The Voice from China-- An CHEN on International Economic Law*, Springer, 2013, pp. 169, 174-175.

[12] M. Matsushita, T. J. Schoenmaum, and P. C. Mavoidis, *The World Trade Organization: Law, Practice, and Policy*, 2nd ed., Oxford University Press, 2006, pp. 912-913.

[13] E.-U. Petersmann (ed.), *Reforming the World Trade Organization: Legitimacy, Efficiency, and Democratic Governance*, Oxford University Press, 2005, pp. 233-274.

arousing further thinking and discussion.

Professor An CHEN's research achievements form an important part in international legal culture, and should be deemed as a treasure he contributed to the academia in China and the whole world. In his works, not only the substantive contents and conclusions are worth leaning repeatedly, but the independent academic spirit, deep concern on national interest, and critical research methodology are all worth taking seriously and drawing useful experiences. In other words, disregarding to whither the prevailing wind blows , Professor An CHEN has kept a firm confidence of his owns. His contributions are saliently featured by holding a firm Chinese stand while taking a global broad view, and by insistently pursuing the fair and reasonable development of international economic order, and thus advocating for China's self-position and orientation during this process, regardless of all kinds of voices otherwise preaching. With no doubt, scholars of international economic law, domestic or abroad, have greatly benefited from Professor An CHEN's works both in the sense of substantial viewpoints and methodological approach, and will keep benefiting therefrom in the future.

15.1：老战士新呐喊 捍卫全球公义

——评《中国的呐喊：陈安论国际经济法》

王江雨*

《中国的呐喊：陈安论国际经济法》的出版，是国际经济法发展过程中一个里程碑性的标志。事实上，这本书是近年来论述国际经济新秩序问题唯一的最重要的著作。这本巨著800多页，从陈安教授过去30年取得的大量的学术成果中，遴选24篇代表性文章，汇辑而成。

该英文专著书稿获得“国家社会科学基金中华学术外译项目”的立项，据悉，这是我国国际经济法学界荣获此立项的第一例。依据全国社科规划办公室文件解释，“中华学术外译项目”是2010年由全国哲学社会科学规划领导小组批准设立的国家社科基金新的主要类别之一，旨在促进中外学术交流，推动我国哲学社会科学优秀成果和优秀人才走向世界。主要资助我国哲学社会科学研究的优秀成果以外文形式在国外权威出版机构出版，进入国外主流发行传播渠道，增进国外对当代中国、对中国哲学社会科学以及传统文化的了解，推动中外学术交流与对话，提高中国哲学社会科学的国际影响力。[1]

《专家评审意见》认为，陈安教授的这部英文专著**“对海外读者全面了解中国国际经济法学者较有代表性的学术观点和主流思想具有重要意义。全书结构自成一体，观点新颖，具有中国风格和中国气派，阐释了不同于西方发达国家学者的创新学术理念和创新学术追求，致力于初步创立起以马克思主义为指导的具有中国特色的国际经济法理论体系，为国际社会弱势群体争取公平权益锻造了法学理论武器。”**[2]

《中国的呐喊：陈安论国际经济法》是陈安教授站在中国和国际弱势群体的共同立场，践行知识报国夙志，投身国际学术争鸣之力作，也是其命名为“中国的呐喊”之由来。

《中国的呐喊》全书分为六部分，不仅分析国际经济法重大的理论问题，而且也从学理上讨论国际经济法的实际应用。它首先探讨国际经济法的一般理论原则，有力地论证了国际经济法的定义内涵。陈安教授认为，国际经济法乃是一门独立的学科，而不应仅仅被视为国际公法的一个分支部分。这部著作第一部分最有价值、犹如皇冠珠宝的地方，是针对当代经

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* 作者系新加坡国立大学法学院教授，亚洲法律研究中心副主任。

[1] 全国哲学社会科学规划办公室“国家社科基金中华学术外译项目申报问答”，at http://www.npopss-cn.gov.cn/n/2013/0228/c234664-20635114.html

[2] 全国哲学社会科学规划办公室下达“关于《中国的呐喊》书稿的专家评审意见”，2013年11月22日。

济主权的“大辩论”所作的精辟剖析。陈安教授批评了美国的单边主义，并与他所赞同的WTO 多边主义加以比较，论证热烈而极具感染力。该著作还就中国对国际秩序诸多问题所持的各种主张，加以仔细分析并进行辩护。它是迄今针对中国在国际秩序中所持态度最好的陈述。《中国的呐喊》的第四、第五和第六部分，分别探讨了中外双边投资条约、中国的涉外经济立法以及中国参与国际经济争端解决等方面的法律问题。

《中国的呐喊》一书中的所有文章，都是陈安教授过去在各国发表的论文，它们具有三个共同特点。第一，他从历史、政治和经济综合的角度对法律问题进行探讨。虽然该书较少对国际经济法中的具体规则和案例进行学理分析，因此不能成为实务律师的参考书，但这本书的独到智慧在于深入探讨剖析国际上聚讼纷纭的各种问题，如国家主权、管理体制、经济民族主义、美国单边主义、“中国威胁论”等等。第二，陈安教授从南方国家的视角来分析和论证各种问题，也就是说，在南北两类国家有关国际经济秩序的分歧中他支持发展中国家的观点。但是，和某些持有“第三世界思路”的国际法学者的僵硬观点不同，陈安教授赞同多边主义，并认为国际经济秩序可以由诸如 WTO 之类的各种国际组织来驱动和引导。他似乎并不认为新自由主义是一种具有“原罪”的理念，它代表发达国家富豪们的利益压迫发展中国家穷苦大众。陈安教授主要是反对一些西方国家，特别是美国，鼓吹和实行单边主义。第三，陈安教授显然是一位爱国主义者，甚至是思想开明、毫无偏见的民族主义者[3]。他为维护中国在国际舞台上的既定立场和行动举止进行声辩，其满腔热忱，令人印象深刻。

本书作者陈安教授是中国最杰出的法律学者之一，他带头倡导从南方国家的视角（当然更多从中国的视角）看待国际经济法问题。陈安教授出生于 1929 年，经历了和见证了中国和全球在 20 世纪发生的许多最重要的事件。他在 1949 年之前的民国时代就接受了正规的法学教育，在 1979 年之后自学了中华人民共和国的法律体系和国际法。据报道，他在灾难性和“无法无天”的文化大革命之后，从 1981-1982 年开始致力于国际经济法的研究，并应邀到哈佛大学进行学术访问。[4]他在 50 多岁才开始接触国际经济法却能够跻身成为该领域全球最著名的学者之一，可谓奇迹。更难能可贵的是，除了从事学术研究，他在重建厦门大学法学院中发挥了重大作用。厦门大学法学院在 1953 年全国性“院系调整”中被撤销，中断 27

[3] The scientific and detailed analysis on nationalism by Prof.CHEN，See *The Voice from China*，Springer Press，2014，pp.200-203.对“民族主义”一词的科学解读和具体剖析，参见《陈安论国际经济法学》（五卷本），第 130-134 页。

[4] See Prof. Eric Yong Joong Lee, *A Dialogue with Judicial Wisdom, Prof. An CHEN: A Flag- Holder Chinese Scholar Advocating Reform of International Economic Law*, published in The Journal of East Asia and International Law , Vol. 4, No.2, Autumn 2011, pp. 477–514. Korean Prof. Eric Lee is now the Editor-in-Chief of the said Journal .This long *Dialogue* with 28 pages is now compiled in the Introdction of the English monograph *TheVoice fromChina*，Springer Press，2014，pp.xxxi-lviii.

年之后，直到 1980 年才重新组建，但现在已发展成为中国最顶尖的法学院之一。总之，陈安教授堪称是一位既博学多才又勤奋不息的天才人物。

15.2：An Old Warrior's New Defense of Global Justice

- Comments on *The Voice from China*

Wang Jiangyu*

The publication of *The Voice from China: An CHEN on International Economic Law* represents a landmark development in the discourse of international economic law. As a matter of fact, it is the single most important book on the New International Economic Order (NIEL) published in recent years. This enormous book, featuring almost 800 pages, is a collection of 24 representative articles selected from the voluminous scholarship authored by Professor An Chen that spanned the past 30 years.

This English monograph has successfully won the support from the Chinese Academic Foreign Translation Project (CAFTP), making itself the first of such kind within the academic circle of International Economic Law in China. According to the official specifications[1] from the National Social Science Fund of China (NSSFC), CAFTP is one of the major categories of projects set by the NSSFC and approved by the National Philosophy and Social Science Planning Leading Group of China in 2010. This Project aims to promote Sino-foreign academic exchanges, and to facilitate the outstanding works as well as prominent scholars in the field of philosophy and social science towards the world's academic stage. For this purpose, a major part of such funding is allocated to sponsor the aforesaid achievements to be published in foreign language through authoritative publishers abroad. It is expected that, by such way of accessing and participating in foreign ***mainstream*** distribution channels, foreigners could have a better understanding of contemporary China, its philosophy and social sciences and its traditional culture. It is also expected that Sino-foreign academic exchange and dialogue would hence be more active, and the overseas influence of Chinese philosophy and social science would be enhanced.

In the Expert Review Report, some of the most professional peers opine that Prof. CHEN's book "contributes vastly in the sense of introducing onto the world arena a series of typical academic views and mainstream ideas of Chinese International Economic Law scholars. The whole book is well and uniquely structured, and loaded with creative points of views. With its obvious Chinese character and style, this book has illustrated various innovational academic ideals and pursuits that are different from those voices & views preached by some authoritative scholars from Western developed powers. The author has endeavored to create a specific Chinese theoretical

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[1] See"Q & A upon the Application for the Chinese Academic Foreign Translation Project(CAFTP) under the National Social Science Fund of China(NSSFC)", http://www.npopss-cn.gov.cn/n/2013/0228/c234664-20635114.html

system of International Economic Law under the guidance of Marxism, to further serve as a theoretical weapon for the weak groups of international society to fight for their equitable rights and interests."[2]

"*The Voice from China: An CHEN on International Economic Law*" is a masterpiece of Prof. An CHEN to practice his lifetime will of serving the home country with knowledge and participating in the international competition of academic views. The whole book is based on the common stand of China and other international weak groups, and is indeed a strong & just *Voice from China*.

Divided into six parts, this magnificent book discusses both grand theories as well as practical doctrinal issues in international economic law (IEL). It starts with discussions on the general theories of international economic law, including a vigorous effort to define the IEL so that it can be an autonomous academic discipline – and so that it should not be regarded as merely part of public international law according to Prof. CHEN. However, the examination of the "Great Debates" on contemporary economic sovereignty forms the crown's jewels of this first part of the book. Professor CHEN' critique of U.S. unilateralism, contrasted with his praise of multilateralism represented by the WTO, is powerful and passionate. The book also carefully examines and defends China's position on various issues concerning the international order. It offers by far the best account of China's attitude in this regard. Parts IV，V and VI examine, respectively, legal issues concerning Sino-Foreign bilateral investment treaties (BITs)，Sino-Foreign legislation and China's participation in the settlement of international economic disputes.

All the chapters, originally journal articles published by Professor CHEN in various places, have three common features. First, they all put legal issues in their historical, political and economic contexts. Although the book does not work much on doctrinal analysis of specific rules and cases in international economic law – and hence it cannot be treated as such a reference book by practicing lawyers, its wisdom lies more in the examination of international controversial issues such as sovereignty, regulatory space, economic nationalism, U.S. unilateralism, the China threat theory, etc. Second, it reasons from Southern perspective, meaning it sides with the developing countries in the North-South division in the international economic order. However, unlike many of the diehards in the camp of the Third World Approaches to International Law, An CHEN favors multilateralism as well as an international economic order driven and led by international institutions such as the WTO. He does not seem to view neoliberalism as an idea with the original sin of oppressing the poor people in the developing countries on behalf of the billionaires in the developed world. Rather, he is mainly opposed to the employment of unilateralism by some Western countries, especially the U.S. Third, Professor CHEN is obviously also a patriot and even an open-minded nationalist.[3] His passion to defend China's relevant positions and behaviors at the international level is remarkably impressive.

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[2] See Expert Review Report on the monograph manuscript *of "The Voice from China"*，issued by CAFTP under the National Social Science Fund of China(NSSFC),Nov.22,2013.

[3]The scientific and detailed analysis on nationalism by Prof.CHEN，See *The Voice from China*，Springer Press，2014，pp.200-203.

The author of the book, Professor An CHEN, is one of China's most prominent legal scholars and a leading advocate of the southern view of international economic law, of course more from a Chinese perspective. Born in 1929, Professor Chen has experienced or witnessed many of the most important events in China and the world in the 20th century. His legal education walks from formal legal education during the Republic of China period before 1949 to self-education of the PRC legal system and international law after 1979. Reportedly, he started to devote his energy to international economic law during 1981-1982, when, after the disastrous and lawless Cultural Revolution, he was invited to be a visiting scholar at Harvard.[4] It is however a miracle that he was able to turn himself into one of the world's most distinguished scholars in this field given that he only started to learn and work on IEL after he was 50 years old. More mysteriously, besides his research, he also played a major role in reestablishing the Xiamen University Law School, which was once interrupted and dismantled for 27 years since the 1953 nationwide "School Adjustments" until 1980, and developed it into one of the very best law schools in China. By all means, Professor CHEN deserves to be called a genius who is both talented and hardworking.

（译者、编辑：陈 欣）

[4] See Prof. Eric Yong Joong Lee, *A Dialogue with Judicial Wisdom, Prof. An CHEN: A Flag- Holder Chinese Scholar Advocating Reform of International Economic Law*, published in The Journal of East Asia and International Law , Vol. 4, No.2, Autumn 2011, pp. 477–514.Korean Prof. Eric Lee is now the Editor-in-Chief of the said Journal .This long *Dialogue* with 28 pages is now compiled in the Introdction of the English monograph *TheVoice fromChina*，Springer Press，2014，pp.xxxi-lviii.

16.1：二十五年实践显示了 1991 年陈安预言的睿智

中美国际经贸关系需增进互补、合作和互相依存

——评《中国的呐喊》专著第十四章

史迪芬.坎特*

我收到陈安院长新近出版的英文专著《中国的呐喊》[1]一书，并且有机会撰写书评，对此我感到特别高兴。这部重要著作包含二十四篇专论，汇集了陈安过去三十多年来研究中国与国际经济法的代表作，具有重大学术价值。中国自 1980 年开始对外开放，如今已经发展成为全球举足轻重的经贸强国之一。对于任何希望了解中国上述发展进程的人们说来，陈安这部著作乃是重要的信息来源。

陈安是一位杰出的学者，一个具有前瞻思维的教育家。他在中国重新融入世界经济和实行法治的三十多年进程中, 始终发挥着至关重要的作用。他是许多中国年轻一代法学专业人才的导师，这些人才在过去三十年中积极参与了令人振奋的全部发展进程。同时，他也一直是众多国际同行的好朋友，我自己也有幸身列其中。

我特别乐意重新阅读《中国的呐喊》一书的第十四章，即《是重新闭关自守？还是扩大对外开放？——论中美两国经济上的互相依存以及“天安门广场风波”后在华外资的法律环境》。[2]这一章的基本内容就是基于在 1989 年“天安门广场风波”之后一年多（即 1990 年秋）陈安在一次国际学术会议上发表的演讲，见解深刻，而且富有洞察力。那次国际学术会议即由路易斯与克拉克法学院主办，而当时我正在担任该法学院的院长一职。

天安门广场风波曾经导致中美两国关系十分紧张，并且引起许多人怀疑中美两国之间开展的合作和经济互动能否持久。在这种环境下，陈安敢于大胆地、正确地提出自己的见解，雄辩滔滔，断言：尽管问题多多，时时出现，今后中美两国间的经贸合作互动关系势必经久持续，而且日益增强。他明确指出中美交往已经给中美两国人民带来互惠互利的许多事实，并且列举当时中国正在进一步实行的六个方面的改革，它们势必为中美经济互相依存关系的进一步深化创造更加有利的基础。这些改革包括：修订了 1979 年的《中外合资经营企业法》，赋予外商更多权益；制定了适用于经济特区的《成片土地开发办法》，放宽了土地使用权的转让，便于外商投资成片开发土地；开放和拓展上海浦东地区，扩大了外商投资的极其重要的平台；统一了外商投资企业所得税法，使之对外商更为优惠；实施了《行政诉讼法》，使外商有权依法“民告官”；接受了 ICSID 体制，使外商可以把投资争端提交 ICSID 进行国际

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* 作者系美国俄勒冈州波特市兰路易斯与克拉克法学院法学教授（1986-9194 年曾任该院院长）。

1 An Chen, THE VOICE FROM CHINA: AN CHEN ON INTERNATIONAL ECONOMIC LAW (Springer-Verlag 2013) (Hereinafter TH VOICE FROM CHINA).

2 THE VOICE FROM CHINA, 453-466.

仲裁。[1]

陈安在 1991 年提出的关于中美关系的上述预言，现在已被证实是正确的。可是在 1980 年代和 1990 年代，我们美国大多数人士——即使是最乐观的人——也很难预见中国经济竟然会如此非同凡响地快速发展，而陈安这篇论文中所强调的上述这些改革措施，在中国经济如此快速发展的进程中确实起到了关键的作用。

回首前尘，自 1979 年中美双方发表上海公报全面恢复外交关系，迄今三十多年以来，中国和美国一直在民生的各个方面不断地发展更加密切的关系。除了在经济方面建立了互惠互利和互相依存关系之外，在文化、教育以及其它诸多人文领域，两国人民也一直分享着美好的互相交流成果。

在当今世界，我们正面临着许多严重的问题。这些问题，只能通过各国人民和各国政府之间的互相合作、互相尊重和共同努力，特别是各个大国人民和大国政府之间的互相合作、互相尊重和共同努力，才能成功地加以解决。中国和美国是全球最重要大国之中的两个国家。有幸的是，近几十年来我们两国的各届领导人都致力于建立这种关系，并不断取得进展。政府与政府之间不断接触、举行会谈以及解决各种层次的实质问题，这已经成为两国关系的常态特征。我们两国的首脑，美国总统奥巴马和中国国家主席习近平之间，已经建立起紧密的工作关系和个人关系，经常互相邀请和互相访问。2015 年 9 月，习近平主席即将对美国进行重要的国事访问。这种友好和坦诚的氛围相当有利于逐步解决范围广泛的各种争议问题，包括国际冲突和世界和平问题，净化环境问题，能源安全问题，改善严重威胁人类的气候变化问题，加强互相理解和坦诚讨论各种分歧问题，改进健康和消减贫困问题。这种不断接触和加强沟通的模式，完全符合上世纪 1991 年陈安预言中提出的见解，是当前新世纪中我们应当采取的正确途径，也是造福全球的必不可少的关键举措。

最后，在书评末尾我想谈谈个人的访华经历。1984-1985 年间，我曾经以美国富布莱特基金法学教授的身份，在中国南京大学法律系讲学。我经常愉快地回忆起 1985 年春天，在陈安院长盛情邀请下，我带着八岁的儿子到厦门访问，很高兴在厦门大学做了几场学术演讲，会见了陈安指导的许多才俊学生，而其中一些人随后赴美留学成为我的学生，并在美国路易斯与克拉克法学院获得法律博士学位。在厦门期间，承蒙陈安及其家人和厦门大学法学院同行们惠予盛情款待。后来，陈安在 1991 年回访美国，我们共同在路易斯与克拉克法学院非常愉快地相处了一段美好时光。

陈安是我的 lao pengyou(老朋友)。中美两国都有不少人士其职业生涯中始终致力于在中美之间确立建设性的和友好相处的关系，陈安是其中的重要人物之一。在他撰写的这部精彩著作出版之际，我向他表示祝贺，并且向读者们郑重推荐此书。

（2015/06/26）

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[1] *Id* at 459-465.

16.2：TWENTY-FIVE YEARS OF EXPERIENCE SHOW THE WISDOM OF AN CHEN'S 1991 PREDICTION OF INCREASING COMPLEMENTARITY, COOPERATION AND INTERDEPENDENCE OF SINO-AMERICAN INTERNATIONAL BUSINESS RELATIONS

—COMMENTS ON CHAPTER 14 OF CHEN'S MONOGRAPH

Stephen Kanter*

It is with special pleasure that I received and have had the chance to review Dean Chen An's recent volume, THE VOICE FROM CHINA.[1] This important work contains twenty-four articles that represent a portion of Chen An's significant scholarship over thirty years on China and International Economic Law. It is an important source for anyone wishing to understand China, and the development of her initial opening to the wider world from 1980 to China's critical position as one of the most important economic and international trading powers today.

Chen An played a vital role throughout this period of China's reintegration into the world economic and rule of law systems as a prominent scholar, as a forward-thinking educational leader, and as a mentor to so many of China's young lawyers who have participated in all of the exciting developments of the last thirty years. He has also been a good friend to countless international colleagues. I consider myself fortunate to be among their number.

I am particularly pleased to revisit Chapter 14, TO CLOSE AGAIN OR TO OPEN WIDER: THE SINO-US ECONOMIC INTERDEPENDENCE AND THE LEGAL ENVIRONMENT FOR FOREIGN INVESTMENT IN CHINA AFTER TIANANMEN.[2] This chapter is based upon an insightful talk that Chen An gave as part of an International Law Conference held in Autumn 1990 and hosted at Lewis and Clark Law School, where I was serving as Dean, just over one year after the disturbing 1989 events in Tiananmen Square. These events created great tension in the Sino-American relationship and raised doubts about the durability of cooperation and economic interaction between our two countries.

Chen An boldly and correctly argued that the relationship would endure and grow stronger despite problems (even serious ones) that would arise from time to time. He pointed to the mutual benefits already accruing to both countries and noted six recent further reforms in China that he knew would provide the basis for deeper economic interdependence. These included

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[1] An Chen, THE VOICE FROM CHINA: AN CHEN ON INTERNATIONAL ECONOMIC LAW (Springer-Verlag 2013 (Hereinafter THE VOICE FROM CHINA).

[2] THE VOICE FROM CHINA, 453-466.

revision of the 1979 Joint Venture Law, granting more rights and benefits to foreign investors; easing of land use transfer rights within Special Economic Zones, promoting foreign investors to land-tract development; simplification of the tax structure and improved tax incentives for foreign investors; the opening and development of Shanghai's Pudong district, extending a significant key platform for foreign investors; improved enforcement of the Administrative Procedure Law , allowing foreign investors easier to bring suits aganst Chinese governments; and accession to the ICSID international dispute resolution mechanism , allowing foreign investors to submit the investor-state disputes to ICSID for international arbitration.[1]

His predictions have been proven correct. Even the most optimistic among us in the 1980s and 1990s would have been hard pressed to envision the extraordinary pace of further development of the Chinese economy, and the reforms he highlighted in his article played crucial roles.

From the first days of the Shanghai Communique in 1972 and the restoration of full diplomatic relations in 1979 to the present, China and the United States have continued to develop closer relations in every aspect of life. In addition to mutually beneficial economic interdependence, our two peoples have shared cultural, educational and many other wonderful human experiences.

Our world faces many serious problems that can only be successfully addressed through mutual cooperation, respect and effort among peoples and governments, especially those of the world powers. China and the United States are two of the most important of these powers, and it is fortunate that the leaders of both of our countries are committed to building on the progress that has been achieved in recent decades. Government-to-government contacts, meetings and substantive problem solving at all levels have become a regular feature of our nations' relationship. Our two Presidents, Barack Obama and Xi Jinping, have a close working and personal relationship and they have exchanged invitations and visits. President Xi will be making an important state visit to the United States in September 2015. This friendly and candid atmosphere is conducive to progress on a wide range of issues from international conflicts and peace, to a cleaner environment and energy security while ameliorating the threat of severe climate change, to mutual understanding and open discussion of differences, and to improved health and the reduction of poverty. This model, consistent with An Chen's 1991 prediction, is the right one for our new century and is essential for the well-being of the whole world.

I want to close with a personal note. I served as Fulbright Professor of Law at Nanjing University Law Department in 1984-85, and will always fondly remember the visit my eight-year-old son and I made to Xiamen at Dean Chen's kind invitation in the spring of 1985. I greatly enjoyed giving some visiting lectures, meeting a number of Chen An's talented students (some of whom subsequently were my students and obtained their J.D. degrees from our law school at Lewis and Clark), and experiencing the kindness and hospitality of Chen An and his family and law department colleagues. It is wonderful that he was able to return the visit and spend time with us at Lewis and Clark in 1991.

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[1] *Id* at 459-465,

Chen An is a lao pengyou (old friend) of mine, and one of the important people who worked throughout his career for constructive and friendly Sino-American relations. I congratulate him on the publication of this fine volume and commend it to readers' attention.

（**2015/06/26**）

17.1：评陈安教授英文专著《中国的呐喊》：聚焦 ISDS 和 2015 中-美 BIT 谈判

Gus Van Harten 撰*　　谷婀娜** 译

陈安教授是中国国际经济法学领域资历最深的学者之一，他撰写的英文专著《中国的呐喊 》一书，针对中国与国际经济法学之间的互动关系，提出了议题广泛、学识精深的一系列看法。本书汇辑了陈安教授自上世纪 80 年代初期以来撰写的二十四篇专题论文，阐述诠释了中国对有关问题的见解和看法，视角独到、引人入胜，涉及众多议题，既包括中国对国际经济法的总体看法和价值理念、概述中国遭受外国列强多次入侵和占领的惨痛历史，也包括探讨各种具体问题，诸如“安全阀”在投资条约中的作用问题、中国涉外商事合同争端解决问题、中国经济特区的法律法规问题、美国单边主义与 WTO 多边主义之间的紧张关系和矛盾冲突问题，等等。整体看来，陈教授的这些论文犹如一幅绚丽多彩的织锦挂毯，向我们展示了中国“重新崛起”（re-emergence）的总体理念和具体决策, 以及中国与国际经济法律架构之间的互动关系。

全书的一个新颖独到之处在于：针对占据国际投资法论坛主导地位有害观点，本书是一剂解毒良药 (antidote)，反对严重偏袒西方资本输出国的主导看法。这些主导观点竭力鼓吹：应当优先考虑跨国公司的利益；投资者与东道国争端仲裁中的律师们和仲裁员们所扮演的角色，应当是这些跨国公司利益的支持者；保护外国投资者享有的特权应当被视为一项全球化的指导性规范。与此同时，民主、民族自决和国家主权的价值观，却被轻描淡写，不受重视；或被横加诽谤诋毁，有时候甚至到了这种程度，胡说什么：民主、民族自决和国家主权的价值观会给人类福祉构成威胁，其负面作用甚至超过了跨国公司滥用权力、寡头政体、殖民主义。至少，从这些主导看法中，人们几乎听不到批判殖民主义历史流毒的声音，另一方面，也几乎听不到评论、剖析殖民主义历史流毒与当今“投资者-东道国争端解决机制”（investor-state dispute settlement ，以下简称 ISDS）之间因果关联的声音——而这种机制，归根到底就是由一帮 ISDS 这一法律行业的从业者们以及北美和西欧各强国政府所积极推动的。

在此种占主导地位的大量国际法文献背景下, 认真思考鉴别来自饱受历代形形色色殖民主义祸害国家的考察家们的看法，显得尤为重要。陈教授的专著之所以被称作是“一剂解毒良药”，是因为他不仅深入洞察并强烈谴责肆虐于中国和其他国家的殖民主义，同时还颂扬中国人民在反对帝国主义和法西斯占领的斗争中取得的成就。基于此，他致力于将这一源于中国历史的价值理念引入国际经济法。例如，对中国饱受殖民主义荼毒的历史，陈教授不但没有讳言回避，反而大声疾呼：“自臭名昭著的 1840 年鸦片战争以后，中国饱受西方列强欺凌和残暴日寇入侵，丧权辱国”；正是这种历史使命感激励他具有“强烈的民族自豪感和

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爱国主义情怀”，并“立志为本国和广大发展中国家弱势群体的正义要求，呐喊和鼓呼”。铭记殖民主义历史并致力于国际主义事业，尤其是为广大弱势群体大声疾呼——这种理念，迥异于那些专为豪富强势精英们的利益而粉饰殖民主义的大量学术文献。

同时触动我的是，陈教授这本专著也给中国学者们带来了挑战。我不想对另一个拥有独特历史和文化的国度做过多评论；但我想说的是，我看到了在中华民族自豪感和明显由西方规则主导的游戏战略之间存在的冲突，即希望西方强国被击败在他们自己设计的游戏里。陈教授强调“我们不能盲目地附和遵从西方学者的观点”，“应该以求真务实的态度，独立思考，明辨是非”，对此我十分赞同。但是，我认为中国目前面临的直接挑战是：必须机智地决定接受什么和拒绝什么，尤其是在西方强国的压力之下，该何去何从。

遗憾的是，我的母国——加拿大，当今的联邦政府是一个极度“右翼”且非常“不理智”的政府。正因为此，面对中国遭受的来自西方军国主义的诽谤诋毁，加拿大当局一直表现得更像是一个参加煽动者而非公正调停人。陈教授将西方军国主义对中国的中伤称之为“中国威胁”谰言。晚近，这一谰言在北美被频频援引，目的是推动由美国主导的跨太平洋伙伴关系谈判（Trans -Pacific Partnership Agreement，以下简称 TPP）项下处于保密状态的 ISDS 条款的达成，然而，美国国会和美国人民对该谈判却持怀疑态度。TPP 的支持者们并没有解释其中的 ISDS 机制是如何运行的、外国投资者享有的特权包含哪些内容、怎样做到在 ISDS 机制下优先保障公众利益而避免仲裁缺乏独立性、公正性、平衡性等等问题；也没有对该机制所耗费的总成本以及给公众带来的风险做出说明。他们一心一意专注于将 TPP 塑造成“反华”的工具，以此满足自身的需要。

面对 TPP 项下以美国范本为蓝本的 ISDS 条款的扩张和其聚焦“反华”的宣传，特别是考虑到中国自己在过去 15 年时间里已经采纳的强有力 ISDS 机制基本上是参照美国范本建立的，此时，我们该如何应对？此外，中国赋予外国投资者的宽泛特权也有进一步扩张，诸如在“公平公正待遇”之类的灵活性术语的设置上，只给外国投资者设定有限的例外，便将本国的国家主权让渡给 ISDS 机制下那些往往依附成性、并非真正独立的仲裁员，这些仲裁员往往以国际法院的法官们显然不会采取的某种方式，依附于跨国公司和行政官员；相比其他国家的政府，跨国公司和行政官员与美国政府当局之间的联系要更为密切。这样看来，中国和美国开始同步并行，对权力让渡加以认可，使得权力从国家机构（包括立法、行政、司法机构）手中，转移至外国投资者以及那些以仲裁员身份坐堂审案的私家律师手中。尽管中美之间还存在差异，但在 ISDS 机制问题上中国却趋向于仿效美国的做法。然而，ISDS 依旧被当做西方强国的工具，用以对抗那些不满 ISDS 给本国民主和主权构成威胁的弱小国家，也用以“反华”，以满足自身的需要。就这一矛盾悖论（paradox）问题我还不能作出明确的阐释，但我相信它是一个值得关注的问题，不论对中国学者还是西方学者，都是如此。

我一向批判 ISDS 机制反对民主，在制度设计上存有偏袒，偏向于支持大型的公司和豪富的个体。 接下来我想以学者的身份，开展评论。从陈教授关于 ISDS 的论证中引发的一个最为迫切的问题是：中国在同美国谈判缔结双边投资条约（Bilateral Investment Treaty，以下简称 BIT）时该作何选择。中美 BIT 谈判将是继欧盟和美国“跨大西洋贸易与投资伙伴协议”（Transatlantic Trade and Investment Partnership，以下简称 TTIP）谈判以及上述 TPP 谈判之后最为紧要的谈判。正是因为 ISDS 的不断扩张，已经使其从之前一个微不足道的角色发展到如今在全球治理中占据绝对的优势地位。换言之，中美 BIT 与 TTIP、TPP 三者是相辅相成的，特别是其中的 TPP，不只是“反华”，更主要是对国家主权的全盘否定。

