

INTERNATIONAL LAWYER

A Dialogue with Judicial Wisdom



Professor An CHEN

INTRODUCTION

The Journal of East Asia and International Law had the great honor of interviewing Professor An Chen, a highly renowned international academic lawyer representing East Asia as well as China in this volume's International Lawyer: A Dialogue with Judicial Wisdom. As a flag-holder Chinese scholar advocating reform of international economic law ("IEL"), he is a man of exceptional brilliance and principle with clear, broad and rigorous thinking and wisdom.

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. 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 until 1980 when the Law Department of Xiamen University was reestablished. By that time, he was already in his fifties. He had the keen insight to recognize that China would 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. 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 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 ICC, IAI and RIA.

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. The following interview contains his lofty messages and ideas for peace and co-prosperity of human society from a great mentor of our time.

QUESTIONS & ANSWERS

1. Professor CHEN! Thank you so much for doing this interview with the Journal of East Asia & International Law. It is truly a great honor for us to talk with such a highly renowned international lawyer like you. Following our tradition, I would like to begin our interview with some personal questions. Where were you born? Would you briefly talk about your family? How did your parents' education influence your ideas and outlook?

I was born in a small mountainous town in northeast Fujian Province called MUYANG in Fu'an County. My father was a Xiu Cai (a scholar passing the imperial examination at the county level in Ming and Qing Dynasties of pre-modern China) in the late Qing Empire. He had an excellent command of poetry, literature and calligraphy. He was a faithful follower of Confucianism, and an upright and honest person longing for social justice and fairness. I was profoundly influenced by him since my childhood and thus determined to be an honest and industrious person (堂堂正正做人, 勤勤懇懇治學) like him.



Photo 1: Prof. CHEN - At his Study Room (2008)

2. While you were growing up, Chinese society and politics were more tumultuous than in any other periods for the past few hundred years. You experienced the foreign occupation, the war against Japan, the civil war and the socialist revolution. How did you face this turbulent environment as a young student? What brought you finally to study law at university?

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

3. I heard that it was quite difficult to study international law up until the late 1970s in China. How were you able to keep your ideas and knowledge on modern international law for this period?

As is known to all, from the late 1950s, China suffered from a fragile social and political situation for twenty years. During this period, the legal research and the legal academic community in China also withered. As a junior teacher in the university at that time, I had to shift my teaching field from law to Marxism and Leninism in 1953 due to the national “high education disciplinary adjustment.” As you may imagine, I was gradually kept away from law field due to such shift, not to mention keeping my mind abreast with the progress of modern international law.

4. Since 1978, the study of international law in China has seen rapid growth and many Chinese legal scholars are actively working in various fields. Would you briefly describe the developing process of international law studies in China? What do you think was the most important event and who were some influential figures in this course?

I think the resolution adopted by the Third Session of the 11th National Congress of the Chinese Communist Party in late 1978 was critical. This Congress corrected social chaos and restored social order, and inaugurated the state policy of reform and opening up formulated by the late leader, Xiaoping DENG. Without this policy, there would have been no revival of the Chinese legal community. I would say this Congress is the most important turning point in modern Chinese history. After that, the legal community in China began to thrive gradually over time. As to some influential figures, I would

recommend the following most prominent academic pioneers:

- (1) In the field of public international law: Professor Tieya WANG of Beijing University and Professor Tiqiang CHEN of Chinese Foreign Affairs University;
- (2) In the field of private international law: Professor Depei HAN of Wuhan University and Professor Haopei LI of Chinese Foreign Affairs University; and
- (3) In the field of international economic law: Professor Meizhen YAO of Wuhan University and Professor Ding LIU of Renmin University of China.

5. In the early 1980s, you debated with Professor Jerome Cohen of Harvard Law School regarding cross-border investment. After that, Professor Cohen said: "Your knowledge added to my shortage." Would you please tell me more about the debate? Then, from 1981 to 1983, you were invited to study and lecture at Harvard, what have you gained from it? How has it influenced your academic career afterward?

In the spring of 1981, Professor Cohen visited Xiamen and expressed in one of his lectures the concern that China might arbitrarily confiscate foreign investment and property. Based on my knowledge of relevant Chinese laws and policies, I raised some opposing ideas against his and followed with my explanations. This academic debate presenting our viewpoints can be found in my article, "Should an Absolute Immunity from Nationalization for Foreign Investment Be Enacted in China's Economic Law?" which was published afterwards in both Chinese and English. This bilingual article was collected in my book "CHEN's Papers on International Economic Law" (in two volumes) published by Beijing University Press in 2005, and was later reprinted in the book, "An CHEN on International Economic Law" (in five volumes) published by Fudan University Press in 2008. These two books are compilations of my 30 years' research in the field of international economic law.



Photo 2: Prof. CHEN and Prof. Cohen (2004)

Then, with Professor Cohen’s kind invitation, I went to Harvard Law School to study and lecture between 1981 and 1983. During that time, I read many authoritative books of international law and international economic law written by prominent American scholars such as Professor Louis Henkin, Professor Andreas F. Lowenfeld and Professor John Jackson, and many other first-hand documents and records. This experience broadened my insight and provided me with a great deal of fresh knowledge. At the same time, however, I found that these books contained some opinions with a strong sense of colonialism and economic hegemonism reflecting the US style double-standards rooted in unilateralism and utilitarianism. Such opinions not only went against the just call of reforming the old international economic order (“OIEO”) and establishing the new international economic order (“NIEO”), but also were against the historical tide of the modern world. I think these opinions are misleading with major deficiencies.

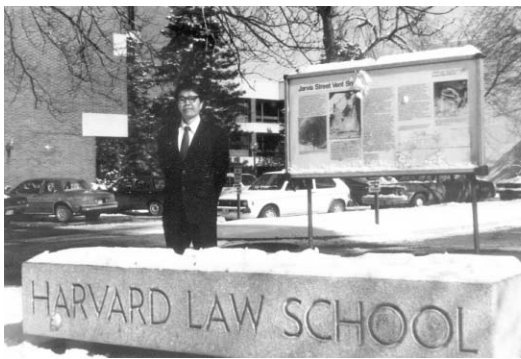


Photo 3: Prof. CHEN - First visit to Harvard (1981)

For this reason, we 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 three decades of research and writing, I have always been trying to analyze, distinguish, ascertain, absorb or reject western legal theories while steadily taking into account the national situation of China and the position of the weak countries. In addition to “taking the essence while discarding the dross” (取其精华, 弃其糟粕) of the western legal theories, I have raised a series of my own innovative ideas and actively participated in international academic debates, which have helped us to shape our systematic theories on various important legal subjects such as the South-North conflicts and cooperation; the establishment of NIEO; the law-making, law-enforcing, law-abiding and law-reforming of international economic law. Our theories are significantly and substantially different and independent from the existing western ones. And in turn, we gain the due respect and attention from the international academic community.



Photo 4: Prof. CHEN - Discussing with Prof. Lowenfeld (2005)

6. I noticed that a major part of your thirty years' research achievements were compiled and published in "An CHEN on International Economic Law" (in five volumes) in 2008 with as many as 2626 pages. Which papers do you think can best reflect your opinions that are independent from the western scholars?

I tried to put forward my independent opinions in every of my papers and here I would like to just list a few, which you might wish to read through as follows:

- (1) The Ancient-source & Long-stream of Sino-foreign Economic Interflows and Their Jurisprudential Principles;
- (2) To Close Again, or to Open Wider: The Sino-U.S Economic Interdependence and the

Legal Environment for Foreign Investment in China after Tiananmen;

- (3) The Three Big Rounds of U.S. Unilateralism versus WTO Multilateralism during the Last Decade: A Combined Analysis of the Great 1994 Sovereignty Debate, Section 301 Disputes (1998-2000) and Section 201 Disputes (2002-2003);
- (4) A Reflection on the South-South Coalition in the Last Half-Century from the Perspective of International Economic Law-Making: From Bandung, Doha and Cancún to Hong Kong;
- (5) Should the Four 'Great Safeguards' in Sino-Foreign BITs Be Hastily Dismantled? - Comments on Critical Provisions concerning Dispute Settlement in Model U.S. and Canadian BITs; and
- (6) 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.



Photo 5: "An CHEN on International Economic Law" (five volumes) in 2008

In addition to the said five volumes published in 2008, more papers have been published since then and below are some of them as follows:

- (7) What should be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neo-liberalistic Economic Order, Constitutional Order of the WTO and Economic Nationalism's Disturbance of Globalization, published in The Journal of World Investment & Trade, Vol.10, No.3 (2009);

- (8) A Clear-cut Stand on China's Strategic Position in the Establishment of New International Economic Order ("NIEO"): With Comments on An Integral and Accurate Comprehension of DENG Xiaoping's 28-word Foreign Policy, published in Chinese Journal of International Economic Law, Vol.16, No.3 (2009);
- (9) Third Comments on China's Strategic Position in the Establishment of NIEO: To Where Would the G 20 & Its "Path from Pittsburgh" Lead: The Pending Riddle of the New Platform of G20 South-North Cooperation and the Conflict between Ideas such as "Law-abiding" and "Law-reforming," published in Journal of International Economic Law(China), Vol.16, No.4 (2009);
- (10) Some Jurisprudential Thoughts upon WTO's Law-governing, Law-making, Law-enforcing, Law-abiding and Law-reforming, published in The Journal of World Investment & Trade, Vol.12, No.2, (2011) ; and
- (11) 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, published in Modern Law Science, Southwest University of Political Science and Law, No.6,(2011).

