

ORIGINAL ARTICLE

INTERNATIONAL COURT OF JUSTICE: TRIBUTE TO JUDGE SHI JIUYONG

The formative international law studies of Judge Shi Jiuyong

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Abstract

Shi Jiuyong was an eminent Chinese international lawyer who became the first Chinese national to helm the International Court of Justice. This tribute examines Shi's underexplored university education years, illuminating how these early experiences proved formative in his subsequent years as an international law practitioner, scholar and judge. In doing so, this tribute explores the factors that animated Shi's choices and focuses, giving context to his slew of admirable achievements later in life.

Keywords: Chinese Judge of the International Court of Justice; Monism in International Law; Shi Jiuyong; Shi Jiuyong's legal education; Shih Chiu Yung

Shi Jiuyong, also known as Shih Chiu Yung, was an honorable and distinguished member of the international legal community, and an inspiration and trailblazer for many. Born on 9 October 1926 in Ningbo, China,¹ Shi experienced the weaknesses of international law impacting China on the global stage, which led to him studying international law. After a long and stellar career as a legal scholar and government legal adviser,² Shi was elected as a member of the International Law Commission (ILC) in 1987 and served as its chairman in 1990. In 1994, he became the fourth Chinese national to ascend to the bench of the International Court of Justice (ICJ or Court). His peers later elected him as Vice-President in 2000, and three years later, he made history by becoming the first Chinese national to be elected President of the Court. He held this office for three years and remained a member of the court until his resignation in 2010.³ Shi passed away on 18 January 2022, aged 96, in Beijing, China.

Shi's life spanned some of the most critical years of the Chinese people's disillusionment with international law and justice, which undoubtedly spurred his subsequent pursuits. Born just a few

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¹Shi Jiuyong's father, Shi Youfang, was an employee of the Swiss company Chemische Industrie Basel in Shanghai.

²See J. Shi, 'Autonomy of the Hong Kong Special Administrative Region', (1997) 10 *Leiden Journal of International Law* 491; J. Shi, 'Maritime Delimitation in the Jurisprudence of the International Court of Justice', (2010) 9 *Chinese Journal of International Law* 271; J. Shi, 'Prohibition of Use of Force in International Law', (2018) 17 *Chinese Journal of International Law* 1. As a legal adviser to the Chinese Foreign Ministry, he was instrumental in providing legal advice to the Office of the Chinese Senior Representative, Sino-British Joint Liaison Group. T. Cheng, 'Peking Names Team Members', *South China Morning Post*, 22 June 1984, at 1; T. Cheng, 'Joint Group Holds "Extra" Sessions', *South China Morning Post*, 29 November 1985, at 12; 'Chinese Liaison Members Arrive', *South China Morning Post*, 20 May 1986, at 16.

³International Court of Justice Press Release, 'Judge Shi Jiuyong, former President and former Vice-President of the Court, will resign as a Member of the Court with effect from 28 May 2010', available at www.icj-cij.org/public/files/press-releases/715927.pdf.

years after China felt bitterly let down by the inequitable outcome at the Paris Peace Conference in 1920, where respected rules of international law yielded to realist international politics with a 'Eurocentric' bias,⁴ Shi witnessed how his home country was deprived of her sovereign jurisdiction and rights. Shi's childhood and formative years were also shaped by the failure of the League of Nations and international law to restrain the Japanese invasion of Manchuria in 1931 and the ensuing Second Sino-Japanese War from 1937 to 1945. These transformational experiences left an indelible imprint on the young Shi, as evidenced in his focus on and life-time dedication towards international law.

This tribute examines Shi's underexplored university education years, illuminating how these early experiences proved formative in his subsequent years as an international law practitioner, scholar and judge. In doing so, this tribute explores the factors that animated Shi's choices and interests, giving context to his slew of admirable achievements later in life.

