

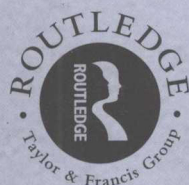
# International Law in the Post-Cold War World

Essays in memory of Li Haopei

*Edited by*

Sienho Yee and Wang Tieya

Routledge Studies in International Law



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# Preface and acknowledgements

The collection now presented in memory of Judge Li Haopei has had a long period of gestation. When Judge Li was still alive, preparations were already under-way for this project. Due to the many demands on our time, we were not able formally to embark upon this venture until after Judge Li left us in November 1997. Nevertheless, we, together with the contributors, persevered. We are all glad that the collection has finally seen the light of day.

This collection begins with a set of materials specifically relating to Judge Li. Various contributors relate also in other parts of the collection the personal touch of Judge Li and comment upon his work. The collection also includes an Appendix written by Judge Li on the topic of *jus cogens*. Together, these no doubt paint a solid picture of the man and his contributions to the cause of international law.

We hope that the title of this book will not be considered in the future as evidence of undue optimism, despite some signs that the Cold War may revive, whether between old enemies or new ones. At this time, many of the contributors, from all corners of the world, discern some special features in international law and relations and have endeavoured, in their individual capacity, to dissect and comment upon these features. The contributions have been divided into four parts – Trends and perspectives, Sources of international law, Substance and theories of international law, and Courts and adjudication. The contributions are broad in scope, rich in content, rigorous in analysis, and inspiring in viewpoint. Rather than attempting any introduction, we thought it better to leave it to the readers to appreciate them.

We are grateful to all those whom we invited to participate in this venture, particularly the contributors whose works finally appear in this collection. We regret that we have been unable to accept all the manuscripts we received, and that personal circumstances have prevented some invitees from completing their drafts. We are also grateful for the encouragement that we received from the Judges who have not been able to contribute. This collection would not have been possible without the assistance of the Li family, especially Ling Yan, who helped translate various materials from Chinese to English, compiled Judge Li's bibliography, and, on behalf of the family, gave us permission to reprint Judge Li's article entitled '*Jus cogens* and international law' in the Appendix to this volume. For all this we are grateful to Ling Yan and the entire Li family.

Sienho Yee worked on this collection while a member of St Hugh's College, Oxford, and while a visiting assistant professor of law at Northwestern University School of Law in Chicago. He is grateful to Professors Ian Brownlie, CBE, QC, FBA (Oxford) and Anthony D'Amato (Northwestern) for their encouragement and for answering his various questions. He is also grateful for the hospitality and encouragement he received from Mr Derek Wood, CBE, QC, Principal, and Dr Joshua Getzler, Fellow and Director of Legal Studies of St Hugh's, and Dean David Van Zandt of Northwestern; and for the assistance he received at Oxford from the staff of the Bodleian Law Library and at Northwestern from his research assistants, Cleo Kung and Todd Lloyd; foreign and international law librarian, Irene Berkey; his secretary, Martha Minor; Professor D'Amato's secretary, Mary Finn; and Bill Haydasz, computer expert.

Finally, we are grateful to Routledge for undertaking to publish this collection and to Joe Whiting, Simon Whitmore and Annabel Watson at Routledge and Mike Hauser and his team at M Rules for having assisted us all along.

We can say to the ever-demanding Judge Li that we have all tried our best in this project. Our sincere hope is that this scholarly enterprise will help to deepen our understanding of the pressing issues of our time and to promote peace and justice in the world. Limited though this collection may be, we hope that there will be those who like it.