7. In your opinion, what are the advantages and shortcomings of the law-making process of modern international economic law?

Since the end of World War II, struggles between the powerful developed States and the weak developing States have been permeating the whole development of the global economy. The former endeavor to maintain the established international economic order ("IEO") and international economic law ("IEL") to enhance and extend their vested economic interests, while the latter endeavor to renew the established IEO and IEL to acquire a level playing field and equitable economic rights and interests. In the past 60 odd years, whenever these two groups came to a compromise, the struggles were temporarily paused; but whenever new conflicts arose, the struggles reappear. Such a historical course could be generalized as 6C Rules, namely Contradiction - Conflict - Consultation - Compromise - Cooperation - Coordination, and then new Contradiction. We may have seen such spiral-up circles in the development of the NIEO and NIEL. Each new circle moves higher than the former in a spiral-up manner, but is not a mere repetition of the former. The result is that the equal and equitable economic rights of the

weak countries were gradually obtained, improved and safeguarded in this process.

From a jurisprudential perspective, the policy-making process of contemporary global economic and trade rules is in essence a 'law-making' process of IEL. For 60-odd years, three major defects appeared in this process.

First, a few developed countries (such as the G7) often consult and manipulate secretly or to bargain half-openly before a policy can be made. Then the issue is handed over to some economic or regional organizations composed of one or two dozen developed countries (such as the OECD or the EU) who will coordinate their respective interest, put forward a common proposal, and set out an overall arrangement. The issue will not be submitted to and discussed in a global arena or organization until and unless the above process is completed. This practice deprives numerous developing countries of their right to know and to participate in the law-making process from the very beginning. Yet, due to their lack of information and capacity, the developing countries often can do little to help.

Second, major international economic organizations often adopt unfair and unreasonable voting mechanisms which distribute the voting power among the countries unequally. A typical example is the "weighted voting mechanism" which is still arrogantly employed by the IMF and World Bank. Under this mechanism, it is possible for a handful of developed countries to make decisions on important global economic affairs. By their overwhelming majority of voting rights, these countries can have a de facto veto privilege. On the other hand, facing such an unfair and unreasonable mechanism, the developing countries are often entrapped in a dilemma; they either have to accept all such disadvantages to stay in this system, or to isolate themselves by quitting the system. Given the current situation of economic globalization and the increased interrelations among the economies, economic sovereignty and rights of the developing countries will definitely be harmed in one way or another.

Third, the US, as the only superpower, adopts "the superiority of US national interests" and 'double standards' as its 'national policies' in global economic and trade policy-making processes. Based on its absolute economic advantage, the US can not only coordinate among various political groups to control the decision-making process, but it can also neglect its treaty obligations and take actions at its own will even after the decision has been made.¹

¹ Peremptory attitudes expressed by United States in its dealing with Section 301 disputes and Section 201 disputes from the years 1998-2004 serve as a typical example. See An CHEN, *The Three Big Rounds of U.S. Unilateralism versus WTO Multilateralism during the Last Decade: A Combined Analysis of the Great 1994 Sovereignty Debate, Section 301 Disputes (1998-2000), and Section 201 Disputes (2002-present)*, 17 TEMP. INT'L & COMP. L.J. 409-466 (2003). An updated and extended version was reprinted by South Center in pamphlet form. See South Center, Working Papers No.22 available at <http://www.southcentre.org/publications/workingpapers/paper22/wp22.pdf> (last visited on Sept. 1, 2011). This long Article has then been compiled in the book *REFINDING SOVEREIGNTY IN*

In short, the key lies in the severe unfairness in international power allocation in global economic and trade policy-making processes. A direct consequence is that the main decision-makers of the IEO and the international economic and trade policies are often constituted by a small group of developed countries, which further causes unfair global wealth distribution. As is well-known, the unfair global wealth allocation is the most essential manifestation of the OIEO which still exists. It is also the main undesired consequence of the lack of protection of the economic sovereignty and rights of the developing countries. You can see there is causality between the allocation of power and the allocation of wealth. This is the historical and ruthless fact of human society, which is true in both China and foreign countries, at present and in the past. In light of this, the unfair allocation of power must be reformed to guarantee fair distribution of global wealth. This also explains why so many developing countries have been emphasizing equal rights of all nations in the global economic and trade policy-making. All in all, the international weak groups' demand for reforming the unfair allocation of power in global economic and trade policy-making and wealth distribution is in nature a demand for 'law-reforming.'

*8. What do you think about the relationships among law-making, law-abiding and law-reforming of IEL in THE WTO Rules?*²

Some believe that international law scholars should think from a true lawyer's perspective and vigorously advocate 'law-abiding', rather than indiscreetly talk about the reformation of the existing IEO and IEL since such talks sound more like a political slogan and challenge rather than a real legal endeavor.³ Such talks, if put into practice, will usually lead to violation of the existing international law and incur international legal and moral liabilities. This opinion is partially true, yet needs to be thoroughly examined.

Herewith, the dialectical and interactive relationships among law-making, law-abiding and law-reforming of the existing IEL (including but not restricted to the WTO rules) shall be noted. Facing the existing IEL, including various "rules of the game" of

INTERNATIONAL LAW (Wenhua Shan et al. ed.) 87-146 (Hart Publishing, 2007); also compiled in AN CHEN ON INTERNATIONAL ECONOMIC LAW (Vol.4) 1725-1807 (Fudan Univ. Press, 2008).

² AN CHEN, *A Third Comments on China's Strategic Position in the Establishment of NIEO: To Where Would the G20 & Its "Path from Pittsburgh" Lead – The Pending Riddle of the New Platform of G20 South-North Cooperation and the Conflict between Ideas such as "Law-abiding" and "Law-reforming"* ("Third Comments" for short), 16 J. INT'L ECON. L.(CHINA) 1-29 (2009).

³ For example, the authoritative American Professor A. H. Lowenfeld holds this hegemonic point of view. See ANDREAS F. LOWENFELD, INTERNATIONAL ECONOMIC LAW 412-414 (2002); 492-493(2nd ed. 2008). For details on the quotations and comments on these pages by the author, see AN CHEN ON INTERNATIONAL ECONOMIC LAW (Vol.1) 13-16, (Fudan Univ. Press, 2008). See also Annex I of the present interview-paper..

international economy and trade, the weak groups certainly cannot deny them, nor can they remake the rules entirely. However, they should not accept these rules in an overall way while ignoring their unfairness and injustice. A correct attitude towards these rules should be to fully review 'law-abiding' and 'law-reforming' in combination by the criteria of justice and fairness in order to achieve equal rights and interests for the weak groups. The weak groups shall uphold the rules that meet such criteria and stress law-abiding, while for the rules that fail the criteria, these weak groups should reasonably advocate law-reforming. In other words, for each and every rule that reaches the set criteria of justice and fairness, thus satisfying the need to reform the OIEO and to establish the NIEO, the weak groups shall continue to use and reiterate, with law-abiding being emphasized. On the other hand, for each and every rule that transgresses the aforementioned need, law-reforming shall be emphasized, and the weak groups shall argue on a reasonable basis, seeking to reform, abolish or eradicate it through all possible ways and approaches. Consequently, from a historical perspective, the following facts should be noticed:

First, to demand reform of the established IEO is not merely a political slogan. Actually, it is at the same time a 'legal' concept, namely 'law-reforming.' For over 60 years, the international weak group has endeavored to realize this goal. This process is always full of difficulties, but is still feasible with the firm belief and enduring efforts of the weak groups by gradually "excreting the old and absorbing the new" or "demolishing the old and creating the new." (吐故纳新, 弃旧图新)

Second, as to the obvious unfairness and injustice contained in the current IEL, the developed countries have promised to reform them. But always no acts have been taken due to their economic superiority. It is often seen that these powers sometimes fail to live up to their international obligations. There is an aphorism that reads: "The 'public law' always relies on insubstantial reasons. The strong is able to enforce their 'law' to tie others, while the weak is inevitably wronged and to endure with great patience." (公法乃憑虛理, 強者可執其法以繩人, 弱者必不免隱忍受屈也)⁴ From a jurisprudential perspective, this aphorism not only generalizes the "law of jungle" in the past but also reflects its present nowadays. Under the existing IEL, it is certainly misleading to excessively demand the international weak group to abide by all laws unconditionally and absolutely. Instead, the weak group should stand and fight, advocate and appeal for law-reforming, so as to change and eliminate the existing unfair "rules of the game."

⁴ GUANYING ZHENG, *STERN WARNINGS IN PEACE TIME · PUBLIC LAW*, published by San Wei Tang, (vol. 1) 42 (1898), [郑观应, 光绪24年(1898年)三味堂刊, 卷一, 第42页] ZHENG is a renowned thinker in China's late Qing Dynasty. He penetratingly exposed the excuse on public international law hold by the western powers to justify their invasion and brutal behaviors in China.