1. Shi's undergraduate studies

In June 1944, when Shi enrolled in St John's University in Shanghai, the city and the school had been substantially transformed by the Second World War. Shanghai was under Japanese occupation, while the US was at war with Japan after the latter's attack on Pearl Harbor in 1941. The university was the only Protestant Christian college remaining in Shanghai, but it was without any American faculty and staff because they were either repatriated as part of an exchange of civilians between the US and Japan or had been placed in internment camps by the end of February 1943.⁵ Shortly after Shi began his sophomore year in 1945, Japan surrendered on 15 August. After that, the American staff of the Protestant missions gradually returned to Shanghai.⁶

Shi's undergraduate studies were profoundly influenced by several significant and persistent challenges that affected Chinese students. Outside the university, reports of misbehaviour by American service members in China enraged the Chinese public and caused a public uproar. The situation was exacerbated when the US government resolved to give substantial American aid to help reconstruct a defeated Japan. These events offended the sensibilities of the Chinese people and ignited waves of anti-American activities on campus and beyond.⁷ In Shi's senior year, his studies were frequently interrupted by student strikes and related protest activities.⁸

Shi closely followed such news with a strong sense of justice and patriotism. In August 1946, he wrote a letter to a Shanghai newspaper and took issue with certain falsehoods that had been published in an earlier article.⁹ The writer of the contested article falsely claimed that 'Foreigners [in China] are discriminated against here [in ways that] Chinese are not discriminated [against] in civilized countries, notably the States.'¹⁰ Shi disagreed and challenged the veracity of the allegation, stating:

⁴See Y. Zhang, *China in the International System, 1918-20: The Middle Kingdom at the Periphery* (1991).

⁵M. Lamberton, *St. John's University, 1879-1951* (1955), at 208.

⁶*Ibid.*, at 216.

⁷C. Tsao, 'Kill for Fun', *China Weekly*, 5 October 1946, at 125; 'Situation Tense at St. John's University', *North-China Daily News*, 5 June 1948, at 3; T. C. Chao, 'Letters to the Editors: Anti-Americanism', *China Press*, 5 June 1948, at 7; 'Anti-American Demonstrations', *Chinese Weekly Review*, 5 June 1948, at 9; 'Campus Paper Hits Anti-US Students', *North-China Daily News*, 5 June 1948, at 3; 'Student Agitation', *China Weekly Review*, 5 June 1948, at 26. There was a nationwide student movement protesting against the US policy of 'building up Japan' at the cost of China. Students took to the streets and held meetings to discuss their views. In late May 1948, students of St John's conducted a poll on the controversial American aid policy to Japan.

⁸'Partial Strike at St. John's Held Quietly', *China Press*, 12 November 1947, at 5; 'St. John's U. Asks Pledges of Discipline', *China Press*, 17 February 1948, at 1; 'St. John's Receives Discipline Pledge from Vast Majority', *China Press*, 25 February 1948, at 1; 'All Classes Suspended at St. John's', *China Press*, 3 June 1948, at 1; 'Letter to the Editors, The St. John's Affair', *China Press*, 5 June 1948, at 5.

⁹C. Y. Shin[sic], "'Sapiens'?" The Readers Forum', *Shanghai Evening Post & Mercury*, 5 August 1946, at 8.

¹⁰*Ibid.*

[A]re you really sure that Chinese are not discriminated in other countries, especially [the] United States? If that is so, then how are you going to explain the story [that] appeared in the Post dated a few weeks back that an American judge in San Francisco ruled that a group of property owners were justified in evicting a Chinese woman from her home because her presence would constitute a “lowering of social and living standard”. Is it not discrimination?¹¹

Notably, he did not contend that foreigners in China did not experience any discrimination at all, stating that ‘evidences of prejudice of foreigners may be found in every country’.¹² Nonetheless, he championed an enlightened view in support of the equal treatment of people from all races because ‘after all we are all human beings which belong to the same genus and same species, i.e., Homo sapiens’.¹³ His open-minded views aligned with the international law theory he advocated in 1951 in his Masters’ thesis at Columbia.

It is against this historical backdrop that Shi pursued his undergraduate studies at St. Johns. While initially studying Chemistry with a view to joining his father in the chemical industry,¹⁴ he switched to political science after his first semester, being far more intrigued by the subject.¹⁵ Shi was exposed to a liberal arts education which proved instrumental in his future career in academia, diplomacy, and international organizations. In his first two years at St. John’s, Shi studied a variety of mandatory courses, including Biology, Chemistry, Physics, Chinese, English, History, Religion, and Philosophy.¹⁶ In his final two years, Shi focused primarily on political science courses as his major and Philosophy as a minor.¹⁷

Shi’s time at St John’s allowed him to acquire solid foundational knowledge in international law and related subjects. Due to the onset of the Second World War, Shi was not able to receive instruction from American professors during his first two years, and instead was taught by two out of the three Chinese alumni professors in charge of international law and its related subjects.¹⁸

One of them was Phen S-Tsu, also known as Pan Shizhi, who offered courses on public international law, history of political thought, criminal law, and international law (law of war), among others.¹⁹ Shi’s other professor, M. T. Z. Tyau, also known as Diao Minqian, taught courses that included constitutional law, international organizations, administrative law, diplomacy, and international law (law of peace).²⁰ Tyau was one of the most

¹¹Ibid.