The Editors  
December 2000

# Abbreviations

AER	All England Reports
AFDI	Annuaire français de droit international
AJIL	American Journal of International Law
AmCHR	American Convention on Human Rights
AUJILP	American University Journal of International Law & Policy
BYIL	British Year Book of International Law
CL	Comparative Law
Cmd.	Command Paper [Paper laid by command of the Crown before Parliament]
Decl.	Declaration by individual judges
Diss. op.	Dissenting opinion by individual judges
Doc.	Document
ECHR	European Convention on Human Rights, <i>or</i> European Court of Human Rights
EcmHR	European Commission of Human Rights
EJIL	European Journal of International Law
EPIL	R. Bernhardt (ed.), Encyclopedia of Public International Law
ETS	European Treaty Series
FRY	Federal Republic of Yugoslavia
HMSO	Her (His) Majesty's Stationery Office
HR	Human Rights
HRLJ	Human Rights Law Journal
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICJ Reports	International Court of Justice Reports of Judgments, Orders and Advisory Opinions
ICJYB	International Court of Justice Yearbook
ICL	International & Comparative Law
ICLQ	International & Comparative Law Quarterly
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia

ICTYJR	ICTY Judicial Reports
IL	International Law
ILC	International Law Commission
ILCYB	Yearbook of the International Law Commission
ILM	International Legal Materials
ILO	International Labour Organization
ILR	International Law Reports <i>or</i> International Law Review
IMF	International Monetary Fund
IMO	International Maritime Organization
J	Journal
JCL	Journal of Comparative Law
JIL	Journal of International Law
JTL	Journal of Transnational Law
LJ	Law Journal
LR	Law Review
NATO	North Atlantic Treaty Organisation
NY	New York
NYU JILP	New York University Journal of International Law & Policy
OSCE	Organization for Security and Cooperation in Europe
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PRC	People's Republic of China
RCADI	Recueil des Cours de L'Académie de Droit International de La Haye
Res.	Resolution
RIAA	United Nations, Reports of International Arbitral Awards
Rome Statute	Rome Statute for an International Criminal Court (1998)
Sep. op.	Separate opinion by individual judges
Ser.	Series
Sess.	Session
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNJY	United Nations Juridical Yearbook
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
UNWCC	United Nations War Crimes Commission
USC	United States Code
USSR	Soviet Union
UST	United States Treaty Series
WTO	World Trade Organization
Y	Yearbook
YB	Yearbook
YBECHR	Yearbook of the European Convention on Human Rights

# Contributors

**Georges Abi-Saab**, Member of the Appellate Body, WTO; Professor of International Law, Graduate Institute of International Studies, Geneva; Rennert Distinguished Professor in the Global Law School Program, NYU Law School; Honorary Professor, Cairo University; former Judge on the Appeals Chamber at the ICTY and ICTR, Judge *ad hoc* at the ICJ in *Territorial Dispute (Libya v. Chad)* and *Frontier Dispute (Burkina Faso v. Mali)* and Commissioner on the United Nations Compensation Commission; author of *Cours général de droit international public* (Hague Academy of International Law) and others.

**Kaare Bangert**, Dr, Research Assistant Professor, Danish Research Council; D.Phil. candidate, Wolfson College, Oxford; former Legal Officer, Foreign Ministry of Denmark; former Lecturer in public international law and EEC law, University of Copenhagen; author, *200 soemils fiskeriterritorium* (1999).

**Rudolf Bernhardt**, former Judge and Vice-President of the European Court of Human Rights; former Director and Professor, Max Planck Institute for Comparative Public and International Law, University of Heidelberg; General Editor, *Encyclopedia of Public International Law*.

**Bartram S. Brown**, Associate Professor of Law at the Chicago-Kent College of Law; member, the Council on Foreign Relations and the Board of Directors of Amnesty International, USA; public member, US Delegation to the UN Commission on Human Rights in 1999 and 2000.

**Antonio Cassese**, Professor of International Law, University of Florence; member, *l'Institut de Droit International*; former Judge and former President of the ICTY; Visiting Fellow, All Souls College, Oxford; former President of the Council of Europe Committee for the Prevention of Torture; participant in numerous international conferences and author of numerous articles and books including *International Law in a Divided World* (1986) and *Self-determination of Peoples: a Legal Reappraisal* (1995).