Third, for over 60 years since the end of the World War II, the struggle for 'law-reforming' and 'anti-law-reforming' has experienced continuous ups and downs. A recent example is the WTO Doha Round starting from the end of 2001. This round reflects the struggle between the law-reforming and anti-law-reforming groups within the current WTO contexts. However, law-reforming promised by the developed countries (particularly in agricultural products' market access, domestic support and export subsidy) remains nominal without real progress. By so doing these countries ate their own words by making use of their superior economic status.⁵

Fourth, considering that the South is far weaker than the North currently, and the group of strong powers (such as the G7) has maintained a dominant position for over thirty years in international economic fields, the international weak group's demand for law-reforming may not be accomplished once and for all. But they shall not rest on the current situation and keep silence, nor should they act 'individually'. It is repeatedly proved by practice that the only feasible and effective way is to form South-South Coalitions to mobilize their 'collective power' to promote law-reforming steadily and solidly.⁶

9. What do you think about the WTO's law-enforcing body, the DSB?

In my opinion, the WTO's law-enforcing body or judiciary body, the DSB, cannot be simply considered 'Bao Qingtian'⁷ in the field of international economy. Professor John

⁵ AN CHEN, *A Reflection on the South-South Coalition in the Last Half Century from the Perspective of International Economic Law-making: From Bandung, Doha and Cancún to Hong Kong*, 7 J. WORLD INVESTMENT & TRADE 201-233 (2006). This long article has won wide attention in international academic circles. The concluding section of this article was first published under the title *South-North Conflicts in a Historical Perspective*, in the authoritative SOUTH BULLETIN, No.120 (2006). At the request of the Journal's editor, Jacques Werner, the abovementioned version was re-written and published under a new title *Weak versus Strong at the WTO: The South-South Coalition from Bandung to Hong Kong*, in 1 THE GENEVA POST QUARTERLY: THE JOURNAL OF WORLD AFFAIRS 55-107 (April 2006). With time passing, this article received growing attention in international academic circles. Its newly-updated version was translated into Korean language and published in 9 THE INHA LAW JOURNAL (2006). Two years later, its re-updated English version was included in the volume edited by Professor Yong-Shik Lee entitled, *ECONOMIC DEVELOPMENT THROUGH WORLD TRADE: A DEVELOPING WORLD PERSPECTIVE* 33-65 (2008). Now, both Chinese version and English version of this long article were compiled in the recent series book, AN CHEN ON INTERNATIONAL ECONOMIC LAW 479 – 506 (vol.1) & 1808-1852 (vol.4), (Fudan Univ. Press, 2008)

⁶ AN CHEN, *A Clear-cut Stand on China's Strategic Position in the Establishment of NIEO: With Comments on An Integral and Accurate Comprehension of Deng Xiaoping's 28-word Foreign Policy*, (Second Comments for short), 16 J. INT'L ECON. L.(CHINA) 55-81(2009). See also *supra* note 2, at 1 – 29.

⁷ "BAO Qingtian" (包青天), with the latter word literally meaning "blue sky without cloud", and here to symbolize justice, is the reverent appellation of Chinese people towards Zheng BAO (包拯, 999 – 1062). Zheng BAO was a high-ranking officer in ancient China's Song Dynasty, and was especially famous and beloved for his adjudicative activities and judicial wisdom. He did not fear dignitaries, and was so just and brave, that he even dared to sentence the then Emperor's son-in-law to death, because the latter had committed a crime of murder.

Jackson, an authoritative American lawyer renowned as the “Father of THE WTO” in western academia, proudly announced that DSB had a certain degree of mandatory power, which is one of the major innovations in the history of the development of international economic dispute settlement mechanisms. The WTO’s dispute settlement system (“DSS”) is often eulogized as the “jewel in its crown” and a “unique, a great achievement.” Professor John Jackson emphasizes that “this DSS is unique in international law and institutions, both at present and historically” and that “the DSS has been described as the most important and most powerful of any international law tribunals, although some observers reserve that primary place to the International Court of Justice. Even some experienced World Court advocates, however, have been willing to concede that primacy under some criteria to the WTO DSS.”⁸ Professor John Jackson’s high appraisal of DSS was echoed by many scholars in the West and China.

For 16 years, the DSB as a law-enforcing body has indeed played a significant role in settling international trade disputes and made significant contributions. However, every coin has two sides. As a matter of fact, the WTO/DSB as a whole has its problems: ‘congenital deficiency’ and ‘postnatal imbalance.’

As to the ‘congenital deficiency’ of the WTO/DSB, one has to be aware that the rules enforced by the DSB are not necessarily good laws. As is well known, some of the laws are unfair and unreasonable, some arbitrarily made, some merely nominal promises, and some accessory in bullying the weak. These laws distort the normal and healthy international trade, and deteriorate the situation of the international weak groups. In this aspect, I would like to give two typical examples as follows:

First, the rules of agricultural products’ market access, domestic support and export subsidy are against the weak groups and ‘bad rules’ or ‘evil rules.’ The weak groups strongly demand for reforming them in the Doha Round, while the strong powers try to preserve them. Up to now, it is regretful that these unfair rules are still in effect in the DSS, and are still connived and shielded within the current WTO/DSB regime.⁹

Second, as is known, China has a dual economic identity: it is the largest developing country in the world as well as having established the basic system of a market economy. As early as in 2003, Chinese Premier Jiabao WEN has pointed out the basic reasons for China still staying a developing country as follows: “A large population and underdevelopment are the two fundamental national conditions of China. Considering its population, no matter how trivial the problem is, with 1.3 billion multiplied, it will be a very serious one; and no matter how sizable the financial and material sources might be, with 1.3 billion divided, it will become very low in average per capita. All Chinese

⁸ JOHN H. JACKSON, *SOVEREIGNTY, THE WTO AND CHANGING FUNDAMENTALS OF INTERNATIONAL LAW* 134-135 (2006).

⁹ *Supra* note 5.

leaders must keep this in mind at all times.”¹⁰

On September 24, 2010, Jiabao WEN further emphasized in the United Nations General Assembly as follows:

China's GDP ranks third in the world, whereas its average per capita is as low as 1/10 of that of the developed countries. Chinese economy has been booming for over 30 years, however, its further development is constrained by energy, resource and environment. Outputs of a number of vital products of China rank top in the world, yet comprehensively, China still stays at the end of the global industry chain. China has already become a big international trade country, but the technology and added value of exporting products are low, and the core technologies largely depend on import. Although some coastal cities have been quite modernized, many places in the middle and western and the vast rural areas are still backward, with 150 million people still living in poverty. Chinese people's livelihood has been largely improved, while social security system is still distempered, and employment pressure is still huge. Political life and social activities in China have gradually flourished, and fundamental rights of citizens have been well protected. However, democracy and legal system has not yet been well established, and problems such as social disparity and corruption still exist. With the modernization in place, China has both advanced and backward areas, novel and old notions, and is facing many unprecedented challenges. China is still at the primary stage of socialism, and is still a developing country. This is our basic national condition and reality.¹¹

However, the dual economic identities of China have not been clearly confirmed by the WTO/DSB. Furthermore, under the management of several powerful developed countries, China was to some extent forced to reluctantly accept varieties of 'disadvantageous articles' at the inception of its accession to the WTO that even exceeded the standards acceptable to developed countries, thus making China frequently subject to unfair treatment. In other words, China had to accept many hidden WTO-plus obligations when acceding to the WTO. The negative impacts of these obligations have begun to emerge. About six years ago, a treatise commenting on such articles of China's Accession Protocol pointed out that non-market economy, transitional product-specific safeguard measures, special safeguard measures on textiles and transitional trade review mechanism are among the most harmful provisions to China.¹²

¹⁰ Jiabao WEN, *Casting Sights to China – Speech at Harvard University*, available at <http://www.chinanews.com.cn/n/2003-12-12/26/380015.html> (last visited on Sept. 1, 2011).

¹¹ Jiabao WEN, *To Recognize a Real China – Speech in General Debate of the 65th United Nations Assembly*, available at <http://politics.people.com.cn/GB/1024/12800629.html> (last visited on Sept. 1, 2011).

¹² Yongfu GAO, *Comments on Various Disadvantageous Articles in Legal Documents on the Accession of PRC to WTO*, 11 J. INT'L ECON. L. (China) 46-81 (2004). GAO is a senior Professor of Law School, Shanghai Institute of Foreign Trade. He is former Associate President of Shanghai WTO Affairs Consultation Centre and a current senior expert.

Article 15 of the Protocol is the non-market economy provision providing that the importing WTO members may not use normal methodology in determining subsidy and dumping margins.¹³ Such a method excludes the consideration of China's domestic market prices or costs. The non-market economy status will last until 2016. This is the main reason that Chinese products have met so many anti-dumping investigations in the world, especially in the western countries.

Article 16 of the Protocol deals with the transitional product-specific safeguard mechanism,¹⁴ the "selected safeguard clause" in the GATT time. However, this clause has been declared illegal under the WTO rules because of its specificity and discrimination and its low requirements for taking safeguard measures against Chinese exporting products. This discriminative treatment will be terminated after 12 years has passed from China's joining the WTO.