¹²Ibid.

¹³Ibid.

¹⁴Shanghai Municipal Archives, Shi Jiuyong’s St. John’s University Application Form, dated 30 May 1944 (unpublished manuscript on file with the author). The form revealed that he had attended Sunan Middle School from 1936 to 1942, when the school ceased operation. He indicated on the form that he was an atheist and intended to pursue a career in the chemical industry after graduation.

¹⁵Ibid.

¹⁶Curriculum for the Bachelor of Arts & Bachelor of Science Degrees, St. John’s University (1944–45) (unpublished document, on file with author). He was enrolled in Chinese prose, Chinese composition, general biology, invertebrate zoology, vertebrate zoology, general chemistry, qualitative analysis of chemistry, general physics, physical measurements, the life of Christ, social application of Christianity, history of classical philosophy, and others.

¹⁷Ibid. Major and Minor Requirements. ‘Candidates for the degree of BA . . . must fulfil 36 to 42 credits in upper class courses in their junior and senior years, 18–30 of which must be in a major department and 6 to 12 in a minor department.’

¹⁸The third professor was Tsen Deh Chang, also known as Cen Dezhang. After receiving his BA degree from St. John’s in 1920, he studied at Columbia and received his MA degree in 1921. Tsen was the first Chinese translator of Oppenheim’s *International Law*.

¹⁹Phen received his BA degree from St John’s in 1933, before leaving for the University of Cambridge and the Middle Temple in London for his legal education. At Cambridge, he studied international law under Hersch Lauterpacht. Middle Temple Archives, Phen S-Tsu’s admission file; Queens College Archives of Cambridge University, Phen S-Tsu’s entry in the matriculation book (unpublished manuscript on file with the author).

²⁰After completing his preparatory education at St John’s, Tyau pursued his legal education at University College London, University of London. He studied international law under Sir John Macdonell, and received his Bachelor of Laws degree and

accomplished academic international lawyers in China in that era with advanced legal education as well as experience as a legal adviser at China's Foreign Ministry.²¹ He also authored several books and articles²² and was the first Chinese national to publish articles in the *British Yearbook of International Law* in 1922.²³

To better understand the preparatory education in political science and international law Shi received in China, it is crucial to examine the courses he studied at St John's. He took four courses with Phen – jurisprudence, international law (law of peace), international law (law of war), and Russian government; five courses with Tyau – Principles of Political Government and Sciences, Government of England, Diplomacy, International Organization, and the History of Western Diplomacy; and two courses with foreign professors – History of Western Political Thought with Donald Roberts, and History of Church in China with Charles Elliott Perry. Both foreign professors were American missionary academics who had been with St. John's for decades and had returned to the university after the war. Besides political science, Shi appeared to have a strong interest in philosophy and history.²⁴ He had a great fondness for his philosophy professor Edmund Hwei Chi Hsu, also known as Xu Huaqi,²⁵ and he had taken four of his courses. Significantly,²⁶ he studied French for a year which proved very useful in his subsequent graduate studies at Columbia because it allowed him to use French literature on international law for his research.

One event which would have been ripe for discussion was the election of ICJ judges in February 1946 as Chinese diplomat Hsu Mo had been chosen as one of the 15 inaugural judges.²⁷ As victims of Japanese aggression, the Chinese people had high hopes for this judicial institution and had:

sincerely hope[d] . . . that all the Allied nations w[ould] place themselves under the judicial control of the International Court of Justice and the peoples of the world w[ould] pay due respect to international law. Unless this [was] done, the prospect of world peace and security [was] not going to be very bright.²⁸

Shi undoubtedly explored the significance of this momentous occurrence with his professors at St. John's.