中国在中美 BIT 谈判中面临的主要挑战是什么？中国会因为 ISDS 存在缺陷，而基于我前述的任何一项理由拒绝接受吗？我认为答案很可能是否定的。以中加投资条约为例，在我看来，加拿大在某种程度上扮演着牺牲品的角色，就像是“一只被献祭给华盛顿的羔羊”。中加投资条约中涉及的一些主要问题同样也是中美 BIT 谈判所面临的挑战。其中最为关键的就是市场准入问题。中国迄今既有的投资条约从未给予外国投资者以准入前的国民待遇(pre-establishment national treatment)，中加投资条约也不例外。值得注意的是，中国却向美国表达了同意以准入前国民待遇为基础进行谈判的意愿。就美国而言，根据其所缔结的 BIT 来推测，它希望为本国投资者在中国争取到一个扩大版的市场准入权，反之却对中国投资者在美国享有的市场准入施加诸多限制条件。一个最好的例证，就是美国和厄瓜多尔签订的 BIT 中就市场准入作出的例外规定，美国将涉及本国经济运行的主要行业部门均排除在准入前国民待遇的清单之列；相比之下，厄瓜多尔对准入前国民待遇所做的保留几乎等于零。[1]从某种意义上讲，市场准入问题应被视为中美 BIT 谈判真正开始之前的首要问题，其中的关键在于中国愿意在市场准入方面对美国做出多大让步？而作为回报，中国愿意在市场准入方面接受美国做出的让步又是多么微乎其微？

陈教授在其专著中评论了 19 世纪时期美国和其他西方强权国家把不平等条约强加于中国的历史目的。他写道“根据不平等条约，列强以苛刻的条件贷款给中国政府，并在中国开设银行，从而垄断了中国的金融和财政。”如今，美国这一目标改变了吗？尽管 BITs 和不平等条约在很多方面不能等同，但其基本主旨目标是永恒不变的，即通过层层加码的方式订立各种条款，使美国企业享有各种优惠，借以促进它们对中国经济的渗透。然而，这些优惠条件是怎样层层加码设置起来的呢？最为重要的一点是，双方同意将涉及条款的各种争端都提交 ISDS 机制去仲裁解决，但其中仲裁员的选择却最终是由世界银行（World Bank）的行政官员们决定的。试想想，如果仲裁员不是由世界银行选定，而是由某一家亚洲开发银行（an Asian Development Bank）来选定，而后者在投票权分配方面又相对有利于中国，那么，美国会举手赞成吗？我估计，美国会觉得这一提议根本不值得考虑。现在，中国愿意对美国作出让步的范围究竟多大？可以探讨的是，中国在与其他国家（包括加拿大）缔结的 BITs 中，似乎已经朝着这一方向发展，在此类 BITs 中，中国通常处于资本输出国的地位。但到目前为止，中国尚未对美国作出重大让步。

中美 BIT 谈判还面临哪些其他挑战呢？因为加拿大当前是保守党执政，正如陈教授所讲的那样“加拿大这些年跟美国一直如影随形，亦步亦趋”，只有当石油行业的要求超过了美国政府优先关注的事项时才是例外。我们可以设想，2012 年中-加 BIT 和一般北美范本在 ISDS 规定上的差别，体现的是中国而非加拿大的偏好。基于这样的设想，除市场准入议题之外，中国曾经尽其所能地支持国内产业，似乎并不赞同北美范本中相对开放的 ISDS 诉讼程序，也不允许原住民享有履行要求的例外，并坚持使用比美国范本还要宽泛的“拒绝授益”条款(“denial-of-benefits” clause) [2]。

虽然陈教授对 2012 年中加投资条约的剖析有着深刻的见解，但其中却没有论及中加投资条约和美国 BIT 模式的差异。可以探讨的是，陈教授似乎过分强调了中国与北美在路径上

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[1] Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, Protocol Article 2, 4.美国对国民待遇事项做出的保留有 17 项之多，厄瓜多尔仅有 2 项。

[2] 参见 2012 年中加 BIT 第 16 条的规定。又译“不予授益”条款或“不予施惠”条款。

的差别。例如，陈教授强调中方在 2012 年中-加投资条约路径方面的的独特性时，强调的是征收“补偿”两种标准之间的差别，即“兴旺发达企业的价值”与“公平市场价值”之间的区分。我不想完全否定这种区分方法，但我猜测，很多 ISDS 的仲裁员在适用这两种标准时应该会采取在本质上相同的方式。再者，2012 年中加投资条约项下的“税收例外”条款，实际上沿用了自北美自由贸易协定（North American Free Trade Agreement，以下简称 NAFTA）以来北美模式中的规定；而“用尽当地救济”条款规定提出 ISDS 仲裁请求前的“等待期”，也仅仅是四个月。这个等待期的长度实际上要短于其他采取北美模式的条约。

在最惠国待遇（Most-Favoured-Nation，以下简称 MFN）问题上，陈教授指出中国对该条款采用的是更为缩限的版本，因为 2012 年中加投资条约规定 MFN 条款不能适用于争端解决机制。但是，对 MFN 条款加以限制早在新世纪初期就已存在，之后被广泛运用于北美范本中。需要说明的是，2012 年中加投资条约允许 MFN 条款适用于 1994 年以来中加两国所签订的许多其他投资条约，这不免是对该条款的一种扩大适用，这就意味着投资者可以选择适用自 1994 年以来中加两国所签订的许多其他投资条约中更为优惠的规定。然而，不论是中国还是加拿大，1994 年之后缔结的 BITs 并未包含在中加投资条约中出现的各种例外和保留规定，直到发现 MFN 条款存在漏洞，才开始对其范围进行缩减，从而达到限制外国投资者权利的目的。就其本身而言，2012 年中加投资条约对 MFN 条款所做的规定，看来实际上是降低和削减了针对平衡外国投资者权利和东道国主权利益问题所作出的适度改进。

陈教授强调中加投资条约是双方“利益互相妥协”的典例，这一点我非常赞同。不过，就 ISDS 条款的设置而言，中国似乎已经朝着 ISDS 西方范本的方向走得很远；基于这一立场，现在中国直接和美国进行 BIT 谈判时将会面临更大的挑战。尤其是在诸如市场准入、维护自己的国民经济战略规划、抵制同美国企业有紧密关系的世界银行对 ISDS 的管辖等问题上，中国都将被迫对美国做出各种让步。

我本着钦佩和尊敬的精神写了这篇书评。全球化给我们带来了许多积极正面的事物，其中之一就是让我这样一个居住在安大略湖畔静谧郊区的加拿大人，能够享有“特权”阅读一位来自被群山环绕的福建省的中国杰出学者所写的专著。为此，我心怀感激。我衷心地希望，陈安教授对国际经济法领域所做的贡献和他本人对人文价值所做的努力，能够有助于牵制中国轻率地走向西方强国设定的关于 ISDS 和给予外国投资者特权的游戏规则。

17.2： Review on Prof. CHEN's English Monograph - Focusing on the ISDS & 2015 China-U.S. BIT Negotiation

Gus Van Harten*

The *Voice from China*, by An Chen, offers a wide-ranging record of intensive scholarship on China's relationship to international economic law. It provides access to a rare and intriguing perspective from China by one of the country's most senior academics in the field. The book collects 24 articles written by Professor Chen since the early 1980s. The articles cover broad topics such as Chen's proposed values to inform international economic law and an outline of China's bitter history in relation to foreign powers' invasions and occupations. The articles also examine specifics including the role of safeguards in investment treaties, dispute resolution in Chinese commercial contracts, legal aspects of special economic zones, and the tension between U.S. unilateralism and WTO multilateralism. As a whole, Chen's writings offer a rich tapestry of generalist ideals and specific decisions to represent China's re-emergence and interaction with the legal architecture of the international economy.

A refreshing feature of the book is its antidote to dominant themes of international investment law scholarship, which has a heavy bias toward a Western capital-exporting point of view. That dominant theme prioritizes interests of multinational companies – and the role of investor-state lawyers and arbitrators as supporters of those interests – by defending the privileging of foreign investors as a guiding norm of globalization. Meanwhile, values of democracy, self-determination, and sovereignty are downplayed or denigrated, sometimes to such an extent as to suggest these values are a greater threat to human welfare than corporate abuse of power, oligarchy, or colonialism. At least, one hears little about the legacy of colonialism, on the one hand, and on the other hand the links between that legacy and investor-state dispute settlement (ISDS) as promoted primarily by the ISDS legal industry and North American and Western European powerful governments.

In this context of such innumerable literature on international law, it is important to identify perspectives from observers in countries victimized by colonialism in its various iterations. Professor Chen's book offers a refreshing antidote because he acknowledges and condemns strongly colonialism in China and elsewhere and because he celebrates the achievements of the Chinese people in resisting imperialism and fascist occupation. In turn, he strives to introduce values emerging from China's history into international economic law. For example, he does not shy away from but rather calls out the "aggression and suppression by the Western powers and

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Japan for more than a century" as "a humiliation to all Chinese people". His historical awareness motivated him to have a "strong sense of national pride and patriotism" and a "determination… to strive for social justice" and "to contribute to [his] own country and to support all other weak countries". The connection between remembering colonialism and committing to internationalism, especially on behalf of the weak, is the flipside of air-brushing colonialism from academic literature in the interests of wealthy and powerful elites.

Yet it struck me that Professor Chen's approach also presents a challenge for scholars in China. I do not want to go far in commenting on another country with its own extraordinary history and culture but will say that I see a tension between Chinese national pride and the apparent strategy of playing by Western rules in the hope of beating the West at its own game. Chen stresses "we should not blindly follow and completely accept… Western opinions" but rather "contemplate independently and critically in order… to distinguish right from wrong". I could not agree more. However, I expect the immediate challenge in China is to decide what to accept knowingly and what to reject, especially under pressure from the West.

Regrettably, my own country of Canada – under an exceptionally right-wing and often tactless federal government – has been more an agitator than a moderator of Western militarism based in part on the vilification of China. Chen calls the latter the "China Threat Doctrine". This doctrine was often invoked most recently in North America to promote the secretive ISDS provisions in the U.S.-led Trans-Pacific Partnership (TPP) to a sceptical U.S. Congress and American people. Instead of explaining how ISDS – and the privileging of foreign investors it entails – offers a public benefit to outweigh the lack of independence, fairness, and balance in ISDS and its gross costs and risks for the public, the TPP's promoters instead focused on portraying the TPP as "anti-China" and desirable on that basis.

What are we to make of the expansion of a U.S. model of ISDS in the TPP and its advertisement as "anti-China", especially if viewed alongside China's own embrace over the last 15 years of a muscular version of ISDS based largely on the U.S. model? China has also extended extraordinary rights to foreign investors, has settled for limited exceptions to flexible concepts like "fair and equitable treatment" for foreign investors, and has conceded its national sovereignty to ISDS arbitrators who are dependent – in a manner that international judges clearly would not be – on multinational corporations and executive officials who are more closely connected to the U.S. Administration than any other country's government. It seems the joint approach of China and the U.S. is to endorse the transfer of power from national institutions – legislative, governmental, or judicial – to foreign investors and private lawyers sitting as arbitrators. There are differences in their approaches, but the Chinese way in ISDS tends to have followed the U.S. path. Even then, ISDS is still presented in the West – to counter those weaks upset by its threat to democracy and sovereignty – as anti-China and therefore desirable. I do not have a clear explanation for this paradox but I think it warrants attention from Chinese and Westerners alike.

I offer the next comment as an academic who has criticized ISDS as anti-democratic, institutionally biased, and lopsided in favour of large companies and wealthy individuals. I think the most pressing question to emerge from Chen's scholarship on ISDS involves China's choices in

the proposed China-U.S. bilateral investment treaty (BIT). A China-U.S. BIT would be the most significant step, after the proposed Europe-U.S. Transatlantic Trade and Investment Partnership (TTIP) and TPP, in the expansion of ISDS from its minority role to a dominant position in global governance. In other words, a China-U.S. BIT complements the TTIP and TPP; inter alia,the TTP is not merely anti-China but rather anti-sovereignty altogether.

What are the key challenges for China in such a BIT and will China reject ISDS on any of the grounds I have identified? I think the answer is likely not. Drawing from the example of the 2012 Canada-China investment treaty – where I see Canada partly as having played the role of a sacrificial lamb for Washington – there are a few major issues on which China and the U.S. will face challenges in negotiating a BIT. The most prominent is market access. China has not given market access on the basis of pre-establishment national treatment to foreign investors in its investment treaties, including the 2012 Canada-China treaty, but has signalled a willingness to do so with the U.S. For its part, the U.S., judging from its BIT record, will want an expansive version of market access for U.S. investors in China combined with more limited market access by Chinese investors to the U.S. economy. As an illustration, one can review the market access exceptions in the Ecuador-U.S. BIT where the U.S. exempted practically all of the major sectors of its economy from pre-establishment national treatment and Ecuador exempted virtually none in its own economy. [1]Having gone some way to allowing market access before the BIT negotiations really began, a key question is how much market access China will be willing to give up and how little China will be willing to accept in return.

Chen comments on the historical aim of the U.S. and other Western powers as reflected by the unequal treaties imposed on China in the nineteenth century. Chen says: “By establishing banks in China [they] monopolized the banking and finance of China”. Has the aim changed? BITs differ from unequal treaties in many ways but a basic goal is constant: to facilitate the penetration of China’s economy by U.S. companies on terms that are stacked in favour of the latter. How are the terms stacked? Most importantly, they refer disputes about the terms to ISDS where the choice of whom serves as an arbitrator is made ultimately by World Bank officials. Imagine if the arbitrators were chosen instead by officials at an Asian Development Bank based on an allocation of voting power relatively favourable to China, would the U.S agree with that ? It would be a non-starter in the U.S., I expect. Will China accept a comparable concession to the U.S.? Arguably, China has moved in this direction in other BITs, usually while occupying a capital-exporting position, with other countries including Canada. But the big concession to the U.S.is yet to come.

What about other challenges in a BIT with the U.S.? Because Canada, as Chen puts it, tends to follow the U.S. path “like a shadow to a person” – certainly under the present Conservative government, except when U.S. government priorities are trumped by those of the oil industry – we can assume that the differences between the 2012 Canada-China BIT and the usual North American model of ISDS reflect Chinese, not Canadian, preferences. On this assumption, besides the issue of market access, it appears that China held onto its existing ability to favour domestic

[1] See Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, Protocol Article 2, 4.

companies, did not agree to the North American model of relatively open ISDS proceedings, did not accept exceptions allowing for performance requirements that would support aboriginal peoples, and appears to have insisted on a broader version of the "denial-of-benefits" clause[1] than in the U.S. model.

While Chen's analysis of the 2012 Canada-China treaty is insightful, it does not address these divergences from the U.S. model. Instead, Chen arguably over-states the degree to which China varied from the North American approach. For example, in stressing the uniqueness of China's approach based on the 2012 Canada-China treaty, Chen emphasizes the distinction between standards of "going concern value" and "fair market value" in compensating for expropriation. I do not wish to dismiss the distinction outright, but I suspect many ISDS arbitrators will apply these standards in essentially the same way. Further, the taxation carve-out in the 2012 Canada-China treaty actually tracks the North American model since NAFTA, and the 2012 Canada-China treaty's provision for exhaustion of local remedies is little more than a four-month waiting period for ISDS claims. That length of waiting period is actually shorter than other treaties on the North American model.

On the topic of most-favoured-nation (MFN) treatment, Chen comments that China achieved a more limited version of this concept because MFN was not extended in the 2012 Canada-China treaty to dispute resolution procedures. But that limitation on MFN has been present in the North American model since the early 2000s. More telling is the 2012 Canada-China treaty's extension of MFN to past BITs since 1994. For Canada and China, there are post-1994 BITs that do not include various exceptions and reservations in the 2012 Canada-China treaty that appear – until one considers the MFN loophole – to limit the scope of foreign investor rights. As such, the approach to MFN in the 2012 Canada-China treaty appears actually to roll back the modest improvements in balancing foreign investor rights with sovereign interests.

I sympathize with Chen's emphasize on 2012 Canada-China treaty as an example of "mutual compromise". Yet it seems that China has moved far already in the direction of the Western model of ISDS and will now face a greater challenge to its position in direct negotiations with the U.S. In particular, China will be pressured to make concessions to the U.S. on market access, its preserve a national economic strategy, and its past resistance to ISDS – under the authority of the World Bank – in its close relationship with U.S. corporations.

I offer this assessment in a spirit of admiration and respectful criticism. One of the positive things about globalization is that a Canadian from a quiet suburb beside Lake Ontario can have the privilege to review the writings of an eminent Chinese scholar from the mountains of Fujian Province. For that, I am grateful. I do hope the strength of Professor Chen's contribution to the field and his commitment to humanistic values may help to check China's imprudent move toward Western rules on ISDS and the privileging of foreign investors.

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[1] See: 2012 Canada-China treaty, Article 16.

18.1：矢志不渝倡导南南联合自强与国际经济新秩序：评陈安教授专著《中国的呐喊：陈安论国际经济法》

陈辉萍*

《中国的呐喊：陈安论国际经济法》是陈安教授的新作，2014 年由 Springer 出版社出版。陈安教授是厦门大学法学院资深教授。30 多年来，陈安教授在国际知名期刊上发表了众多中文和英文论文，从其中精选出 24 篇进行翻译和改写，汇聚成这部 852 页的巨著。

2008 年由复旦大学出版社出版的专著《陈安论国际经济法》（以下简称“2008 年专著”）含五卷，78 篇论文，多数是用中文写成，也有少部分是英文论文。2014 年新专著精选/翻译/改写的有 24 篇论文，其中 5 篇是在 2008 年至 2013 年期间完成的。

这两大专著可视为姊妹卷。新专著承继了他的一贯学术追求和理念，但又显示出岁月沉淀下来的更为成熟和老练的立场和观点。作为陈教授曾经指导过的博士生，以及 20 来年的同事，我拜读了他几乎所有的论文和专著，对其学术水平和学术理念熟稔于心。2011 年，我曾为他 2008 年的专著写过书评，[1]评论了陈教授的人品、独特的研究视角和写作风格、以及他对国际经济法的重大贡献。2014 年 Springer 推出的这部英文版新作，体现了中华法学学术代表作“走出国门”、进一步弘扬中华文明的努力追求，因此，我很乐意为它再写一篇书评。

新作全书分为六部分，分别探讨和论证若干学术前沿重大问题：（一）当代国际经济法的基本理论；（二）当代国家经济主权的“攻防”战；（三）中国在构建当代国际经济新秩序中的战略定位；（四）当代国际投资法的论争；（五）当代中国涉外经济立法的争议；（六）若干涉华、涉外经贸争端典型案例剖析。

该新作有两大特点：第一，它涵盖了国际经济法的诸多广泛议题；第二，在探讨这些议题时，作者是站在中国的立场，因而将中国的观点推介给了世界。故此，该书命名为《中国的呐喊》。本篇书评主要评论第二个特点。

陈安教授是中国第一个旗帜鲜明地提出“南南联合自强”理论的学者。陈教授看到中国和广大发展中国家在历史上遭遇的各种磨难，以及他们当前在世界上所处的不利处境和弱小的政治经济地位，就积极倡导南方国家在建立国际经济新秩序中要联合起来，依靠整体的力量，共同奋斗。“南南联合自强”理论最早由陈教授在《南南联合自强五十年的国际经济立法反思：从万隆、多哈、坎昆到香港》一文中率先提出并积极倡导。他认为，通过南南联合自强，各国通力合作，促进法律改革，不仅会使这些弱小国家群体改善处境，获得平权，也会促使当前的国际经济法律制度朝着有利于全世界的方向发展。金砖五国（BRICS，是巴西、

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[1] 该书评发表在2011年秋季出版的《东亚与国际法期刊》第4卷第2期第533-536页。《中国的呐喊》第lix-lxiii页再次刊登了该书评。

俄罗斯、印度、中国和南非五个国家英文名称第一个字母的组合缩写）这个联合体的建立和承担的使命，以及新近成立的金砖国家开发银行和已经签署成立协定的“亚洲基础设施投资银行”，正是南南联合自强的典范。

对于中国在南南联合自强中的作用，陈教授认为，中国作为主要的发展中大国之一，应该成为南南联合自强的强有力支持者，以及今后建立国际经济新秩序的积极推手和中流砥柱。这应该成为中国在当代国际经济法律议题上的战略定位。这一观点主要体现在他的《论中国在建立国际经济新秩序中的战略定位——兼评“新自由主义经济秩序”论、“WTO 宪政秩序”论、“经济民族主义扰乱全球化秩序”论》一文中。

本着“中华民族的爱国主义”和国际主义的有机结合，陈教授宣称中国应该坚定地与广大发展中国家站在一起。陈教授提出这一定位的原因是，2009 至 2010 年间，一些外国学者和盲目附和的中国学者认为，根据“新自由主义经济秩序”论、“WTO 宪政秩序”论、“经济民族主义扰乱全球化秩序”论等新理论，中国应该采取经济上更加“自由主义”的立场，俯首帖耳地完全接受西方“华盛顿共识”和全盘遵守 WTO 的各项规则。对这些“时髦”理论，陈教授并不苟同。相反，他认为，这些理论会误导中国在建立国际经济新秩序中的方向。本书的目的就是批判性地分析和抵制这些理论，从而澄清是非，保护中国的国家利益和国际声誉，并保障众多发展中国家的平等权利。

陈教授认为，中国在国际经济新秩序中的定位，也同样适用于 WTO 体制这一具体问题。他认为，中国与广大发展中国家对现有的 WTO 法制，不能仅限于“遵守”和“适应”，而应当通过南南联合，凝聚力量，寻求对其中某些不公平不公正的“游戏规则”加以改变、改革和补救。陈教授认为，WTO 争端解决机构充满了缺陷和不平衡。他认为，某些 WTO 体制本身在立法之初就存在不公平不合理，可概称为“先天不足”，有一些是武断制定的，口惠而实不至，专门欺负弱小国家。他指出，WTO 的某些专家组在执法实践中显示出“不公平和无能”，采取“政治上很圆滑但法律上破绽百出”的方法，可概称为“后天失调”。他认为，中国应与这类不公平和不利于发展中国家的 WTO 规则做斗争，发展中国家应该联合起来，自助自立自强。这与他一贯倡导的南南联合自强理论是一脉相承的。陈教授提出的这一战略定位，独树一派，与西方学者和某些追随西方“时髦”理论的中国学者泾渭分明，大相径庭。

该书让人印象深刻的一点，是作者有力地反驳了西方对中国和平崛起和支持南南联合集体行动的偏见和攻击，其典例之一就是一些美国政客、军队和学界头面人物提出的“中国威胁论”。这一误导大众的说词被许多发达国家甚至某些不明真相的发展中国家所接受，严重损害中国的国际声誉，甚至影响中国今后的政治经济发展。陈教授溯本追源，通过比较源远流长的中国对外关系的真实历史、十九世纪欧洲和亚洲的历史、以及当前美国的具体情况，他得出结论：当代“中国威胁论”是十九世纪曾经甚嚣尘上的“黄祸论”的变种，“黄祸论”是俄国沙皇和德国皇帝威廉二世最先提出来的。陈教授指出，“中国威胁论”和“黄祸论”拥有相同的 DNA，其目的都是为了曲解历史，曲解中外交往关系的传统主流，成为殖民主义和帝国主义的口号。在反击这类错误学说时，陈教授一方面充分运用其丰富的知识，以及对中国和美国、世界历史的全面而深刻的洞察；另一方面，运用其犀利的语言风格和“妙语连珠”的中国成语来强化自己的立场。这种风格在法律文献中比较少见，但这就是陈教授的风格。

南南联合自强学说受广大发展中国家欢迎。发展中国家在瞬息万变的国际政治和经济环

境中，在传统上南方国家存在的正当性备受质疑的情况下，面临诸多共同的挑战，南方思想家提出针对“全球南方国家：50 年回顾及今后走向”的议题，以国际论坛的方式加以讨论。[1]南方委员会认为，努力争取更加公平的国际体制已经使南方国家更为团结，也强化了他们采取联合行动的决心。[2]联合国前秘书长加利亲自来信邀请陈教授为该论坛撰文。加利是以联合国和平大学欧洲和平发展中心名誉委员会主席、全球法语区秘书长和南方中心委员会前主席的名义发出邀请的。陈教授欣然授受邀请，写了一篇题为《南南联合自强：年届“知命”，路在何方？——国际经济秩序破旧立新的中国之声》的论文。[3]

陈教授的理论研究高屋建瓴，入木三分。他的著作新颖尖锐，雄辩滔滔，具有中国风范和中国气派，阐释了不同于西方发达国家学者的关于经济主权和国际经济新秩序的创新学术理念和学术追求，为国际社会的弱势群体争取公平权益锻造了法学理论武器。正因为如此，该书获得中国国家社科基金中华学术外译项目的资助，他是国际经济法领域迄今惟一获此殊荣的学者。该项目的顺利完成，说明陈教授的学术水平已获得国际认同；而荟萃其三十多年来主要学术成果的代表作《中国的呐喊》进入了国外主流发行传播渠道，势必大大促进各国对当代中国的了解和理解。故此，Springer 出版社将该书列入“理解中国”系列丛书。

此书出版时，陈教授已年届 85，这正是一般人安逸颐养天年的时候，陈教授却仍孜孜不倦，笔耕不辍。这对年轻学者们确是一种榜样和鞭策。

（2015/07/06）

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[1] 引自加利致陈教授函。

[2] ECPD International Round Table “GLOBAL SOUTH: AT 50 AND BEYOND”, http://ecpd.org.rs/index2.php?option=com_content&do_pdf=1&id=185.

[3] 这篇英文论文发表在2015年春季《东亚与国际法期刊》第8卷第1期第75-105页。该刊总主编Eric Lee评论道：“您对即将来临的国际经济秩序和全球性的南南联合自强的洞见和科学分析，给我留下了深刻印象。……您的论文从国际法的视角揭示了中国对21世纪全球社会的伟大愿景和中国对全球共享繁荣昌盛的胸怀。在国际法论坛上表达如此真诚的亚洲立场，极为鲜见和难能可贵。”（参见Eric Lee2015年3月4日致陈安教授函）

18.2：A Tireless Advocate for S-S Coalition and NIEO: Comments on CHEN's Monograph

Huiping CHEN*

The Voice from China: An CHEN on International Economic Law is a new monograph written by Prof. An CHEN, published by Springer in 2014. Prof. An Chen is a senior eminent resident professor at Xiamen University Law School (China). This 852 page book is a collection and compilation of 24 carefully selected articles written by him in English and published in international leading journals over the past 30-odd years. This English book is partially based on and substantially updated from his previous monograph entitled An CHEN on International Economic Law published by Fudan University Press (China) in 2008 (hereafter referred to as "the 2008 monograph"). The 2008 monograph consists of five volumes with 78 articles published until 2008, most of which are in Chinese with some in English. The new monograph consists of 24 English articles, five of which were written and published during 2008 and 2013. These two monographs could be seen as sister books in the sense that this new monograph continues his consistent academic pursuit and ideas, but also goes further to show well-established, more sophisticated ideas and positions gained from his aged experience. As Prof. Chen's previous PhD student and colleague for 20 years, I read almost all his articles and books and thus quite familiar with his scholarship and academic pursuits. I wrote a book review for his 2008 monograph in 2011[1] covering broad comments including his personality, his unique research and writing approaches as well as his important contribution to international economic law. The new English monograph published by Springer in 2014 shows Prof. Chen's further efforts to promote the international exchange of Chinese legal scholarship and the dissemination of Chinese civilization. Therefore, I am glad to write a sister review for this new book.

The 24 articles in this new monograph are organized under six subheadings: (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) and Contemporary Chinese Practices on International Economic Disputes (Cases Analysis).

This monograph has two features: first, the book covers a broad range of international economic law issues; second, the author is standing in the shoes of China when taking positions in these

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* Dr. Huiping Chen is now professor of international law at Xiamen University Law School. She was a Ph.D. candidate of international economic law under the supervision of Prof. An CHEN during 1994–1999.

[1] This book review was published in *The Journal of East Asia and International Law (JEAIL)*, Vol. 4, No. 2, Autumn 2011, pp. 533–536. It is reprinted in this new book The Voice from China at 1ix-lxiii.

issues, and thus brings China's views to the world. Hence, this book is entitled "The Voice from China". This book review focuses on the second feature.

Prof. An Chen is the first Chinese scholar who takes a clear-cut stand proposing the "South–South coalition doctrine". Realizing the historical suffers by China and the developing countries (the "South countries") and their current disadvantageous and weak political and economic positions in the world, Prof. Chen strongly advocates that the South countries should unite and rely on themselves as a whole in the establishment of a new international economic order (NIEO).This doctrine is first formulated and elaborated by him in his article "A Reflection of the South–South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancún to Hong Kong". He suggests that through collaboration of individual power found in South-South coalition, and through the united promotion of legal reform, these disadvantaged groups will not only become stronger, but also impel the advancement of the current international economic legal system for the benefit of the whole world. The establishment and the mandate of the BRICS association (BRICS is the acronym for an association of five major emerging national economies: Brazil, Russia, India, China, and South Africa) and the newly founded Development Bank of BRICS and the Asian Infrastructure Investment Bank are examples of South-South coalition.

As to China's role in the South-South coalition, Prof. Chen suggests that China, as one of the major developing countries, should be a strong supporter of South-South coalition and a driving force for the establishment of NIEO currently and in the future. This should be China's strategic position on contemporary international economic legal issues. This suggestion is mainly embodied in his article "What Should Be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization".

Based on the organic combination of "patriotism of Chinese People" and internationalism, he argues that China should stand firmly together with the developing countries. The reason for Prof. Chen to raise this position is that, during 2009-2010, some foreign scholars and their Chinese followers suggested that China ought to adopt a more economically liberal position, fully accept "Washington Consensus" and comply fully with WTO rules based on doctrines such as the Neoliberal Economic Order, Constitutional Order of the WTO, and Economic Nationalism's Disturbance of Globalization. Prof. Chen does not agree with these "pop" doctrines, and instead believes that these doctrines would mislead China in the NIEO. The purpose of this book is to critically analyze and resist the application of these doctrines to China, so as to protect China's national interest and international reputation，as well as the equal rights of vast developing countries.

According to Prof. Chen, this position towards NIEO also applies in the specific context of the WTO regime. He argues that China and the international developing countries shall not be limited only to "abide by" and "adapt to" current WTO laws, but should also consolidate with each other under the "South-South Coalition" to strengthen the ability to seek changes, reforms and redress from some unfair and disadvantageous "rules of the game" among WTO laws. In his opinion, the

WTO/DSB (dispute settlement body) is the embodiment of deficiency and imbalance. He claims that some of the WTO laws are deficient since they are unfair and unreasonable at the very beginning of their enactment, some of which are arbitrarily made, nominal promises and an accessory in bullying the weak. He also argues that these principles are imbalances since some specific DSB panels show "injustice and incapability", and take "politically astute but legally flawed" approaches in law-enforcement practices. He advocates that China should combat these unfair and disadvantageous WTO rules. He suggests, in this regard, that developing states unite and work together for collective self-help and self-reliance as a whole. This echoes his persistent ideas of the South-South Coalition doctrine. By keeping and suggesting the strategic position, he creates a separate school which is quite different from and probably unacceptable by some foreign scholars and their Chinese followers.

I am impressed with the book's strong and vigorous refutation and rebuttal to some biases and attacks on China's peaceful rise and support of collective action from the South. The current "China Threat" doctrine proposed by some American politicians, military leaders and academics is one example. This misleading idea is accepted by developed countries and even some developing countries which are ignorant of the facts. This misguided understanding will seriously damage China's international reputation and potentially further block its economic and political development. After tracing the history of China's foreign relations, the history of nineteenth century in Europe and Asia, and after conducting careful analysis of the current US situation, Prof. Chen determines that the current China Threat Doctrine is a variant of the once prevalent, yet problematic, "Yellow Peril Doctrine" fabricated and advocated for by the Russian Tsar and German Emperor. Prof. Chen holds that these two doctrines share the same DNA in their goal to distort the historical understanding of Sino-foreign relations, and have been used as slogans of colonialism and imperialism. In the fight against these misguided doctrines, Prof. Chen employs his abundant knowledge and complex understanding of Chinese and world history including US history; on the other hand, he takes advantage of his excellent command and unique style of language i.e. his sharp and incisive language, and series of Chinese idioms and allusions used to emphasize his position. This literature language style is quite rare in legal analysis articles. But this is his style.