The provision on textiles in the Report of the Working Party on the Accession of China is similar. It allows the importing WTO members to impose safeguard measures against textile products from China when the imports cause 'market disruption.' They need not even testify that their like product industry is 'really' injured by Chinese imports, which is actually a WTO obligation.

An additional unfair article is the Transitional Review Mechanism in the Protocol. Based on this article, the WTO General Council and its sixteen subsidiary bodies will review China's implementation of the WTO Agreements and other related provisions of the Protocol. It may review China's trade policy, economic data, even that of government procurement, notwithstanding that China is not a member of the Government Procurement Agreement. Moreover, such review takes place annually until eight years after China's accession to the WTO.

In brief, China accepted those WTO-plus obligations under some particular circumstances and paid an extra-high cost for its accession to the WTO. China should pay more attention to the negative effects of them in political, diplomatic and economic fields, and also endeavor to seek change and reform of the unfair situations. Indeed, such unfair situation is merely one example which other developing countries also suffer. Under such circumstances, if the WTO/DSB makes no distinction regarding whether the laws are good or bad, but rigidly "ensures that the laws must be absolutely observed" and strictly 'enforces the laws,' it certainly will not lead to justice, but does the opposite.

¹³ See *Protocol on the Accession of the PRC*, available at <http://www.people.com.cn> last visited on (last visited on Nov. 25, 2010). See also *supra* note 12, at 47-56; Weitian ZHAO, *Interpretations on the Articles of Protocol on the Accession of the PRC* (available only in Chinese) 91-98 (2006). Weitian ZHAO was a late authoritative expert on GATT/WTO.

¹⁴ *Supra* note 12 at 57-62. See also Weitian ZHAO, *Discriminatory Safeguard Article – An Interpretation on Article 16 of Protocol on the Accession of the PRC*, 4 J. INT'L TRADE (China) 35-39 (2002).

As for ‘postnatal imbalance’ of the WTO/DSB, the primary fact is that there is precedence showing some specific DSB panels’ injustice, incapability and “politically astute, but legally flawed” approach in their practices. In this aspect, I would like to give three typical examples as follows:

The first example is the Section 301 Disputes in which over 30 countries led by the EU challenged the United States during the years 1998 - 2000. The DSB panel adopted an equivocal attitude and technique, which reprimanded little but helped a lot with the final approval of an unjustifiable chicanery from the respondent (US). This was substantially partial to the domineering superpower and its notorious Section 301,¹⁵ thus incurring criticisms from the public. One such criticism pointed out that: “The Panel decision seemed to be a fair ‘political’ decision that pleased both parties, or at least enabled them to save face. However, this panel decision is ‘legally weak,’ even though it is not entirely wrong.”¹⁶ “While the Panel Report is politically ‘astute,’ its legal underpinnings are ‘flawed’ in some respects and its policy implications for the future of the WTO Dispute Settlement Body generate serious concerns.”¹⁷ In 2003, I made further and detailed comments on this Panel decision in my comprehensive article titled, *The Three Big Rounds of U.S. Unilateralism v. The WTO Multilateralism During the Last Decade: A Combined Analysis of the Great 1994 Sovereign Debate, Section 301 Disputes (1998-2000) and Section 201 Disputes (2002-2003)*.¹⁸

The second example is the US-Section 201 Case in which twenty-two countries and regions led by the EU challenged the United States. The DSB panel and the Appellate Body (“AB”) ruled against the US. However, though the domineering unilateral ‘safeguard measures’ of the US had only been implemented for twenty one months, lots of benefits had been gained by the US and serious damages had been caused to foreign rivals. Such behavior was neither denounced nor was any due restitution to the injured foreign rivals compelled.¹⁹ Because “benefits have been gained at the expense of others without any punishment,” the US President at that time even satisfactorily announced that “these [US] safeguard measures have now achieved their purpose.”

¹⁵ Panel Report, *United States-Sections 301-310 of the Trade Act of 1974*, WT/DS152/R, (Dec. 22, 1999), available at [http://www.worldtradelaw.net/reports/wtopanels/us-section301\(panel\).pdf](http://www.worldtradelaw.net/reports/wtopanels/us-section301(panel).pdf) (last visited on Sept. 1, 2011).

¹⁶ Seung-Wha Chang, *Taming Unilateralism Under the Trading System: Unfinished Job in the WTO Panel Ruling on United States Sections 301-310 of the Trade Act of 1974*, 31 LAW AND POL’Y INT’L BUS. 1156 (2000).

¹⁷ *Id.*

¹⁸ CHEN, *supra* note 1; An CHEN on International Economic Law 1725-1807 (vol. 4). The Excerpt from this comprehensive Article with comments on American authoritative Professors L. Henkin & J.Jackson’s views upon contemporary economic sovereignty, See Annex II of the present Interview-paper.

¹⁹ An CHEN, *Third Round of U.S. Unilateralism Versus WTO Multilateralism: Jurisprudential Investigation and Prospect of Section 201 Disputes*, 2 CHINA LEGAL SCIENCE (2004). This Article has also been compiled in AN CHEN ON INTERNATIONAL ECONOMIC LAW 409-420 (vol. 1).

“We will continue to pursue [our] economic policies,” as well as “our commitment to enforcing our trade laws.”²⁰ As to the serious damages incurred to foreign rivals, the eloquent President pretending to be deaf and dumb, kept absolutely silent without saying even one word of regret, sorry or apology. Thus it can be fully seen that the US had no intention to change or reform its unilateral domineering legislation accused around the world. This has laterally reflected that the so-called ‘mandatory power’ of the current WTO/DSB regime which Professor John Jackson so indulged in elaborating on (如此津津樂道) is not so strong towards the self-willed and hegemony-addicted US; on the contrary, it is much limited or even weak.

The third example is the US-FSC Case launched by the EU. It was in the end settled with US ‘defeat’ (fail) under the WTO/DSB mechanism. Before that, however, both parties had been bargaining and fighting for more than 8-10 years on export subsidies.²¹ A famous WTO expert, Professor Yuqing ZHANG wrote a special monograph to make a full introduction and analysis to the entire case, which is worthy of a careful and thorough study. As to how shall we treat the final end of this case which did not come out until 8-10 years? How shall we treat and evaluate the adjudicative efficiency and the actual effect of WTO/DSB in this case? It seems that we may as well cite one paragraph of relatively objective and honest critique of Professor John Jackson for reference and supplement: “If disputes drag on for a decade, it comes to a point where there really is no remedy, and the system is clearly not operating effectively.”²² Pitifully, with respect to the said case, Professor John Jackson has not clearly expressed whether or not he is willing to apply these objective and honest criteria directly and specifically to the evaluation of the ‘mandatory power’ of current WTO/DSB regime, which he has indulged in elaborating on. This problem remains to be examined and clarified.

To generalize, in my mind, the ‘congenital deficiency’ and the ‘postnatal imbalance’ of the current WTO/DSB regime revealed in the aforementioned typical examples, especially the weakness and retard of its mandatory power on domineering behavior of hegemonic country, seem to have showed that this law-enforcing body is far from a “powerful long rope” capable of “taming down and tying up the black dragon,”²³ and even not to mentioned of becoming a modern ‘BAO Qingtian’ in the contemporary international economic fields. In other words, this law-enforcing body, which is eulogized as the “unique, a great achievement with unparalleled efficacy, or this

²⁰ George W. Bush, President’s Statement on Steel, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/12/20031204-5.html> (last visited on Sept. 1, 2011).

²¹ Yuqing ZHANG, *Preface, Comprehend DSU of WTO by Cases: Comments on US – FSC Export Subsidy Dispute*.

²² Jackson, *supra* note 8, at 147.

²³ These words are cited from a famous and popular poem written by Chairman Mao: “Now with the powerful long rope holding in hand, when will we tame down and tie up the black dragon?” (今日長纓在手，何時縛住蒼龍)?

twinkling “jewel in WTO’s crown,” is not always dazzling, but rather dim and dark under occasions when some specific DSB panels separately show its connivance in bad laws, its shielding for evil laws, or its political astuteness yet with legal flaws in face of powers.

It appears that the current regime and rules of this law-enforcing body per se remain to be improved gradually through continuous ‘law-reforming,’ before it can give a real play to its due function of protecting the weak, strengthening the just and eliminating the evil.

10. How to attain goodness but avoid harmfulness in law-abiding and law-adapting, and meanwhile to promote law-reforming in regimes such as the WTO?

China has been a member of the WTO for almost 10 years. Practicing years have extensively deepened its understanding of the current WTO legal system and its related international regimes. At this point, we ought to review both the credits and shortcomings of this system including the DSS, etc. According to the Marxist epistemology, human beings constantly face problems when adapting to, comprehending and reforming the world. Over 100 years ago, Marx pointed out incisively that: “Heretofore the philosophers have only interpreted the world in various ways - the point, however, is to change it.”²⁴ This judgment remains correct today. Comprehending the world is the prerequisite of adapting to and reforming it. However, practical activities of human beings should not just aim at comprehending, interpreting and adapting to the world. A more critical step is to carry out active reform through practices so as to promote healthy and harmonious development of human society.