After passing all exams, he was conferred the Bachelor of Arts in political science on 30 June 1948.²⁹ After graduation, Shi applied to several schools for postgraduate studies,³⁰ and ultimately decided to attend Columbia University in early 1949.

Doctor of Laws degree in 1914 and 1916, respectively. His doctoral dissertation focused on 'The Legal Obligations Arising out of Treaty Relations Between China and Other States'. While a law student, he had won the Quain Prize in International Law at the UCL, and he was one of the first two Chinese students to receive a doctorate in law in Great Britain.

²¹Before joining St. John's in 1942, he had taught at Tsinghua, Yenching Universities and completed several stints as a diplomat and newspaper editor.

²²For example, M. T. Z. Tyau, *China's New Constitution and International Problems* (1918); *China's Diplomatic Relations, 1931–1932* (1933).

²³M. T. Z. Tyau, 'Exterritoriality in China and the Question of Its Abolition', (1921–1922) 2 *British Year Book of International Law* 133.

²⁴Shanghai Municipal Archives, Shi Jiuyong's Academic Record Card of St. John's University (unpublished manuscript on file with the author). Shi took several courses related to philosophy and history, namely Introduction to Philosophy, Aristotle's Philosophy, Christian Philosophy, Logic, History of Modern Philosophy, History of Classical Philosophy, and Evidence of God.

²⁵Hsu had studied theology at St John's and subsequently completed his master of theological studies in 1939 and doctor of theology in 1940, both at Harvard.

²⁶Shanghai Municipal Archives, *supra* note 24. Shi also studied Economic Principles, Introduction to Sociology, Modern History, and Abnormal Psychology.

²⁷'Post Scripts', *Shanghai Evening Post and Mercury*, 6 March 1946, at 2; 'International Court of Justice to be Inaugurated Apr. 16', *China Press*, 6 April 1946, at 2.

²⁸Press Comments: Here's to the International Court of Justice', *China Critic*, 2 May 1946, at 77.

²⁹Shanghai Municipal Archives, *supra* note 24.

³⁰*Ibid.* These included Columbia, Michigan, Yale, and Harvard. In June 1946, he had briefly considered transferring to the University of Pennsylvania as an undergraduate student, but dropped the idea later.

2. Shi's postgraduate studies

Shi arrived in San Francisco in January 1949³¹ and registered as a graduate student with the Faculty of Political Science, Columbia University.³² While interested in international law, Shi did not attempt to go to law school because international law had 'never occupied a prominent place in the curriculum of [American] law schools'.³³ It had been generally studied 'not only as a branch of law but as a branch of political science'.³⁴ As part of his degree, Shi was required to submit a satisfactory degree thesis. He was to 'discover, within the field of his primary interests, an appropriate subject upon which to write the required essay' and consult with his supervisor about his proposed topic.³⁵

Shi's undergraduate education in China had prepared him well to undertake further studies as an international law student. He not only satisfied the compulsory foreign language requirement for his graduate studies,³⁶ but also completed a comprehensive examination that was designed to 'test not only [his] general background of factual information in the social sciences but also his field of graduate concentration'.³⁷

While Shi was at Columbia, two leading specialists were mainly responsible for teaching and research supervision in international law. Philip C. Jessup was the Hamilton Fish Professor of International Law and Diplomacy, while Oliver J. Lissitzyn was an assistant professor of public law. During Shi's enrollment, Jessup was appointed Ambassador-at-large by the US government in 1949 and only offered a course later in the spring session of that academic year.³⁸ Consequently, Lissitzyn became Shi's principal professor³⁹ and thesis supervisor.⁴⁰ Shi's program of study at Columbia was hence put together in consultation with Lissitzyn who was also the departmental adviser in international relations and international law.⁴¹

Lissitzyn was a very gifted international lawyer.⁴² He was a devoted teacher who had a strong interest in teaching students and often left an impact on their careers.⁴³ He was known to '[n]ever [be] parochial in his outlook' and one who 'sought to understand diverse and hostile attitudes while seeking elements of common interest on which agreement might be achieved'.⁴⁴ This was why he 'inspired respect and affection' from students of various nationalities and backgrounds.⁴⁵

³¹National Archives at Washington, DC., Passenger Manifest, China National Aviation Corporation, Flight 912, 26 January 1949 (unpublished manuscript on file with the author).