This South-South coalition doctrine is inspiring and accepted especially among developing countries. A forum on the topic of "Global South: at 50 and beyond?" is proposed to look at instances where "developing countries face many common challenges in a changed and rapidly evolving global political and economic environment, and when the traditional rationale of the South is being questioned and even doubted by some".[1] The South Commission concludes that "The struggle for a fairer international system has consolidated their cohesion and strengthened their resolve to pursue united action".[2] Prof. Chen was invited to contribute to the forum by H.E. Boutros Boutros-Ghali, in his capacity as the Chairman of the Honorary Council of the European Centre for Peace and Development (ECPD) of the UN University for Peace, and as the former UN Secretary-General, Secretary General of the Francophonie, and Chairman of the South Centre

[1] Quoted from a letter by H.E. Boutros Boutros-Ghali to Prof. An Chen.
[2] ECPD International Round Table "GLOBAL SOUTH: AT 50 AND BEYOND", http://ecpd.org.rs/index2.php?option=com_content&do_pdf=1&id=185.

Board. Prof. Chen happily accepted this invitation and wrote the article “Global South: at 50 and beyond? – The Voice from China for Establishing NIEO”. [1]

Prof. Chen has conducted research from a strategically advantageous and high position and expressed fully his penetrating opinion. His book contains creative viewpoints, critical analysis and an eloquent plea, with a unique Chinese character, splendor and style. This book illustrates and elaborates his original and novel academic research, ideas which are substantially different from those of western academia. He had endeavored to fight for the rights and interests of the weak by providing theoretical weapons. These features illustrate the necessity and value of expanding upon and spreading the book across the world. For this reason the book was financially supported by the Chinese Academic Foreign Translation Project (CAFTP) sponsored by the Chinese Fund for the Humanities and Social Sciences. He is the only person so far who won this sponsorship among those in the international economic law circle. Through the CAFTP his scholarship and this book which is a collection of the essence of his scholarship with the 30 plus years have gained international recognition and have entered the primary channels of academic dissemination. The aim of this project is to promote Sino-foreign academic exchange, and to facilitate the global dissemination of high-level research for scholars in the field of philosophy and social science, hence this book is included in the series books of “Understanding China” by Springer. This series commonly aims to spread the works regarding Chinese culture and civilization, so as to promote foreigner knowledge and understanding of modern China.

At the age of 85 when most people at the same age retire from work, Prof. Chen continues to work hard in research and teaching. This is a great encouragement to and acts as a driving force for young scholars.

(July 6, 2015)

（编辑：杨 帆）

[1] This long Article has been published in *The Journal of East Asia and International Law(JEAIL)*, Vol. 8, No. 1, Spring 2015, pp. 75–105. As JEAIL’s Editor-in-Chief Eric Lee commented , “It has totally impressed me with your insightful and scientific analysis on the newly coming international economic order, the global south-south coalition. ..... Your paper is showing the great vision as well as Chinese mind for the common prosperity in the 21st century's global community through the angle of international law. We have rare seen such a genuine position of Asia in international law forum.”(See: Letter from JEAIL’s Editor-in-Chief Eric Lee to Prof.An CHEN,2015/03/04)

19.1：中国呼声 理应倾听

——评陈安教授专著《中国的呐喊》

[美] 洛林.威森费尔德*

两年前出版的一部鸿篇力作——《中国的呐喊》，时至今日，我才有机会拜读。该书的作者陈安教授曾经多年担任中国最好的学府之一——厦门大学的法学院院长，又是中国国际经济法学会的创始人之一，并长期担任该学会的会长。陈教授是中国国际经济法学领域最负盛名、最为杰出的学者之一，也是硕果累累、最为多产的学者之一。《中国的呐喊》这本内容深邃的专著，汇集融合了他三十多年撰写的 24 篇长篇学术专论，聚焦探讨国际贸易法与国际投资法领域聚讼纷纭的各种热点问题。

这部扛鼎之作应该收藏在亚太地区所有学界和政府部门的阅览室和图书馆，以供关注当前国际贸易与国际投资法律热点问题的学者们和政府官员们参考。

陈教授将其最新的著述取名为《中国的呐喊》，用意深远。在他的学术生涯当中，他一直积极学习研究西方学者们的原著，汲取其中有益的智慧，同时又质疑、批驳西方学界有关贸易与投资的某些主流观点。陈教授非常谦虚，他称自己的观点只不过是“具有中国特色的个人视角”，但应该指出的是，他的建议——特别是那些可能被视为“离经叛道”的异议——是深深植根于中国过去 150 年的苦难历史，其中很大一部分是他亲身经历过的切肤之痛。

在阅读专著中的专论时，西方的读者将会领略到贯穿其中的广泛主题。第一,阐述建设性的爱国主义精神，支持和拥护正在“和平崛起”的中国。中华文明可以追溯到五千多年前，有过灿烂辉煌的时期，也有过令人沮丧的衰落式微。1840-1949 年是这个国家特别不幸的岁月，整个晚清阶段，正值西方帝国主义最嚣张之际，中国频频横遭屈辱，饱受欺凌，多次被迫投降，国家主权大部沦丧。在 20 世纪初期革命已经成熟，但是又遭野蛮凶残的日本人入侵占领，二战之后，国内战争又接踵而至。

这些经历促使中国知识分子在接受西方学者提出的一系列经济学和法学理论过程中，心存戒惧，这就理所当然，不足为奇了。例如，中国比较迟才加入建立“解决投资争端国际中心”的 ICSID 公约，就是其后果之一。基此，陈教授在上述专著中，反复多次回顾中国遭到发达国家列强不公平待遇的种种事实，以论证他对那些条约措辞或者法律学说提出的质疑和异议，在他看来，这些条约措辞和学说只会加重“全球经贸大政决策权力在国际分配中的严重不公”。

贯穿于陈教授这部专著的另一个主要议题是，探讨如何纠正“南北之间”（即发达国家与那些被视为正在发展中的国家）之间的不平衡问题。陈教授所指控的不公平待遇，不仅中国身受其害，所有的发展中国家也都深受其害，它们在二战结束、殖民时代终结之后，不得不与资本输出国展开国际谈判。陈教授谈论“弱小民族”，证论“南南合作”，敦促贫穷国

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家联合起来“逐步争得经济平权地位”。只有努力纠正“全球经贸大政决策权力在国际分配中的严重不公”，发展中国家才能有效抨击和改变“全球财富分配的不公”。陈教授认为“权力分配与财富分配之间，往往存在着不可分割的因果关系”，因此，“必须改变权力分配的不公，以保证全球财富分配的公平。”

贯穿于陈教授这部专著的第三个主要议题便是探讨发展中国家在当前的贸易和投资谈判中应当持有的具体立场。概括起来说，《中国的呐喊》一书探讨如何在发达国家和发展中国家之间的各个领域，实行更公平的经济权力分配，向发展中国家的学者们和政府官员们提供了各种具体建议。陈教授毕竟是一位饱学的法学教授，他旁征博引，论据充分，资料翔实，论证严谨。因此，那些正在参加国际贸易谈判和正在就双边投资条约最新版本进行磋商的发展中国家的代表们，都可以从陈教授的见解中领悟到很好的忠告和教益。

陈教授认为，当经济强国和弱势国家两方聚集在一起进行贸易和投资条约谈判时，前者往往采取“双重标准”。诸如，发达国家一边强迫发展中国家取消对非农业产品的关税，把这些国家进一步融入世界经济中，另一边他们自己却反其道而行之，设立种种“环境”壁垒，阻碍来自发展中国家的农产品进口的贸易自由，这是很不公平的。

在投资激励方面也有类似的问题。西方资本输出国所推行的双边投资条约要求东道国给予海外投资进入东道国关键经济部门的“自由准入”权以及“国民待遇”。然而，恰恰又是这些国家针对来自发展中国家的某些投资设置所谓的“国家安全”壁垒。

晚近的不少实践中，西方国家屡屡以提高效率为名，主张将发展中国家的国有企业私有化。在很多情况下，这可能是个不错的建议。但陈教授担心的是，让外资进入国民经济的关键部门，会使得东道国容易受到“国际垄断资本主义的盘剥”。

西方读者可能只对陈教授的某些主张给予较大同情，对他的其余主张则未必尽然。在有关征收后的补偿问题的探讨中，陈教授主张应采用限制性的标准而不是许多西方国家准备采用的标准。当然，有关赔偿的计算方法，发达国家的学者们也见仁见智而尚无定论，但一般情况下，大多数会倾向于在条约中纳入“赫尔”原则（“充分”补偿）的措辞，而不是仅采用“适当”补偿的措辞。

类似的问题也出现在陈教授关于“用尽当地救济”原则适用于解决投资争端的讨论当中。在一个发展中国家的部分行为涉嫌征收外资的情形下，数亿美元投资可能面临危险时，几乎没有哪个资本输出国的律师会赞同首先到东道国偏远的中小省份的法院去寻求当地行政救济。他们不会认为，他们不愿意向一个从未审过征收案件的乡下法院寻求救济，实际上是在“变相地”剥夺东道国的“经济主权和司法主权”。相反，他们认为，直接诉诸国际仲裁，才能保护自己避免受害于经验不够丰富的法官作出“偏袒本地的裁决”。

需要强调的是，陈教授的著述绝非在鸡蛋里挑骨头，或者恶意攻击他人观点，甚至夸夸其谈，不切实际。无疑，他看问题有自己的立场。但他的目的只是在引导读者理解他所看到的国际经济谈判中的不平衡，这种不平衡一直存在于过去两代人的国际经济谈判之中。他的观点是乐观和积极的。正如他援引本国箴言所说，“千万别把娃娃与洗澡水一起泼掉”。他更愿意看到发达国家与发展中国家能够达成共识。例如，中国与加拿大新近缔结的 BIT，历经 18 年的漫长磋商才达成的共识，便是如此。所有的努力都是值得的。

作为他这一代人中的中国国际经济法学的顶尖学者之一，陈教授是个相当难得、罕有其匹的人物。他来自福建省农村的一个知识分子家庭，但前半生在中国变乱动荡的时局下饱经沧桑。直到年逾半百，他才得以重返法学领域刻苦钻研，并开始认真学习英语，获得一个

进入哈佛大学学习研修的机会。

留美回国后，陈教授很快便成为厦门大学法学院的院长，这是中国国内顶尖的法学院。他作为中国国际经济法学会的创始人之一，历任会长多年。陈教授还荣获政府授予的“全国杰出资深法学家”称号。这一荣誉代表中国法学界的最高学术水平，自 1949 年以来，全国仅有 25 人获此殊荣。

在阅读陈教授的学术专论汇辑时，西方读者也许不能完全认同他的一切观点，但他们会从《中国的呐喊》当中认识一位治学严谨、富有思想的学者，其独树一帜、不同凡响的呐喊呼声，源自于他的祖国过去 150 年来政治和经济的拼搏奋斗。对于发展中国家的人们来说，它是指明前路、鼓舞人心的呐喊。对于发达国家人们来说，它是一种要求公平待遇和互相尊重的呼声。总之，它是人们理应认真倾听的呐喊呼声。

李庆灵 译、陈辉萍 校

19.2：China's Voice Deserves Hearing

- Comments on Prof. CHEN's "THE VOICE FROM CHINA"

Lorin S. Weisenfeld*

Although it was published two years ago, I have just had a chance to read Prof. An Chen's weighty volume, *The Voice from China*. Dean for many years of Xiamen Law School, one of China's best, and a founder and long the head of the Chinese Society of International Economic Law, Prof. Chen is one of China's best known and most distinguished scholars in the field of international economic law. He is also one of its most prolific and productive. In *The Voice from China*, Prof. Chen has pulled together in one hefty volume 24 of his lengthy academic articles, written over the course of more than 30 years, on contentious issues in international trade and investment law.

The volume is a tour de force. It ought to be in the reference library of every scholar and government official in the Asia-Pacific Region concerned with current issues in the fields of international trade and investment law.

Prof. Chen calls his latest publication *The Voice from China* for good reason. Over the course of his career, he has taken issue with elements of the received wisdom on trade and investment law emanating from Western scholars. With modesty, he labels his ideas simply "personal views with Chinese characteristics", but it should be noted that his proposals - particularly those that might be seen as iconoclastic - are deeply rooted in the troubled history of China over the past 150 years, a good part of which he has lived through and experienced personally.

A Western reader will note several broad themes running through the articles incorporated in this volume. The first is a notion of constructive patriotism in support of a China that is "peacefully rising". Chinese civilization extends back more than five thousand years, embracing extended periods of brilliance and dispiriting periods of decline. The years 1840-1949 were particularly unhappy ones for the country. Humiliated throughout the late Qing dynasty, repeatedly bullied by Western powers at their most imperialistic, and forced to surrender significant sovereign rights under insulting conditions, China was ripe for revolution at the beginning of the last century. To this mix should be added the brutal Japanese occupation during World War II and the civil war that followed.

It is not surprising that these experiences left Chinese intellectuals leery of accepting without question a range of doctrines in the fields of economics and law propounded by Western scholars. As a consequence, for example, China was relatively late to adhere to the treaty establishing the

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* Mr. Weisenfeld, an American senior attorney, had been the General Counsel of the Multilateral Investment Guarantee Agency (MIGA) for a long period during last 1980s-2000s .He is the current head of the Washington office of Felsberg & Associates, a corporate law firm based in Sao, Paulo, Brazil.

International Center for the Settlement of Investment Disputes (ICSID). Time and again, Prof. Chen returns to the shabby treatment received by China at the hands of industrialized powers to justify his questioning of treaty language or legal doctrines that, in his eyes, only reinforce "the severe unfairness in international power allocation in [the formulation of] global economic and trade policy making".

Redressing that balance between "North" and "South", the developed countries and those seen as developing, is another major theme that runs through this volume. The unequal treatment of which Prof. Chen complains has been experienced not only by China but by all developing countries that, following the demise 死亡，终结 of colonialism in the post-war period, have had to negotiate with capital- exporting states in international fora. Prof. Chen talks of "weak nations" and of "South-South cooperation", urging that poorer countries stand together to "gradually obtain equal economic rights". Only by seeking to redress the "severe unfairness in international power allocation in [the] global economic and trade policy-making processes" can developing countries attack "unfair global wealth distribution". Prof. Chen finds a "causality between the allocation of power and the allocation of wealth." Thus, "unfair allocation of power must be reformed to guarantee fair distribution of global wealth."

Taken together, the articles republished in *The* Voice *from China* offer scholars and government officials in developing countries concrete suggestions in multiple contexts for rendering more fair the distribution of economic power between industrialized and developing countries. Prof. Chen is, after all, a law professor, and he advances his views carefully and with voluminous support Specific positions that developing states might take in current trade and investment negotiations are, thus, a third major theme that emerges in this volume.

Those involved on behalf of developing countries in international trade negotiations and in negotiations over the latest versions of bilateral investment treaties would be well advised to have a good understanding of Prof. Chen's views.

Several examples will serve to illustrate the tensions that Prof. Chen sees - double standards, as he calls them - between economically powerful states and the weaker ones when the two sides gather to negotiate trade and investment treaties. It is not fair, he argues, that developing countries be pressed to eliminate tariffs on non-agricultural goods, to further the integration of these states into the world economy, when developed states turn around and erect "environmental" barriers that hamper free trade in agricultural commodities from developing countries.

A similar problem emerges with respect to investment encouragement. Western bilateral investment treaties demand "free access" to critical economic sectors in host countries and "national treatment" for their investments, but then these same states bar certain investments from developing countries for reasons of "national security".

There have been numerous examples in recent years of Western nations arguing for privatization of state-owned enterprises in developing countries in the name of efficiency. This may be a

good idea in many cases, but Prof. Chen worries about the instances in which foreign investment in critical sectors has made the recipient state vulnerable to "the predations of international monopoly capitalism".

A Western reader will be more sympathetic to some of these arguments than to others. In discussing the issue of compensation following an expropriation, Prof. Chen argues for a narrower standard than many in the West are prepared to accept. Of course, the measure of compensation is by no means a settled issue among scholars in developed countries, but in general terms, most would probably favor treaty language embracing the Hull standard ("adequate") as opposed language talking only of "appropriate" compensation.

The same point can be made regarding Prof. Chen's discussion of the role of the "exhaustion of local remedies" doctrine in the context of resolving investment disputes. In the face of allegedly expropriatory action on the part of a developing country, few lawyers in the capital- exporting states would support a requirement to first seek administrative remedies, often in a modest and distant provincial tribunal, when hundreds of millions of dollars may be at stake. They would not view their reluctance to go before a rural court that has never seen an expropriation case as a "disguised" effort to deprive the host country of its "economic and judicial sovereignty." Rather, they would see direct recourse to international arbitration as a way to protect themselves against "hometown decisions" by insufficiently experienced judges.

It should be underscored that there is nothing mean-spirited or vindictive or even doctrinaire in Prof. Chen's writings. He has a point of view, to be sure, but his objective is to guide his readers to an understanding of the imbalances as he sees them in international economic negotiations over the past two generations. His is an optimistic and positive view. As he notes in one of his homey references, he does not want to "throw out the baby with the bath water". Rather he wants to see a convergence between the industrialized states and the developing countries. If it took Canada and China 18 years to negotiate a new bilateral investment treaty, so be it. The result was worth the effort.

Prof. Chen is an unlikely figure to have emerged as one of the leading Chinese international economic law scholars of his generation. He comes from a family of intellectuals in rural Fujian Province, but he lived through all of the vicissitudes suffered by China for the first half of his life. It was not until the relatively ripe age of 50 that he was able to dedicate himself seriously to his field, when he began to learn English and secured an opportunity to study at Harvard.

Returning to China, Prof. Chen quickly became dean of the Xiamen Law School, a leading law school in the country. He was one of the founders of the Chinese International Economic Law Society, and for many years its head. Prof. Chen was awarded the designation by the government as a "nationally eminent and senior jurist", the highest academic honor in Chinese legal circles, one of only 25 such honorees since 1949.

Western readers will not agree with all of Prof. Chen's arguments as they read this compilation of his articles, but they will recognize in *The Voice from China* a serious and thoughtful scholar,

whose distinctive voice has been shaped by the political and economic struggles of his country over the past 150 years. For those in the developing world, it is a voice of guidance and encouragement. For those in the industrialized countries, it is a voice calling for fair treatment and respect. It is a voice that deserves to be heard.

20.1：魅力感召、法治理念与爱国情怀之和谐统一

——读陈安教授《中国的呐喊》有感

赵云*

2013 年，一本重要的国际经济法专著诞生。[1]该书甫一出版立即引起来自世界各地的国际专家学者们的关注和兴趣，尤其是那些对中国国际经济法实践特别感兴趣的国际专家学者们。陈教授是国际经济法领域的世界知名学者。由于特殊的历史原因，他的专业研究工作只能在 1970 年代末才得以展开。[2]但从那时起陈教授撰写了许多国际经济法研究领域的优秀学术文章和书籍，这些学术成果对中国国际贸易和投资相关的法律制度的发展，产生了重大的影响。

陈教授从过去三十年间撰写的学术论文中精选二十四篇，汇辑成为一部专著，[3]全面且充分地展示了其作为一名中国学者对国际经济法的理解。这是中国学者首次向全世界全面表明中国在国际经济事务上的立场。陈教授是谈论这一事务最为合适的人选。实际上，这本专著的一个显著的特点是它从中国的视角系统性地审查和研究了国际经济事务。[4]这正好与此专著的书名——“中国的呐喊”相呼应。因此，对于想知道中国学者对国际经济法持何种看法的读者而言，此专著是一份宝贵资料。

这本专著的论述几乎覆盖了国际经济法的所有领域，包括贸易、投资、区域经济一体化以及经济全球化之趋势。[5]中国执行对外开放政策之后，首先面临的一个主要挑战是争端解决机制。外商投资者尤为关注中国的司法体制以及司法程序的公正与透明。在 20 世纪 80 年代，建立一套与国际实践互相接轨的争端解决机制，是极为迫切的任务。作为应对，中国迅速恢复商事仲裁制度，以在某种程度上减轻外商投资者的顾虑。[6]1995 年施行的《中华人民共和国仲裁法》（以下简称《仲裁法》）是中国仲裁制度发展的一块里程碑。[7]

但是，1995 年《仲裁法》的内容引发了激烈的争论与批判，尤其是适用于中国国内与涉外仲裁裁决的双轨体制。[8]在 1995 年《仲裁法》施行仅两年之后，陈教授及时地对该部法律作出评价。他在论文中审查了《仲裁法》施行之时双轨制度的合理性问题。文章扼要总结了针对涉外仲裁裁决实施不同制度的四种解释与理解，即与民事诉讼法互相接轨的必要性、[9]与 1958 年《纽约公约》以及 1965 年《华盛顿公约》互相接轨的必要性、[10]符合国际实践[1]以

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[1]陈安，中国的呐喊：陈安论国际经济法，Springer Berlin Heidelberg, 2013, pp. 593-594.

[2] Eric Yong Joong Lee, ‘A Dialogue with Judicial Wisdom, Prof. An CHEN: A Flag-Holder Chinese Scholar Advocating Reform of International Economic Law’, The Journal of East Asia and International Law, Vol 4, No.2, Autumn 2011, pp.477-514.

[3]陈安，中国的呐喊：陈安论国际经济法，Springer Berlin Heidelberg, 2013, pp.xiv-xxvii。

[4]Ibid.,p. vi.

[5]Ibid.,pp.xiv-xxvii。

[6]Ibid., pp. 593-594.

[7]Ibid., pp. 594-595.

[8]Ibid., pp. 581, 590, 595-596, 617-618.

[9]Ibid., pp. 592-596.

[10]Ibid., pp. 596-600.

及考虑中国特色[2]。陈教授有条不紊地剖析论争中的基本问题，即有关中国《仲裁法》的涉外仲裁监督规定与下述四个方面的接轨问题。

首先，在关于《仲裁法》中的涉外仲裁监督规定是否与相关的民事诉讼法互相接轨的争论上，陈教授认为，其核心问题就在于《仲裁法》中的双轨制度对国内与涉外的仲裁监督区别对待。[3]具体而言，国内的仲裁裁决可以就程序运作和实质内容同时进行审查与监督，而涉外仲裁裁决则只限于程序运作。[4]在与《民事诉讼法》比较之后，陈教授指出 1995 年《仲裁法》的一个积极的方面是，它进一步扩大了管辖法院对国内仲裁裁决的监督权力范围，并授权法院在必要时可以裁定应予撤销仲裁裁决。[5]但是陈教授同时也强调，《仲裁法》将涉外裁决的监督范围限于程序范围之内，这可能导致在现行的仲裁监督制度下引发矛盾以及不公正的裁决。[6]另外，《民事诉讼法》中明确规定的“公共利益”保护条款在《仲裁法》中毫未提及，因为在对涉外仲裁裁决的监督制度中并没有此类实质性规定。[7]

其次，陈教授在分析 1995 年《仲裁法》是否与国际条约有关规定接轨这一争论上审查了两个国际条约，即 1958 年《纽约公约》和 1965 年《华盛顿公约》。尽管有学者主张“《1958 年的纽约公约》也只是允许作为裁决执行地的东道国的主管机关对程序上有错误或违法之处的外国仲裁裁决实行必要的审查和监督。”[8]陈教授指出，根据《纽约公约》第 5 条第 2 款的规定指出，[9]部分实体性问题比如“公共政策”[10]还是在公约中有所列举，这显然表明《纽约公约》对国际仲裁裁决中实体性内容的监督。另一方面，1965 年《华盛顿公约》促进了解决投资争端国际中心(ICSID)的设立，并在第 52 条[11]规定了其国际仲裁裁决的监督机制。通过这一监督机制，对实体性内容和程序性规定进行必要的审查和监督，以处理仲裁裁决的“终局性”与“公正性”这一对矛盾。[12]另外，陈教授也指出《华盛顿公约》第 52 条规定的，由解决投资争端国际中心对实体性内容进行监督，可以化解“南”与“北”之间的矛盾，因为弱势的一方（通常是发展中国家）可以借助这一条规定进行自我保护，以避免不公正的裁决。[13]因此，鉴于中国 1995 年的《仲裁法》并没有对涉外仲裁裁决的监督机制上包含实体性内容，这很难与国际条约在这一事项上所规定的精神与实践相一致。

再次，在涉外裁决监督条款是否符合先进的国际惯例这一争论上，陈教授言简意赅地列

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[1]Ibid., pp. 600-608.
[2]Ibid., pp. 608-618.
[3]Ibid., p. 590.
[4]Ibid., p. 581.
[5]Ibid., p. 594.
[6]Ibid., pp. 595-596.
[7]Ibid., p. 596.
[8]Ibid., p. 597.
[9]《纽约公约》第 5 条第 2 款规定：倘声请承认及执行地所在国之主管机关认定有下列情形之一，亦得拒不承认及执行仲裁裁决：（1）依该国法律，争议事项系不能以仲裁解决者；（2）承认或执行裁决有违该国公共政策者。
[10]陈安，*op.cit.*, pp. 597 - 598.根据陈安教授的观点，《1958 年纽约公约》上述条文中使用了英美法系所惯用的“公共政策”一词，其含义相当于大陆法系中的“公共秩序”(public order),或中国法律用语中的“社会公共利益”(social public interests)。这些同义语的共同内涵，通常指的是一个国家的重大国家利益、重大社会利益、基本法律原则和基本道德原则。
[11]《华盛顿公约》第 52 条：1.任何一方可以根据下列一个或几个理由，向秘书长提出书面申请，要求撤销裁决：（1）仲裁庭的组成不适当；（2）仲裁庭显然超越其权力；（3）仲裁庭的成员有受贿行为；（4）有严重的背离基本程序规则的情况；（5）裁决未陈述其所依据的理由。
[12]陈安，*op.cit.*, p. 599.
[13]Ibid., p. 600.

举了国外在涉外仲裁裁决监督上的实践，例如美国、英国、德国、日本和澳大利亚的仲裁立法。 "他山之石，可以攻玉"，鉴于发达国家的仲裁立法法，陈教授总结道，发达国家的仲裁监督机制以同一的、统一的标准、同等的必要性要求对待各自的国内仲裁裁决和涉外仲裁裁决。此外，陈教授亦指出发达国家的仲裁立法不仅赋权于管辖法院可以裁定“不予执行”裁决，而且在必要时可以裁定“应予撤销”。[1]至于发展中国家的仲裁立法，陈教授表示其中许多是借鉴发达国家先进的仲裁实践经验，并同样建立了仲裁监督机制对它们国内和涉外仲裁裁决实行“一视同仁”的监督。[2]另外，陈教授还援引了联合国国际贸易法委员会《国际商业仲裁示范法》[3]以证明对国内和涉外仲裁裁决实行监督的国际趋势应当是“单轨制”而非“双轨制”。显然，中国的 1995 年《仲裁法》中关于涉外仲裁裁决监督的规定与发达国家和其他发展中国家的实践相左。

最后，在中国特色以及地方保护主义这一争论上，陈教授重申追求所谓的"一片净土"论会导致"缺乏应有的清醒和足够的警惕"。[4]他还提到党和国家领导人的号召和指示以提醒人们一个事实，即一套有效的、健全的仲裁监督机制应当是打击和杜绝仲裁程序中的一切不法行为的。[5]有些人可能认为当前涉外仲裁的仲裁员的素质相对较高，因此推测在审理仲裁案件期间很少会存在不法行为，[6]而管辖法院某些法官的素质却不够理想，不足以对这些案件形成有效的监督，且他们还可能受"地方保护主义"影响。对于涉外仲裁的"极少不法行为"的推断，陈教授不否认涉外仲裁的仲裁员的素质整体上具有较高水平且在仲裁的过程会严以自律。[7]然而，仲裁审理期间"极少失当行为"并不必然意味着据此就能否定对仲裁员在整个涉外仲裁过程中的不当行为实施监管的必要性。这种忽略审理涉外仲裁案件的仲裁员也可能会存在某些不法及舞弊行为的观点，显然不符合中国现代社会的法治思想以及深深地扎根在法律框架内的正义精神。陈教授不同意以"预防地方保护主义"作为维持目前的"单轨"仲裁监督机制的借口或护盾。这展示了他负责任的态度以及意图寻求一套有效的、健全的仲裁监督机制的决心，他也鼓励法学界、司法界、仲裁界和商界更多的人投身到设计与完善当前的仲裁监督机制的洪流中。

在 1995 年仲裁法实施当时，存在对中国仲裁员素质的质疑以及涉外仲裁程序可能难以有效运行的诸多顾虑是可以理解的。因此，就仲裁制度在中国的正常运作以及排除外商投资者对中国争端解决机制的疑虑而言，一套适当的监督机制显得尤为重要。在这一背景下，陈教授继续就如何加强涉外仲裁程序的监督机制提出建言。诸如设立自律委员会、仲裁研究中心和专家委员会的此类设想，不仅旨在确保仲裁员和仲裁程序的公平公正，[8]而且有利于中国仲裁的有序发展，促进仲裁这一领域的学术研究。

仲裁的概念在商业世界中已被广泛认可，中国国际经济贸易仲裁委员会每年处理大量的

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[1]Ibid., p. 605.
[2]Ibid., pp. 606-607.
[3]S.Zamora&R.A.Brand, ed, Basic Documents of International Economic Law, CCH International, Vol.2, 1991, pp.975～984. 作者在文中提到：“联合国大会于 1985 年 12 月 11 日通过专门决议，向整个国际社会郑重推介这部《国际商事仲裁示范法》，建议“全体会员国对这部《示范法》给予应有的考虑”，以作为各国国内仲裁立法的重要参考和借鉴。这种郑重推介，客观上无异于承认了和进一步加强了示范法各有关条款作为国际通行做法(通例)的应有地位。”
[4]陈安，*op.cit.*, p. 610.
[5]Ibid., pp. 619-611.
[6]这些不法仲裁行为包括：仲裁员在仲裁中凭伪证作出裁决或收受贿赂，舞弊，或者枉法裁决等。
[7]陈安，*op.cit.*, p. 612.
[8]Ibid., pp. 608-618.

商业争端案件。中国仲裁实务发展相当快速，其间也吸收了其他世界级仲裁机构的先进经验，增强了本土仲裁机构在世界仲裁市场中的竞争力。陈教授提出的观点和见解在指导中国仲裁的发展方面至今仍有借鉴意义。只有对仲裁理论与实务的不断研究，方能确保仲裁机构改善自身的仲裁管理与争端解决程序。研究机构等仲裁内部相关机构提供的支持，应当为相关的研究与合作提供一个有益的平台。

在如今的商业世界中，我们强调不同类型的纠纷解决机制共同存在的重要性。陈教授对这一问题也持开放的态度，而没有局限于传统的诉讼程序和仲裁机制。本专著的论文也涉及解决投资争端国际中心和 WTO 争端解决机制分别针对国际投资和贸易争端而设立的纠纷解决机制。这些论文的讨论中，我们可以看到陈教授对待不同类型的纠纷解决机制采纳务实而开明的做法。通过研究这些机制的运作方式，陈教授就如何利用这些机制实现中国的最佳效益提出自己的见解。例如，在分析 WTO 争端解决机构（DSB）这一法律执行机构时，陈教授提到，尽管 WTO 争端解决机制 (DSS) 在所有现有的国际经济争端解决机制当中，地位显著，它仍然问题不少，"先天不足，后天失调"。[1]具体而言，陈教授指出，争端解决机制的“先天不足”在于其所执之法中，如在农产品协议的“三大支柱”(即市场准入、国内支持和出口补贴) 规则中均包含对国际弱势群体不利的“劣法”或“恶法”的内容，它们仍然不合理地在 WTO 争端解决机制中生效运行。[2]此外，正如其他发展中国家在入世时遭受不公正的待遇一样，中国作为世界最大的发展中国家，其已经基本建立了市场经济体制，但这一“双重经济身份”并没有得到 WTO/DSB 的考虑，还迫使中国接受一些“不利条款”。[3]与之相反，有些发达国家则通过制定和执行 WTO 规则受益。在 301 条款和 201 条款的相关案例中，陈教授指出美国在全球经济体系和 WTO 下的优势地位，如其在 WTO 守法方面的刚愎自用、霸权成瘾，进一步阻碍 WTO/DSB 朝着更为公平与公正的争端解决机制发展。上述两个案例进一步反映了 WTO/DSB 是“后天失调”的。[4]但是陈教授强调，由于 WTO 主要由发达国家发起和构建的，包括中国在内的发展中国家应该寻求更灵活的战略，以适应 WTO 的规则体系。发展中国家不应畏惧承担在现行 WTO 规则下所作出的不公正的承诺，而应共同努力以尽快熟悉 WTO 的各种“游戏规则”，并在面临 WTO 不公正的立法、守法、执法、变法之时，共同为弱势群体鼓与呼。[5]陈教授指出，WTO 成员之间关系的核心特征在于贯穿于规则的确立、执行、遵守与改变始末的这一“成员驱动”（WTO 所有的决议都是由其成员方共同做出）功能特征。因此，发展中国家作为"游戏规则"中的弱势一方，尽管力量有限但却是国际经济领域不可或缺的，他们应该凝聚集体力量，构建更为公平的国际经济秩序和国际经济法大背景下，谋求经济上的平权。

从本书体现出的学术贡献来看，不难发觉陈安教授对于不同的司法体系都有深入的掌握及独到的见解。比如，在本书第二十四章《一项判决，三点质疑——评香港高等法院“1993 年第 A8176 号”案件判决书》[6]中，陈安教授批判性地评论了香港高等法院的第 A8176 号案件，并且严格遵循“以事实为依据，以法律为准绳”原则对中国与香港不同的法律和司法体系作了比较。[7]在本章中，陈安教授主要从三个方面，分析并质疑香港高等法院的这一判决，

[1]Ibid., pp. 249-252.
[2]Ibid., p.249.
[3]Ibid., p.249-250.
[4]Ibid., pp. 252-253.
[5]Ibid., pp. 254-258.
[6]Ibid., pp. 717-752.
[7]Ibid., p. 717.