**Bin Cheng**, Ph.D., LL.D., Hon. LL.D., FRAeS, Emeritus Professor of Air and Space Law, and sometime Dean of the Faculty of Law, University of London; author of numerous articles and books including *Studies in International Space*



*Law* (1997), *The Law of International Air Transport* (1962) and *General Principles of Law as Applied by International Courts and Tribunals* (1953).

**Simon Chesterman** is an Associate at the International Peace Academy. His recent publications include articles on war crimes, human rights theory, and euthanasia. His doctoral thesis, supervised by Professor Ian Brownlie at the University of Oxford, is forthcoming from Oxford University Press as “*Just War or Just Peace? Humanitarian Intervention and International Law*”.

**Władysław Czapliński**, Jean Monnet Professor of International and European Law, Polish Academy of Sciences and University of Gdansk; has numerous publications on state succession, state responsibility, customary law, Third Pillar of the EU, and jurisprudence of the ECJ; Rapporteur, ILA Committee on State Succession; Editor, *Polish YIL* and *Przegląd Prawa Europejskiego*.

**Gennady M. Danilenko**, Professor of Law, Wayne State University School of Law; former head of the Center for International Law, Institute of State and Law, Russian Academy of Sciences; author, *Law-Making in the International Community* (1993).

**Vladimir-Djuro Degan**, Professor of Public International Law, Faculty of Law, Rijeka; member, *l'Institut de Droit International*; Director of the Adriatic Institute of the Croatian Academy of Arts and Sciences at Zagreb; author of numerous books and articles including *Sources of International Law* (1997).

**Gao Feng**, member of the Editorial Committee of the *Chinese Yearbook of International Law*, Beijing.

**Ross Garland**, Rhodes Scholar and D.Phil. candidate, Brasenose College, Oxford.

**Christine Gray**, University Lecturer and Fellow, St John's College, Cambridge; former Reader in Public International Law, Oxford; author of *Judicial Remedies in International Law* (1987).

**Bing Bing Jia**, LL.B. (Peking University); D.Phil. (Oxon.); Legal Assistant to Judge Li Haopei and Judge Wang Tieya, Appeals Chamber, ICTY and ICTR; Associate Legal Officer, Appeals Chamber, ICTY and ICTR; author, *The Regime of Straits in International Law* (1998).

**John R.W.D. Jones**, M.A. (Oxon.); M.A. in Law; LL.M.; Barrister, Lincoln's Inn; Associate, White & Case, Paris; Door Tenant, Chambers of Rock Tansey QC, London; former legal officer at ICTY and ICTR; author of *The Practice of the International Criminal Tribunals for the former Yugoslavia and Rwanda* (2nd edn, 2000).

**Santiago Legarre**, Lecturer in Law, Austral University, Argentina.

**Vaughan Lowe**, Dr, Chichele Professor of Public International Law in the University of Oxford and Fellow of All Souls College, Oxford; former Reader

in Public International Law in the University of Cambridge and Lecturer in the Universities of Manchester and Cardiff; author of *The Law of the Sea* (with R. Churchill), *The Settlement of Disputes in International Law* (with J. Collier) and co-editor, *Fifty Years of the International Court of Justice*; counsel and advisor to various governments and corporations.

**Ronald St. J. Macdonald**, OC, QC, LL.D., former Professor of International Law, Dalhousie; Judge at the European Court of Human Rights; Honorary Professor of Peking University; author of numerous articles and books; member of *l'Institut de Droit International*.

**Peter Malanczuk**, Dr iur, Professor of International Law, Law Faculty, and Director of the GLODIS-Institute, Erasmus University Rotterdam; Honorary Professor and Honorary Director of the Institute of Globalization and International Law of Peking University; Chair, ILA Study Group on State Responsibility; Series Editor, *Studies and Materials on the Settlement of International Disputes* (Kluwer); Special Legal Advisor to Ethiopia; Arbitrator, China International Economic and Trade Arbitration Commission; Counsel, Lalive & Partners, Geneva.