The WTO has expanded to an organization of 153 members since the GATT period of 1947. According to a recent speech of Director-General Mr. P. Lamy, in the following 10 years, the WTO may host 180 members without difficulty.²⁵ Truly, the WTO has a characteristic of ‘rule-orientation’ rather than ‘power-orientation.’ Does this mean the WTO rules will automatically, smoothly and unconditionally be followed? The answer is self-evident. As discussed before, the ‘6C rule’ permeates in the law-making process of IEL, and the DSB is by no means ‘Bao Qingtian,’ not to mention the large number of exceptions and vagueness in many WTO rules. All members try to interpret these rules for their own benefits. Numerous conflicts among different (and different kinds of) members appear, while any so-called ‘comity’ or ‘modesty’ would carry advantages to

²⁴ See 1 SELECTIONS OF MARX AND ENGELS 5 (People’s Press, 1995).

²⁵ P. Lamy, *The Doha Round marks a transition from the old governance of the old trade order to the new governance of a new trade order*, WTO NEWS (Oct. 1, 2010) available at http://www.wto.org/english/news_e/sppl_e/sppl173_e.htm (last visited on Sept. 1, 2011).

some members, but incur disadvantages or even serious damages to some other members. This is the basic cognitive premise for the discussion of law-making, law-abiding, law-enforcing and necessary law-reforming of the WTO's rules.

Considering that the current WTO system has been designed mainly by developed countries, developing countries including China should research how to adapt to, comprehend and reform it. Because they barely had any say in the past law-making process, they were also quite weak individually and collectively. As a consequence, the attitudes and experience of developing countries towards the current WTO regime are in different stages.

First, when joining the WTO, developing countries had to firstly adapt to and abide by the existing WTO rules, so as to further understand these rules in the practices of adapting and abiding. At this point, they are actually entrapped in a dilemma: on the one hand, they realize the importance of joining the globalization process to develop; on the other hand, they face the existing WTO "rules of the game" designed mainly by developed countries which are unfamiliar in many aspects. They are even unsure of the possible practical influence these rules would bring to them. Joining the WTO is one of such examples; it is more or less revealed that developing countries are somewhat "out of choice" and "helpless." Of course, joining the WTO is the first step for them to gain more say in the decision-making of international economic affairs in the future.

Second, during the law-adapting and law-abiding process, developing countries shall not only endeavor to acquire proficiency in various "rules of the game" to attain the goodness and avoid the harmfulness, they also need to distinguish right from wrong, good from evil, and contemplate the reforming direction on the stand of the common rights and interests of international weak groups. In fact, after their accession to the WTO, developing countries have indeed gained some obvious improvements and strengthened themselves up through their own efforts. Mr. Lamy pointed out at the occasion of the 10th anniversary of the World Trade Institute in Bern that "developing countries' share of world trade has grown from a third to over half in just fifteen years - and China has just passed Japan as the world's second biggest national economy, and Germany as the world's top exporter."²⁶ This vividly illustrated the good side of the WTO regime for developing countries. However, developing countries should also clearly see and remember the varieties of aforesaid 'disadvantageous clauses' and unfair treatments unreasonably imposed on them and set within the WTO regime, so as to correspondingly design their coping strategy.

Third, with regard to the obviously unfair rules in the WTO regime which could harm the common rights and interests of international weak groups, developing

²⁶ *Id.*

countries shall dare to voice demands for law-reforming with sufficient reasons. They shall unswervingly fight for law-reforming, maintenance and promotion of a fair playing field and interests for international weak groups, through South-South Coalition and agglomeration of their power. It is justified for the developing countries to request reform of some unfair and unreasonable rules because developed countries have taken advantages of developing countries' weakness, insufficient participation and lack of experience, to broaden their burdens. Thus, there is a lack of legitimacy and justice for weak group members to absolutely abide by these unfair and unreasonable WTO rules. Besides, in order to attract developing countries to join the WTO or to have them concede in the fields such as intellectual property rights, developed countries had made promises in cutting their domestic subsidies to agricultural products. Regretfully, at the present time, many of such promises are still on the paper and just like some rubber checks. When developing countries discover this, they surely have the right to demand reform of these rules.

Mr. Lamy has noticed that: "The US, the EU and Japan remain key players but they are no longer dominant. Fast-emerging powers, like China, India and Brazil, play a role that was unimaginable even twenty years ago - while smaller developing countries naturally want a say in a system in which they have a growing stake."²⁷ Within the WTO and even the whole global economic domain, the balance of power is changing profoundly. Developing countries have formed an important component and positive force in the WTO, whose active participation in the WTO rule-making is not only important to the maintenance of their own interests, but also to pushing the WTO rules towards a more impartial, balanced and reasonable direction. Although individual power of the developing countries is still weak, their collective power has been enhanced. Thus developing countries are possible to voice their independent proposals. They should protect their common rights and interests by strengthening and deepening the South-South Coalition.

To sum up, it is important to probe into the WTO law-making, law-enforcing, law-abiding and law-reforming so as to warn people, especially those from international weak groups, to promote the "establishment, enforcement, observance and reformation" of the WTO rules to advance along with time. It is fair to say that the WTO has opened an important page in the process of realizing 'rule of law' of international economic relations. However, it is undoubtedly a historical 'long march' of the international community before the final and actual fulfillment of this ambition. Such an aim cannot be achieved without the longstanding joint efforts of the international community. At the present stage, it is of most importance for developing countries to

²⁷ *Id.*

deepen their understanding of the existing WTO rules in law-adapting and law-abiding so as to attain the goodness and avoid the harmfulness. It is also of critical importance for them to promote 'law-reforming' through South-South Coalition to obtain and protect their own equitable economic rights and interests. Only by these approaches, can international weak groups promote the establishment of a fair international economic legal system, achieve 'rule of law' in the WTO, etc. and boost the joint prosperity of global economy.

11. What do you think about the path for weak groups to promote law-reforming of the IEO, IEL & WTO?

Surely, the path for weak groups to promote law-reforming of the IEO, IEL & WTO is inevitably very rugged and tough. Yet, it is also sure that this path has a bright future. Weak groups all have suffered colonial or semi-colonial domination and depredations in modern history. Although they won independence after World War II, most of them are still poor and weak both individually and collectively. As the South is far weaker than the North, and given the established hegemonic structure and the "anti-law-reforming" resistance from the latter, it is not easy for the South to demand "law-reforming." However, since the end of World War II, with the weak groups consciously carrying out the South-South Coalition and their unswerving collective campaign, law-reforming has been steadily advanced from a macroscopic perspective though difficulties remain.²⁸

The 60-odd years' history of "law-making, law-abiding, law-reforming, anti-law-reforming and finally gradual law-reforming" within the GATT/WTO regime might serve as a typical example.²⁹ This history shows that the South-North contradiction and South-North interdependence still coexist. The escalation of economic globalization and the South-North gap always stimulate or deepen the South-North contradictions and conflict, but they also intensify the degree of the South-North interdependence. Complementariness in economies and intensified interdependence caused by intersection of economic interests predetermine that international hegemonists have no possibility of opposing the developing countries to the end or cutting them out of the economic interchange.

The international hegemonists after weighing the advantages and disadvantages will make certain concessions and compromises when dealing with the legitimate

²⁸ CHEN, *supra* note 5.

²⁹ For details, see An CHEN, *Some Jurisprudential Thoughts upon WTO's Law-governing, Law-making, Law-enforcing, Law-abiding and Law-reforming*, 12 J. WORLD INVESTMENT & TRADE, Pt. VII (2011).

requests of the weak groups representing over 80% of the world's population. The recurrent deadlocks in the South-North conflict will, to a certain extent, be resolved through dialogue and consultation, by seeking the convergence of the adversaries, reaching appropriate agreement, and thus substituting the mutually destructive behavior of both sides with a win-win result for both sides. Even though the new co-operation situation may occasionally be weakened or undermined by the new South-North contradictions and conflict, the contemporary trend of the economic globalization and the fact of South-North interdependence could revitalize the South-North co-operation. In this sense, South-North co-operation might suffer from "disease," and sometimes even suffer from severe symptoms, but will in no case be "incurable and die". The spiral recurrence of the '6C Track' is the historical record and factual proof in this respect. Therefore, the pessimistic attitude towards the dimness of the future of the WTO or the view of its quick collapse - just the same as the opposite position that "the WTO would travel along a smooth path as the South wins and the North loses" - is deficient.³⁰

All in all, one could understand vicissitudes by taking history as a warning. The 60-odd years' historical course of "law-making, law-abiding, law-reforming, anti-law-reforming and finally to gradual law-reforming" within the GATT/WTO regime has at least showed the following points:

First, some extremely unreasonable and obviously unfair old norms and "rules of the game" for the GATT/WTO regime are gradually abandoned and renewed with the ceaseless push of international law-reforming power for over 60 years, because these unfair old norms and rules are against and breaching proper and equitable rights and interests of billions of population in weak States, and because they are not in accordance with and even against the contemporary historical trend.

Second, the law-reforming process of the unfair old legal norms and original "rules of the game" for the GATT/WTO regime, although it has been facing constant difficulties and obstacles, yet from a macroscopic perspective, is advancing with a rather bright prospect, because it accords with proper rights and interests of billions of population of weak States and the contemporary historical trend.