即该案管辖权、所谓的中国票据法自治原则以及诉讼程序中的被告答辩权等。[1]该案原被告双方争议的焦点，[2]是案中的汇票能否绝对地“独立存在”，具有“自主性”；也就是所谓的“汇票自治原则”在国际法、中国国内法和 1993 年香港司法体系中，是否具有法律依据。根据陈安教授的观点，该案的审理法官卡普兰先生作出判决的依据却是原告方律师狄克斯先生提供的子虚乌有的规则。[3]

关于第一项质疑，即关于该案的管辖权，陈安教授指出一个非常重要的有待回答的问题是：该案的管辖权究应属谁，它应由香港的高等法院通过诉讼方式处断，抑或是应由中国的 CIETAC 通过仲裁方式解决？[4]陈安教授注意到，卡普兰法官把该案管辖权判归香港法院，无视合同当事人在该案中自愿选择了签约地、履行地、合同的仲裁管辖机构、适用的准据法（A158 号合同[5]）以及合同仲裁条款应当适用于 10732C 号汇票争端这些事实，从根本上违反了“有约必守”以及当事人“意思自治”这两大基本法理原则。[6]香港《仲裁条例》（第 2 条、第 34A 条和第 34C 条[7]）和英国参加缔结的、对香港有法律约束力的 1958 年《纽约公约》[8]均认可的当事人“意思自治”的实践。[9]

诸如此类，该案裁决对已与国际惯例接轨的中国法律法规缺乏应有的尊重。[10]对此，陈安教授总结为：“任何人，只要真心实意地尊重和遵循当事人‘意思自治’和‘最密切联系’这两大法理原则，就当然会认定中国的法律是解决 A158 号合同一切有关争端的唯一准据法；任何人，只要言行一致地承认中国的法律是解决本合同一切争端的准据法，并对此准据法给予起码的尊重，就绝不会对中国法律体制中有关涉外合同争议及其管辖权的一系列具体规定，弃置不顾。”[11]因此，根据陈安教授对此问题的深入分析，该案审理中把汇票争端管辖权判归香港法院是缺乏法律依据的。

在第二项质疑，也就是关于中国法律“承认”该案汇票之“独立性”问题中，陈安教授

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[1]Ibid., p. 718.
[2]Ibid., p. 718 -723.
[3]Ibid., p. 717.
[4]Ibid., p. 723.
[5]Ibid., p. 726: 在 A158 号买卖合同第 7 条中，双方明确约定：“与合同有关的分歧通过友好协商解决。如不能达成协议，将提交中国国际〔经济〕贸易仲裁委员会仲裁。”
[6]Ibid., pp. 724 -729.
[7]Ibid., pp. 724 -729: 根据香港《仲裁条例》第 2 条、第 34A 条和第 34C 条的规定，涉及香港地区当事人的国际仲裁协议以及按国际协议进行的仲裁，应当适用联合国贸易法委员会于 1985 年 6 月 21 日颁行的《国际商事仲裁示范法》的第一至七章。《国际商事仲裁示范法》第 8 条明文规定: (1)法院受理涉及仲裁协议事项的诉讼，为当事人一方在不迟于就争议实质提出第一次申述之际，即要求提交仲裁，法院应指令当事人各方提交仲裁。但法院认定仲裁协议无效、失效或不能履行者，不在此限。(2)已经提起本条第(1)款规定的诉讼，尽管有关争端在法院中悬而未决，仲裁程序仍可开始或继续进行，并可作出裁决。
[8]Ibid., p. 731: 1958 年《承认和执行外国仲裁裁决公约》(简称《1958 年纽约公约》)第 2 条第 3 款明文规定: 当事人就有关诉讼事项订有本条所称之(书面仲裁)协议者，各缔约国的法院在受理诉讼时，应依当事人一方的请求，指令各方当事人将该事项提交仲裁。但前述协议经法院认定无效、失效或不能实行者，不在此限。
[9]Ibid., pp. 729 -730: 澳大利亚著名学者赛克斯和普赖尔斯在《澳大利亚国际私法》一书中也引证典型判例，对当事人选择仲裁地的法律意义作了更加明确的阐述: ……〔在合同中〕设立条款规定在某特定国家里提交仲裁，这就仍然是一种强有力的推定:实行仲裁的所在地国家的法律就是合同的准据法。这种推定，只有另设明文规定的法律选择条款，或者另有其他具有绝对优势的综合因素表明应当适用其他法制，才能加以改变。因此，订有仲裁条款的合同的准据法，往往就是仲裁举行地当地的法律。
[10] Ibid., pp. 734 -736: 陈安教授指出该案判决缺乏对于“《中华人民共和国民法通则》第 8 章第 145 条的规定”、“《中华人民共和国涉外经济合同法》第 5 条的规定”、“中国司法解释对‘涉外合同争议’准据法的规定”，以及“中国大学教科书对‘涉外合同争议’准据法的基本主张”的应有尊重。
[11]Ibid., p. 739.

指出，狄克斯先生（原告的代表律师，香港律师）在论证其论点时所援引和发挥的论据，即他所谓的“中国在汇票以及其他票据方面实施的各项法律原则”，往往是“无中生有”，或“化有为无”，并不符合事实原貌或原文原意。[1]为了进一步指出狄克斯先生在此方面的“无中生有”或“化有为无”，陈安教授分别从五个角度进行了阐述：第一，中国法律中并不存在“汇票自治原则”这个生造出来的名词，也不存在狄克斯先生所推崇的汇票至高无上的“独立性”；[2]第二，狄克斯先生援引中国的《银行结算办法》时，使用了断章取义的方法；[3]第三，狄克斯先生在转述郭锋先生论文时，阉割前提，歪曲原意；[4]第四，狄克斯先生的见解与中国票据法学术著作中公认的观点、有关的国际公约及中国票据法的具体规定，都是背道而驰的；[5]第五，狄克斯先生在援引《中华人民共和国民事诉讼法》，以论证其所谓的“汇票自治原则”时，竟然篡改条文，无中生有。[6]根据以上的五点，可以很自然地得出结论：狄克思先生所呈递的虚假《证词》，诱使审理法官卡普兰先生落入对“中国票据法律原则”的误判和陷阱。[7]

在第三点中，陈安教授对于该案被告答辩权问题提出了质疑。关于法官卡普兰先生在判决中做出的阐释：“我拒绝了被告的申请，不接受他们提交的陈安教授所写的另外一份意见书，因为已经为时太晚，而且在特殊的环境下，对方的专家狄克思御用大律师没有机会在足够的时间内做出答复”，陈安教授指出此说法难以令人信服。[8]首先，这种“为时过晚”论是站不住脚的，特别是考虑到法官允许狄克思先生为原告提供的专家意见书一拖再拖，逾期整整三个月，[9]而被告针对狄克思意见的答辩书距离狄克思意见书的提交仅仅 26 天却被拒绝接受。从这个角度来说，法官卡普兰先生的“为时过晚”论缺乏令人信服的解释和足够的法律依据。其次，不给予被告充分的答辩权，是违反公平原则，违反国际诉讼程序惯例的。[10]这一原则已经在众多的国内和国际立法中有所体现，例如英美诉讼法的理论和实践中的“自然公平准则”、中国民事诉讼法中的“以事实为根据，以法律为准绳”，以及体现在 1958 年《纽约公约》和 1985 年联合国《国际商事仲裁示范法》中的“给予被诉人以充分答辩权”。[11]总之，此案的判决之依据是卡普兰先生和狄克思先生擅自编造的规则，缺少法律依据，应当被

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[1]Ibid., p. 740.
[2]Ibid., p. 740.
[3]Ibid., p. 741: 狄克斯先生任意阉割了适用第 22 条规定的法定前提:票据经过“背书转让”，并且以移花接木和张冠李戴手法，把它强加于该案 10732C 号这份未经背书转让的汇票头上；同时忽略了或“回避”了《结算办法》第 14 条第 2 款和第 3 款的规定，即对商业汇票使用范围及其票据权利加以重大限制。
[4]Ibid., pp. 743-744:郭文探讨的主题乃是：票据经背书转让之后，票据债务人对于持票的善意第三人的票据债权，应当承担什么责任。换言之，全文的论述主题，特别在论述普通债权与票据债权的区别时，其大前题乃是：第一，票据已经背书转让；第二，已经出现持票的善意第三人……狄克斯先生在援引郭文这些论点用以论证狄克斯先生自己所极力强调的票据权利的 autonomy 时，却有意无意地忽略了或删除了郭文立论的这两个大前题。该案涉讼的 10732C 号汇票，其票据双方当事人始终就是买卖合同原来的双方当事人，从未发生过“背书转让”情事，因此，该案这场票据纠纷的当事人也百分之百的就是原来买卖合同纠纷的当事人，丝毫不涉及任何持票的善意第三人问题。
[5]Ibid., p. 745:在中国，1994 年 2 月出版的《票据法全书》（全书 1950 页，约 315 万字），其中就辟有一章专门论述“票据抗辩”。书中多处论证、肯定和支持票据债务人依法行使抗辩权，从而很不利于或否定了狄克斯先生论证票据的绝对 autonomy……中国学者的上述一贯观点和联合国上述公约所规定的票据法基本原则，不但已经体现在 1988 年中国《银行结算办法》的前引条文之中，而且尤其鲜明地体现在 1995 年 5 月 10 日通过的《中华人民共和国票据法》之中。它强调：票据的签发、取得和转让，都必须“具有真实的交易关系和债权债务关系。”
[6]Ibid., p. 748: 根据陈安教授的分析与对比解释，狄克思先生转述了中国《民事诉讼法》第 189 – 192 条所规定的“督促程序”，但狄克思先生在转述这些条文的时候，将自己不正确的理解强加给中国的有关法律。
[7]Ibid., p. 740.
[8]Ibid., p. 750.
[9]Ibid., p. 750.
[10]Ibid., p. 751.
[11]Ibid., pp. 751-752.

认定为丧失其法律约束力。

在这一起案件判决的研究和分析中，陈安教授展现出了作为一名杰出的国际法学者应有的姿态，有力、有理、有节地抨击了该判决中的非正义。在对此案件分析和对判决质疑中，陈安教授不仅熟练和系统地运用相关的法律原则、实体和程序法律、学术著作，以及国际惯例，来发掘和批判该案判决中不合理和缺乏依据的事项。更重要是，陈安教授此种遵照“以事实为依据，以法律为准绳”原则来对任何司法体系中存在的不公正行为进行据理力争的精神，体现了中国法律体制的核心价值理念，值得所有的法律学者去学习。

上述讨论也正对应陈教授此本专著的基调和核心议题——主权。二战之后，国际社会所重组的国际经济秩序牺牲了发展中国家的利益。中国作为最大的发展中国家，应当扮演改变这种不公正经济秩序的重要角色。以争端解决为例，陈教授深谙相关理论，并能够就如何重构一套国内的争端解决体制，以及发展国际经济并与其他国家保持贸易关系提出务实的见解。[1]对于当下国际经济法立法、守法和变法的问题，陈教授坚持“正确的态度”[2]应当是公平公正地对待弱势群体。因此，我们不应将改革现有的国际经济秩序的呼声仅仅视为一种政治标语，而应将其视为一个“法律”概念以切实促进法律改革上的成果。此外，国际法环境下的弱势群体应当不断努力地主张及呼吁以消除现行的国际经济法的不公平现象，因为正如现在的状况所印证的，发达国家不愿意兑现它们的承诺，即牺牲它们的经济优势去做法律的变革（例如在 WTO 多哈回合谈判中，WTO 中的发达国家成员国拒绝在农业谈判上妥协并迈出实质的步伐）。正是在这一严峻的国际经济法环境下，陈教授强调“南南合作”势在必行，因为“集体力量”是促进稳固和公正的法律变革的唯一可行和有效之途径。[3]

本专著中收集的每篇论文都鲜明地蕴含了主权这一主旋律。在鼓励国际交易与交流的同时，中国应该能够捍卫自身的主权以及经济自主。笔者个人在 2015 年底受邀前往厦门大学开展系列讲座，其间首次见到陈教授，他睿智的言辞就让我印象深刻。陈教授申明了青年一代国际学者积极地参与国际学术交流以及熟悉国际学术讨论的重要性。但是，他也指出中国的国际专家学者不应该盲目地附和或顺从其他学者鼓吹的观点，而应当具有独立的见解并基于对中国大背景的考量提出建议。文如其人，这便是我对陈教授这样一位享有盛誉的学者的确切感受。因此笔者在阅读他的专著期间甚为愉悦，而通过此书，读者们不仅可以获得国际经济法领域的中国学者视角，更为重要的是，拥有一个优良契机去欣赏陈教授这位国际知名学者的个人魅力感召与爱国情怀。

[1]Ibid., p. 167.
[2]Ibid., p. 111.
[3]Ibid., p. 207.

20.2：Harmonization of Charisma, jurisprudence and Patriotism

- The Inspiration from "The Voice from China: An CHEN on International Economic Law"

Yun ZHAO*

A major monograph on international economic law was produced in 2013,[1] immediately arousing the attention and interests from international lawyers around the world, in particular from those with special interest in the Chinese practice in the international economic field. Professor Chen An is a world-renowned scholar in the field of international economic law. Due to the special history, he could only start his research in late 1970s;[2] but since then, Prof. Chen has produced many excellent articles and books in the field, which exert a heavy influence on the development of the legal regime in China for international trade and investment.

Twenty-four carefully-selected articles written during the last three decades by Prof. Chen[3] effectively demonstrate the views of Prof. Chen, a Chinese scholar, on relevant issues on international economic law in a comprehensive manner. It is for the first time that a Chinese scholar comprehensively shows to the world China's position on international economic affairs.[4]Prof. Chen is exactly the right person to speak on the matter. Actually, one distinct feature of this monograph is its systemic review and study of international economic affairs from a Chinese perspective. This exactly corresponds to the title of this monograph – "The Voice from China". Accordingly, this monograph is a valuable source for readers to know the Chinese views on international economic law.

This monograph touches on almost every aspects of international economic law, including trade, investment, regional economic integration and the trend of economic globalization.[5] One major challenge facing China after its implementation of the open-door policy was the dispute resolution mechanism at that time. Foreign investors were seriously concerned about the judicial system and the quality of judicial proceedings in China. The establishment of a dispute resolution framework to be in line with the international practice was an urgent task in the 1980s.[6] China was quick to respond by reinstating arbitration for commercial arbitration, which to a certain extent help to relieve the concerns of foreign investors. The milestone in the development of arbitration was the enactment of Arbitration Law in 1995.[7]

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[1]An CHEN, *The Voice from China: An CHEN on International Economic Law, Understanding China*, Springer Berlin Heidelberg, 2013, pp. 593-594.

[2]Eric Yong Joong Lee, 'A Dialogue with Judicial Wisdom, Prof. An CHEN: A Flag-Holder Chinese Scholar Advocating Reform of International Economic Law', The Journal of East Asia and International Law, Vol 4, No.2, Autumn 2011, pp.477-514.

[3]An CHEN, *The Voice from China: An CHEN on International Economic Law, Understanding China*, Springer Berlin Heidelberg, 2013, pp.xiv-xxvii.

[4]Ibid., p.vi.

[5]Ibid.,pp.xiv-xxvii.

[6]Ibid., pp. 593-594.

[7]Ibid., pp. 594-595.

However, the contents in the 1995 Arbitration Law aroused heated discussions and criticism, especially the dual-track regime ("separate track") [1]for domestic and foreign-related arbitral awards. Prof. Chen was quick to make comments on the regime just two years after the enactment. He examined the reasonableness of the dual-track regime at the time when the Arbitration Law was enacted. Four types of interpretation and understanding for the separate regime for foreign-related arbitral awards were succinctly summarised in his paper, namely, the necessity of compliance with the Civil Procedure Law;[2]necessity of compliance with the 1958 New York Convention and Washington Convention of 1965[3]; following relevant international practices;[4] taking into consideration of the unique situation in China.[5]Prof. Chen methodically indicated the essential issues within the debates concerning the tallying provisions of Foreign-Related Arbitration Supervision of Arbitration Law with the four aspects below.

First, with regard to the debate over whether Arbitration Law provisions tallying with corresponding Civil Procedure Law in foreign-related arbitration supervision, the core issue mentioned by Prof. Chen concerning the separate track adopted by China's Arbitration Law is that it differentiates domestic arbitration supervision from foreign-related arbitration supervision.[6] That is to say, both procedural operation and substantive matters are allowed to be examined and supervised in the domestic awards, whereas in a foreign-related arbitral award, only its procedural operation is allowed to be examined and supervised.[7] In the comparison between the current Arbitration Law and the Civil Procedure Law of China, one positive aspect of the Arbitration Law, noted by Prof. Chen, is that it has further broadened the scope of the jurisdictional court's supervision power over domestic awards, thus empowering the court to set aside an arbitral award when necessary.[8] However, Prof. Chen also emphasized that this Arbitration Law limits the scope of the supervision over foreign-related arbitration awards to procedure operations only, and can lead to some contradictions and unjust awards under present arbitration supervision mechanism.[9] Moreover, the "public interest" protection, which is expressly enumerated in the Civil Procedure Law, is not appropriately reflected in the Arbitration Law as no such substantive content is listed in the supervision over foreign-related awards.[10]

Second, two international treaties, i.e. New York Convention of 1958 and Washington Convention of 1965, have been involved in the analysis of Prof. Chen regarding the debate over whether Arbitration Law provisions tallying with those of international treaties correspondingly. Even though some people argued that "New York Convention of 1958 only allows the competent authority of a Contracting State where an enforcement is sought to carry out a necessary examination and supervision over foreign awards involving procedural errors or violations of

[1]Ibid., pp. 581, 590, 595-596, 617-618.
[2]Ibid., pp. 592-596.
[3]Ibid., pp. 596-600.
[4]Ibid., pp. 600-608.
[5]Ibid., pp. 608-618.
[6]Ibid., p. 590.
[7]Ibid., p. 581.
[8]Ibid., p. 594.
[9]Ibid., pp. 595-596.
[10]Ibid., p. 596.

law",[1]Prof. Chen indicated that based on the stipulation in Section 2, Article 5[2] of the New York Convention, some substantive issues such as "public policy",[3] are enumerated in this Convention and thus obviously manifesting that New York Convention stipulates the supervision over substantive contents in international arbitral awards. On the other hand, the Washington Convention of 1965, which facilitates the establishment of International Centre for Settlement of Investment Disputes (ICSID), also enumerates its supervision mechanism on international arbitration in Article 52.[4]This supervision mechanism is employed to strike a balance in the contradiction between the"finality" and "justice" of an award by conducting necessary examination and supervision over both the substantive contents and procedural operations.[5] Furthermore, Prof. Chen also indicated that including substantive matters to be supervised by ICSID in Article 52 can settle the contradiction between the "North" and the "South", based on the fact that the weaker party (frequently the developing countries) can resort to this article to protect themselves from unjust awards.[6] Therefore, considering the present Arbitration Law of China has not included the substantive matters into the supervision mechanism over foreign-related arbitral awards, it is unlikely that this mechanism is in compliance with the spirit and practice of international treaties in this regard.

Third, in the respect of debating whether foreign-related awards supervision provisions in compliance with advanced international practices, Prof. Chen precisely and concisely enumerates the instances of foreign practice in terms of foreign-related awards supervision, *i.e.* the arbitration enactments of United States, United Kingdom, Germany, Japan, and Australia. As "stones from other hills may serve to polish the jade of this one", in view of the developed countries' arbitration enactments, Prof. Chen concluded that the arbitration supervision mechanism in developed countries treat the domestic arbitration and foreign-related arbitration with identical and unified standard and corresponding necessary requirements. Moreover, Prof. Chen also indicated that the developed countries' arbitration enactments not only empower the jurisdictional court to make an order to refuse the enforcement of an award, but set aside it when necessary as well.[7] As to the developing countries' arbitration enactments, Prof. Chen indicated that many of them draw on the advanced arbitration practice experience from the developed countries, and also set up arbitration supervision mechanism to conduct identical supervision towards domestic and foreign-related

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[1]Ibid., p. 597.

[2] According to Section 2, Article 5 of New York Convention of 1958, if the competent authority in the country where enforcement is sought (the host country) finds that (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country or, (b) the recognition or enforcement of the award would be contrary to the public policy of that host country, recognition and enforcement of an arbitral award may be refused.

[3]An CHEN, *op.cit.*, pp. 597-598. According to Prof. Chen, the term "public policy" which is commonly used by common law systems is employed in the above stipulation of the New York Convention of 1958. Its meaning is equivalent to the term "public order" in a civil law system or to the term "social public interests" in Chinese law. The common implication of these synonyms usually refers to the fundamental interest of a state and society and the basic legal rules and basic moral rules of the country.

[4] According to Article 52 of the Washington Convention of 1965, either party can request annulment of the award by an application to the ICSID, on one or more of the following grounds: (a) that the tribunal was not properly consulted; (b) that the tribunal had manifestly exceeded it powers; (c) that there was corruption on the part of a member of the tribunal; (d) that there had been a serious departure from a fundamental rule of procedure; or (e) that the award had failed to state its reasons on which it was based.

[5]An CHEN, *op.cit.*, p. 599.

[6]Ibid., p. 600.

[7]Ibid., p. 605.

awards.[1] Besides, Prof. Chen also referred to the UNCITRAL Model Law on International Commercial Arbitration[2] to demonstrate the "same track" international trend instead of "separate track" concerning the foreign-related arbitration supervision and domestic awards supervision. It is obvious that the present provisions concerning foreign-related arbitral awards supervision in the Arbitration Law of China are not in compliance with neither the developed countries' arbitration enactment practices, nor the practices in the developing countries.

Fourth, over the debate upon the uniqueness and local protectionism of China, Prof. Chen reiterated that pursuing the so-called "a piece of pure land" can lead to "lacking a clear head and due vigilance".[3] He also referred to the calls and instructions of party and state leaders[4] to remind people of the fact that an effective and perfective arbitration supervision mechanism is expected to prohibit and fight any misconducts[5]in the arbitral proceedings. Some people may argue that the current arbitrators in the foreign-related arbitration are at relatively higher levels and thus are expected to commit few misconducts during these arbitrational cases, whereas some judges from jurisdictional courts are not high enough to effectively conduct supervision over these cases and may be influenced by "local protectionism." With regard to the "few misconducts" in the foreign-related arbitration, Prof. Chen admitted that arbitrators in the foreign-related arbitration are at relatively high level and may behave themselves well during the arbitration courses.[6] However, "fewer misconducts" being discovered during the arbitration proceedings does not necessarily mean that the whole process of foreign-related arbitration should not be supervised in terms of misconducts by arbitrators. Obviously, neglecting the possibility that certain misconducts and malpractices may be exercised by arbitrators in the foreign-related arbitration, is not in line with China's modern social rule-by-law thought and the spirit of justice rooted deeply inside the law. Prof. Chen disagreed with the opinion to manipulate the "local protectionism" as an excuse or a guarding shield for maintaining the present "separate track" arbitration supervision mechanism, which identifies his responsible attitudes and determined mind-set towards an effective and perfective arbitration supervision system, and encouraged more people from law circles, judicial circle, arbitral circles, and business circles to engage into the designation and perfection of the current arbitration supervision mechanism.

It is understandable at the time of the enactment of the Arbitration Law, a lot of concerns existed in China over the quality of arbitrators and possible malfunctioning of the arbitration mechanism for foreign-related arbitration proceedings; consequently, a proper supervision mechanism appeared all the more important for the proper functioning of arbitration in China and dissipate the concerns of foreign investors over the dispute resolution system in China. Under this circumstance,

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[1]Ibid., pp. 606-607.
[2] According to Basic documents of international economic law, by S.Zamora&R.A.Brand, ed, Basic Documents of International Economic Law, CCH International, Vol.2, 1991, pp.975～984, the United Nations General Assembly adopted a special resolution on 11 December 1985, seriously recommending this Model Law on International Commercial Arbitration to the whole international society and suggesting that "all States give due consideration to the Model Law" as a main reference for national enactments on arbitration.
[3]An CHEN, *op.cit.*, p. 610.
[4]Ibid., pp. 619-611.
[5] Including awards made on the basis of perjury or an arbitrator's corruption, malpractice, distorting the text of law in the arbitration, etc.
[6]An CHEN, *op.cit.*, p. 612.

Prof. Chen continued to make suggestions on how to strengthen the supervision mechanism for foreign-related arbitration proceedings. The ideas on the establishment of a Self-Disciplined Committee, Research Institute of Arbitration, and Expert Committee have their target to ensure the proper function of the arbitrators and the arbitration proceedings.[1] These ideas, moreover, support the smooth development of arbitration in China and promote academic research on the topic of arbitration.

The concept of arbitration has been widely accepted in the commercial world, with the CIETAC receiving large number of commercial cases annually. The arbitration practice has developed rather quickly, absorbing useful experience from other world arbitration institutions, adding in the competitiveness of the Chinese arbitral institutions in the world arbitration market. The ideas raised by Prof. Chen continue to be useful in guiding further development of arbitration in China. Only by continuous study of arbitration theory and practice, can the arbitration institutions improve on their arbitration administration and dispute resolution processes. The support of relevant internal organs, such as research institutes shall provide a useful platform for relevant research and cooperation.

In the commercial world nowadays, we emphasize the importance of the co-existence of different types of dispute resolution mechanisms. Prof. Chen was also open-minded on the matter, not limiting himself to the traditional litigation process and the arbitration mechanism. The papers in this monograph also touches on the ICSID and WTO dispute settlement mechanisms for international investment and trade disputes. From the discussions in these papers, we can see that Prof. Chen adopted a pragmatic and flexible approach in dealing with different types of disputes. By examining the functioning of these mechanisms, Prof. Chen was able to put forward his insights on how to make use of these mechanisms to realize the best benefits of China. For instance, in the analysis of the WTO's law-enforcing body – the DSB, Prof. Chen mentioned that even though the WTO's dispute settlement system (DSS) has its distinctive status among all the available international economic dispute settlement mechanisms, it still owns "congenital deficiency and postnatal imbalance".[2] To be specific, Prof. Chen noted that the DSB system has "congenital deficiency" in the rules of agricultural products' "three pillars" (i.e. market access, domestic support, and export subsidy) all contains "bad or evil" contents that run against the interests of the weak groups, which still unreasonably take effect in the WTO's DSB system.[3] And just being similar to other unfair treatment occurring in the accession process of developing countries to the WTO, the WTO/DSB did not take into account the "dual economic identity" of China, which represented the largest developing country in the world with a basic system of a market economy, thus not confirming the market economy status in China and forcing China to accept some "disadvantageous articles."[4] On the contrary, some developed countries in the WTO have benefited from the partial law-making and law-enforcing in the WTO/DSB. It is in the cases of Section 301 and Section 201 that Prof. Chen indicated that the superior status of the United States both in the global economy and the WTO, i.e. the "self-willed and

[1]Ibid., pp. 608-618.
[2]Ibid., pp. 249-252.
[3]Ibid., p.249.
[4]Ibid., p.249-250.

hegemony-addicted" behaviour in the WTO law-abiding, has further hindered the WTO/DSB from becoming a more balanced and justice dispute settlement mechanism. The two cases further reflected that the WTO/DSB system is "postnatal imbalance".[1]However, Prof. Chen emphasized that since the WTO has been found and designed mainly by developed countries, developing countries including China should seek for a more flexible strategy to adapt to the rule system in the WTO. It is not that the developing countries should be afraid of assuming the burden of unfair commitment responsibility under current WTO rule system. It is just that the developing countries should make collective endeavour to nurture proficiency in various "rules of the games" as soon as possible, and stand together to make advocating sounds for the weak groups when confronting the unjustified law-making, law-abiding, law-enforcing and law-reforming circumstances in the WTO.[2]Prof. Chen mentioned this pivotal feature existing in the WTO membership, which is this "member-driven" characteristic functioning throughout the process of making, abiding, enforcing and reforming law. Therefore, the developing countries, acting as the weaker part in the "rules of the game" should combine their limited yet indispensable power in the international economic environment to pursue a level playing field in the context of a more balanced IEO and IEL background.

From the scholarly contributions reflected in this monograph, it is not difficult to find that Prof. Chen has unique insights and deep understanding of different judicial systems. For example, in chapter 24 of this monograph[3] - "Three aspects of inquiry into a judgment: Comments on the High Court Decision, 1993 No.A8176, in the Supreme Court of Hong Kong", Prof. Chen critically commented on the specific High Court Decision case 1993 No. A8176, and compared different laws and judicial systems in China and Hong Kong, strictly following the principle of "taking facts as the basis, and taking laws as the criterion."[4] In this chapter, Prof. Chen analysed and queried this High Court Decision in three major aspects, i.e. the jurisdiction of the case, the so-called principle of autonomy in the Chinese Bills Law, and the defendant's right of defence during civil procedure.[5]The subject matter in dispute[6]is whether the Bills of Exchange "can stand independently" and owned "autonomy", i.e. whether the so-called "principle of autonomy of Bills of Exchange" has legal basis from the perspectives of international law, domestic law in China, and the Hong Kong judicial system in 1993. According to Prof. Chen, the judge in this case, Justice Kaplan, made the judgment according to the presumptuously fabricated rules made by Mr. Dicks.[7]

With regard to the jurisdiction of the case, Prof. Chen indicated that the question that needs to be answered is whether this case should be decided by the High Court of Hong Kong, or settled by the CIETAC through arbitration.[8]Prof. Chen noted that Judge Kaplan neglected the facts that both contracting parties in this case voluntarily chose the place of contracting, the place of performance,

[1]Ibid., pp. 252-253.
[2]Ibid., pp. 254-258.
[3]Ibid., pp. 717-752.
[4]Ibid., p. 717.
[5]Ibid., p. 718.
[6]Ibid., p. 718 -723.
[7]Ibid., p. 717.
[8]Ibid., p. 723.

the entity for arbitration and the proper law (Contract A158[1]), and that the arbitration clause should be applied to the Bills of Exchange, thus violating the principles of *Pacta Sunt Servanda* and "Autonomy of Will".[2] Both the Hong Kong Arbitration Ordinance (Article 2, 34A, and 34C[3]) and the 1958 New York Convention,[4]to which Hong Kong is legally bound, acknowledged the practice of party autonomy.[5] As such, the decision failed to pay due respect for Chinese Laws and Regulations that tally with international practice.[6]Prof. Chen summarized that "anyone who sincerely respects and complies with the major legal principles of 'autonomy of will' and 'the closest connection' will inevitably consider Chinese law as the only proper law to resolve all the relevant disputes arising from Sales Contract A, and anyone who shows due respect to Chinese law and honestly recognizes and confirms it as the proper law…will definitely not disregard the series of specific provisions under the Chinese legal system."[7] Hence, Prof. Chen concluded that the judgment was lack of legal basis.