**Richard May**, Judge (since Nov. 1997), Presiding Judge, Trial Chamber III, and Chair, Rules Committee of the ICTY; B.A. (1963), LL.B. (1964), Cambridge University; Barrister (Inner Temple, 1965–87); Circuit Judge, Midland and Oxford Circuit (1987–97); author, *Criminal Evidence* (Sweet & Maxwell, London, 1st edn, 1986, 4th edn, 1999).

**Gabrielle Kirk McDonald**, former President and Judge of the ICTY and Presiding Judge of the Appeals Chambers of the ICTY and ICTR. Before coming to The Hague she was a civil rights lawyer, a partner in a law firm, a law professor, and a federal district judge in the United States.

**Edward McWhinney**, QC, JSD (Yale), President and first Canadian member of *l'Institut de Droit International*; former M.P. (for Vancouver-Quadra); former member of PCA, The Hague; taught law at Yale, Toronto, McGill, Simon Fraser in Vancouver, Paris I (Sorbonne) (by special decree of the French Cabinet) and The Hague Academy of International Law; former Crown Prosecutor; adviser to the UN Secretary-General, and Canadian and foreign governments; author of numerous books and articles.

**Jordan J. Paust**, University of Houston Law Foundation Professor, University of Houston Law Center, author of numerous articles and books, including *The Military in American Society: Cases and Materials* (with others, 1978); *International Law as Law of the United States* (1996).

**Marco Sassòli**, Ph.D. (Basel); Professor of Public International Law at the University of Quebec at Montreal, Canada; former Registrar of the First Court of Public Law of the Swiss Federal Tribunal in Lausanne; former assistant to Professor Luzius Wildhaber (Basel); former Deputy Head of the ICRC's legal

division; former Secretary-General of the Swiss Fund for Needy Victims of the Holocaust/Shoa in Berne and Executive Secretary of the International Commission of Jurists in Geneva; author of numerous publications on international humanitarian law and human rights.

**Mohamed Shahabuddeen**, Judge of the International Criminal Tribunal for the former Yugoslavia (Vice-President, 1997–1999); former Judge of the International Court of Justice (1988–1997); Member of the Institute of International Law (First Vice-President, 1991–2001); author of *Precedent in the World Court* (1996).

**Jianming Shen**, S.J.D., Penn University; Visiting Professor of Law, St John's University School of Law; former Research Fellow in International Law, University of Hong Kong Faculty of Law; Kenneth Wang Research Professor of Law, St John's University School of Law; Assistant Professor of International Law, Peking University Faculty of Law.

**Theo van Boven**, Professor of International Law, University of Maastricht, Netherlands; member of the UN Committee on the Elimination of Racial Discrimination; President of the Netherlands Association of International Law; Vice-President of the International Commission of Jurists (Geneva); Vice-President of the International Institute for Human Rights (Strasbourg), former Director of the UN Centre for Human Rights, and former Registrar of the ICTY.

**Budislav Vukas**, Professor of Public International Law at the University of Zagreb; Judge at the International Tribunal for the Law of the Sea; member of *l'Institut de Droit International*; lectured at many other universities and at The Hague Academy of International Law (on "States, peoples and minorities" in 1992); author of numerous publications.

**Guiguo Wang**, LL.M., Columbia; J.S.D., Yale; Woo Po Shing Professor of Chinese and Comparative Law, City University of Hong Kong; Visiting Professor of Law, the People's University of China, Beijing, and Nankai University, Tianjin, China; Arbitrator of China International Economic and Trade Arbitration Commission, Beijing; Member of the International Academy of Comparative Law.