Third, the accumulative achievements on law-reforming of the unfair old legal norms and original "rules of the game" for the GATT/WTO regime must be counted on and attributed to a long-term and united campaign of international weak States themselves, rather than bestowals from international powers. For the international weak States, the aphorism contained in *The Internationale* by Eugène Edine Pottier is still instructive, which reads: "No Savior from on high delivers; No trust have we in prince

³⁰ CHEN, *supra* note 5.

or peer; our own right hand the chains must shiver; Chains of hatred, greed and fear.”

Fourth, the former three points not only apply to the law-reforming process of the unfair old legal norms and original “rules of the game” for the GATT/WTO regime; with enough deliberation and retrospection, the international weak States can also apply them to scientifically examining and dissecting ‘all’ the unfair contemporary international economic legal norms and the macroscopic process of continuously reforming and renewing any unfair IEO and IEL.

12. Professor Chen, during the last three decades, you have devoted yourself to establishing an academic flag with Chinese characteristics different and independent from prevailing Western theories in the field of the IEL. You have been considered as a flag-holder Chinese Scholar advocating reform of International Economic Law, renowned as a truly leading scholar of international economic law in China as well as all over the world. Your personal experience would offer a guiding compass for young scholars of other Asian countries who are contemplating pursuing a career in this field. In retrospect, what were the most difficult challenge and most memorable achievement for you in your academic career as a scholar in this new field of law?

I would say I have never been very talented but mediocre. For well-known reasons, I have spent much of my life in tough periods. It was not until the opening and reform of China initiated by Xiaoping DENG that I could get a good chance. In 1981, when I was aged 52, I went abroad to study and research international economic law. For this reason, People’s Daily once described me in a special report, “Just started to race at the age of spurt.” (在應冲刺的年齡才起跑) Despite some achievements I have made in the three decades of my study, I am humble and dare not to “offer a guiding compass” for the young scholars of other Asian countries.

Looking back, I often regret my delay in studying new legal knowledge. However, I always adhere to the motto of “realizing the distance, never contenting with lagging, rousing to catch up, overcoming shortage by diligence.” (承認差距, 不甘落後, 急起直追, 以勤補拙) In the meantime, I hold an attitude of “taking and digesting; then absorbing and/or discarding; and then criticizing and creating” towards western theories. I always try to absorb their essence but discard their dross, and am never afraid of raising my own independent and convincing opinions and often participate in international academic debates.³¹ As legal scholars, particularly Asian ones, we must bear in mind that our countries have long been invaded and bullied by the western powers and Japan

³¹ For example, debating with Western authoritative Professors such as A. F. Lowenfeld, L. Henkin, J. H. Jackson, etc. See Annex I and Annex II of the present Interview-paper.

in history and suffered from colonialism and economic hegemonism. We need to bravely pursue natural justice and international social equity and defend our countries with the correct theories and knowledge of international economic law that we have acquired, so as to defend equality in the international community and protect the equitable rights of weak countries.

These few words are actually some of my personal experiences on my study of international economic law, and I wish to share it to encourage young Asian scholars and colleagues.

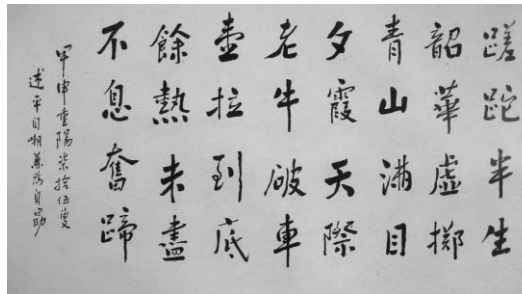


Photo 6: Prof. CHEN's calligraphy and poem in Chinese (2005)

蹉跎半生，韶華虛擲，青山滿目，夕霞天際。
老牛破車，一拉到底，餘熱未盡，不息奮蹄。

*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*



Photo 7: Prof. CHEN with Prof. Eric Lee before Xiamen Law School (2011)

Interview by Eric Yong Joong Lee under the auspices of Jaemin Lee

The interviewers would thank Dr. Manjiao CHI as well as Ms. Carol CHEN, for their kind help in preparing the present interview-paper.

RECENT PUBLICATIONS

Books

1. 陈安(主编):《国际经济法学》(第五版),北京大学出版社 2011年版。
【English Title: An CHEN (Editor-in-Chief): International Economic Law, 5th Edition, Peking University Press, 2011】
2. 陈安(主编):《国际经济法学新论》(第二版),高等教育出版社2010年版
【English Title: An CHEN (Editor-in-Chief): Modern International Economic Law, 2nd Edition, Higher Education Press, 2010】
3. 陈安(主编):《国际经济法概论》(全国自学考试指定教材),北京大学出版社2010年版
【English Title: An CHEN (Editor-in-Chief): Basic Theories on International Economic Law, Assigned textbook for National Self-taught Test, Peking University Press, 2010】
4. 陈安(主编):《国际经济法学资料新编》(两册),北京大学出版社2008年版
【English Title: An CHEN (Editor-in-Chief): *Neo-Compiled Materials on International Economic Law (2 Volumes)*, Peking University Press, 2008】
5. 陈安:《陈安论国际经济法学》(专著,五卷本),复旦大学出版社2008年版
【English Title: An CHEN: *An CHEN on International Economic Law (5 Volumes)*, Fudan University Press, 2008】

Articles

1. 陈安:《评“黄祸”论的本源、本质及其最新霸权“变种”:“中国威胁”论——从中国对外经贸交往史的主流及其法理原则的视角》,发表于《现代法学》2010年第6期
【English Title: 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*, Modern Law Science, Vol. 6, 2011】
2. An CHEN: *Some Jurisprudential Thoughts upon WTO’s Law-governing, Law-making, Law-enforcing, Law-abiding and Law-reforming*, The Journal of World Investment & Trade,

Vol.11, No.2, 2011.

【Chinese Title: 陈安:《论世贸组织的法治、立法、执法、守法与变法》,载于《世界投资与贸易杂志》2010年第11卷第2期】

3. 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》,《现代法学》2010年第6期

【English Title: An CHEN: *Fragmentary Jurisprudence Thoughts upon the Decade of China's Accession to WTO: Brief Comments on WTO's Law-governing, Law-making, Law-enforcing, Law-abiding and Law-reforming*, Modern Law Science, Vol. 6, 2010】

4. 陈安:《论WTO体制下的立法、执法、守法与变法》(增订本),发表于《国际经济法学刊》(第17卷),北京大学2010年第4期。

【English Title: An CHEN: *On the Law-governing, Law-making, Law-enforcing, Law-abiding and Law-reforming under WTO Regime (amended)*, Journal of International Economic Law (China), Vol.17, No.4, 2010 Beijing University Press】

5. 陈安:《对香港居民谢业深诉秘鲁政府案ICSID管辖权裁定的四项质疑——〈中国—秘鲁双边投资协定〉适用于“一国两制”下的中国香港特别行政区吗?》,《国际经济法学刊》(第17卷)北京大学2010年第1期

【English Title: An CHEN: *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?* Journal of International Economic Law (China), Vol.17, No.1, 2010 Beijing University Press】

6. An CHEN & Huiping CHEN, *China-India Cooperation, South-South Coalition and the New International Economic Order: Focus on the Doha Round* (amended), compiled in the book entitled *China, India and The International Economic Order* (edited by M. Sornarajah et al.), Cambridge University Press, 2010.

【Chinese Title: 陈安, 陈辉萍:《中印合作、南南联合自强与国际经济新秩序:聚焦于多哈回合》(增订本),载于M. Sornarajah 等编:《中国、印度和国际经济秩序》一书,剑桥大学出版社2010年版。】

7. An CHEN: *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?* The Journal of World Investment & Trade, Vol.10, No.6, 2009.

【Chinese Title: 陈安:《对香港居民谢业深诉秘鲁政府案 ICSID 管辖权裁定的四项质疑——〈中国—秘鲁双边投资协定〉适用于“一国两制”下的中国香港特别行政区吗?》载于《世界投资与贸易杂志》,第10卷第6期,2009】

8. 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》(简称《三论》),《国际经济法学刊》(第16卷),北京大学出版社 2009 年第 4 期

【English Title: An CHEN: A Third Comments on China's Strategic Position in the Establishment of NIEO: To Where Would the G20 & Its "Path from Pittsburgh" Lead - The Pending Riddle of the New Platform of G20 South-North Cooperation and the Conflict between Ideas such as 'Compliance' and 'Change,' Journal of International Economic Law (China), Vol.16, No.4, 2009 Beijing University Press】

9. 陈安:《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”》(简称《二论》),《国际经济法学刊》(第16卷) 2009 年第 3 期

【English Title: An CHEN: A Clear-cut Stand on China's Strategic Position in the Establishment of NIEO: With Comments on An Integral and Accurate Comprehension of Deng Xiaoping's 28-word Foreign Policy, Journal of International Economic Law (China), Vol.16, No.3, 2009】

10. 陈安:《论英国 FOSFA 裁决之严重违法、不予执行——中国中禾公司采购巴西含毒大豆案述评》,《国际经济法学刊》(第16卷),北京大学出版社 2009 第 1 期

【English Title: An CHEN: On the Serious Illegality & Unenforceability of the British FOSFA Arbitral Award: Comments on the Case of Singapore Bunge v. Xiamen Zhonghe, Journal of International Economic Law (China), Vol.16, No.1, 2009, Beijing University Press】

11. An CHEN & Dong CHEN: *What should be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neo-liberalistic Economic Order, Constitutional Order of the WTO and Economic Nationalism's Disturbance of Globalization*, The Journal of World Investment & Trade, Vol.10, No.3, 2009.