Regarding the issue of the recognition in Chinese law of the "Autonomy" of the Bills of Exchange, Prof. Chen indicated that the argument raised by Mr. Dicks (Hong Kong Barrister representing the plaintiff) in terms of legal principles applicable in China to bills of exchange and other payment instruments were fabricated or misrepresented and not in conformity with the reality and the original meanings.[8] In order to elaborate on Mr. Dicks' fabrication and misrepresentation, Prof. Chen elaborated from the following five points: first, Chinese law did not have strange expressions of "the autonomy of bills of exchange" and absolute "independence" of bills of exchange, as worded by Mr Dicks;[9] second, Mr. Dicks' citation from the procedures for bank

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[1]Ibid., p. 726: According to Clause 7 in Contract A, they agreed that: "Any difference relating to the contract will be resolved by compromise. If compromise cannot be reached, it will be submitted to the China International (Economic and) Trade Arbitration Commission for arbitration."

[2]Ibid., pp. 724 -729.

[3] Ibid., pp. 729 -730: Under the provisions of Articles 2, 34A, and 34C of the Hong Kong Arbitration Ordinance (CAp.341), an international arbitration agreement and an arbitration pursuant to an international arbitration agreement are governed by Chapters I to VII of the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985 (hereinafter "UNCITRAL Model Law"). Article 8 of the UNCITRAL Model Law explicitly provides: a court before which an action is brought in a manner which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative, or incapable of being performed; Where such an action has been brought , arbitral proceedings may nevertheless commenced or continued, and an award may be made, while the issue is pending before the court.

[4] Ibid., p. 731: Section 3 of Article II of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention) provides: The court of a Contracting State, when seized of an action in a matter in request of which the parties have made an (written arbitration) agreement within the meaning of this Article, at the request of one of the parties, refers the parties to arbitration unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

[5] Ibid., pp. 729 -730: famous Australian scholars E.I. Sykes and M.C. Pryles also cited typical precedents in their work, Australian Private International Law, and made the precise statement that: Nevertheless, a clause specifying arbitration in a particular country remains a strong inference that the proper law is that of the country where arbitration is to be held. The inference can be displaced only by an express choice-of-law clause or by a fairly overwhelming combination of factors pointing to another legal system. Thus, often the proper law of a contract (including the arbitration clause) will be the law of the place where the arbitration is to be held.

[6] Ibid., pp. 734 -736: Prof. Chen indicates that the Judgment is a lack of due respect for Article 145 of Chapter VII, General Principles of Civil Law of the People's Republic of China, Article 5 of the Law of the People's Republic of China on Economics Contracts Involving Foreign Interests, a judicial interpretation by the People's Supreme Court of the PRC, and also the Chinese collegiate textbook's basic position on the proper law of disputes arising from the economic contracts involving foreign interests.

[7]Ibid., p. 739.

[8]Ibid., p. 740.

[9]Ibid., p. 740.

settlements were out of context;[1] third, Mr. Dicks had emasculated its prerequisite and garbled its original meaning when citing Mr. Guo Feng's article;[2] fourth, Mr Dick's opinion ran counter to the generally accepted viewpoints of Chinese academic works on bill laws, the stipulations of relevant international conventions, and the bills law in China[3]; and fifth, Mr Dicks had distorted the original text when quoting the Civil Procedure Law of PRC as evidence for the said "Autonomy of Bills of Exchange"[4]. Based upon these five points, it was thus safe to conclude that Mr. Dicks had submitted ill-grounded affidavit which misled Justice Kaplan in respect of China's legal principles on payment instruments[5].

Prof. Chen then moved further to question on the defendant's right of defence in this case. Regarding Justice Kaplan's explanation in the judgment that "I refused an application by the Defendant to produce an additional report by Professor CHEN An on the grounds that it was too late and in the special circumstances there was no opportunity for Mr. Dicks Q.C., the expert on the other side, to reply to it in sufficient time", Prof. Chen opined that it was hardly convincing.[6] Firstly, the reason "It was too late" was not tenable. The Judge permitted the extension of "the time within which Mr. Dicks had to submit his expert evidence for the plaintiff many times",[7] while the defendant's defence to Mr. Dicks' evidence was rejected for only 26 days after the presentation of Mr. Dicks' evidence. Justice Kaplan obviously had no persuasive explanation and concrete legal basis on this issue. Secondly, denial of the right to defence was contrary to the principle of equity and international practice on litigation procedures.[8] This principle had been reflected in many domestic and international laws, including "the rule of nature" in the Anglo-American procedural laws, the principle of "basing on facts and taking laws as criteria" in the Chinese Civil Procedure Law, "the right to defence" in the 1958 New York Convention and the

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[1]Ibid., p. 741: he (Mr. Dicks) emasculates the prerequisite of Article 22 that the Bill of Exchange should have been "transferred by endorsement" and forcibly applies the garbled stipulation to the case of Bill of Exchange 10732C. Meanwhile, he neglects or, in another word, evades the provisions of paragraphs 2 and 3 of Article 14 which apply major limitations to the sphere of application of the rights to a bill of exchange.

[2]Ibid., pp. 743-744: The subject of Mr. Guo's article is the liability of the debtor on a payment instrument transferred by endorsement to the holder of the instrument who is a bona fide third party. In other words, the prerequisites of the argument of the whole article, inter alia those arguments on the differences between an ordinary debt and a debt upon a payment instrument, are that, firstly, the instrument has been transferred by endorsement; and secondly, it has been held by a bona fide third party…However, Mr. Dicks ignored or intentionally garbled the two prerequisites of Mr. Guo's article when citing it as evidence for his so-called autonomy of payment instruments. The Bill of Exchange has nothing to do with any third party because it has never been transferred by endorsement and the payee and the payer are consistently the original two parties of Sales Contract A.

[3]Ibid., p. 745: In China, the 1984 Complete Compilation of and Comments on Bill Laws (with 1950 pages and about 3.15 million words) contains a chapter devoted to "The Defence Against Payment Instrument." In this book, there are many arguments for defence by the obligors of payment instruments; these are unfavourable to the absolute "autonomy" of payment instruments insisted on by Mr. Dicks…the above viewpoints and principles are embodies not only in the 1988 Settlement Procedures of Banks but also more explicitly in the Law of Bills of the People's Republic of China, promulgated on 10 May 1995, which stressed that the issue, obtainment ,and transfer of a payment instrument (bill) shall all "be based on a real transaction and credit – debt relation."

[4] Ibid., p. 748: according to Prof. Chen's analysis and comparison interpretation, Mr. Dicks restated his so-called supervisory procedure (procedure for hastening debt recovery) provided by Articles 189 to 192 of the Civil Procedure Law, but Mr. Dicks rewrite the original text of the aforementioned provisions in the Civil Procedure Law, in which he forced his incorrect understandings upon the law.

[5]Ibid., p. 740.

[6]Ibid., p. 750.

[7]Ibid., p. 750.

[8]Ibid., p. 751.

1985 UNCITRAL Model Law on International Commercial Arbitration.[1] To sum up, the judgment based on the presumptuously fabricated rules made by Mr. Kaplan and Mr. Dicks had no legal basis.

In this chapter, Prof. Chen demonstrated the firm gesture of a leading international law scholar to argue strongly, reasonably, and pertinently against any unjust grounds, which deserves to be learnt by all legal scholars. As reflected in this chapter, Prof. Chen not only has a comprehensive understanding of domestic and international laws in the field, but also can proficiently and systematically apply relevant legal principles, substantial and procedural rules, academic works, and international practice to critically comment on the inappropriate and ill-grounded issues in the judgment.

The line of the above discussions exactly corresponds to the basic tone of this monograph and the essential subject for Prof. Chen, which is sovereignty. After the Second World War, international society reconstructed international economic order at the sacrifice of developing countries. China, as the largest developing country, should play an important role to change the unfair economic order. Taking dispute resolution as an example, Prof. Chen, having a deep understanding of the international dispute theory, was able to come up with realistic ideas on how to reconstruct a national dispute resolution framework while developing international economic and trade relationships with outside world.[2] With regard to the relationship among law-making, law-abiding, and law-reforming of the existing International Economic Law (IEL), Prof. Chen insisted that "a correct attitude"[3] should not break the balance of treating the weak groups fairly and justly in terms of making, abiding and reforming IEL. Hence, we should not treat demanding reform of the established IEO (International Economic Order) merely as a political slogan, but as a "legal" concept so that real legal reforming achievements can be expected in the IEO. Moreover, the weak groups in the international law environment should fight for themselves to contribute more advocacy and appeal for eliminating the unfair *status quo* of rules system in the IEL, because as current situation reflects, the developed countries are not willing to enforce their commitment to sacrifice their superior economic status for a level playground in law-reforming (e.g. in the process of Doha Agenda in the WTO, the developed country Members of the WTO refuse to comprise in Agriculture negotiation, thus making real progress in this field unpromising.) It is in such severe IEL environment that Prof. Chen emphasized that "South-South Coalitions" are imperative considering the "collective power" is essential to promote solidified and fairly law-reforming progress.[4]

This underlying tone of Sovereignty is obvious from each and every paper collected in this monograph. While encouraging international transactions and exchanges, China should be able to protect its sovereignty and economic autonomy. I have deepest impression from my first meetup with Prof. Chen by end of 2015 when I was invited to give a series of seminar at Xiamen

[1]Ibid., pp. 751-752.
[2]Ibid., p. 167.
[3]Ibid., p. 111.
[4]Ibid., p. 207.

University. Prof. Chen wisely made his statement that it is important for the younger generation of international lawyers to actively participate in international academic exchanges and be familiar with international academic discussions; however, Chinese international lawyers should not blindly follow whatever other scholars proposed. One should have an independent mind and make suggestions by taking into account of the Chinese circumstance. This exactly demonstrate the unity of Prof. Chen as a well-respected scholar with his papers. Accordingly, the reading process of this monograph has been an extremely pleasant one. Readers will not only obtain knowledge on Chinese views on international economic law, but more importantly, has the opportunity to appreciate the charisma and patriotism of Prof. Chen, as a world-renowned international lawyer.

21.1：驳“中国威胁论”——史学、政治学与法学的视角

——读陈安教授《中国的呐喊》第四章

张祥熙[1]

右图为《美国霸权版“中国威胁”谰言的前世与今生》，陈安著，江苏人民出版社 2015 年 3 月第一版。

《美国霸权版“中国威胁”谰言的前世与今生》是教育部立项遴选和定向约稿的哲学社会科学研究优秀成果普及读物之一，由江苏人民出版社 2015 年出版。全书从史学、法学和政治学的三维角度，综合地探讨和剖析“中国威胁论”的古与今、点与面、表与里。本书可视为作者 2014 年在德国施普林格出版社出版的英文专论 The Voice of China: An CHEN on International Economic Law 第四章的最新详细扩展。

该书的基本内容原是作者 2011-2012 年相继发表于中外权威学刊的中英双语长篇专题论文，题为《评“黄祸”论的本源、本质及其最新霸权“变种”：“中国威胁”论》。发表以来，获得中外学术界广泛好评。该文的英文版本刊登于国际知名的日内瓦《世界投资与贸易学刊》，该刊主编 Jacques Werner 认为论文融合史学、政治学和法学，文章见解精辟，“让我在审读中享受到乐趣，因此乐于尽快采用此文”。随即在该刊 2012 年第 1 期作为首篇重点论文刊出，篇幅达 58 页，占该期三分之一以上。数十年来投身于“南南合作”事业的国际活动家、原“南方中心”秘书长 Branislav Gosovic 先生撰写专文对论文给予高度评价，认为它“乃是一篇力排‘众议’、不可多得的佳作。这篇文章的确是一项研究与解读当代世界政治的重大贡献”，“分析透彻并且富有启迪意义。我衷心期待：中国乃至其他发展中国家的领导人、决策者和智囊舆论人士们，都能阅读并研究这篇文章，汲收其中的深刻见解和建议。对于那些想研究或理解当今中国与西方关系的人们来说，这也是一篇‘必读’文章”。

此书引起韩国出版界密切关注，一家出版机构已与江苏人民出版社签订翻译出版合同，预定 2017 年推出韩文本。可以预期，其国际学术影响势必逐渐扩大。

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[1] 作者系厦门大学南洋研究院博士生。本书评原发表于《中华读书报》，2016 年 08 月 31 日第 10 版。

所谓的“中国威胁”谰言，喧嚣迄今不止一百四十余年，其直观的表象即是以危言耸听和蛊惑人心的话语，故意渲染、夸大、曲解中国各个方面的历史和现状，胡说中国会给西方带来种种威胁。尽管这种罔顾事实的论调在实践中一再被证伪，但是基于西方中心主义的视角的强权政治依旧存在和维护西方话语霸权的需要，“中国威胁论”并不会随着时间的流逝而消失。学者们对于此种“真实的谎言”展开了各种研究与批判。厦门大学法学院教授陈安《美国霸权版“中国威胁”谰言的前世与今生》一书无疑是这方面研究中的翘楚。

《美国霸权版“中国威胁”谰言的前世与今生》一书高屋建瓴，紧扣甚嚣尘上的“中国威胁论”这一重大问题，娴熟地运用跨学科的方法，探讨了“中国威胁论”的来龙去脉，深刻理解其本源和本质，实现了由现实追溯历史，又由历史回归现实的研究，提出了许多新观点，为国家外交决策和对外交往提供了有益的参考。

诚如作者在书中所言，“以史为师，以史为鉴，方能保持清醒头脑和锐利目光”。[1]正是基于其强烈历史使命感，作者追根溯源，对“中国威胁论”的本源进行了由古及今、由点到面和由表及里的全方位、多层次的系统考察和深入探讨，厘清了“黄祸”论——“中国威胁论”的历史演进进程，深刻指出当代“中国威胁论”就是 19 世纪中后期一度甚嚣尘上的俄国沙皇版的“黄祸”论和德国皇帝版“黄祸”论在新历史条件下的“借尸还魂”。

在廓清了“中国威胁论”的前世与今生后，作者又进一步在历史研究的基础上，运用政治学研究的视角，对“中国威胁论”的实质进行了鞭辟入里的分析论证。作者在查阅大量史料记载的基础上正本澄源，指出西方人所认为的“蒙古人两度西征对欧洲造成‘黄祸’战祸和威胁”的说法是于史无据之谈。因为在中原大地建立元朝的蒙古统治者从未派兵入侵过欧洲，更遑论是讲礼让爱和平的中国汉人。紧接着，作者在分析了沙俄入侵中国、德国入侵中国和八国联军侵华，以及 1949 年中华人民共和国成立之后以美国为首的西方国家对中国推行的一系列敌视政策等历史事实的基础上，一针见血地指出，“黄祸”论——“中国威胁论”鼓吹者最惯用的伎俩是“贼喊捉贼”，威胁者自称受“被威胁”，加害人伪装“受害人”，其实质乃是鼓吹“侵华有理”“排华有理”“反华有理”“遏华有理”，而鼓吹排华、反华和遏华，往往先导于和归宿于军事行动上的侵华。正因为如此，无论是“黄祸”论还是其后的“中国威胁论”，都只不过是西方国家在强权政治和霸权体系下自说自话的谰言。

作者运用法学研究的视角，分析其中蕴含的基本法理与和平内涵，有力地驳斥了“中国

[1] 陈安，《美国霸权版“中国威胁”谰言的前世与今生》，江苏人民出版社 2015 年 3 月第一版，第 3 页。

威胁论”这一“真实的谎言”。作者在考察了自汉唐至明朝中国对外经济文化交流的大量史实后认为，中国人通过长期的独立自主和平等互惠的对外经济文化交往，既为自身经济、社会和文化的进步起到了促进作用，也为全球经济文化的不断进步、共同繁荣和丰富多彩，作出了重大的贡献。然而，鸦片战争之后，近代中国落后丧权、饱受欺凌。西方列强通过一系列条约的签订，迫使中国纳入到由西方主导的资本主义殖民体系之中。中国的对外经济交往，无论在国际贸易、国际投资、国际金融、国际税收的哪一个方面，无论在国际生产、国际交换、国际分配的哪一个领域都须受制于列强，低人一等。弱肉强食的丛林法则显露无遗。中华人民共和国成立之后，“中国开始在新的基础上积极开展对外经济交往，促使中国历史传统上自发的、朴素的独立自主和平等互利的法理原则，开始进入自觉的、成熟的发展阶段”。但“在这个历史阶段中，中国遭受两个超级大国为首的封锁、威胁和欺凌，中国依然是被威胁者、被侵害者，而包括美国在内的坚持殖民主义、帝国主义既得利益的列强，则仍然是无庸置疑的威胁者、加害者”。[1]强权政治和丛林法则的影响也依然延续。正因为如此，冷战结束之后，中国积极融入世界政治经济体系，也迫切希望改变不公正、不合理的世界经济体系。

中国要实现中华民族伟大复兴的中国梦，需要努力营造一个长期和平稳定的国际环境，这就使得中国长期实行和平外交政策成了历史的必然。但作者也不忘提醒我们，历史发展之必然也犹如硬币之两面，既有顺应历史潮流的发展趋势，也有悖逆历史潮流的趋势。美国长期推行侵华反华的政策也非历史之偶然，这一点我们要有清醒的认识。例如在美国支持下，菲律宾、越南等国在南海抛出的“中国南海威胁论”和日本抛出的“中国东海威胁论”，以及美国“亚太再平衡”战略的推出就是最好的例证。这一历史必然的总根源在于美国的帝国主义经济体制。作者告诫善良的中国人切勿对“黄祸”论——“中国威胁论”的实践后果掉以轻心，切勿“居安而不思危”或“居危而不知危”。

余音尚未消散，我们的邻国韩国某些当权人士就不顾中国的强烈反对，一意孤行要在韩国部署“萨德”系统。“萨德”探测距离最远范围远远超出防御朝鲜导弹所需，不仅直接损害中国等国的战略安全利益，也破坏地区和全球的战略稳定。不仅如此，韩国媒体也密集炒作“大国的报复”，认为中国对韩国施压才刚开始。殊不知，韩国自身及其背后的美国才是这场风暴的肇事者，这不仅无助于东北亚局势的缓和，而且极大地伤害了中韩关系，渔利的是美国。欣闻本书的韩文版将在韩国面世，希望韩国的领导人、决策者、智囊、舆论界人士，

[1] 陈安，《美国霸权版“中国威胁”谰言的前世与今生》，江苏人民出版社 2015 年 3 月第一版，第 132 页。

乃至普通学者、普通百姓都能好好阅读此书，了解此书之富有洞见的观点和建议，重新审视“萨德”部署一事，切勿利令智昏，做出搬起石头砸自己的脚的事情。我想，这也正是此书重大现实意义的最好体现之一吧。

21.2：Rebutting “China's Threat” Slander from the Perspectives of History, Politics and Jurisprudence

- On Chapter 4 of Professor CHEN’s Monograph “The Voice from China”

“A Most Important Contribution to this Kind of Research at Present ” ---Prof. B. Gosovic

Zhang Xiangxi[1]

The so-called “China threat” slander has dinned in the Western world for more than one hundred and forty years. Its most commonly adopted form is by using of the scaremongering and demagogic words to intentionally pile up, exaggerate and distort various aspects of China’s history and *status quo*, with an aim to create an illusion that China will bring threats for the West. Although this kind of facts-ignoring argument has been falsified repeatedly in practice, it will not disappear with the passage of time, as there is still need from the western center of power politics to maintain the western intellectual hegemony at the global level. Scholars have made a variety of research and criticism on this “living falsehood”, and with its Chapter 4, this book is undoubtedly the top of such kind.

The basic contents of this Chapter is based on a previous Article published in the internationally renowned journal, i.e. *The Journal of World Investment & Trade,* entitled *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*. For this 58-page article which accounted for more than a third of the whole issue’s space, Jacques Werner, then editor-in-chief of that journal, noted its penetrating views, and “enjoyed reading it”. Mr. Lorin S. Weisenfeld was happy to say that he found the work brilliant and fascinating, and it has pulled together a number of disparate areas for him and caused him to see things in a fresh light.

Mr. Branislav Gosovic, the former secretary-general of the South Center, who has engaged in

[1] PhD Candidate, Research School for Southeast Asian Studies, Xiamen University

international activities for the cause of “south-south cooperation” for decades, spoke highly of the article. He wrote in a review article that “it is stimulating to read such a rich and enlightening analysis coming from a developing country at a time when conformity, self-censorship or resignation vis-à-vis the reigning storyline is widespread in governments, the media, as well as the academia.” And he “would like to see leaders, policy- and opinion-makers, not only in China, but also in other developing countries, including those involved in Group of 77 and NAM activities, read and study Professor Chen’s article and absorb the insights and conclusions presented by the author.” Besides, “It is a ‘must reading’ for those who study or are trying to understand China-West relations of today. It helps one to appreciate China’s sensitivities and reactions, as well as to grasp the Western, US-led, global, all-azimuth offensive against this country, of which the ‘China threat’ intellectual construct, as a contemporary iteration of the earlier ‘yellow peril’ doctrine, represents the overarching framework.”[1] So it can be expected that with the publication of this book, the academic influence of views the author put forward in the book will be bound to expand gradually at home and abroad.

This book holds tightly and makes a high level description of the rampant “China Threat”, which is not only a historical issue, but also an important reality problem. The author sheds light on the roots, intellectual and policy antecedents, i.e. the “family tree”, of the “China Threat Doctrines” by skillfully adopting the interdisciplinary approach from the perspectives of history, political theory and law. He also puts forward many new ideas and provides the beneficial reference for the national diplomatic decision-making and foreign communication. With great foresight and powerful writing, this book not only preserves the author’s strong patriotic and sincere feelings, but also reflects his rigorous scholarly research attitude and profound knowledge.

As is stated in the book, it is only through taking the history as teachers and as mirrors can people keep sharp brain and incisive eyesight. Based on his strong historical sense of mission, the author is trying to carry out synthetic discussion and comprehensive dissection on the past and present,

[1] Branislav Gosovic. China – “Threat” or “Opportunity”? Professor An Chen’s Article on “Yellow peril”/“China threat” Doctrines–An Important Contribution to the Study and Understanding of Contemporary World Politics, *Journal of International Economic Law*, Volume 20, Number2, 2013.

the points and facets, as well as the appearance and essence of “China Threat Doctrine” and clarifies the historical evolution process from “Yellow Peril Doctrine” to its new variant “China Threat Doctrine”. So in this book, the author profoundly points out that the contemporary “China Threat Doctrine” is nothing but a current “variant” under contemporary situations of the once clamorous “Yellow Peril Doctrine” fabricated and preached by Russian Tsar and German Emperor in 19th century.

After making clear all the ins and outs of the “China Threat Doctrine”, the author further makes a thorough analysis on the essence of the “China Threat Doctrine” from both the historical and political perspectives. By consulting a large number of the original historical records, the author clarifies matters and points out that it is nonsense in the history that the twice Mongolian Westward March was the biggest “Yellow Peril” war and threat, because Yuan Dynasty of China had never sent a single soldier to invade Europe during its 98 years of existence. So the popular yet vague statements such as that “Yuan Dynasty of China sent a large army to invade Europe and caused Yellow Peril” did not accord to historical facts, let alone the Han Chinese people who are modest and courtesy and love peace. Then, based on the analysis of the Russian invasion of China, the German invasion of China, the aggression against China by the Eight-Power Allied Force and a series of hostile policies towards China implemented by the US-led western countries after the founding of the People's Republic of China, the author puts it succinctly that various versions of “Yellow Peril Doctrines” have been playing their customary trick of a thief crying “Stop thief!”, and its essence and core lie at the preaching and justification of invading into China, excluding Chinese, opposing against China and containing China; and such exclusion, opposition and containment always come before and lead to a final invasion. From these evidence it could be fairly put that both the “Yellow Peril Doctrines” and its new variant “China Threat Doctrines” are nothing more than a self-talking slander under the Western-system of power politics and hegemony.

Then the author utilizes the perspective of economic jurisprudence to analyze the basic and inherent jurisprudential principles and the real meaning of peace which is contained in the long standing mainstream of Sino-Foreign economic interactions, and refutes effectively that the

“Yellow Peril Doctrine” and its new variant “China Threat Doctrine” are downright “living falsehood”. Based on his thorough investigation into the development history of the long standing mainstream of Sino-Foreign economic interactions from the Han through Tang Dynasty and till to the Ming Dynasty, the author points out that just through their long-term external economic interactions of an equal and reciprocal nature, Chinese had made significant contributions towards the continuous improvement, common prosperity and colorful enrichment of global economics and culture.

However, after the opium war, modern China had to surrender its sovereign rights under humiliating terms and suffered from bullying. And thus China was forced into the capitalist colonial system dominated by the West. In this case, because its political and economic sovereignty were severely damaged, China’s external economic intercourse from whichever aspects such as international trade, international investment, international finance or international taxation, and within whichever domains such as international production, international exchange or international distribution were always in an involuntary and coerced condition, under others’ control, at others’ service. So China always suffered from humiliation of inequality, and it had to undergo unequal exchange and exploitation. The law of the jungle is exposed completely here.

After the founding of the People's Republic of China, China has begun to actively carry out foreign economic exchanges on the new base, and it would inevitably prompt the spontaneous and plain traditional principle of equality and reciprocity in its external economic intercourse shift to a conscientious and mature stage. But during this historical stage, new China had been blocked, threatened and bullied by various countries led by then two superpowers. China was still the country which was threatened and invaded, while the big powers including the U.S., who insisted on their colonial and imperial vested interests, were still the undoubted menacers and injurers. The influence of power politics and the law of jungle also continues till that time. As a result, after the end of the cold war, China has been actively integrated into the world political and economic system, and is also eager to change the unfair and unreasonable world economic system.

In order to fulfill the Chinese dream of achieving the great renewal of the Chinese nation, China needs to strive to create a peaceful and stable international environment for a long time, which makes it inevitable for China to unwaveringly follow the path of peaceful development and the win-win strategy of opening-up.

The author does not forget to remind us that the trees may prefer calm but the wind will not subside. The development of world history is just like a coin of two sides, with one complying with the tide of historical development, and another rebelling against the historical trend. The author told us that we should have a clear understanding that it is not the accident of history for US to implement the long-term anti-China policy. Supported by the United States, for example, the Philippines, Vietnam and other countries have been vigorously preaching one after another the Doctrines of “China Threat in the south China sea” and “China Threat in the east China sea”, and the United States having launched the strategy of “Asia Pacific rebalancing” are all the best examples. The behaviors of the United States are rooted in its imperialist economic system. So the author has warned the kind and forgiving Chinese people must not treat the practice consequences of the “Yellow Peril Doctrines” and its new variant “China Threat Doctrine” lightly, and must prepare for danger in times of safety.

What the author warned has not been dissipated. Our neighbor, the Republic of Korea, disregarding the strong opposition from China, decided to deploy “THAAD” in South Korea. The furthest detecting distance range of “THAAD” is far beyond the needs of defense of North Korea's missile. Such decision not only directly harms the strategic security interests of the neighboring countries such as China, but also directly damages the regional and global strategic stability. Not only that, the medias in South Korea also densely hype the views of “revenge from the great power”, and assume that the pressures putting on the South Kore from China has only just begun. However, South Korea and the United States behind him are just the troublemakers of the tense situation. The deployment of “THAAD” will not help to ease the tension as among northeast Asian region, while on the contrary, it would cause great damage to the Sino-South Korean relationship, with the United States being the only one profiting therefrom.

If the leaders, policy-makers, and also the common people in South Korea have a chance to read and study this book and absorb the insights and conclusions presented by the author, and reexamine closely the deployment of “THAAD”, there is a reason to believe that South Korea will not be blinded by lust for “THAAD”, and decides to lift a rock only to drop it on its own feet.

22.1：论国际经济法的普遍性

——评《中国的呐喊：陈安论国际经济法》

中川淳司* 撰，刘远志** 译，李国安*** 校

国际经济法（International economic law）是从什么时候开始具有普遍性的？时至今日，世界贸易组织（以下简称“WTO”）的成员方业已超过 160 个[1]，双边投资协定（bilateral investment treaties, 以下简称 BIT 或 BITs）的总数已接近 3000 个[2]，因此，现在还提出这个问题，多少会显得有些奇怪。然而，如果把时钟回拨到三十年前的 1987 年，这个问题的回答和今天的答案就迥然不同，而绝不仅仅是修辞上的差异。在 1987 年，WTO 还不存在，其前身“关税与贸易总协定”（以下简称“GATT”）所举行的旷日持久的第八回合多边贸易谈判（即“乌拉圭回合”）也是 1986 年才刚刚正式开始。在 1987 年，GATT 的缔约方仅有 91 个。时值“冷战”末期，包括苏联、中国在内的社会主义阵营国家大多数并没有加入 GATT[3]。BITs 在 1987 年时的总数也只有约 300 个[4]，而且大多是在西欧发达国家和发展中国家之间缔结的。第二次世界大战后，东西方国家之间的“冷战”很快表面化，在此国际背景下，构成当代国际经济法主体的各种国际组织和国际条约，其成员方/缔约国几乎全部都是西方的资本主义国家以及某些发展中国家，而绝大部分社会主义国家并没有参加这些国际组织和国际条约。这意味着，国际经济法获得当今这种普遍性可以说是直到“冷战”结束之后才开始形成。

对于各个社会主义国家来说，“冷战”结束意味着其国内的经济体制需要引入与市场经济相适应的新制度。与此同时，在对外战略上，意味着需要正式加入之前由资本主义国家和某些发展中国家构成的国际组织和国际条约。对于社会主义各国来说，如何实行国内体制改革和承担新的国际义务，是需要仔细研究的课题。然而，对于国际经济法学来说，更重要的研究课题是，在“冷战”结束后国际经济法普遍化的过程中，国际经济法发生了何种变化？

在思考这个问题时，以中国的经历为视角进行研究具有以下重大意义：第一，中国经历了国内体制改革以及承担了新的国际义务，是体验“冷战”结束后国际经济法普遍化的当事国之一。在邓小平理论的指导下，1978 年 12 月，中国共产党第十一届三中全会提出“改革开放”的国策，决定由社会主义计划经济体制向市场经济体制转变。从此以后，与国内各项制度改革同时进行的，是对外开放政策的逐步推进。1986 年，中国向 GATT 提出了“复关”申请，经过 15 年多的谈判，于 2001 年 11 月正式加入 WTO。在这个过程中，中国以 1982 年 3 月与瑞典缔结 BIT 为开端，到 2017 年 2 月为止，共缔结了 132 件 BITs[5]。第二，

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[1]到 2017 年 2 月为止，WTO 的成员国为 164 个，另有 21 个国家正在进行加入 WTO 的谈判。参考：WTO, Members and Observers. Available at [https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm]

[2]截至 2015 年末，BIT 的总数为 2946 个，除此之外，还有 358 个自由贸易协定（FTA）。合计起来的国际投资协定（international investment agreements, IIAs）总数达到了 3304 件。参考：UNCTAD, *World Investment Report 2016 Investor Nationality: Policy Challenges*, Geneva: UNCTAD, 2016, p.101.

[3]有若干例外。除 GATT 的原缔约国、1959 年革命后继续保留 GATT 缔约国身份的古巴以外，同样为原缔约国的捷克斯洛伐克、波兰（1967 年加盟）、罗马尼亚（1971 年加盟）、匈牙利（1973 年加盟）仍为 GATT 加盟国。

[4]参考：UNCTAD, *Trends in International Investment Agreements: An Overview*, Geneva: UNCTAD, 1999, p.22, Figure 2.