³²Columbia University, *Announcement of the Faculty of Political Science for the Winter and Spring Sessions 1948–1949* (1949), at 73–84.

³³P. C. Jessup, 'The Teaching of International Law in Law Schools', (1947) 41 *American Society of International Law Proceedings* 67.

³⁴*Ibid.*, at 68.

³⁵Columbia University, *supra* note 32, at 74.

³⁶*Ibid.*, at 73. In addition to English proficiency, his Master's thesis would reveal that his French reading proficiency was good, credit to the French courses he took at St John's.

³⁷*Ibid.*, at 74.

³⁸Columbia University, *Announcement of the Faculty of Political Science for the Winter and Spring Sessions 1949–1950* (1950), at 83.

³⁹It is worth noting that the related courses on international organization and others were offered by Franz L. Neumann, Professor of Government, Leland M Goodrich, Professor of International Organization and Administration, Lawrence Henry Chamberlain. While Jessup was back on campus for public lectures and discussions, Shi did get opportunities to attend these lectures.

⁴⁰For both Master's and subsequent advanced research studies in international law.

⁴¹Columbia University, *supra* note 32, at 74.

⁴²See 'Resolution of the Faculty', (1981) 19 *Columbia Journal of Transnational Law* 173; J. N. Hyde, 'Oliver J. Lissitzyn (1912–1994)', (1995) 89 *American Journal of International Law* 88.

⁴³Hyde, *ibid.*

⁴⁴*Ibid.*

⁴⁵*Ibid.*

When Shi was his student, Lissitzyn published a significant piece of work that inspired Shi.⁴⁶ In this critically acclaimed monograph, Lissitzyn conducted a study to ‘appraise the Court as an instrument for the maintenance of international peace and security’.⁴⁷ He addressed three crucial questions – in what ways can it help to avoid violence and war? What use has already been made of it? And what unused potential does it have?⁴⁸ He offered the view that the answers to these and other related questions were found not only in the UN Charter and ICJ statute but also in ICJ’s record, which showed ‘the attitude of the various states and of the political organs of the United Nations toward its functions, and the place of law in international relations’.⁴⁹ In his view, the most significant contribution the Court could make to the cause of peace at the time was ‘the development of international law through its activity’.⁵⁰

At Columbia, Shi took several courses on international law. One such course was International Law I, as taught by Professor Lissitzyn, which covered ‘[t]he principal features of international law as it developed and has been invoked in diplomatic practice, international adjudications, and national courts since the middle of the seventeenth century’.⁵¹ The course also aimed to examine ‘the defects and weakness of the international legal system; [and] trends in the law and its probable lines of development’.⁵² The knowledge from this course would lay the groundwork for Shi’s Master’s thesis research.

Another course was the Law of Treatises, also by Lissitzyn. This course covered the ‘role of international agreements in international relations’, the ‘position in international law of bipartite and multipartite agreements between international organizations’, ‘negotiation, conclusion, recordation, validity, interpretation, revision and termination of public international agreements’,⁵³ as well as the ‘domestic position of treaties and executive agreements in the United States’.⁵⁴ This would arguably be the first formal instruction that Shi obtained on the relationship between municipal law and international law in the US context. In addition, he would also have been given his first taste of ‘[p]roblems in the drafting of treaties’.⁵⁵

For classes on International Law, Lissitzyn prepared and distributed mimeographed copies of ‘Supplementary Cases and Materials on International Law’ (which spanned over 200 pages) to his students.⁵⁶ This aimed to supplement the materials from H. W. Briggs’s ‘The Law of Nations’.⁵⁷ The supplementary materials covered a broad range of issues in international law. They provided an excellent snapshot of the breadth and depth of what Lissitzyn taught and discussed with his students. For example, one case discussed the American practice in international law concerning the import-export clause in the Constitution, which prohibited individual states from taxing imports.⁵⁸ The materials also covered the then-latest judicial decisions on issues arising from the legal implications of the US government’s recognition of Soviet Russia,⁵⁹ the applicability of American laws to mandated territory,⁶⁰ sovereignty immunity,⁶¹ expropriation for public

⁴⁶O. J. Lissitzyn, *The International Court of Justice; Its Role in the Maintenance of International Peace and Security* (1951).

⁴⁷*Ibid.*, at 2.