【Chinese Title: 陈安, 陈东:《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《世界投资与贸易杂志》,第10卷第3期,2009】

12. 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》(简称《一论》),《现代法学》(第16卷)2009年第2期

【English Title: An CHEN: *What should be China's Strategic Position in the Establishment of New International Economic Order? With Comments on Neo-liberalistic Economic Order, Constitutional Order of the WTO and Economic Nationalism's Disturbance of Globalization*, Modern Law Science, Vol.16, No.2, 2009】

Annex I of the present Interview paper
(As a supplement to supra note 3 of the Interview paper)
Some Fragmentary Comments
on Professor A. F. Lowenfeld's Views upon IEO & IEL³²

An CHEN

During 1975 to 1979, Professor Lowenfeld had sequentially published 6 volumes of teaching materials, composing a series under the title of International Economic Law, which have undoubtedly made enormous contribution to the preliminary formation of the disciplinary system of modern international economic law.

After a comprehensive survey on basic arguments of these books, however, obvious and fundamental limits can be discerned as follows: In the process of analyzing and judging various legal cruxes of international economic relations, the domestic legislations of US are regarded as the ultimate criteria, and the practical interests of US capitalists are targeted as the supreme aim. With regard to the strong demand and proper behavior to defend their economic sovereignty of the numerous weak nations, such as to reinforce domestic legal jurisdiction and restrictions vis-à-vis the transnational corporations and foreigners within border, they either held a vague attitude, or appear to be fair and just actually take sides with US.

In early 1970s, e.g., in order to maintain national economic sovereignty and to develop national economics, the Chilean government once adopted legal measures to reinforce restrictions vis-à-vis the domestic foreign-funded enterprises involved in economic arteries, by gradual transformation of the shares and management to Chilean nationals, or by gradual nationalization, with appropriate compensation paid to the foreign investors. The International Telephone and Telegraph Corporation ("ITT"), an enormous American transnational corporation, tried almost everything to guard its vested benefits in Chile. It went as far as to actively appropriate a million dollars as 'donation,' to closely assist the CIA in the conspiracy to interfere in internal affairs of Chile, and even to secretly send agents into Chile, conducting political bribery, instigating strikes and riots, and trying to overturn the legitimate Governmental authorities of Chile. After these confidential affairs failed and were exposed later on, they were much denounced by the international public opinion, and were soon

³² Excerpt from An CHEN, *On the Frontierness, Comprehensiveness and Independence of International Economic Law Discipline*, AN CHEN ON INTERNATIONAL ECONOMIC LAW 13-16 (vol.1) (Fudan Univ. Press, 2008).

becoming a worldwide scandal. Most righteous and impartial personages within US also expressed their strong condemnations on these notorious matters. Confronting such cardinal issues of right and wrong, however, Professor Lowenfeld regrettably claimed in a Preface of a prevailing book that:

The present volume neither praises nor condemns ITT - or indeed the multinational corporation generally, and it accepts neither the leftist nor the rightist interpretation of events in Chile. This is so not because of any abstract faith that "truth must lie somewhere in the middle," but because of a conscious effort to do here what law teachers do as a matter of course in other areas - to present the material as objectively as possible.³³

Nevertheless, as to the various illegal acts by ITT in Chile, Professor Lowenfeld made a deliberate misinterpretation and a brazen defend by citing the arguments in the Award, which reads:

A different panel of the American Arbitration Association also found in favor of the claimant, dismissing as not forbidden by the contract of guaranty evidence of ITT's efforts in Chile and in the United States to prevent the election of President Allende or to bring pressure looking to his downfall.³⁴

The meanings among these lines, according to Professor Lowenfeld, is obviously to suggest that such brutal illegal acts of interfering in internal affairs of the host State should not be inadvisably investigated, or would be excusably extenuated, as long as no forbidden terms are explicitly stipulated in the contract. His 'objectivity' in such a stand may be seen as a small segment of a whole.

It shall be particularly pointed out that: up to this day, in his globally prevalent one-volume teaching material with the title *International Economic Law*, which was published at 2002 and revised and republished at 2008, Professor Lowenfeld had consistently stuck to his American position. The global just proposals and jurisprudential opinions - such as to reform the OIEO, to establish the NIEO, to stipulate new norms of IEL, and to maintain and respect the economic sovereignty and economic legislations of each weak nation - strongly advocated by the developing countries who constitute 80 percent of world's population, were either ignored, or disparaged, or

³³ A. F. LOWENFELD, *INTERNATIONAL PRIVATE INVESTMENT: INTERNATIONAL ECONOMIC LAW* (vol.2) Preface(vii) (1982).

³⁴ *Id.* at 170(FN d). As to the details of the case, see AN CHEN, *CHEN'S PAPERS ON INTERNATIONAL ECONOMIC LAW* 525-531, (Beijing Univ. Press, 2005); see also, AN CHEN, *AN CHEN ON INTERNATIONAL ECONOMIC LAW* 919-925 (vol.1). See also AN CHEN (ed.), *CROSS VERBAL SWORDS - FIVE FAMOUS CASES ON INTERNATIONAL INVESTMENT DISPUTES* 97-166 (1986).

negated. For example, the Charter of the Rights and Duties of States, which was passed with an overwhelming majority in the General Assembly of United Nations in 1974, has won widespread identification of the international society, and has already formed *opinio juris* through 2 - 3 decades of practice. Notwithstanding this fact, in Lowenfeld's globally prevalent teaching material, the Charter is constantly deemed as heterodoxy and "departure from the traditional international law,"³⁵ thus with no legally mandatory force. It reads in the book:

Viewed **more than a quarter century** later, the Charter of the Rights and Duties of States seems less significant than it appeared at the time. If there was indeed an effort to divorce international investment from international law, that effort did not succeed, **though appeals to 'sovereignty' and other echoes** of the debates of the 1960s and 1970s **continued to be heard** in the United Nations and other international fora.Notwithstanding the statements of several of its proponents designed to endow the New International Economic Order with the characteristics of law and to equate the resolutions with legislation, the challenge appeared **essentially political**. [Emphasis added]

The United States and other home countries of multinational corporations rejected the challenge by the developing states, refused to agree to any change in the 'traditional principles,' and denied that they had been replaced or modified in customary law by State practice (as contrasted with resolutions in the United Nations). The capital-exporting States took the position that the traditional requirements are solidly based both on the 'moral rights' of property owners and on the needs of an effective international system. Moreover, they argued, whatever objections might be made to the **traditional rules** as applied to investments established **in the colonial era**, the traditional rules should clearly apply to arrangements made between investors and independent governments negotiated on a commercial basis.³⁶ [Emphasis added]

Words in the above paragraphs are rather thought-provoking. With a careful consideration, such following issues could be raised:

(1) The Charter of the Rights and Duties of States, which was passed with an overwhelming majority in the United Nations General Assembly in 1974, reflects the common national will and the *opinio juris communis* of the overwhelming majority of members of contemporary international society. Thus, it accords most with the principle

³⁵ Lowenfeld, *supra* note 3, at 491 (2nd ed. 2008).

³⁶ Lowenfeld, *supra* note 3, at 412 - 414 (2002); 492-493(2nd ed. 2008). The paragraph is adapted from a paragraph in the Restatement (Third) of Foreign Relations Law, n. 49, § 712, Reporters' Note 1 (Status of International Law on Expropriation).

of democracy that the minority shall be subordinate to the majority; and it embodies most of the principle of human rights (including sovereignty and the right to development) that safeguards billions of weak populations' human rights of the international society. The United States has always been praising itself as "democratic model of the world," and "guardian for human rights in the world," and is mouthful of humanity, justice and morality. Then, vis-à-vis the critical issue on the human rights (sovereignty and the right to development) of international weak groups, how would such a country play fast and loose, or even totally betray and discard the principle of democracy and that of human rights, which it consistently holds as the highest criteria?

(2) After the adoption of the Charter, "more than a quarter century later," towards the global *opinio juris* and legal idea that have already formed through decades of practice by the international society, how would such a country go so far as to merely turn a blind eye and a deaf ear, and still define to be 'essentially political'? Why could not the Charter be defined legal, and become legally bound norms of conduct?

(3) For the last 40 years ever since 1960s, as "appeals to sovereignty and other echoes" from global weak groups in the United Nations and other international fora have been lasting and "continued to be heard," how would the number one country in the world, who regards "to lead the world" and to guide the future direction of the world as its own responsibility, stuff its ears and refuse to listen, or act as if it had not heard?

(4) How would the United States, which praises itself as pioneer of the era, be always preoccupied with and unable to part from the out-of-dated, traditional international legal norms and the colonial moral concept, which were established in the colonial era? And vis-à-vis the newly formed international legal norms which reflect the new time spirit of the 21st century, how would such a country be so incongruous, disdainful, and even hostile to these up-to-dated norms?