[5]参考：UNCTAD, International Investment Agreements Navigator, China. Available at [http://

以加入 WTO 和缔结 BITs 为象征，意味着中国开始接受国际经济法的制约，但并不是单单消极被动地接受原有的以资本主义各国和某些发展中国家为主体的国际组织和国际条约。正如 Lim 和 Wang 等人所指出的[1]，在与中国加入 WTO 同时开始的 WTO 多哈发展回合会议上，中国已逐渐代表发展中国家与欧美等发达国家形成对峙。相比于过去 GATT 时代的多边贸易谈判以主要的发达国家的合意为主而推进，如今 WTO 多边贸易谈判的力量对比关系已经发生了变化。发生这种变化的决定因素之一，实际上就是因为中国的加入。这意味着，比起中国成为当今国际社会关注的焦点，以“冷战”结束后国际经济法的普遍化过程及由此带来的变化为背景，中国更是思考和观察国际经济法未来发展前景的非常有益的基点。在这种历史背景下，本篇书评郑重推荐陈安教授于 2013 年在德国斯普林格出版社出版的《中国的呐喊：陈安论国际经济法》一书(63+789 页)，这部专著收辑的多篇论文便是思考国际经济法未来发展前景的最好素材。

陈安教授是中国国际经济法学界的资深前辈，第一代国际经济法学研究的代表人物。陈安教授 1929 年生于福建省福安市，1950 年从厦门大学法学院毕业后留校任教，1953 年遵从当时中国的高等学校院系调整政策方针，研究方向改为马克思列宁主义。中国实行改革开放国策后，陈安教授 1980 年调回复办的厦门大学法学院再次担任法学教授，1981 年至 1983 年应邀在哈佛大学法学院进行国际经济法研究。1999 年从厦门大学退休后，作为名誉教授接受返聘，继续从事学术研究和博士生论文指导的工作。从 1993 年至 2011 年，他被连续推举担任中国国际经济法学会会长。2008 年，陈安教授关于国际经济法学的研究成果整理汇辑为五卷本系列专著，由复旦大学出版社出版发行。本篇书评所评析的《中国的呐喊：陈安论国际经济法》这部英文专著，是陈安教授精选的关于国际经济法学的代表作论文集，收集汇辑了从 1984 年至 2012 年他撰写的二十四篇论文，分列以下六部分：

第一部分 当代国际经济法的基本理论（论文 1~论文 3）
第二部分 当代国家经济主权的“攻防战”（论文 4~论文 5）
第三部分 中国在构建当代国际经济新秩序中的战略定位（论文 6~论文 8）
第四部分 当代国际投资法的论争（论文 9~论文 12）
第五部分 当代中国涉外经济立法的争议（论文 13~论文 19）
第六部分 若干涉华、涉外经贸争端典型案例剖析（论文 20~论文 24）

限于篇幅，本篇书评无法对上述全部论文进行评析，而只能通过对各组成部分主要论文的介绍，以期让陈安教授关于国际经济法学的精华观点浮现于世人眼前。

《中国的呐喊》第一部分收录了三篇论文。1、《论国际经济法学科的边缘性、综合性和独立性》（1991 年第一次发表）,论证国际经济法的定义和调整对象； 2、《对中国国际经济法学科发展现状的几种误解》（1991 年第一次发表 ）,论证国际经济法的独立性； 3、《“黄祸论”的起源、本质及其最新霸权“变种”》（2012 年第一次发表），尖锐批判当今甚嚣尘上的“中国威胁”谰言。

论文 1 涉及的是国际经济法的定义和调整对象，介绍了国际经济法的“狭义说”，即认为国际经济法只是用以调整国际经济关系的国际公法的一个新分支[2]；国际经济法的“广义说”，即认为国际经济法乃是调整跨国经济关系的国际公法、国际私法、国内经济法以及国

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investmentpolicyhub.unctad.org/IIA/CountryBits/42#iiaInnerMenu]

[1] C. L. Lim and J. Y. Wang, “China and the Doha Development Agenda”, 44 Journal of World Trade 1309 (2010).

[2]陈安教授对其代表学说，列举了 G. Schwarzenberger, 金沢良雄，D. Carreau 作为例子。参照：An CHEN, The Voice from China: An CHEN on International Economic Law, Berlin/Heidelberg: Springer, 2013, p.5.

际惯例（软法）的总和[1]。接下来，陈安教授从跨国经济关系多数由各种私人主体（非国家主体）承担的现实出发，以求真务实致用（practicalities，starting from the reality ，seeking truth from facts）哲学为基础，对“广义说”进行了论证和支持。虽然说“广义说”是美国国际经济法学界的主流学说，但陈安教授并没有无条件地接受这一学说。例如，2002-2008 年，美国 Lowenfeld 教授发表了新版的国际经济法教科书，其中对《各国经济权利和义务宪章》（1974 年）之法律效力给予了极低评价，陈安教授对 Lowenfeld 教授的这种看法进行了批判，根据二三十年来的事实，指出《各国经济权利和义务宪章》在 2002-2008 年当时在国际社会中已经获得广泛的承认，已经形成了共同的法律确信效力（opinio juris communis）[2]。

论文 1 的立场，系从求真务实致用的角度出发，深刻领悟国际经济法的真谛，从中国的实际出发，站在发展中国家的立场，批判由发达国家所倡导的各种错误观点。其实，论文 1 所持的这种立场，也是贯穿《中国的呐喊》一书始终的立场。

《中国的呐喊》第二部分中的论文 4 探讨当代国家经济主权的“攻防战”（2003 年第一次出版），剖析 WTO 成立前美国国内进行的“1994 年主权大辩论”（The great 1994 sovereignty debate）；剖析围绕着美国贸易法“301 条款”引起的 WTO 争端案件；剖析围绕美国的钢铁产业保护措施引起的 WTO 争端案件。通过这些剖析，对美国为坚持自己的贸易主权而不惜损害 WTO 多边贸易体制进行了批判。

“1994 年主权大辩论”，是指 1994 年 WTO 成立前夕美国议会对《乌拉圭回合谈判协定》文本的采纳与否而引发的“WTO 争端解决程序是否会损害美国主权”的争论[3]。依据乌拉圭回合所通过的《关于争端解决规则与程序的谅解书》，WTO 的“争端解决机构”（DSB）有权设立争端解决专家小组，而且专家小组报告和上诉机构报告的通过均采取“反向协商一致”（negative consensus）决策原则，几乎就是赋予上述报告自动通过的法律效力。美国许多议员担心这会因此损害美国的主权。对于这些担心，美国 John Jackson 教授作了如下的解释和“澄清”：依据美国法律，《WTO 协定》在美国并不具有自动执行力，WTO 专家小组报告和上诉机构报告同样如此，如果要执行这些报告，需要美国议会的立法授权；当美国议会不希望执行 WTO 专家小组报告和上诉机构报告时，根据美国宪法，美国政府仍然有权贯彻执行自己的意志。最坏的情况下，美国还可以退出 WTO（参见《《WTO 协定》》第 15 条第 1 款）从而不需要承担《WTO 协定》中的义务。

通过剖析 Jackson 教授的以上观点，陈安教授敏锐地发现美国对于其主权（实为霸权）有着强烈的教义信条（creeds）[4]。因此，在美国已经批准加入《WTO 协定》后，美国议会仍然维持和推行其贸易法 301 条款，以此经常单方面启动贸易制裁措施（如 1995 年美-日汽车摩擦案、1998 年美-欧香蕉案）。在美-欧香蕉案中，欧盟针对美国的单边措施申请设立的 WTO 专家小组发布报告认为，美国贸易法 301 条款虽然乍一看是违反了《WTO 协定》，但美国政府在通过《乌拉圭回合协定》时做出的《政府行政声明》（Statement of Administrative Action, 简称 SAA）中，表明了其承诺限制 301 条款实施从而确保《WTO 协定》一致性的意愿。陈安教授虽然对此表示了一定程度上的谅解，但是对于该专家小组报告抑制美国单边主义措施不力，给予了尖锐的批评。[5]在这之后，在美国钢铁保障措施案中 WTO 专家小组裁定美国败诉，被看做是多边主义初步小胜

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[1]陈安教授对其代表学说，列举了 P. C. Jessup, H. J. Steiner & D. F. Vagts, J. H. Jackson, A. Lowenfeld, 櫻井雅夫作为例子。参照：ibid., p.6

[2] Ibid., pp.15-17

[3] 参照：John H. Jackson, “The Great 1994 Sovereignty Debate: United States Acceptance and Implementation of the Uruguay Round Results”, 36 *Columbia Journal of Transnational Law* 157 (1997).

[4]参照：An CHEN, supra n.6, pp.119-120.

[5]参照：ibid., pp.148-156.

[1]。

《中国的呐喊》第 3 部分（论文 6~论文 8）论述了中国在构建当代国际经济新秩序（以下简称 NIEO）中的战略定位，这些论文为考察中国的参与给国际经济法的组织与条约体制带来怎样的变化，提供了最为合适的素材。在此，我介绍一下概述中国在国际经济新秩序中立场的论文 6（2009 年第一次出版）。在论文的开头，陈安教授论证了从国际经济旧秩序（OIEO）发展到国际经济新秩序（NIEO）的“6C 轨迹”或“6C 律”，即矛盾（contradiction）→冲突成交锋（conflict）→磋商（consultation）→妥协（compromise）→合作（cooperation）→协调（coordination）→新的矛盾（contradiction new）之“螺旋式上升”发展路径[2]；并且主张：中国作为和平崛起中的全球最大的发展中国家，应该致力于遵循以上路径，为促进实现国际经济新秩序而发挥重大的历史作用，实现和平崛起的目标。从 1955 年不结盟各国首脑会议（“万隆会议”）开始、经由 1974 年《建立国际经济新秩序宣言》、直至现在确立的 WTO 体制，陈安教授强调在国际经济法的上述发展进程中，中国应当强化发展中国家的地位，同时积极促进发展中国家之间的协作互助，成为“南南联合自强”的驱动力量和中流砥柱。[3]

论文 7（2006 年第一次发表）论述了在 WTO 多哈回合谈判过程中，以中国与印度、巴西为轴心的发展中国家所开展的团结合作（coalition），并阐明了陈安教授提倡的实现国际经济新秩序之中国积极战略。

《中国的呐喊》前面三个部分论文的探讨焦点，集中于国际经济法学一般理论和以 WTO 法为核心的国际贸易法。第 4 部分则主要探讨国际投资法。论文 9（2006 年第一次发表）论述了中国签订的双边投资条约中的争端解决条款。该文发表时，中国已经缔结了 112 部双边投资条约，但是在投资争端交付国际仲裁解决程序上仍然秉承严肃认真和慎之又慎的立场。经过多年的调查研究、政策咨询和审慎考虑，中国直到 1990 年 2 月才签署了《解决国家与他国国民间投资争端公约》（ICSID 公约），事后又经过三年的权衡利弊，才于 1993 年 1 月 7 日正式批准公约。在这之前，虽然中国签订的双边投资条约中已有关于发生投资争端可以提交国际仲裁的条款，但是并没有规定具体的程序。即使在之后中国签订的双方投资条约中，依旧采取了限制提交 ICSID 仲裁的案件范围，即仅限于东道国对投资者财产的征用补偿争端才可以提交 ICSID 仲裁。论文 9 还剖析了美国 2004 年 BIT 范本和加拿大 2004 年 BIT 范本中关键性的投资争端解决条款，并探讨了中国是否应该采用同样的规定。当时国际流行的大多数 BITs 都规定，对于外国投资者与东道国无法通过协商解决的所有投资争端，都允许外国投资者将争端提交国际仲裁。但是，陈安教授认为：这种条款反映的是作为资本输出国的发达国家权益，中国是资本输入国，采用此条款需要相当慎重。他建议，在谈判缔结 BITs 时，包括中国在内的发展中国家就投资争端解决问题应当坚持设置四大“安全阀”，即应该承认东道国享有（ｉ）就是否提交国际仲裁的逐案审批同意权，（ii）当地救济优先权，（iii）东道国法律优先适用权，（iv）国家重大安全例外权。[4]

此论文公开发表于 2006 年，当时，中国已经不是单纯的资本或者投资输入国，因为第十一个五年计划（2001 年～2005 年）以来，中国开始采取积极的对外投资的战略（即“走出去”政策），如果总是从净资本输入国立场考量条约规定似乎已不合时宜。但是，陈安教授根据 2004 年底的官方最新统计数字，指出中国对外直接投资的的总量（潜在债权）对比外国在华投资的总量（潜在债务），几乎“微不足道”，其比率约为 4.5%:95.5%，因此，改

[1]参照：ibid., p.157
[2]参照 ibid.,p.168
[3]陈安教授曾提到为南南联合之目的协调金砖国家的立场。
[4]参照 ibid.,pp.282-287

变上述保留四大“安全阀”方针，为时尚早。[1]同时，文章以阿根廷为前车之鉴，说明了其“不慎放权导致如潮官司”，再次主张对投资争端交付国际仲裁应该继续采取慎重之方针。在本篇论文中，陈安教授基于求真务实致用的理念，考量当时中国仍然主要作为投资输入国的现实，其立论基调与前述第 1~3 部分多篇论文是一脉相承、一以贯之的。与此同时，鉴于将来中国的对外投资比重可能提高，本篇论文预期，日后中国对待投资争端交付国际仲裁的方针，也可能随之改变。从这个意义上来说，陈教授的立场并不是教条主义，而是求真务实致用的。换言之，将求真务实致用在更长的时间维度上延伸，日后中国与接受中国投资的发展中国家签订的 BITs，可以引入把投资争端交付国际仲裁的条款；但中国与作为资本输出国的发达国家签订的 BITs，则仍应继续维持慎之又慎、保留四大“安全阀”的方针。论文 10（2007 年第一次发表）再次提倡采取这种“区别对待”的办法。

《中国的呐喊》第 5 部分收录了与中国制定的涉外经济法相关的 7 篇论文。本篇书评介绍论文 16（1990 年第一次发表）。这篇论文以经济特区和沿海开放城市为例，论述当时的中国经济发展和立法框架。需要注意的是这篇论文发表于 1990 年。中国在 1978 年实行改革开放政策后，1980 年开始依次设立了广东深圳、珠海、汕头、福建厦门、海南（1988 年）5 个经济特区（SEZs）。1984 年进一步开放大连、天津、上海等 14 个沿海城市（COPOCIs），1985 年以后设立珠江三角区、长江三角洲等沿海经济开放区（CEOAs），逐步推进经济改革政策。但是，因为 1989 年天安门事件，中国遭受很多国家的严厉指责，改革开放政策被迫一时中断。陈安教授于此时机执笔撰写此文，显然怀有向国内外宣告设立经济特区、沿海开放城市等开放政策之正当性的意图。当时中国国内有这样一种声音，即批判改革开放政策系战前“租界”死灰复燃。面对这种质疑，陈安教授认为无论从其目的（实现社会主义现代化），还是中国政府对于外国在华投资的管辖权来看，这些开放政策与曾经的“租界”都迥然不同。[2]此文对改革开放政策实施十年以来中国国内外投资的飞跃性增长给予了高度评价。对于阶段性、渐进性开放进程中伴生的腐败现象，陈教授也赞扬了中国当局所坚决采取的惩治措施。论文接着从法律角度对经济特区这类开放政策进行详细解读，其目的是为了提升因“天安门事件”而削弱的外国对华投资热情。这与《中国的呐喊》第 5 部分收录的从法律角度阐明中国对外经济政策的其他各篇英文论文，具有共通之处。例如，论文 18（1997 年第一次发表）对《中国仲裁法》（1994 年颁布，1995 年实施）的剖析，论文 19（2005 年第一次发表）对中国承认、执行外国仲裁裁决的国内法令的剖析。

《中国的呐喊》 第 6 部分收录了对在华投资纠纷仲裁若干案件的评论和剖析。这是陈教授作为专家接受咨询时撰写的 5 份意见书和解说。本篇书评介绍的论文 20，系应英国一家保险公司请求撰写的，对被保险人的代位请求权的鉴定意见书（2006 年第一次发表）。此案具体案情为，一家英国投资公司与中国公司合资设立电力公司，在中外合作经营投资合同中，约定向该英国投资公司保证付给投资额 18%的利润。但是根据中国国务院 1998 年第 31 号《通知》，禁止向外国投资者分配固定利率的利润，导致该合同利润分配条款无效，于是该英国投资公司认为这相当于英资被中国政府“征收”，并依据中国的《仲裁法》提请仲裁，请求该英国承保的保险公司支付风险事故赔偿金。陈安教授在鉴定意见书中认为，中国国务院《通知》的法律效力低于中国国内的制定法，《中外合作经营企业法》才是适用于本案的准据法。这就否定了变更《中外合作经营企业法》内容的国务院《通知》之法律效力。因而，在向英国保险公司请求代位求偿前，应该慎重调查是否确因“征收”产生相应损失。论文 21（2006 年第一次出版）是陈安教授对于英国保险公司再次咨询问题的回答，他重申本案中采取的措施不是“征收行为”，不应向该英国保险公司索赔。在这些鉴定意见书中，陈安

[1]参照 ibid.,p.289
[2]参照 ibid.,pp.484-486.

教授对中国相关法律的解说清晰明快。此外，陈安教授在国际仲裁领域也发挥了相当大的作用。虽然在《中国的呐喊》这本书中没有提及，但实际上陈安教授被中国政府指派为“解决投资争端国际中心”（ICSID 公约）的仲裁员。2011 年陈安教授被津巴布韦政府指定为 2 件 ICSID 仲裁案的仲裁员。[1] 这表明，在投资争端仲裁实务中，中国政府非常信赖陈安教授。

以上，介绍了《中国的呐喊》这部收录陈安教授 1984 年以后撰写的国际经济法领域论文的英文著作的概要。如同本篇书评开头提出的，冷战结束后国际经济法普遍化的过程中发生了什么变化？解答这个问题，可以从陈安教授的这部著作中获得启发，这也正是我撰写本篇书评的意图所在。我认为：

第一，作为《中国的呐喊》这本书“一以贯之”的立论主张，中国加入国际经济法的组织、条约体制，乃是中国推行改革开放政策的重要一环；并且，为进一步顺利推进改革开放，中国必须对国际经济法的内容有所权衡取舍，注意求真务实致用（practicalities）之基本取向。论文 9 最鲜明地表达了此种观念。这篇论文中论证了引入投资争端提交国际仲裁制度时，必须保持慎重态度。论文 10 则赞成在中国与吸收中国投资的发展中国家签订投资条约中，可以尝试采用把投资仲裁提交国际仲裁的制度。论文 7 探讨中国在世贸组织多哈回合谈判中的战略定位，论文 1 和论文 2 论证和肯定国际经济法之“广义说”，也都同样强调求真务实致用的取向。这是陈教授一以贯之的国际经济法学理念。对中国来说，参与多边贸易体制和缔结双边投资条约，一方面是向国内外表明中国坚持改革开放政策的承诺，同时也在促进外国投资和促进中国在国际贸易中的出口增长发挥了重要作用。但是，从计划经济体制向市场经济体制转变的过程，是一个伴随着巨大的阵痛和各种摩擦的过程，因此在接纳国际经济法的过程中，也应力求确保这种渐进式的体制转变得到应有的保障。本书中陈安教授贯彻始终的求真务实致用，是与中国的相关政策要求相吻合的。

第二，《中国的呐喊》清楚地表明，中国作为谋求和平崛起的最大发展中国家，坚决反对发达资本主义国家的专横霸道。这一观点在阐释中国在建立国际经济新秩序过程中的战略定位的论文 6 中已有明确的表述，此外，在批判当今最大的霸权主义国家——美国屡屡滥用单边主义并将其凌驾于多边主义之上的一系列论文中，也旗帜鲜明地表达了这一观点。可见，陈安教授所提倡的国际经济法的理念与美国的单边主义是尖锐对立的。从这个意义上说，冷战结束后的国际经济法秩序的普遍化进程，实际上凸显了自诩为“多边主义代表”的美国，其实只是唯我独尊的“自我中心主义者”。然而，不可否认，中国在多哈回合谈判中的战略导致了谈判的长期化甚至停滞，造成多边贸易体制有效性减损的后果。中国在加入世贸组织历经 16 年之后，现已成为全球最大的贸易大国。作为多边贸易体制的最大受益者，中国难道没有在谋求维持和发展该体制过程中发挥领导作用吗？

现在，美国新任总统露骨地宣扬“美国第一”，就任第一天就宣告退出 TPP。与此相反，在今年的达沃斯会议上，中国的习近平主席倡导推进全球化。普遍化的国际经济法今后将面临两个任务，一是抑制美国倡导的单边主义，二是中国在全球化进程中如何发挥领导作用。与此同时，陈安教授在《中国的呐喊》这本书中一贯提倡的求真务实致用，也势必会继续引起全球学术界的广泛关注和深入探讨。

[1]这两个案件是：Bernhard von Pezold and Others v. Republic of Zimbabwe(ICSID Case No. ARB/10/15); Border Timbers Limited, Border Timers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe(ICSID Case No. ARB/10/25).

22.2：On the Universality of International Economic Law

- Comments on <The Voice from China: An CHEN on International Economic Law>

Junji Nakagawa*, translated by Liu Yuanzhi,** proofread by Yang Fan***

Since when has the international economic law (hereinafter "IEL") acquired universality? Nowadays, the World Trade Organization (hereinafter "the WTO") already has more than 160 members.[1] Meanwhile, the total number of bilateral investment treaties (hereinafter "BIT") has reached to around 3,000.[2]So, it seems a little bit weird to raise such a question now. However, if we lookback to 30 years ago in 1987, the answer to this question would be significantly different - and not only in the sense of rhetoric. In 1987, the WTO did not even exist, and its predecessor, the General Agreement on Tariffs and Trade (hereinafter "the GATT"), only began the time-consuming eighth round of multilateral trade negotiations (Uruguay Round) in 1986. Back then, the GATT had only 91 Contracting Parties. Cold War was coming to its end, and most of the socialist countries, including the Soviet Union and China, did not join the GATT.[3] In 1987, the total number of BITs was about 300,[4] mostly concluded between developed countries in Western Europe and developing counties. The Cold War became worldwide immediately after World War II. In such an international context, the members/parties to international organizations and treaties, which constitute the majority of today's IEL, were almost always Western capitalist countries and some developing countries. Most of the socialist countries were not part of these international organizations and treaties. In other words, the universality of IEL as we see today was only established after the end of the Cold War.

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[1] As of February 2017, WTO has 164 members. In addition, 21 countries are in the process of negotiations to join the WTO. See WTO, Members and Observers. Available at: https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

[2]By the end of 2015, the total number of BIT is 2946. Besides, there are 358 Free Trade Agreement (FTA) with investment chapters. Accordingly, the total number of international investment agreements (IIAs) reaches 3304. See UNCTAD, *World Investment Report 2016 Investor Nationality: Policy Challenges*, Geneva: UNCTAD, 2016, p.101.

[3] There are certain exceptions. In addition to Cuba, which remained as the GATT member after its revolution in 1959, Czechoslovakia, Poland (joined in 1967), Romania (joined in 1971) and Hungry (joined in 1977)are already contracting parties to the GATT.

[4]See UNCTAD, *Trends in International Investment Agreements: An Overview*, Geneva: UNCTAD, 1999, p.22, Figure 2.

For socialist countries, the end of the Cold War also implied the necessity to usher into their domestic economic systems a market economy model. In terms of international strategies, this means that the socialist countries needed to join the international organizations and treaties originally established by capitalist countries and several developing countries. How to conduct domestic institutional reforms and take new international obligations were two subjects that required careful research by these socialist countries. However, a more important subject for IEL is, what changes would be undergone by the IEL in its process of universality after the Cold War.

Taking this question into consideration, the study from the perspective of China's experience has the following significances: Firstly, China has undergone domestic institutional reforms and increasingly undertook new international obligations, and it is one of the many countries that experienced the universalization of IEL after the Cold War. Under the guidance of the Deng Xiaoping Theory, in December 1978, the Third Plenary Session of the 11th Central Committee of the Communist Party of China put forward the national policy of "reform and opening up", and decided to change from the socialist planned economy system to the market economy system. Since then, the progressive opening up to the outside world was launched in parallel with its domestic institutional reform. In 1986, China applied to restore its identity as Contracting Party in the GATT. After more than 15 years' negotiations, China formally acceded to the WTO in November 2001. Since its conclusion of the BIT with Sweden in March 1982, China has entered into132 BITs by February 2017.[1]

Secondly, the accession to the WTO and the conclusion of BITs means that China began to accept the binding force of the IEL, rather than to simply and passively accept the original international organizations and treaties dominated by capitalist countries and certain developing countries. In the WTO Doha Development Agenda, beginning in the same year as China's accession, China has gradually become the representative of developing countries and confronted the developed countries such as the United States and the EU.[2] Compared with the GATT era when the multilateral trade negotiations were promoted mainly by the intention of developed countries, the

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[1] See UNCTAD, International Investment Agreements Navigator, China. Available at [http:// investmentpolicyhub.unctad.org/IIA/CountryBits/42#iiaInnerMenu]

[2] C. L. Lim and J. Y. Wang, "China and the Doha Development Agenda", 44 *Journal of World Trade* 1309 (2010).

current WTO regime has seen a shift in negotiating powers. In fact, one of the decisive factors that has caused such shift was the accession of China. In other words, in the post-WWII context of the universality of the IEL and the accompanying changes, China serves as a very useful basis for observing and considering the future of the IEL. This should be more significant than simply regarding China as the focus of current international society. Under such circumstance, this Review strongly recommends the Chapters compiled within Professor An CHEN's book, *The Voice from China: An CHEN on International Economic Law*, published by Springer in Germany in 2013.These Chapters are the best materials and documents for considering the future of the IEL.

Professor An CHEN is the pioneer of Chinese scholars in the field of International Economic Law in China and the representative figure of the first generation. Born in Fu'an City, Fujian Province in 1929, Professor CHEN graduated from the Law School of Xiamen University in 1950 and started his teaching career in that same University. Due to historical reasons, he shifted his research field from law to Marxism and Leninism in 1953. When the Law Department of Xiamen University was reestablished in 1980 as a result of China's reform and opening-up, he was appointed as professor of law. During 1981 to 1983, he was invited to conduct research on IEL at Harvard Law School. Although he retired from Xiamen University in 1999, he continued to teach as honorary professor and engaged in academic research and PhD student supervision. He was elected as President of the Chinese Society of International Economic Law during 1993-2011. In 2008, Professor CHEN's achievements on IEL were compiled into a five-volume collection, published by Fudan University Press. The current English monograph that this book review focuses on is actually a collection of Professor CHEN's English Chapters on IEL.24 selected and representative Chapters written during 1984 to 2012 are compiled in six parts:

Part I: Jurisprudence of contemporary international economic law (Chapters 1 to 3)

Part II: Great debates on contemporary economic sovereignty (Chapters 4 to 5)

Part III: China's strategic position on contemporary international economic order issues(Chapters 6 to 8)

Part IV: Divergences on contemporary bilateral investment treaties (Chapters 9 to 12)

Part V: Contemporary China's legislation on Sino-foreign economic issues (Chapters 13 to 19)

Part VI: Contemporary Chinese practices on international economic dispute settlement (Case studies) (Chapters 20 to 24)

Due to length restriction, it is not possible to comment on all these Chapters. This review aims to show the essence of Professor CHEN's main viewpoints in IEL by introducing the major Chapters of each of the six Parts.

Part I contains three Chapters, including: Chapter 1"*On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline*"(first published in 1991) that discusses the exact connotation and denotation of the science of IEL, Chapter 2"*On the Misunderstandings Relating to China's Current Developments of International Economic Law Discipline*"(first published in 1991), in which Professor CHEN agrees with the independence of IEL, and Chapter 3 (first published in 2012) that discusses the source, essence of "Yellow Peril" doctrine and its latest hegemony "variant", and criticizes the "China Threat" doctrine from a modern perspective.

Chapter 1 deals with the conception and the subject matter coverage of IEL. According to this Chapter, the "narrow interpretation" doctrine would consider IEL as a novel branch of public international law that only regulates international economic relations;[1] while the "broad interpretation" doctrine advocates that IEL refers to all legal norms regulating cross-border economic activities.[2] Then, starting from the reality that a variety of the cross-border economic intercourse with individuals, Professor CHEN advocates for the "broad interpretation" on the basis of the philosophy of practicalities. Therefore, he concludes that IEL generally refers to all legal norms that regulate international economic relations, comprising public international law, private international law, domestic economic law and soft rules that originate from international business practices. Even though the "broad interpretation" is the mainstream theory of American IEL scholars, Professor CHEN did not unconditionally accept this doctrine. For instance, in 2002-2008, Professor Andreas F. Lowenfeld published and reprinted a treatise titled *International Economic*

[1]For the "narrow interpretation", Professor CHEN takes the opinions of G. Schwarzenberger, Kanazawa Yoshio and D. Carreau as example. See An CHEN, *The Voice from China: An CHEN on International Economic Law*, Berlin/Heidelberg: Springer, 2013, p.5.

[2]For the "broad interpretation", Professor CHEN takes the opinions of P. C. Jessup, H. J. Steiner & D. F. Vagts, J. H. Jackson, A. Lowenfeld and Sakurai Masao as example. See *ibid.*, p.6

Law, in which he gave a rather low evaluation of the legal force of the Charter of Economic Rights and Duties of States (1974), Professor CHEN criticized this opinion based on the fact that the Charter has won widespread recognition by international society and has already formed *opinio juris communis*.[1]

The position of Chapter 1 is based on pragmatic approach. It profoundly comprehends the connotation and denotation of IEL, supports the position of China as a developing country, and challenges the legitimacy of the viewpoints advocated from the standpoint of developed countries. In fact, the position of this Chapter is consistently adhered to this monograph. Chapter 4 (first published in 2003) of Part II relates to the Great 1994 Sovereignty Debate in the United States prior to the establishment of the WTO. It also discusses the disputes over Section 301 of the US Trade Act and US safeguard measures on imports of certain steel products under the WTO, and criticizes that the adherence of the United States to its own economic sovereignty had incurred damages to the multilateral trade system.

The Great 1994 Sovereignty Debate mainly refers to the nationwide discussion in 1994 prior to the establishment of WTO, when the US Congress was focusing on whether or not the United States should accept and implement the Uruguay Round results, and more specifically, "whether the acceptance of the WTO dispute settlement mechanisms was an inappropriate infringement on the United States' sovereignty."[2] According to the *Understanding on Rules and Procedures Governing the Settlement of Disputes*(hereinafter DSU) adopted at the Uruguay Round, the Dispute Settlement Body (DSB) shall have the authority to establish panels, adopt Panel and Appellate Body reports under "reverse consensus", whereby reports are entrusted with the legal force of being adopted automatically. Many members of the Congress worried that the sovereignty of the United States would be impaired because of DSU. In addressing these viewpoints, Professor Jackson provided the following explanations and clarifications: WTO agreements will not be self-executing in US law, nor do the results of panel reports or Appellate Body reports automatically become part of U.S. law. Instead, the United States must implement the international obligations or the result of a panel report, often through legislation adopted by the Congress. In the

[1]*Ibid*., pp.15-17

[2]See John H. Jackson, "The Great 1994 Sovereignty Debate: United States Acceptance and Implementation of the Uruguay Round Results", 36 *Columbia Journal of Transnational Law* 157 (1997).

case that the US Congress is not willing to execute panel reports or Appellate Body reports, the US Government still has the power to resist to adopt them under the US Constitution. In the worst case, the United States has the right to withdraw from the WTO, and thus need not bear its obligations under the WTO agreements.

By dissecting the viewpoints of Professor Jackson, Professor CHEN keenly discovered that the United States had strong creeds on its own sovereignty.[1]Prof. CHEN believes that is the reason for the US Congress to still retain and enforce Section 301 of US Trade Act after its ratification of the WTO agreement. And the U.S. often unilaterally initiated trade sanctions (for example, the 1995 *US-Japan Auto* case, the 1998 *US-EC Banana* case). In the *US-EC banana* case, the WTO panel report concluded that although Section 301 seems to violate WTO agreements at the first glance, the US Government had demonstrated in its Statement of Administrative Action (SAA), which was made in the process of adopting Uruguay Round agreements, that it committed to limiting the implementation of Section 301 to ensure the consistency of WTO agreements. Professor CHEN expressed a certain degree of understanding of the panel report. Meanwhile, he criticizes sharply on its incapability of restraining the unilateral measures of the United States.[2] After that, in the *US – Safeguard Measures on Steel Products* case, the WTO panel ruled against the United States, which is regarded as the first minor victory of multilateralism.[3]

Part III discusses China's strategic position in the establishment of new international economic order (hereinafter "NIEO"). The book provides the most appropriate materials for examining changes brought by China's participation to the organizations and treaties of IEL. Here, I would like to introduce Chapter6 (first published in 2009) on China's position in the NIEO. At the beginning of this Chapter, Professor CHEN demonstrates the "Path of 6C" or "Law of 6C" that leads the old international economic order (hereinafter "OIEO") to the NIEO. This path shows a spiral-up development, namely Contradiction → Conflict → Consultation → Compromise → Cooperation→Coordination→Contradiction new.[4] Prof. CHEN proposes that, as the largest developing country, China should be devoted to follow such development path, play an important

[1]See An CHEN, *supra* n.6, pp.119-120.
[2]*Ibid.*, pp.148-156.
[3]*Ibid.*, p.157
[4]Ibid.,p.168

role in the historical course of establishing the NIEO to realize the goal of peaceful rising. From the 1955 Summit of Non-Aligned Countries (Bandung Conference), through the 1974 Declaration on the Establishment of A New International Economic Order, to the final establishment of the WTO system, Professor CHEN emphasizes that in the process of developing IEL, China should strengthen the position of developing countries and become one of the driving forces and mainstays for the establishment of the NIEO in joint effort with the South-South self-reliance through cooperation, that is cooperation between developing countries and mutual assistance.[1]

Chapter 7 (first published in 2006) demonstrates the coalition of developing countries, led by China, India and Brazil, in the process of the WTO Doha Development Round, and explains China's positive strategy on establishing NIEO as advocated by Professor CHEN.