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰*Ibid.*, at 3.

⁵¹Columbia University, *supra* note 32, at 83.

⁵²*Ibid.*

⁵³*Ibid.*, at 84

⁵⁴*Ibid.*

⁵⁵*Ibid.*

⁵⁶O. J. Lissitzyn, *Supplementary Cases and Materials on International Law* (1948).

⁵⁷H. W. Briggs, *The Law of Nations: Cases, Documents, and Notes* (1938).

⁵⁸Lissitzyn, *supra* note 56, at 1–6; *Hooven & Allison Co. v. Evatt*, 324 U.S. 652 (1945).

⁵⁹*Ibid.*, at 32–41. *The Maret*, 145 F.2d 431 (3d Cir. 1944).

⁶⁰*Ibid.*, at 71–5. *Brunell v. United States*, 77 F. Supp. 68 (SDNY 1948).

⁶¹*Ibid.*, at 58–62. *Ex parte Peru (Ex parte Republic of Peru (The Ucayali))*, US, Supreme Court, 318 US 578 (1943); *Republic of Mexico v. Hoffman*, 324 U.S. 30, 65 S.Ct. 530, 89 L.Ed. 729.

utility,⁶² state responsibility,⁶³ and the delimitation of boundaries.⁶⁴ The claims of the United States with respect to the continental shelf and certain coastal fisheries were part of the discussion topics.⁶⁵ Important international instruments,⁶⁶ such as the Charter of the International Military Tribunal and its manifestation in the Nuremberg trials⁶⁷ were included. Another example was the Hague Regulations of 1909, which focused on military authority over the territory of hostile states, and the Draft Convention on Rights and Duties of States in Case of Aggression.⁶⁸

During the two-and-a-half years Shi spent on his advanced research for the Master's degree, he also undertook a course on Research in International Law with Lissitzyn, which was described as a course that allowed for 'individual and group study of selected problems in international law'.⁶⁹

After consulting Lissitzyn, Shi decided to conduct research and write his Master's thesis on the monistic theory of international law. Shi was particularly enamored with monism and⁷⁰ sought to 'make an investigation of this monistic conception of international law'.⁷¹ His choice of topic was not surprising, as intellectually curious students of international law were often fascinated by enduring questions such as, 'Is there such a law as the law of nations? If so, what then is its real nature? Why [are] rules of international law . . . binding?'⁷²

Shi was a pragmatist and acknowledged the limited potential monism as a novel conception of international law would achieve. It could not 'have any immediate and appreciable effects on the practices employed [by] statesmen and foreign offices in their international relations'.⁷³ However, he maintained that such research could serve a cautionary function – 'jurists can at least remind statesmen of the world of the destructive and chaotic effects produced on relations among states by the predominance of false theories'.⁷⁴ This remark seems to have been drawn from his own experience and that of his homeland as a victim of foreign aggression and the unjust extraterritoriality regime, which were undoubtedly catastrophic tragedies that laid bare the limitations and failure of international law and its institutions. Shi's experience growing up in China while it was under strong foreign control and influence, during which China suffered through brutal Japanese aggression and the Second World War, must have contributed to his decision to undertake research on monism in international law. He must have been interested in producing a piece of scholarship that would be of value to maintain global peace and security, and advance and protect the interests of weaker states.

Shi's thesis was completed in May 1951, consisting of 117 pages of research. As this thesis was never published and little is known about it, this work will be briefly explored. The main text of

⁶²*Ibid.*, at 42–8. *Anderson v. N.V. Transandine Handelmaatschappij* [28 N.Y.S.2d 547 (1942)].

⁶³*Ibid.*, at 138–41. *Teodoro Garcia and MA Garza (United Mexican States) v. United States of America* (1926); *United States (John H. Williams) v. Venezuela* (1890).

⁶⁴*Ibid.*, at 146–60. *Boundaries in the Island of Timor (Netherlands v. Portugal)* (1914).

⁶⁵*Ibid.*, at 101–3.

⁶⁶*Ibid.*, at 7–14, 190. Students were taught through basic documents relating to the legal status of Germany regarding the allied declaration regarding the defeat of Germany, extracts from the Report to the President on the results of the San Francisco Conference, the Switzerland-UN Arrangement on Privileges and Immunity of the UN, and the US acceptance of the jurisdiction under the optional clause of the ICJ statute.