For every unselfish, magnanimous and impartial law scholars, the above questions are all seemingly worthy to be deliberated, doubted and compared; and these questions are also not too difficult to be dissected, distinguished from right and wrong, and chosen between acceptance and rejection.

Annex II of the present Interview paper
 (As a supplement to supra note 18 of the Interview paper)
Some Fragmentary Comments on
L. Henkin & J.H. Jackson's Views
regarding Contemporary Economic Sovereignty³⁷

An CHEN

The fierce rise, fall, and re-emergence of the debates, which revolved around the restriction and anti-restriction on economic sovereignty from 1994 to 2003, provide significant information worthy of serious research by the international community, especially small and weak nations. Such nations should analyze and inquire about these debates so as to draw some enlightenment.

The implications of the debates for developing countries, which have occurred over the span of ten years, are several as follows:

First, as economic globalization accelerates, the offensive and defensive war of economic sovereignty has not calmed down; it continues and sometimes becomes rather fierce. Therefore, the developing countries must strengthen their sense of crises/risks to avoid unconscious acceptance of the theories of obsolescence, relegation, weakening, or dilution of economic sovereignty. [as Professor Henkin advocates]

The main characteristic of this offensive and defensive war is that the most powerful nation is striving to defend its vested economic hegemony, to weaken further the economic sovereignty of those less powerful nations, and to damage the hard-earned economic sovereignty of weak nations. The international hegemonist has been consistently applying a 'double standard' [as Professor John Jackson advocates] to the issue of economic sovereignty, i.e., regarding its own economic sovereignty and actually economic hegemony as a 'holy god,' while it treats that of weak and small nations as a 'small straw.' Under such international circumstances, the third world should **never away with the 'S' word in current time**. They must consciously insist their independent sovereignty, so as to separately and/or jointly fight against the political and economic hegemony, when the political and economic hegemony still exist. [Emphasis added]

Second, the international allocation of decision-making power in global economic affairs is an important part of the offensive and defensive wars on economic

³⁷ Excerpt from An CHEN, *The Three Big Rounds of U.S. Unilateralism versus WTO Multilateralism during the Last Decade*:..., AN CHEN ON INTERNATIONAL ECONOMIC LAW 1799-1805 (vol.4).

sovereignty. Therefore, the developing countries should strive to acquire an equitable portion of decision-making power in the international arena.

The equity and rationality of the international allocation of decision-making power in world economic affairs is decisive as to whether a weak nation's economic sovereignty can obtain the protection it deserves. Further, it determines whether the international allocation of world wealth is reasonable. To change the severe inequity in the international allocation of global wealth, the protection of the weak nations' sovereignty should be strengthened. For this purpose, reformations should be conducted on the source of the severe inequity malpractice in the international allocation of decision-making power in world economic affairs.

As noted above, Professor John Jackson, when reviewing and concluding "The Great 1994 Sovereignty Debate" emphasized repeatedly that the core and essence of the debate was about the allocation of power, the appropriate allocation of the decision making power in international affairs between the US government, and international institutions. This insight touched the essence of the issue and was on point. Perhaps confined by his social status and position, Professor Jackson was unable or did not dare to further expose the gigantic inequity of the current allocation of the decision-making power in international affairs between the superpower and the majority of developing countries.

The facts attest that, in the allocation system of decision-making power in international economic affairs, the United States has acquired a portion far in excess of what it deserves. During "The Great 1994 Sovereignty Debate," the arguments of the "Sovereignty Confidence Group" and the "Sovereignty Anxiety Group" seem contradictory, even though, in essence, they share a common fundamental starting point, i.e., grasping tightly a super-portion of decision-making power in international affairs without making any concessions, while endeavoring to seize the small portion of the decision-making power that rests on other's plates to satisfy its own voracious appetite.

Third, the economic sovereignty of a country lies in its autonomy power in all its domestic and foreign economic affairs. In the new circumstance of economic globalization, the developing countries should particularly dare to insist on and be good at maneuvering their economic sovereignty. In the tide of accelerated economic globalization, what the developing countries face is a situation in which chances and crises coexist. To make use of the chances, the developing countries must grasp tightly their economic sovereignty. Only by using it as major leverage can developing countries conduct necessary guidance, organization, and management on various internal and foreign economic affairs. To prevent and defend crises, the developing countries should

rely on their tightly grasped economic sovereignty, apply it as the main defense, and take all necessary and effective measures to disintegrate and eliminate any crisis possible.

There is no such thing as a free lunch in the world. Sacrifice must be paid to take advantage of the chances and to make use of foreign economic resources to serve a nation's own economic construction. But the sacrifice is limited to an appropriate degree of self-restraint on certain economic power and economic interests, and on the basis of complete independence and autonomy. The appropriate degree of self-restraint may be found by: 1) persisting on the balance between obligation and right, and resisting harsh foreign requirements. We should flatly reject those extra requirements that would generate a severe negative impact or deteriorate a nation's security and social stability, without making any concession;³⁸ 2) making an overall assessment of the advantages and disadvantages, gains and losses, on the autonomy basis, then striving for more advantages than disadvantages, more gains than losses; 3) being vigilant in peace time and strengthening our sense of anxiety in assessing, anticipating, and taking precautions earlier due to the possible risks accompanying such chances, such as the re-manipulation of the national economy vein by foreign countries, the loss of control and confusion of the finance and monetary order, the drain of national property, and the taxation source of national treasury; 4) being prudent enough and taking deep considerations without making promises too rashly as to those concessions and prices with too high a risk with less benefits; and, finally, 5) making arrangements before and after making promises to enhance the ability to defend and eliminate crisis. Only then can nations, as steadfast as a mid-stream rock, retain their autonomy in their economy under the lash of the economic globalization tide.

Fourth, any mistake in 'theory' is sure to lead to blindness in 'practice' and paying a great price. After an overall survey of the current contradiction between the South and the North, it is obviously 'inadvisable' for the weak and small nations to recognize or to adopt the theories of sovereignty weakening or sovereignty dilution. With accelerated economic globalization, various theories of diluting or weakening the concept of sovereignty will appear quietly on some occasions, which seem to be novel

³⁸ For example, in the 'single package' negotiation on China's accession to the WTO at the beginning of 2001, some developed country members put forward harsh requirements on China's adjustment in its agricultural policy, which were denied by the Chinese delegation. The head of the Chinese delegation and its chief negotiation representative, Yongtu Long, emphasized: "with regard to the agriculture, China has a population of 900 million engaging in agriculture industry, so keeping the stability of agriculture is of great importance to the social stability and economic development of China.... After its accession to the WTO, the Chinese government needs to reserve those measures in support of agriculture which are consistent with the WTO. The interest of the 900 million agricultural population will forever be the first consideration of us." See *Fifteenth Session of WTO Chinese Working Group Finished*, PEOPLE'S DAILY, Jan. 19, 2001.

and fashionable ideas. Some less worldly people with a kind heart, who have not tasted the bitterness of a small or weak nation, may be perplexed by certain specious arguments, evidence, or false impressions, and thus become unconsciously the echoes of the fashionable theories. However, considering the reality that contemporary economic hegemony is performing arbitrariness from time to time, and combining with the fact that those theories of the obsolete and relegation of sovereignty were created right from the hegemonic country and have been advocated as a strong theoretical support of economic hegemony, it should be a sudden wake up (当头棒喝!) for many people; the development direction of the sovereignty dilution and weakening theories is destined to the sovereignty obsolete and relegation theories. This destination is never the welfare of the small and weak nations. Rather, it is a theoretical trap and people with good intention can not foresee its results.

If people can keep calm and strengthen their observation and comparison of the current international reality, they will naturally accept the right judgment in conformity with reality: In the situation of accelerated economic globalization, hegemonism and power politics still exist, thus the tasks of the developing countries to safeguard their national sovereignty, security, and interests are still arduous.³⁹

Consider for a moment China's place in this discussion. In the offensive and defensive wars in the field of political and economic sovereignty during the period of twentieth century, China, being the biggest developing country, had suffered severe historic tortures of national oppression, exploitation and humiliation, been trampled by powers; and then, it experienced great historic exultation when eventually achieving autonomy on politics and economy after more than a century's striving to restore its national dignity. Now, at the beginning of the twenty-first century, in the new situation of accelerated economic globalization, China is, as well as a great deal of other developing countries, once again confronted with the offensive and defensive wars of economic sovereignty in the 21st century. It is necessary at this moment to review the eager exhortation left by Mr. Xiaoping DENG that Chinese people cherish their friendship and cooperation with other countries and their people, but they cherish more their rights of autonomy acquired through long period of struggles. Any country should not count on China to be their dependency, should not expect China to swallow the bitter fruits that may impair their country's interests.⁴⁰

³⁹ See: Zemin JIANG, *China-Africa Cooperated Hand in Hand, Creating a New Century*, PEOPLE'S DAILY, Oct. 11, 2000.

⁴⁰ See: Xiaoping DENG, *The Opening Ceremony Remarks on the Twelfth Plenary Session of the CCP*, THE SELECTED WORKS OF DENG XIAOPING 372 (1983).