The first three parts of the book focus on the general theories of IEL and international trade law centering on WTO law. Part IV mainly concerns with international investment law. Chapter 9 (first published in 2006) discusses the dispute settlement provisions in Sino-foreign BITs (hereinafter referred to as the Chinese BITs). By 2006, China had concluded 112 BITs, and it still adhered to serious and cautious attitude on investment dispute settlement provisions. After many years' investigation, policy consultation and prudent thought, China signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (hereinafter referred as "ICSID Convention") on February 1990. After three years' of weighing the pros and cons carefully, China finally ratified it on January 7, 1993. Before that, although there were arbitration clauses that investment disputes can be submitted to the international arbitration in Sino-foreign BITs, no concrete procedures were set. Even in the BITs signed after 1993, China still restricted the scope of cases which may be submitted to ICSID, only to disputes concerning the amount of compensation for expropriation. Chapter 9 also devotes in examining some critical provisions concerning dispute settlement in the US and Canadian 2004 Model BITs, and discusses whether China should adopt the same rules. Most of the prevailing BITs provide that foreign investors are allowed to submit investment disputes between them and the host country for

[1]Professor CHEN once mentioned that for the purpose of promoting South-South coalition, BRIC countries should coordinate their positions.

international arbitration if the disputes could not be resolved through settlement. Professor CHEN regards the above provisions as reflecting the rights and interests of developed countries or capital exporting countries. However, he argues that China, being a capital importer, needs to put special consideration on the adoption of such clause. Hence, he suggests that in the course of negotiating BITs, the host developing countries should stick to the following four "Great Safeguards", including (i) the right to consent to international arbitration on the case-by-case basis, (ii) the right to require exhaustion of local remedies, (iii) the right to apply the host country's laws as governing law, and(iv) the right to invoke the exception for state's essential security.[1]

The above Chapter was published in 2006 when China could no longer be considered as merely a capital-importing country. Because since the eleventh five-year plan (2001-2005), China has begun to take active strategy promoting outward investment ("going-out" policy), it appeared to be no longer appropriate if China always concluded treaties from the position of a net capital importer. However, based on the official statistics by the end of 2004, Prof. CHEN pointed that the ratio between China's outward investments (contingent credits) and its inward investments (contingent debts) is merely about 4.5%:95.5%. Therefore, Prof. CHEN thinks it is too early and too fast to change the policy.[2]Meanwhile, by taking lessons from the experience of Argentina, Prof. CHEN explained that once a country loosens its jurisdiction imprudently, a tidal wave of litigations will follow. Therefore he asserted that China should take serious consideration again as to submitting investment disputes for international arbitration. In that Chapter, Prof. CHEN still treated China as a major capital recipient, and continued to propose to make treaty based on practicalities. In this sense, the Chapter remains well connected with the foregoing Parts 1 through 3. At the same time, in view that China's foreign investment proportion may increase in the future, he admits that the policy of investment disputes arbitration may also evolve. In this sense, Prof. CHEN's position is not dogmatic, but practical. If we expand the philosophy of practicalities longer on the time dimension, investment arbitration clause may be prescribed in BITs between China and developing countries, but as to BITs between China and developed countries as capital exporter, we should remain prudent. Chapter10 (first published in 2007) also advocates for this

[1]*Ibid*.,pp.282-287
[2]*Ibid.*,p.289

kind of a differential treatment.

Part V includes 7 relevant Chapters, relating to China's legislation on Sino-foreign economic issues. Chapter 16 (first published in 1990) is about the development and legal framework of China's Special Economic Zones and Coastal Port Cities. It is important to note that the Chapter was published in 1990.China adopted a basic state policy of reform and opening up in 1978. Since 1980, China has consecutively established the Special Economic Zones (SEZs) in Shenzhen, Zhuhai and Shantou in Guangdong Province, Xiamen in Fujian Province, and the entire province of Hainan (1988). In 1984, China further opened 14 Coastal Port Cities (COPOCIs) including Dalian, Tianjin, Shanghai. Since 1985, mainland China created the Zhujiang River Delta, the Yangtze River Delta, Special Economic Zones etc., which were generally called as Coastal Economically Open Areas (CEOAs). The economic reform in China was progressively promoted, until it was temporarily interrupted, by the unfortunate Tiananmen Event of 1989, to which China suffered from serious criticism from many countries. To write such an article as this Chapter at that specific historical background, Prof. CHEN intended to declare the legitimacy of opening-up policy to set up Special Economic Zones and Open Coastal Port cities both at home and abroad. There was a voice in then China that criticized the reform and opening-up policy as "leased territories" or "concession". Faced with such challenge, Prof. CHEN pointed out that the opening-up policy is completely different from the "concession" either from the policy's purpose (Socialist Modernization), or China's jurisdiction over foreign investment.[1] In addition, Prof. CHEN praised highly to China's internal and external investment leap growth in the past ten years since the opening-up policy. With regard to corruptions occurred in the process of gradual opening-up, Prof. CHEN also praised the anti-corruption measures taken by the Chinese authorities. Then the Chapter makes a detailed explanation on opening-up policy such as the Special Economic Zones from legal perspective, with a wish to promote the enthusiasm of the internal and external investments that had been weakened due to Tiananmen Event. This is in common with other Chapters in part V that interpret China's foreign economic policy from a legal perspective. For example, Chapter 18 (first published in 1997) on China's Arbitration Law (issued

[1] *Ibid*.,pp.484-486.

in 1994, enforced in 1995),Chapter 19 (first published in 2005) on China's domestic law about acknowledgement and enforcement of foreign arbitral awards.

Part VI includes 5 comments and opinions, written by Prof. CHEN as an expert when he offered consul service on investment arbitration cases in China. Chapter 20 (first published in 2006) is an "Expert's Legal Opinions" written upon the request by a British insurance company, regarding the subrogation right of the insured. The summary of the case is as follows: A British investment company and a Chinese enterprise established a power company, there were provisions of distribution of profit in the contractual joint venture (CJV) that constituted a guaranteed return in the ratio of 18% to the investment. But according to the State Council's Circular [1998] No. 31, a guaranteed fixed return to foreign investors in Sino-foreign joint ventures should be prohibited. Therefore, the provisions on distribution of profit in CJV were invalid and the British investment company claimed that the Circular constituted an act of expropriation. Then the British investment company initiated arbitration proceedings based on China's arbitration law, requested the British insurance company to pay insurance indemnity. Prof. CHEN noted in the expert opinion that the legal effect of the State Council's Circular is lower than China's legislations. China's Contractual Joint Venture Law is the relevant governing legislation. Therefore, he denied the legal effects of the Circular that changed the contents of Contractual Joint Venture Law. Therefore, the British insurance company who insured the expropriation risk for British investment company should make careful investigation to check whether the covered risk has really happened and the assured has really suffered subsequent losses before relevant payment for subrogation claims.

Chapter 21 (first published in 2006) is the re-comments to the question raised by the British insurance company. Prof. CHEN reiterated that the measures taken in this case are not "behaviors of expropriation", and the British investment company should not make subrogation claims toward the insurance company. In such expert's legal opinions, Prof. CHEN explained Chinese law clearly as an expert on investment disputes in China. What's more, he has also played a considerable role in the international arena. Although it is not mentioned in this book, actually Professor CHEN is an arbitrator designated by the Chinese government in the panel list of ICSID,

and was appointed as an arbitrator in two ICSID arbitration cases by the government of Zimbabwe in 2011.[1]It is indicated that in the investment arbitration practice, the Chinese government gives full trust to Professor CHEN.

Above offers a very concise introduction and summary of the Chapters written by Prof. CHEN in the field of IEL since 1984. As the question raised at the beginning of this paper, what changes have taken place in the process of IEL's universality after the Cold War ended? It can be inspired by the Chapters of Prof. CHEN. This is precisely also the intention of this review, which opines that:

Firstly, as the consistent stance of the book, China's accession to the organizations and treaty system of IEL is an important part for it to implement the policy of reform and opening-up. What's more, for the smooth progress of reform and opening-up, China has to weigh and balance different contents of IEL, and needs to pay attention to practicalities orientation. The most notable expression of this concept is included in Chapter 9, which recommends that China should maintain a cautious attitude when introducing the investment arbitration system. Chapter 10 is in favor of the proposal of trying to introduce investment arbitration system into investment treaty between China and developing countries in which China has foreign direct investment. The same practicalities also appear in Chapter7, which discusses China's strategic position in the WTO Doha Round negotiations, and in Chapters1 and 2, which support "broad interpretation" concept of IEL. These are Prof. CHEN's consistent views on IEL. For China, it means to show the promise of the reform and opening-up policy both at home and abroad when participates in the multilateral trading system and enters into BITs, in order to promote China's products export in the future. However, in the process of transition from the planned socialist system to the market economy system, accompanying by huge pains and frictions, China should try its best to seek safeguards in the gradual acceptance of IEL. Prof. CHEN's practicalities throughout this book is in compliance with China's relevant policy requirements.

[1]Bernhard von Pezold and Others v. Republic of Zimbabwe(ICSID Case No. ARB/10/15); Border Timbers Limited, Border Timers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe(ICSID Case No. ARB/10/25).

Secondly, as the largest developing country, China typically objects to the tyranny of developed capitalist countries on its road of "peaceful rise", a point clearly demonstrated in Chapter 6. Chapter 6 discusses China's strategic position in the establishment of NIEO, and criticizes today's biggest hegemonic power – the United States, who often takes unilateral measures over multilateralism. In other words, the ideas of IEL advocated by Prof. CHEN are sharply opposite to the US unilateralism. After the Cold War, the process of universality of IEL highlights the fact that, the United States, although constantly praising itself as representative of multilateralism, is self-centered actually. On the other hand, it is undeniable that China's strategy has also drawn some criticisms, such as the cause of long-term or even stagnation of the WTO Doha Round, and the ineffectiveness of the multilateral trading system. After 16 years since its accession to the WTO, China has become the world's largest trading nation. As the biggest beneficiary of the multilateral trading system, should China not play a leading role to maintain and develop the multilateral trading system?

The current President of the United States expressed a starkly view of "America First", and withdrew from the TPP on the first day he took office. On the contrary, in the Davos 2017 Conference, Chinese President Xi Jinping defended globalization once again. The universal IEL will face two tasks in the future: one is to curb the unilateralism advocated by the United States, and the other is how China should play a leading role in the process of globalization. Meanwhile, the practicalities advocated by Prof. CHEN in the book *The Voice from China* will continue to attract wide concern and inspire deep discussion among the global academic circles.

国際経済法の普遍性について

― An Chen, *The Voice from China: An CHEN on International Economic Law*, Berlin/Heidelberg: Springer, 2013 を素材に

中　川　淳　司[1)]

国際経済法（international economic law）が普遍性を獲得したのはいつのことだろうか？　WTO（世界貿易機関）の加盟国が 160 を超え，[2)] 二国間投資条約（bilateral investment treaties, BITs）の総数が 3000 近くに達した今日，[3)] この問いかけはいささか奇異に響くかもしれない．しかしながら，時計の針をわずか 30 年前の 1987 年に戻してみると，この問いかけは今日とは異なり，単なる修辞以上の意味があった．1987 年には WTO はまだ存在しなかった．WTO の前身である GATT（関税と貿易に関する一般協定）の下で 8 回目に当たる多角的貿易交渉（ウルグアイラウンド）がその前年にスタートしていた．1987 年時点での GATT の締約国は 91 であった．東西冷戦の末期であり，ソ連，中国を初めとする社会主義諸国の大半は GATT には加わっていなかった．[4)] 二国間投資条約の総数は 1987 年時点で約 300 であり，[5)] その多くは欧州の先進国と開発途上国との間で締結されたものであった．第二次世界大戦後まもなく本格化した東西冷戦の下で，今日の国際経済法を構成する主要な国際組織や条約はもっぱら西側の資本主義諸国と一部の開発途上国を構成員としており，社会主義諸国の大半はこれらの国際組織や条約には参加し

1）東京大学社会科学研究所教授

2）2017 年 2 月現在の WTO の加盟国数は 164 である．この他に 21 の国が加盟交渉中である．参照，WTO, Members and Observers. Available at [https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm]

3）2015 年末時点で，BIT の総数は 2946 である．この他に，自由貿易協定（FTA）で投資章を設けているものが 358 あり，これらを合計した国際投資協定（international investment agreements, IIAs）の総数は 3304 件に上る．参照，UNCTAD, *World Investment Report 2016 Investor Nationality: Policy Challenges*, Geneva: UNCTAD, 2016, p.101.

4）若干の例外はあった．GATT の原締約国であり，1959 年の革命後も引き続いて GATT 締約国であったキューバの他，同じく原締約国であったチェコスロバキア，ポーランド（1967 年加盟），ルーマニア（1971 年加盟），ハンガリー（1973 年加盟）は既に GATT に加盟していた．

5）参照，UNCTAD, *Trends in International Investment Agreements: An Overview*, Geneva: UNCTAD, 1999, p.22, Figure 2.

ていなかった．その意味で，国際経済法が今日の普遍性を獲得するのは冷戦終結後のことであるといえる．

社会主義諸国にとって冷戦の終結は，国内的にはそれまでの経済体制を改めて市場経済に親和的な諸制度を新たに導入することを意味した．それと同時に，対外的には，それまで資本主義諸国と開発途上国で構成されていた国際組織や条約に新たに加入することを意味した．国内の体制変革と新たな国際義務の受容を伴うこのプロセスを社会主義諸国がどのように通過したかは，それ自体として興味深い研究テーマである．しかし，国際経済法学にとってより重要な研究テーマは，冷戦終結後の国際経済法の普遍化の過程で国際経済法にいかなる変化がもたらされたかであろう．この問題を考える上で，中国の体験に焦点を当てることには以下の意義がある．第一に，中国は，国内の体制変革と新たな国際義務の受容を通じて，冷戦終結後の国際経済法の普遍化を当事者として体験した国である．中国は鄧小平の指導体制の下で，1978 年 12 月の中国共産党第 11 期中央委員会第 3 回全体会議で改革開放政策を打ち出し，社会主義経済体制から市場経済体制への以降に踏み切った．それ以来，国内の諸制度の変革とともに対外開放政策を進め，1986 年には GATT への加盟を申請，15 年余りの交渉を経て 2001 年 11 月に WTO に加盟した．この間，1982 年 3 月にスウェーデンとの間で BIT を締結したのを皮切りとして，2017 年 2 月までの間に 132 の BIT を締結している．[6] 第二に，WTO 加盟と BIT の締結に象徴される中国による国際経済法の受容は，資本主義諸国と一部の開発途上国で構成されていた国際組織や条約を単に受け入れるという消極的受容ではなかった．中国の WTO 加盟と同時に開始された WTO のドーハ開発アジェンダでの中国の交渉スタンスを克明にフォローした Lim らが指摘するように，[7] 中国はドーハ開発アジェンダで次第に開発途上国を代表して米欧などの先進国に対峙するようになる．GATT の時代の多角的貿易交渉が主要先進国の合意を軸として進められたのに対して，WTO の多角的貿易交渉の力学は変化しており，変化の一翼を中国が担ったといえる．その意味で，中国に焦点を当てることにより，冷戦終結後の国際経済法の普遍化の過程で国際経済法に生じた変化とその背景，さらには国際経済法の将来を考える上で有益な多くの知見が得られるだろう．そのための格好の素材となるのが，本稿で取り上げる An Chen, *The Voice from China: An CHEN on International Economic Law*, Berlin/Heidelberg: Springer, 2013（lxiii+789pp.）である．

6）参照，UNCTAD, International Investment Agreements Navigator, China. Available at [http://investmentpolicyhub.unctad.org/IIA/CountryBits/42#iiaInnerMenu]

7）C. L. Lim and J. Y. Wang, “China and the Doha Development Agenda”, 44 *Journal of World Trade* 1309 (2010).

著者の陳安教授は中国の国際経済法研究の第一世代を代表する人物である．1929 年福建省福安生まれ，1950 年に廈門大学法学部を卒業して教職に就くも，1953 年には当時の共産党政権の高等教育政策方針に従い専攻をマルクスレーニン主義に変えた．改革開放開始後の 1980 年に復活した廈門大学法学部で再び法学を教授するようになり，1981 年から 1983 年にハーバード大学ロースクールで国際経済法の研究に従事した．1999 年に廈門大学を定年退職するが，その後も名誉教授として教育，研究と論文指導を行っている．この間，1993 年から 2011 年まで中国国際経済法学会の理事長を務めた．陳安教授の国際経済法に関する著作は 2008 年に著作集 5 巻にまとめられ，復旦大学出版社から出版されている．本書は陳安教授の国際経済法に関する代表的な著作を収録する論文集である．初出時期で 1984 年から 2012 年にまたがる以下の 6 部・24 篇の論文が収められている．

第 1 部　国際経済法の理論（第 1 論文～第 3 論文）
第 2 部　国際経済法における主権論争（第 4 論文～第 5 論文）
第 3 部　現代国際経済秩序における中国の戦略的な位置（第 6 論文～第 8 論文）
第 4 部　二国間投資条約の多様性（第 9 論文～第 12 論文）
第 5 部　中国の対外経済法（第 13 論文～第 19 論文）
第 6 部　中国の国際経済紛争実践（事例分析）（第 20 論文～第 24 論文）

紙幅の関係で，全ての論文を取り上げて論評することはせず，各部の構成と主要な論文の紹介を通じて，陳安教授の国際経済法学のエッセンスを浮き彫りにすることとする．

第 1 部には 3 本の論文が収められている．国際経済法の定義と対象範囲を論じた第 1 論文「国際経済法学の周辺性，包括性と独立性について」（1991 年初出），「中国の国際経済法学の発展に対する誤解について」論じ，その学問としての独立性を擁護する第 2 論文（1991 年初出），「黄禍論」の起源と本質を論じ，その現代的な表明として「中国脅威論」を批判的に論じる第 3 論文（2012 年初出）である．第 1 論文は，国際経済法の定義と対象範囲について，国際公法に限定する狭義説[8)] と国境を超える経済関係を規制する国際法と国内法の総体と把握する広義説[9)] を紹介する．そして，国境を超える経済関係の多くが私人によって担われている現実を的確に把握する必要があるというプラグマティック

8）陳安教授は代表的な学説として G. Schwarzenberger, 金沢良雄，D. Carreau を挙げる．参照，An Chen, *The Voice from China: An CHEN on International Economic Law*, Berlin/Heidelberg: Springer, 2013, p.5.
9）陳安教授は代表的な学説として，P. C. Jessup, H. J. Steiner & D. F. Vagts, J. H. Jackson, A. Lowenfeld, 櫻井雅夫を挙げる．参照，*ibid*., p.6.

な理由から広義説を支持する．そして，国境を超える経済関係を規律する国際公法，国際私法，国内経済法，国際取引慣行から形成されたソフトなルールの総体で構成されるのが国際経済法であるとする．広義説は米国の国際経済法学における主流的見解といえようが，陳安教授はこれを無条件に受け入れるわけではない．例えば，Lowenfeld が 2002 年に刊行した国際経済法の教科書で諸国家の経済的権利義務憲章（1974 年）の法的効力について低い評価を下したことに対しては，同憲章は当時の諸国の共通の法的確信（*opinio juris communis*）を表明するものであったとして，これを批判する．[10)]

第 1 論文のスタンス，すなわちプラグマティックな観点から国際経済法をとらえるとともに，開発途上国としての中国の立場を擁護し，先進国の立場から唱えられる見解の歪みを批判するというスタンスは，本書に通底するスタンスである．第 2 部の第 4 論文（2003 年初出）は，WTO 発足前の米国で戦わされた主権論争，米国通商法 301 条の発動をめぐる WTO 紛争，米国の鉄鋼セーフガード措置の発動をめぐる WTO 紛争という 3 つのトピックを取り上げて，通商問題に関する米国の主権と多角的貿易体制の関係を批判的に論じる．主権論争とは，WTO 発足直前の 1994 年に米国議会でウルグアイラウンド協定法の採択に際して戦わされた「WTO の紛争解決手続に服することで米国の主権が損なわれることになるか」をめぐる論議を言う．[11)] ウルグアイラウンドで採択された紛争解決了解により，WTO の下では紛争解決小委員会の設置，小委員会報告・上級委員会報告の採択がネガティブ・コンセンサス方式により半ば自動化された．これにより米国の主権が損なわれるのではないかとの意見に対して，Jackson 教授は以下の通り反論した．WTO 協定は米国法上で自動執行力を持たない．小委員会報告・上級委員会報告も同様であり，これらを実施するためには議会の立法措置が必要である．議会が小委員会報告・上級委員会報告の実施を望まない場合，米国憲法上議会はその意思を貫徹する権限を有する．最悪の場合，米国は WTO から脱退することで WTO 協定上の義務から離脱することもできる．陳安教授は，Jackson 教授のこの説明に主権に対する米国の強い信念（creed）を見出す．[12)] そして，米国議会が WTO 発足後も通商法 301 条を維持し，一方的な発動を行ったこと（1995 年の日米自動車摩擦に際しての発動，1998 年の EU バナナ紛争に際しての発動）をもって，その現われとする．後者の発動に対して EU が行った WTO 申立てを扱った小委員会報告は，301 条の文言は一見すると WTO 協定に違反するが，米国行政府がウルグアイラウン

10）*Ibid*., pp.15-17.
11）参照，John H. Jackson, “The Great 1994 Sovereignty Debate: United States Acceptance and Implementation of the Uruguay Round Results”, 36 *Columbia Journal of Transnational Law* 157 (1997).
12）参照，An Chen, *supra* n.6, pp.119-120.

ド協定法の採択に際して行った行政府行動宣言（SAA）でWTO協定整合的な301条の実施を約束したことにより，WTO協定との整合性が担保されたと判断した．陳安教授はこの小委員会報告の判断に一定の理解を示しながら，米国の一方主義を抑止する上では十分でないとして，詳細な批判を加える．[13] 他方で，その後の米国の鉄鋼セーフガード措置をめぐるWTO紛争で小委員会が米国敗訴の結論を導いたことに多国間主義の勝利を見出す．[14]

現代の国際経済秩序における中国の戦略的な位置を論じた第3部は，中国の参加で国際経済法の組織と条約体制にどのような変化が生じたかを考察する上で好個の材料を提供する．ここでは，現代国際経済秩序における中国の立場を総括的に解説した第6論文（2009年初出）を紹介する．論文の冒頭で，陳安教授は旧国際経済秩序（OIEO）から新国際経済秩序（NIEO）への以降が「6つのC」の螺旋的な発展という経路を辿るとの見方を示す．即ち，矛盾（contradiction）→対立（conflict）→協議（consultation）→妥協（compromise）→協力（cooperation）→新たな矛盾（contradiction new）という経路である．[15] そして，平和的台頭を目指す最大の開発途上国である中国は，以上の経路に沿って新国際経済秩序の実現に向けて尽力すべきであると主張する．1955年の非同盟諸国首脳会議（バンドン会議）から1974年の新国際経済秩序樹立宣言を経て今日のWTO体制に至る国際経済法の発展を踏まえて，開発途上国の地位の強化のために他の開発途上国とも協力しながら積極的な役割を果たすことを強調する．[16]

WTOドーハ開発アジェンダにおける中国，インド，ブラジルを軸とする途上国連携（coalition）の展開を論じた第7論文（2006年初出）は，陳安教授が提唱する新国際経済秩序の実現に向けた中国の積極的な戦略を解説したものである．

第3部までの論考が国際経済法学一般とWTO法を軸とする国際貿易法に焦点を当てたものであったのに対して，第4部は国際投資法を取り扱う．本稿では中国が締結した二国間投資条約における紛争解決条項について論じた第9論文（2006年初出）を紹介する．同論文の刊行時点で中国は既に112の二国間投資条約を締結していたが，投資紛争解決手続についてはきわめて慎重な立場を維持してきた．中国が投資紛争解決条約（ICSID条約に署名したのは1990年2月のことであり，条約の批准にはさらに3年を要した．それ以前に中国が締結した二国間投資条約では，投資紛争を国際仲裁に付託する可能性に言

13）参照，*ibid.*, pp.148-156.
14）参照，*ibid.*, p.157.
15）参照，*ibid.*, p.168.
16）陳安教授は，そのための方策としてBRICSの協調に言及する．参照，*ibid.*, p.204.

及する一方で，具体的な手続の定めは置かれなかった．その後に中国が締結した二国間投資条約においても，受入国による投資家財産の収用に対する補償をめぐる紛争についてのみ ICSID 仲裁への付託を認めるという限定的な方針が採られてきた．第 9 論文は，米国の 2004 年モデル二国間投資条約とカナダの 2004 年モデル二国間投資条約の投資紛争解決手続に関する規定を検討し，中国が同様の規定を採用すべきか否かを論じる．いずれも，二国間投資条約が規定するあらゆる事項に関して生じた投資紛争が外国投資家と投資受入国の協議により解決されない場合，外国投資家が紛争を仲裁に付託することを認めている．陳安教授はこの規定を資本輸出国である先進国の利害を反映したものであると評価し，外国投資をもっぱら受け入れる立場にある中国が同様の規定を採用することには慎重であるべきと主張する．そして，投資紛争解決に当たっては，受入国に，（ⅰ）紛争の仲裁付託に当たっての同意権，（ⅱ）国内救済原則，（ⅲ）受入国国内法の準拠法としての適用，（ⅳ）核心的な安全保障に関わる紛争の適用除外という 4 つのセーフガードが認められるべきであると主張する．[17] この論文が公刊された 2006 年の時点で，中国は一方的な資本輸入国・投資受入国であったわけではない．中国は第 11 次 5 カ年計画（2001 年～ 2005 年）以来対外投資を積極的に展開する戦略（走出去）を採用するようになった．もっぱら資本輸入国としての立場から望ましい条約規定を提唱することには疑問なしとしない．これに対して，陳安教授は，2004 年時点で中国の対内外国投資に比べて対外投資の比重はフロー，ストックともにきわめて小さいことから，上記の方針を転換することは尚早であると主張する．[18] それと同時に，国家債務の不履行をめぐり多数の投資紛争仲裁案件を提起されたアルゼンチンの事例を挙げて，投資紛争仲裁への慎重な方針を維持することを重ねて主張した．本論文における陳安教授の主張は，投資受入国としての中国の立場に配慮した現実的でプラグマティックなものであり，その姿勢は第 1 部～第 3 部を貫くプラグマティズムに通じる．それと同時に，中国の対内外国投資と対外投資の比重に言及したことを踏まえると，将来中国の対外投資の比重が高まれば，投資紛争仲裁に対する方針も変わりうることが想定されている．その意味でも，教授の姿勢は教条的でドグマティックなものではなくプラグマティックであるといえる．このプラグマティズムを延長すると，中国が対外投資を行う途上国と締結する二国間投資条約と中国が投資を受け入れる比重が大きい先進国と締結する二国間投資条約を区別し，後者では投資紛争仲裁への慎重な方針を維持しながら前者には投資紛争仲裁条項を採用するという方針が導かれるだろう．第 10 論文（2007

17）参照，*ibid.*, pp.282-287.
18）参照，*ibid.*, p.289.

年初出）はまさにこの意味での二重基準を提唱する．

第 5 部は，中国が策定した対外経済法に関する 7 本の論考を収める．本稿では，経済特区と沿海港湾都市に関する中国の制度の発展を解説した第 16 論文（1990 年初出）を紹介する．この論文が刊行された 1990 年という時期には注意が必要である．中国は 1978 年の改革開放政策の開始後，1980 年から順次，広東省の深圳，珠海，汕頭，福建省の廈門，海南島（1988 年）に 5 箇所の経済特区（SEZs）を設置した．1984 年にはさらに大連，天津，上海など 14 の沿海港湾都市（COPOCIs）を開放し，1985 年以降は長江デルタなど沿海経済開放地帯（CEOAs）を設置し，開放政策を推進した．しかし，1989 年の天安門事件で中国は諸外国から厳しい非難を浴び，改革開放政策は一時的に中断を余儀なくされた．このタイミングで執筆された本論文は，経済特区や沿海港湾都市などの開放政策の正当性を内外に示す意図があった．対内的には，開放政策が戦前の租界の復活につながるのではないかとの批判があった．本論文で陳安教授は，これらの開放政策が，その目的（近代化）から見ても，また外国投資に対する中国政府の管轄権の態様から見ても，かつての租界とは全く異なると主張する．[19] そして，開放政策開始以来の約 10 年間で中国の対内外国投資が飛躍的に増大したことを高く評価する．教授が特に評価するのは，段階的・漸進的に開放を進めるアプローチをとったこと，その過程で生じた腐敗に対して当局が断固たる対応をとったことである．論文は次いで，経済特区などの開放政策の法的側面を詳細に解説する．天安門事件で勢いがそがれた対内外国投資の再活性化を広く訴えることが狙いであった．中国の対外経済政策の法的側面を英文で解説するという狙いは第 5 部に収められた他の論文にも共通する．例えば，第 18 論文（1997 年初出）は中国の仲裁法（1994 年公布，1995 年施行）の解説であり，第 19 論文（2005 年初出）は外国仲裁判断の中国における承認・執行をめぐる国内法令の解説である．

第 6 部は対中投資に関わる仲裁等の紛争案件で専門家として意見を求められた著者が執筆した意見書や解説など 5 本を収める．本稿では，英国の保険会社の求めに応じて執筆された，被保険者の代位請求についての鑑定意見書として執筆された第 20 論文（2006 年初出）を紹介する．事案は，中国会社との合弁で設立された電力会社に投資した英国企業が投資契約で投資額の 18% の利益を保証されていたことに対して，外資合弁企業による固定利率での利益配分を禁じた国務院通知によりこの契約条項が取り消されたことが収用（expropriation）に当たるとして，同企業が中国仲裁法に基づく仲裁手続を提起し，英国の保険会社に保険金の支払を求めたものである．陳安教授は鑑定意見書で，国務院通知が

19）参照，*ibid.*, pp.484-486.