⁶⁷*Ibid.*, at 191–206.

⁶⁸*Ibid.*, at 207–9.

⁶⁹Columbia University, *Announcement of the Faculty of Political Science for the winter and spring sessions 1951–1952* (1952), at 86.

⁷⁰C. Y. Shih, *Monism in International Law* (1951), at 4 (unpublished manuscript on file with the author). An essay submitted in partial fulfillment of the requirements for the degree of Master of Arts in the Faculty of Political Science, Columbia University, dated May 1951, at 4.

⁷¹*Ibid.*

⁷²*Ibid.*

⁷³*Ibid.*, at 3.

⁷⁴*Ibid.*

Shi's Master's thesis spanned seven chapters following a short introductory chapter, in which Shi generally espoused the traditional conception of sovereignty of states.⁷⁵ However, Shi opined that the traditional conception of sovereignty of states was flawed in several aspects.⁷⁶ These included, first, the positivist's doctrinal articulation that 'a state is not bound by any rule short of its consent, express or tacit'; second, the classical notion that a state is 'in principle sole judge of the existence of any individual rules of law, applicable to itself'.⁷⁷ He argued that these conceptions were untenable, and that 'the law of nations cannot be built upon the foundations of the doctrine of the absolute will of states. Such an argument negates the very existence of law in the international community'.⁷⁸ In the substantive chapters, Shi outlined various theories on the nature of international law. He expounded on the views of Léon Duguit, George Scelle, and Hugo Krabbe concerning the foundation of international law. Next, Shi focused on the jurisprudence of the Vienna School with Hans Kelsen as the central figure in this inquiry. He also considered the writings of Alfred Verdross and Joseph L. Kunz who were well-known members of the Vienna School,⁷⁹ before summarizing and concluding his research.

Shi summed up his research by recognizing that the 'theories of international law of Duguit, George Scelle, Krabbe, and the Vienna School are part and parcel of their general theories of law'.⁸⁰ In his opinion, these writers saw international law and municipal law as having the same provenance. While their theoretical discussions shared similarities in several respects, their doctrines were fundamentally different⁸¹ due to the divergent methodological approaches these writers adopted. Shi characterized the method of the Vienna School as 'normative, pure and positive', Duguit's as 'realistic', and Krabbe's as 'theoretical but, unlike the Vienna School, Krabbe has ethical and political considerations'.⁸² In explaining the basis of international law, for Kelsen and the Vienna School, international law was based upon 'a basic norm which is hypothetical'; for Verdross it was '*pacta sunt servanda*'; for Kunz it was '*grundnormgefüge*'; for Duguit, it was 'social solidarity'; and for Krabbe, it was 'legal conscience'.⁸³

Given the delineated scope of his research, Shi was cognizant that his thesis had not delved into the 'controversial problem of the basis and the obligatory force of international law'.⁸⁴ He made it clear that he did not intend to go into 'a discussion as to what should be the real basis of the binding character of international law' because his research was only intended to 'emphasize that the monist theories . . . represent a movement against the untenable theses of the positivists of the 19th century'.⁸⁵ He did, however, reserve harsh words for the positivists of the nineteenth century, who 'center[ed] their views on the law of nations on such catastrophic fictions of absolute sovereignty of state and the derivatives of that false conception of sovereignty such as "auto-limitation", etc.'.⁸⁶ In contrast, he had high hopes for the monist theory of international law to facilitate global peace and harmony:

The monist theories with their emphasis on the primacy of international law, admission of individuals as subjects of the law of nations, and refutation of the sovereign will of states, may

⁷⁵*Ibid.*, at 1.

⁷⁶*Ibid.*, at 2.

⁷⁷*Ibid.*

⁷⁸*Ibid.*

⁷⁹*Ibid.*, at 3.

⁸⁰*Ibid.*

⁸¹*Ibid.*, at 113.

⁸²*Ibid.*

⁸³*Ibid.*, at 113–14.

⁸⁴*Ibid.*, at 116.

⁸⁵*Ibid.*, at 116–17.