中国国内法上制定法より低い効力しか認められていないとして，制定法である合弁法の内容を変更する趣旨の国務院通知の法的効力を否定した．そして，英国保険会社に対して，代位請求に先立って収用に当たる損失が生じているか否かを慎重に調査するよう勧告した．これを受けて英国の保険会社から追加の質問が陳安教授に出され，それに対して回答したのが第 21 論文（2006 年初出）である．教授は本件措置が収用とみなされないことを重ねて説き，保険会社に代位請求を行うべきでないと説示した．これらの鑑定意見書における陳安教授の関連中国法の解説は明快であり，教授が中国の対内投資に関連する紛争処理において鑑定人として果たした役割の一端を伝える．本書には収録されていないが，陳安教授は中国政府により投資紛争処理条約の仲裁人候補者として指名されており，2011 年にはジンバブエ政府により 2 件の ICSID 仲裁で仲裁人に任命されている．[20] 投資紛争仲裁の実務においても陳安教授に対する中国政府の信頼が厚いことを示している．

以上，陳安教授が 1984 年以降に執筆した国際経済法分野の論考を収録した著作の概要を紹介した．本稿の冒頭に掲げた，冷戦終結後の国際経済法の普遍化の過程で国際経済法にいかなる変化がもたらされたかという問いかけに対して，陳安教授の著作から得られる示唆を指摘して，本稿の結びとしたい．第一に，本書を通じて一貫する姿勢として，中国が国際経済法の組織と条約体制に参加することが改革開放政策の遂行にとって重要であり，かつ，改革開放政策の円滑な遂行に資する限りで国際経済法の内容を取捨選択するという，プラグマティックな姿勢が読み取れる．それが最も明瞭に現れたのは，投資紛争仲裁制度の導入に慎重な意見を述べた第 9 論文であり，中国が対外投資を行う途上国との二国間投資条約においては投資紛争仲裁制度の採用を考えても良いという二重基準を示唆した第 10 論文である．しかし，同様のプラグマティックな姿勢は，例えば，WTO のドーハ交渉における中国のスタンスを論じた第 7 論文，さらに，国際経済法の概念について国内経済法なども含めた広義説を支持した第 1 論文にも現れており，教授の国際経済法学を貫く一貫した姿勢といえる．中国にとって，多角的貿易機構への参加と二国間投資条約の締結は，改革開放政策へのコミットメントを内外に表明し，対内投資を盛んにして世界貿易における中国の輸出を伸ばしてゆく上で重要な役割を果たした．ただし，社会主義体制から市場経済への体制移行は大きな痛みと摩擦を伴うプロセスであり，国際経済法の受容に当たっても漸進的な体制移行を可能とするセーフガードを極力確保することが求め

20）以下の 2 件である．*Bernhard von Pezold and Others v. Republic of Zimbabwe* (ICSID Case No. ARB/10/15); *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe* (ICSID Case No. ARB/10/25).

られた．本書を貫く陳安教授のプラグマティズムは中国のこのような政策要求と整合的であった．

第二に，平和的台頭を目指す最大の開発途上国として中国をとらえ，先進資本主義諸国の専横には断固反対するという姿勢も明瞭である．この姿勢は現代国際経済秩序における中国の立場を総括的に解説した第 6 論文で表明されているが，最大の覇権国である米国がしばしば一方主義を多国間主義に優先させることを批判した一連の論考にも鮮明に現れている．陳安教授が唱える国際経済法の理念は米国の一方主義と鋭く対立する．その意味で，冷戦終結後の国際経済法秩序の普遍化は，多国間主義の担い手としての米国が抱える自国中心主義の矛盾を際立たせる意味を持った．他方で，WTO のドーハ交渉における中国の戦略が交渉の長期化と停滞を招き，多角的貿易体制の有効性を減じる結果をもたらしたことは否定できない．WTO 加盟から 16 年を経て中国は世界最大の貿易国となった．多角的貿易体制の最大の受益者である中国には，この体制を維持し発展させる上での指導力を発揮することが求められるようになっているのではないか．

「米国第一」を露骨に唱える大統領が就任し，TPP からの離脱を通告した．ダボス会議では中国の習近平主席がグローバル化の推進を訴えた．普遍化した国際経済法の将来は米国の唱える一方主義の封じ込めと中国の指導力の発揮にかかっているように見える．本書で陳安教授が唱えたプラグマティズムの真骨頂が問われている．

（なかがわじゅんじ）

23.1：一部深邃厚重的普及读物

——评陈安教授对“中国威胁”谰言的古今剖析*

徐海**

大师写小书以飨大众

根据中央有关精神， 2013 年起，教育部正式启动规模宏大的“哲学社会科学研究普及读物”的编写与出版工程，动员全国高等院校一流的专家学者编写通俗易懂、篇幅 10-15 万字左右的小书，内容涉及中国特色社会主义道路与中国梦、哲学、经济学、政治学、法学、文学、史学、美学等人文和社会科学全方位领域。与一般意义的学术研究和科普读物相比，教育部此项工程更侧重对中国特色最新理论的宣传阐释，更强调学术创新成果的转化普及，更凸显“大师写小书”的理念，努力产出一批弘扬中国道路、中国精神、中国力量的精品力作。所撰写的作品必须具备相当的理论深度，同时又能深入浅出，推陈出新。这套丛书在强调理论普及的同时，特别注重对中国现实的高度关注。

诚然，历代学富五车的鸿儒大师，不乏辉煌巨著，洋洋大观。司马迁的《史记》、司马光的《资治通鉴》、马克思的《资本论》……这些鸿篇巨制，即使多个世纪过去仍旧熠熠生辉。不过，纵观历史上的大量重要名篇，影响一个国家甚至世界多年的薄册，也比比皆是，数量绝不亚于鸿篇。哥白尼的《天体运行论》、马基雅维里的《君主论》、王国维的《人间词话》、毛泽东的《论持久战》，……这些传之久远的著作，仅有不到 10 万字左右的规模，有的甚至仅有四、五万字，《道德经》《金刚经》（鸠摩罗什译本）只有 5000 字,儒家经典四书《大学》2000 字,《中庸》3000 字,《论语》16000 字,《孟子》只有 38000 字。

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* 陈安教授撰写的《美国霸权版“中国威胁”谰言的前世与今生》是中国教育部特约立项的优秀科研成果普及读物。其原始蓝本是中英双语长篇学术论文《评“黄祸”论的本源、本质及其最新霸权“变种”：“中国威胁”论》（On the Source，Essence of "Yellow Peril" Doctrine and Its Latest Hegemony "Variant": The "China Threat" Doctrine ）,分别发表于中国《现代法学》2011 年第 6 期和日内瓦 The Journal of World Investment and Trade,2012,Vol.13,No.1。其英文本经改写收辑为英文专著《中国的呐喊：陈安论国际经济法学》第 3 章 （The Voice from China：An CHEN on International Economic Law ， Chapter 3），由德国施普林格 Springer 出版社于 2013 年推出。

**作者系江苏人民出版社资深编审，总经理。

媒体报道，邓小平曾多次强调他反复阅读《共产党宣言》，每每温故而知新。1949 年 5 月，百万雄师突破长江天险，直捣国民党南京“总统府”。在“总统府图书室”，邓小平与陈毅曾纵论旅欧经历，都说是读了《共产党宣言》等启蒙书的缘故，才走上革命道路。 1992 年，邓小平在南巡中又语重心长地对大家说：“我的入门老师是《共产党宣言》”。有人计算过：这部迄今影响全球 170 年的伟大经典著作，也只有 15000 字左右。

借鉴中外历史经验，此项“大师写小书”的出版工程，由教育部精心遴选，定向组稿，并授权委托江苏人民出版社陆续推出。从目前已出版问世的 40 余本“小书”来看，基本体现了教育部的宗旨初心和严格要求。

题材独特、思想深刻、旁征博引、激情充盈

厦门大学陈安教授撰写的《美国霸权版“中国威胁”谰言的前世与今生》，是这批已出版“大师小书”中题材独特、思想深刻、旁征博引、激情充盈的作品，出版后深受广大读者欢迎，也引起了学术界的高度关注。该书不仅在一年内很快重印，而且也引起了国际上的关注，海外出版公司即将翻译出版。2016 年 10 月，在第十八届全国社会科学普及读物经验交流会议上，这部小书被授予**“全国优秀社会科学普及作品”荣誉称号**。

陈安先生系中国国际经济法学界的泰斗，是享誉世界的学者。他钩沉 140 余年的历史，环顾世界发展进程的中外关系，穷本溯源，纵横网罗，探究“黄祸”论的来源、表现形式、发生原因及本质特点。作者指出，今天“中国威胁”论其实是一百多年来“黄祸”论一以贯之的延续，是近代以来荒诞观点的最新霸权变种。无论是历史上的“黄祸”论，还是今日甚嚣尘上的“中国威胁”论，本质上都反映了列强力图殖民、侵略、污辱中国直至消灭中国的罪恶企图，并通过编织和捏造这些谰言，欺骗世界，错导后人，离间世上爱好和平的各国人民。

“黄祸”论肇始于近代史上中国最贫弱、中华民族灾难最深重之时。当时的中国，内外交困、山河破碎、国门洞开。昏庸无能、专制腐败的封建清朝政府对内为非作歹、穷奢极欲，盘剥百姓，对外却卑躬屈节，软弱无力，与列强签订无数丧权辱国的不平等条约，频频割地赔款，致使国家领土支离破碎，民不聊生。大量贫民被迫背井离乡，近走南洋，远逃北美，从事极端危险和困难的劳动，充当

低贱“苦力”，筑路开矿，寄人篱下，糊口谋生。他们备尝艰辛，为所谓的“上帝选民”“高贵白人”做牛做马，不但付出血汗，亦使家庭破碎，产生无数家破人亡悲剧。所谓的“高贵白人”不但不体恤远走他乡的华人的无奈与痛苦，更不深入探究他们这些“高贵白人”所在的列强侵略中国、掠夺中国财富也是导致中国贫民远走他乡糊口谋生的一个重要原因，反而时时恩将仇报，“卸磨杀驴”，诬蔑**黄皮肤**的中国贫民为“黄祸”，欺骗和唆使白人劳工投入残酷的排华、辱华、屠华活动。

陈安先生正是痛感昔日积贫积弱旧中国同胞水深火热的生活，怒对列强当局及其御用智囊们肆意歪曲历史，颠倒是非之无耻，遂在耄耋之年，进行深入专题研究，以深厚的学术功底，高屋建瓴，深入浅出，从史学、法学和政治学的三维角度，综合地探讨和剖析“中国威胁”论的古与今、点与面、表与里，深刻揭露“黄祸论-中国威胁论”的来龙去脉。指出：近十几年来，美国某些政客、军人和学者起劲地鼓吹的“中国威胁”谰言，日本右翼军国主义者不遗余力鼓噪应和的同类谬论,实则只不过是 19 世纪中后期一度甚嚣尘上、臭名远扬的俄国沙皇版“黄祸”论和德国皇帝版“黄祸”论在新历史条件下的最新霸权变种，它们之间的 DNA，是一脉相承的；换言之，它们肆意歪曲和否定中国数千年来对外和平交往的历史事实，**贼喊捉贼**，危言耸听和蛊惑人心，只不过是为反华、侵华活动进行精神动员和舆论准备的“政治骗术”。

作者还依据大量历史事实,揭示了美国立国前后 400 年来向全球实行殖民扩张侵略的霸权行径，提醒中国人民，切勿“居安而不思危”，“居危而不知危”；也提醒周边邻国，切勿忘恩负义，利令智昏，为美国霸权主义者火中取栗，以免自食其果。

本书的一大特色是,作者用心精选了极其生动鲜活的、与本书内容密切相关的 137 帧历史图片，穿插融入相关章节,并且不惮其烦,逐一做了大量脚注，说明所阐述的资料图片的来源和出处，谆谆善诱地引导广大青年读者扩大阅读，增长知识，增强同仇敌忾。

作者运用大量事实，证明这样一个重要结论：与“黄祸”论相反，自古以来**黄皮肤**的中国人从来不是“祸”，而是和平爱好者和对外交往的互惠者。新中国成立以来，特别是改革开放以来，中国结束了闭关自守的意识，努力做到与世界各国人民平等互利，一直是公正、合理国际秩序的倡导者和执行者。

今天，经过改革开放三十余年的拼搏发展，中国正在不断崛起，已成为相对强大的国家。然而，我们极其遗憾地发现，伴随着中国的崛起，当年西方列强刻意渲染“长辫丑恶”的中国人的形象虽然已一去不复回，但由“黄祸”论变种的“中国威胁”论，在上世纪九十年代却又聒噪频起，经过十来年的不断大声咆哮，近年来更是日益猖狂，并直接导致今日中国周围“事件”不断：美国霸权主义者与日本军国主义者互相勾结，狼狈为奸，进行所谓“中国威胁”的反华大合唱，其险恶居心与侵华图谋，犹如司马昭之心，路人皆知！究竟谁是真正的威胁施加者？谁是真正的威胁受害人？太平洋何以如此不太平？何以时时浊浪排空，周边鸡犬不宁？“中国威胁”谰言后面的实质是什么？细读陈安先生的这部图文并茂、雅俗共赏的优秀科普读物著作，读者自会找到最客观、最科学的答案。

总之，我确信：《美国霸权版“中国威胁”论谰言的前世与今生》既是一部历史著作，更是一部现实作品；既是一部政治经济著作，又是一部法律外交作品；既严肃深沉，又通晓畅达；既可作为培养和增强中国人民特别是青少年爱国主义情怀的读本，又可向世界推广，让各国朋友认识一个历史上和现实中的真实中国。谨此郑重推荐，与广大读者共享。

23.2：A Profound but Popular Reading Material

--On the Anatomy of the "China Threat" Slander by Professor CHEN An*

Xu Hai, translated by Zhang Chuanfang**

A Concise Book for the Public by A Great Master

In accordance with the relevant initiative by the Central Committee of the CPC, China's Ministry of Education has since 2013 launched a large-scale project for the redaction and publication of Popular Reading Materials on the Philosophy and Social Sciences. Top-ranking experts and scholars from institutions of higher learning across the country have been mobilized to write some concise books that are easy to understand, with a word count from 100 to 150 thousand. The contents cover almost all fields in humanities and social sciences, including the road of socialism with Chinese characteristics, the Chinese Dream, philosophy, economics, political science, law, literature, history and aesthetics, to name a few. In contrast with ordinary reading materials on academic research and science popularization, this project aims to produce a crop of excellent works advocating the Chinese road, the Chinese spirit and the Chinese power, by placing more stress on the publicity and elucidation of the latest theories with Chinese characteristics, on the transformation and popularization of innovative academic achievements, and on the idea of great master creating concise books. Not only with theoretical depth, but the works must also feature being explained in simple words and bringing forth the new through the old. This book series has prioritized China's reality while focusing on the popularization of theories.

Indeed, there were many great masters and learned scholars with spectacular works in the history of mankind, such as SIMA Qian's *Shih Chi* (*Shi Ji*), SIMA Guang's *History As A Mirror* (*Zi Zhi Tong Jian*), Marx's Capital, etc. These masterpieces have still been sparkling in the long process of human history after centuries of baptism. However, there were also a large number of famous articles or booklets that have over years been influencing a country and even the whole world at large. Like Copernicus's *On the Revolutions of the Celestial Orbiting* (*De Revolutionibus Orbium Coelestium*), Machiavelli's *The Prince*, WANG Guowei's *The Notes and Comments on Ci Poetry* (*Ren Jian Ci Hua*), and MAO Zedong's *On the Protracted War*, these long-lasting works are all below 100 thousand words, and some of them even with a word count of 40 or 50 thousand. Less still, *Tao Te Ching* (*Dao De Jing*) and *Diamond Sutra* (Kumarajiva version) has just around 5000 words for each. In addition, the Four Books on Confucianism, including *The Great Learning* (*Da Xue*), *The Doctrine of the Mea*n (*Zhong Yong*), *The Analects of Confucius* (*Lun Yu*) and *Mencius* (*Meng Zi*), each has a word count of about 2000, 3000, 16000 and 38000 respectively.

It was reported that Mr. DENG Xiaoping on more than one occasion mentioned his experience of repeated reading of The Communist Manifesto, each time with a totally different new understanding. In May 1949, millions of bold warriors of PLA strode over the Yangtze River and occupied the presidential palace of the Kuomintang (Chinese Nationalist Party) in Nanjing. In the library of the presidential palace, DENG Xiaoping and CHEN Yi freely talked about their experiences in Europe and contributed their engagement in the revolution to such enlightenment

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* *The "China Threat" Slander's Ancestors & Its US Hegemony Variant* written by professor CHEN An is an outstanding popular reading material on scientific achievements sponsored by a special project of China's Ministry of Education. Its original version is the academic paper entitled *On the Source, Essence of "Yellow Peril" Doctrine and Its Latest Hegemony "Variant": The "China Threat" Doctrine* in both Chinese and English which was published in *Modern Law Science* (No.6, 2011) in China and *The Journal of World Investment and Trad*e (No.1,Vol.13, 2012) in Geneva, Switzerland respectively. The English version has been included after adaption as the third chapter of *The Voice from China: An CHEN on International Economic Law* published by Springer, a German publisher, in 2013.

** Xu Hai is now a Senior Editor and General Manager of Jiangsu People's Publishing House; Zhang Chuanfang is a Ph.D candidate of international economic law in Xiamen University

book as The Communist Manifesto. In his south China tour in 1992, DENG Xiaoping addressed to the audience in sincere words and earnest wishes: “The Communist Manifesto is my first teacher in Marxism.” This magnificent masterpiece which has been influencing the entire world for over 170 years has, as calculated, only 15000 words.

Drawing lessons from historical experience both in China and abroad, this publication project of great master creating concise books has assigned the Ministry of Education to select qualified authors to write on designated topics and, has authorized the Jiangsu People’s Publishing House to publish the works successively. Thus far, the already published more than 40 books have basically satisfied the original objectives and strict requirements of China’s Ministry of Education.

Unique Theme, Profound Thoughts, Copious Arguments and Passionate Voice

The “China Threat” Slander's Ancesters & Its US Hegemony Variant, composed by CHEN An, a professor of Xiamen University, was among the already published concise books. This book, with a unique theme, profound thoughts, copious arguments and passionate voice, has been highly popular and glued the attention of the academia. Reprinted within one year after its publication in China, this book has also aroused abroad interest and will soon be translated into English and published by an overseas publisher. In October 2016, this book was awarded as “**China’s Excellent Popular Works on Social Sciences**” in China’s 18th experience-exchanging meeting for popular reading materials on social sciences.

Mr. CHEN An, a world-renowned scholar, is the leading authority in the Chinese academia of international economic law. In his book, Mr. CHEN reviewed the Sino-foreign relations in the developmental process of the world history since 140 years ago and examined the origin, versions, causes and essential features of the “Yellow Peril” doctrine by tracing its source and thorough search. He pointed out that the “China Threat” doctrine today was actually the continuance of the “Yellow Peril” doctrine some 100 years ago. It was nothing but a latest hegemony mutation inheriting the preposterous arguments in modern times. No matter the “Yellow Peril” doctrine in history, or the rampant “China Threat” doctrine today, they both in essence reflected the vicious intention of the imperialist powers to colonize, invade, ravage and even destroy China. They intended, by fabricating these slanders, to deceive the world, mislead the posterity and alienate the peace-loving people of all countries across the globe.

The “Yellow Peril” doctrine started in a time when the disaster-ridden China was suffering the poorest and weakest downturn in the modern history. In that time, forced to open its doors, China became disintegrated and beset with troubles both internally and externally. Internally, the stupid, incompetent and highly corrupted Qing government implemented its autocratic ruling by doing evils to and exploiting the general public to satisfy the extreme luxury and extravagance of the aristocrats. Externally, the servile and spineless Qing government surrendered China’s sovereignty and signed with the imperialist powers a series of unequal treaties by which China’s territory was frequently ceded and substantial indemnities were paid, making China’s territory fallen apart and the life of the Chinese people miserable. A large number of Chinese refugees were forced to leave their native land for as near as Southeast Asia and as far as North America to make a living under aliens’ roof. They undertook the most dangerous and difficult jobs and served as cheap manual labor in road construction and mining. In the process of serving the so-called “God’s chosen people” and “noble white people”, they worked hard like horses, only to end up with tragedy where their family members were either dispersed or dead. Under this context, the so-called “noble white people” had never shown any solicitude for the helpless and painful Chinese refugees, as they hardly imagined that it was the imperialist powers in which they were domiciled that drove the Chinese refugees away from home by invading China and rapaciously plundering China’s wealth. How dare the “noble white people” bite the hand that feeds them, defame the Chinese refugees with yellow skin as “Yellow Peril” and even instigate the white workers to oust, humiliate and exterminate the Chinese refugees working there! How dare they!

It was out of the sympathy for the miserable life suffered by the Chinese compatriots in the then poor and weak China and the anger at the distortion of history and turning the facts upside down by the imperialist powers as well as their think tanks that Mr. CHEN as an octogenarian

delved into the monographic study on this theme. In a strategically advantageous position, with profound academic foundation and from the perspectives of history, law and political science, he in simple terms explored the past and today, the individual and general, the exterior and interior of the "China Threat" doctrine, and deeply disclosed the origin and development as well as the cause and effect of the "Yellow Peril-China Threat" doctrine. Mr. CHEN pointed out in his book that the "China Threat" slander preached by some of the U.S. politicians, militants and scholars and the similar absurd defame clamored by the right-wing militarists in Japan are nothing but the latest hegemony mutations of the notorious "Yellow Peril" doctrines fabricated by the Russian Tsar and the German emperor-each with a different version-in the middle and late 19th century. The "Yellow Peril" doctrine and the "China Threat" slander shared the same DNA and came down in one continuous line. In other words, by recklessly distorting and denying the historical facts of China's peaceful external exchanges, they were just weaving sensational "political frauds" confusing people's minds in preparation for their invasion into China. They were the thieves crying "stop thief"!

In the book, the author also revealed, based on quantities of historical facts, the U.S. hegemonic actions that invade and colonize across the world in a span of 400 years before and after the founding of the United States. He reminded the Chinese people to be prepared in times of safety and sober in times of danger; he also alerted China's neighboring countries not to cut down the tree that gave them shade or pull chestnuts out of the fire for the U.S. hegemonists for the fear that they may reap what they had sown.

One of the features of the book is the careful selection of 137 vivid pictures that are relevant to the contents of the book. The pictures are properly inserted into the related chapters and sections, with many footnotes illustrating the sources of the pictures in an attempt to guide the young readers to enlarge their knowledge through extensive reading and to share a bitter hatred against the enemy.

Through volume facts, the author has drawn an important conclusion: contrary to the "Yellow Peril" doctrine, since ancient times, the yellow-skin Chinese people has never been a peril, but a peace-loving benefactor in its external exchanges. Since the founding of the People's Republic of China, and since the Reform and Opening-up Program in particular, China has ended its self-seclusion policy and has been an advocate and performer of a fair and justified international order by observing the principle of equality and mutual benefit in its international exchanges with people of all countries in the world.

Today, China has become a relatively big power after over 30 years of development since the Reform and Opening-up Program, and it is still on the peaceful rise. The image of the Chinese people with a "long ugly braid" intentionally depicted by the western imperialist powers has already been a thing of the past. However, we feel regrettable to find that the "China Threat" slander as a mutation of the "Yellow Peril" doctrine has again emerged since the 1990s. After 10 years of clamor, it has become increasingly rampant and caused many "incidents" surrounding China. The U.S. hegemonists and the Japanese militarists orchestrated in collusion an anti-China chorus of "China Threat". Their vicious intention of invading China was as obvious as a louse on the head of a monk. Who is the true inflicter of threat? Who is the true sufferer of threat? Why are there so many undercurrents and turbid waves in the Pacific Ocean? What is the essence behind the "China Threat" slander? To find the most objective and scientific answer to these questions, the captioned book authored by Mr. CHEN An, which is excellent in both its texts and accompanying pictures and which suits both the refined and the popular tastes, provides an access.

In conclusion, I firmly believe that the book entitled *The "China Threat" Slander's Ancesters & Its US Hegemony Variant* is a historical work, but more of a reality book; it is not only a book on political economy, but also a book on law and diplomacy; it has a serious and grave theme, but also a familiar and smooth style of literature; it can not only serve as a reading book that cultivates patriotism of the Chinese people and the young generation in particular, but also as a medium via which peace-loving friends from all over the world can better understand a true Chine both in history and in reality. I hereby sincerely recommend this book to the reading public and would like to share it with you.

24.1：揭露“中国威胁论”的本质：三支利匕剖示美霸谰言真相

蒋 围*

陈安教授的《美国霸权版“中国威胁”谰言的前世与今生》一书，是教育部遴选立项、定向约稿、统一由江苏人民出版社出版的优秀科研成果普及读物之一。在已经问世的几十种“大师撰小书”系列中，这本书题材独特、有的放矢、切中时弊、思想深刻、激情充盈、图文并茂、雅俗共赏，出版后深受广大读者欢迎，也引起了学术界的高度关注。

此书以史为鉴，以史为师，探讨了“中国威胁论”的本源、本质及其最新霸权“变种”——美国霸权版“中国威胁论”。针对国际上东海版、南海版“中国威胁论”，陈安教授摆事实、讲道理，廓清形形色色“中国威胁论”的迷雾，批判国际强权政治和霸权主义，弘扬中华正气，弘扬中华民族爱国主义。

5 年前，笔者有幸参与此书的资料收集，事后又经反复精读本书，领悟到其中史论结合、夹叙夹议、有理有据、言简意赅、辛辣犀利的层层论证，旗帜鲜明，犹如三支锋利匕首，戳中错误言论的要害：

第一支锋利匕首：戳中和剖开“中国威胁论”的“层层画皮”，揪出其臭名昭著的列祖列宗，摆明其族谱世系，把 140 多年来形形色色“中国威胁论”的原始杜撰者以及花样翻新的后继者们，分门别类，条分缕析，把他们的错误言论及危害本质公之于众。

第二支锋利匕首：戳中和剖开错误言论持有者的“躯体动脉”，从严复检，揭示美国立国前后 400 多年来的殖民扩张历史，劣迹斑斑，罪行累累，指出美国霸权主义者当今强化在全球的侵略扩张行径，绝非历史的偶然，而是其祖祖辈辈基因的必然传承和恶性发展。

第三支锋利匕首：戳中和剖开错误言论持有者的“大脑和心脏”，即在唯物史观的指引下，剖析美国 400 多年来借以立国的经济基础及其上层建筑，揭示当今美国极力推行的侵略扩张国策，乃是深深植根于美国的垄断资本主义——帝国主义的经济体制，也深深植根于美国主流社会意识和价值体系。

综上，可以说，陈安教授正是通过回顾历史，摆出事实，讲明道理，创造性地运用上述三支锋利的理论匕首，戳穿层层伪善画皮，全面深入解剖“美利坚帝国”的躯干、动脉、大脑、心脏，令人信服地揭示了美国长期推行侵华反华政策绝非历史的偶然，而是“美利坚帝国”建国前后 400 多年来的恶性殖民扩张的历史延伸和必然结果，乃是国际反华势力逆时代潮流而动的最新表现。

基于此，陈安教授特别强调，世人应当以史为师，以史为鉴，方能保持清醒头脑和锐利目光，避免遭受“黄祸”论 21 世纪最新变种——美国霸权版“中国威胁论”的欺蒙和利用。同时，也郑重提醒中国周边国家善良的人们，切勿见利忘义，利令智昏，为霸权主义者及其盟友火中取栗。

当前，面对某些国家边“笑容可掬，握手言欢”，边“调兵遣将，巨舰军机，频频入侵”的两面派手法，人们不能不认真学习和师承前辈革命家对付帝国主义和一切反动派的丰富斗

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争经验，牢记和践行其一系列的谆谆教导，诸如：必须“丢掉幻想，准备斗争”，“以斗争求和平则和平存，以退让求和平则和平亡”；必须针锋相对，必须“人不犯我，我不犯人，人若犯我，我必犯人”，必须发挥高度的政治智慧，善于做到策略的灵活与原则的坚定结合。

近两年来，面对复杂多变的国际形势和中国周边东海南海的风云变幻，我们做出了一系列重要的判断，诸如：“要善于运用底线思维的方法，凡事从坏处准备，努力争取最好的结果，做到有备无患、遇事不慌，牢牢把握主动权”；中国人“决不拿国家主权和核心利益做交易”，中国人“不惹事，但也不怕事”；中国人民解放军必须加强战备，随时“能打仗，能打胜仗”等，显然都是既学习、师承和发扬前辈革命家的斗争经验和谆谆教导，又在新的历史条件下“与时俱进”，加以发展、丰富和创新。

中国人今后也势必更加自觉地继承和发扬中华民族数千年来的“铁骨铮铮，岿然屹立，不畏强权，抗暴自强”的优良传统，为保卫国家领土主权的独立和完整，开展更有力更顽强的斗争。

24.2：＂China Threat＂ Slander's Ancestors & Its US Hegemony Variant: Dissecting with Sharp Daggers

Jiang Wei*

The book, *"China Threat" Slander's Ancestors & Its US Hegemony Variant*, written by Senior Professor of Law Mr. CHEN An and published by the JIANG Su People's publishing, is one of the popular books selected from excellent social science research achievements. This publishing program is approved and sponsored by the Ministry of Education of the People's Republic of China. Among these published popular books, this one is objectives-oriented, with unique subjects, full of passion and sharp insights. The author has utilized both text and graphics to address the international community problems of the times, well suiting both refined and popular tastes. It has caused the high attention of the academic community, and is popular among the readers.

This book explores the origin, essence of *"China Threat" theories* and its newest US hegemony variant *through taking history as teachers and as mirrors***.** In terms of "*China Threat"* theories on the South China Sea and East China Sea situations, the author, by means of presenting facts and reasoning, tries to clarify the origin and essence of the problem, to rebut international power politics and hegemony behind them, as well as to carry forward China's national righteousness and promote Chinese patriotism.

Five years ago, I had the opportunity to take part in collecting materials for this book. I have also repeatedly read its finalized and published version. From the way I understand, there are three well-grounded and sharp systematical arguments expressed in the book. Through concise and comprehensive language, and by integrating narrative and comments, these three arguments stick at the heart of *"China Threat" theories* as three sharp daggers.

The first argument serves as a sharp dagger that stabs and rips off the masks of *"China Threat"* theories layer upon layer. It discloses their absurd opinions and harm essence by pointing out their notorious ancestors, their developing venation, the lineage of consanguinity, as well as originators and successors of various versions for over 140 years.

The second argument serves as a sharp dagger that stabs and splits the advocates' body and artery. It points out that the global aggression and expansion behaviors taken and strengthened by American hegemonists are not a historic accident, but an inevitable lineage and malignant development from its ancestral gene, by recalling and revealing the sleaze and criminality of

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American notorious colonial expansion history for over 400 years before and after it has been founded.

The third argument serves as a sharp dagger that stabs and splits the advocates' heart and brain. It discloses that American aggressive national policy is deep rooted in its monopoly capitalism, an imperialistic economic system, and in American leading social consciousness and value system, by analyzing its economic foundation and super structure which are the foundation of the United States for over 400 years from the perspective of the historical materialism.

In a word, it may be said that through looking back into the history, laying out the facts on the originators and successors of "China Threat" theories, clarifying their harm essence, Professor CHEN creatively utilizes above-mentioned three systematic arguments. Just like three sharp daggers pierce through the American hypocritical masks layer upon layer and dissect its truncus, artery, brain, as well as heart, they have disclosed that American aggression against China and its anti-China policy in a long time are no accident, but a continuation and an inevitable result of the malignant colonial expansion for over 400 years before and after the American Empire has been founded. The American hegemonic version of "China Threat" is the newest manifestation of the international anti-China forces against the trends of the time.

Thus, Professor CHEN particularly calls upon that common people should keep a clear mind and sharp-sight through taking the history as mirrors and teachers, to avoid being blinded and utilized by the American hegemonic version of "China Threat", the newest variant of "Yellow Peril Doctrine" in the twenty-first century. Through careful reflection on the past, he reminds kind-hearted people in our neighboring countries not to forget moral principles on the sight of profits, and nor be blinded by lust for money, acting as cat's paw for American hegemonists and its allies.

At present, some countries play a double game. While they are smiling and shaking hands with our country, they also deploy forces, warships and military aircrafts to intrude our territory in the South China Sea. People in China must learn and inherit abundant fighting experiences against imperialists and all reactionaries from their revolutionary predecessors, bearing in mind the good instructions from revolutionary predecessors. We should 'discard illusion and prepare to fight'; and know 'fighting for peace, peace existing; concession for peace, peace perishing', as well as 'tit for tat is fair play'. We should give play to high politic wisdom to be good at combining tactical flexibility with a firmness in principle.

In recent two years, facing with a complex and changeable international situation and a rapidly ever-changing situation in the East China Sea and South China Sea, our country has made a series of important judgments. Among them are, for example, that 'making good use of the bottom-line thinking, preparing for the worst, striving for the best, so as to make well preparation and keep

unflappable facing difficult affairs, as well as firm grasp the initiative'; that Chinese people 'never take the national sovereignty and core interests to make a deal'; that Chinese People's Liberation Army must strengthen war preparedness, so as to have the ability to fight and win a fight at any time etc. These judgments obviously not only are learned, inherited and promoted from, but also are a development, enrichment and innovation in the new historical circumstances of the revolutionary predecessors' fighting experiences and earnest instructions.

Chinese people certainly will inherit and develop good Chinese traditions for thousands of years of 'firm and unyielding character corpse, no afraid of power, opposing violence", strongly struggling for protecting their country's territorial integrity and independence.