⁸⁶*Ibid.*, at 117.

sound idealistic at first. However, they have opened a wide and prospective path for the steady and progressive development of the law of nations and ultimately to the perfect reign of law among the nations of the international community.⁸⁷

In totality, Shi's thesis demonstrates that he had studied the principal writings on monism and dualism in international law with great care. He was careful and thoughtful in arranging and presenting the related theories and materials, and he stated some of the views expressed by these leading authors with admirable clarity and accuracy. Furthermore, his French proficiency empowered him to draw on literature in French, which he read industriously and carefully, and which was used discerningly in many parts of the thesis. What is most praiseworthy is that he critically analysed and made several contributions to monism that remain relevant even today.

A month after the thesis's submission, Shi received the degree of Master of Arts in Public Law and Government at the Commencement Exercises of Columbia University held on 7 June 1951.⁸⁸ After graduating, he continued his research of international law as a PhD student under Lissitzyn until January 1954. In late June 1954, he boarded the steamer *President Cleveland* and departed for home, intending to join the Ministry of Foreign Affairs or pursue an academic career.⁸⁹ The subsequent chapters of his fruitful and accomplished life are generally well-known.⁹⁰

3. Conclusion

Shi's later success in the realm of international law, which culminated in his election as the first Chinese President of the ICJ, was no doubt an extraordinary feat. Contributing to these significant accomplishments was most certainly his formative schooling years. First, Shi's liberal arts undergraduate education in China furnished him with a good grasp of international law, diplomacy, history, philosophy, religion, and the French language. His firm grasp of the English language before arriving in America was also crucial to his academic success at Columbia. Second, Shi was taught and supervised by competent and committed professors in China and America. Third, his decision to return to a new China to participate in nation-building efforts offered him an unrivalled platform, professional opportunities, and global exposure to practice his trade.

This tribute brings to light Shi's once obscure experiences as an undergraduate and graduate student, as well as his Master's research work. Shi's stint at Columbia under Lissitzyn's tutelage and his well-researched Master's thesis is an example of how a budding Chinese international

⁸⁷Ibid.

⁸⁸7,610 Get Degrees at Columbia Today', *New York Times*, 7 June 1951, at 39; A. Brower, 'Martha Inquiry Assailed by Kirk: Commencement Exercises at Columbia University', *New York Times*, 8 June 1951, at 20.

⁸⁹From February to May 1954, Shi worked for the Board of World Missions of the Methodist Church in New York as a typist to earn money to fund his study and living expenses. He arrived first in Hong Kong in July 1954 before travelling home. See Shi Jiuyong's Overseas Returning Student Registration Form dated 1954 (unpublished manuscript in Professor Wang Wei's personal collections).

⁹⁰See S. C. McCaffrey, 'The Forty-Second Session of the International Law Commission', (1990) 84(4) *American Journal of International Law* 930; Judge Gilbert Guillaume (France) elected President of the International Court of Justice, Judge Shi Jiuyong (China) elected Vice President, available at www.icj-cij.org/public/files/press-releases/0/000-20000207-PRE-01-00-EN.pdf; Judge Shi Jiuyong (China) elected President of the International Court of Justice, available at www.icj-cij.org/public/files/press-releases/0/000-20030206-PRE-01-00-EN.pdf; Wu Zhifei, 'Shi Jiuyong: Guo ji fa yuan de shou wei zhong guo ji yuan chang', (2021) 3 *Wen Shi Chun Qiu* 50; Wai Jiao Bu Ji Guan Dang Wei, 'Shi Jiuyong: Wai jiao ling yu guo jia li yi de zhong shi han wei zhe', (2019) 4 *Qizhi* 83; Zong Daoyi, 'Shi Jiuyong: Di yi wei zhong guo ji guo ji fa yuan chang', (2007) 4 *China Trial* 18.

lawyer, like many others, received mentorship from an eminent professor at Columbia.⁹¹ This tribute also recognizes that Shi's thesis was a praiseworthy piece of scholarship. Its exhaustive and comprehensive survey and treatment of the subject, accompanied by comprehensive references and authorities, was an early statement of his aptitude and promise to eventually establish himself as a first-rate international lawyer and ICJ judge.

⁹¹For a detailed comparative study of Judges Vi Kuiyuan, Wellington Koo, and Shi Jiuyong see the forthcoming article, L. Chen, 'A Tale of Two Cities: The Education and Experiences of Two ICJ Judges in China and America', (2022) *Journal of International Dispute Settlement*.

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