**Wang Tieya**, former Judge, Appeals Chamber, ICTY and ICTR; former Professor of International Law and Director of the International Law Institute, Peking University; member, Committee on the Drafting of the Basic Law of the Special Administrative Region of Hong Kong; former Legal Advisor to the Chinese Delegation to the United Nations and to various conferences; lecturer, The Hague Academy of International Law; member of *l'Institut de Droit International* and other learned societies; Editor-in-Chief of the *Chinese Yearbook of International Law* and author of numerous books and articles.

**Sienho Yee**, pupil of Professor Ian Brownlie at Oxford, Lecturer in Law at Queen Mary and Westfield College, University of London; Associate Professor of Law designate, University of Colorado School of Law; former judicial law clerk to Judges Li (ICTY) and Cowen (US, Third Circuit); former Tutor in PIL at Oxford colleges and Visiting Assistant Professor at Northwestern University; former counsel at the IMF; author of various articles on PIL and constitutional law in *Columbia LR*, *EJIL*, *ICLQ*, *German YIL*, *Max Planck YUNL*, etc.

**Zhu Wenqi**, Ph.D. in International Law (Paris II, 1987); Legal Advisor in the Appeals Section of the Office of the Prosecutor of the ICTY; author, *Outline of International Humanitarian Law* (in co-operation with the ICRC, 1997).

# A eulogy for Judge Li Haopei\*

*Antonio Cassese*

Ambassadors, Friends, Colleagues,

Thank you for coming here today to join in this expression of our regard for Judge Haopei Li. I know you will join me in expressing sympathies to his family. His death is something that has affected all who have had the privilege of knowing and working with this eminent judge and scholar.

I would like to share a few thoughts about Judge Li. When I last saw him, he had been in hospital for some time. I asked him what he would do when he returned to China following his retirement. "I will write a book," he said, "I will write a book on private international law. I have taken many photocopies of the relevant writings and am ready to start on my return." "Judge Li," I asked, "Why a book on private international law? Why not public international law?" "Because," he answered, "private international law is hard law. And when I finish it, I will start again and translate the book into English!" This was the man we knew and loved: whilst frail in body, his fighting spirit and intellectual vigour were undiminished. My lasting memory of this wise and learned man is one of a strong spirit constantly seeking out new challenges and pushing intellectual boundaries. This reminds me of the words of a philosopher I treasure. Nearing the end of his years, he wrote that everyone contributing to the common good, be it by way of manual labour or intellectual pursuits, ought not to stop labouring, even in his twilight years. Death, he said, must not surprise us in sloth or idleness. Death did not surprise Judge Li in sloth or idleness.

My fellow judges and I had great respect for Judge Li. The man with whom we worked in the Appeals Chamber had immense legal knowledge, yet he was always gentle and kind-hearted, taking a cooperative and conciliatory approach. I have always said to myself that we judges should all learn Judge Li's style of writing succinctly and to the point. His separate opinions in the Appeals Chamber decisions on *Tadic* and *Erdemovic* demonstrate, in addition to his courage in expressing his very

\* This oration was delivered at the funeral of Judge Li Haopei at The Hague, 14 November 1997, by Antonio Cassese in his capacity as President of the ICTY.

independent views, his remarkable concision. His genuine concern for the fundamental rights of persons and a deep sense of humanity infused his judicial approach. Many a time during the course of deliberations on technicalities, he would see the essence of the issue and insist on the importance of upholding fundamental principles. There are so many such incidents shedding light on the character of Judge Li, which I would like to share with you, but unfortunately, judicial propriety prevents my doing so. Judge Li was the model of an international judge. He was truly independent, had absolute integrity and, of course, deep knowledge of international law.

You all know what the Greeks thought of man's destiny: one should count no man happy until his death, for the gods are jealous, and the mighty and the heroes have their woes just as do ordinary people. As Sophocles wrote at the end of one of his most disconcerting tragedies:

Now as we keep our watch and wait the final day,  
Count no man happy till he dies, free of pain at last.

Dear Judge Li, now that your life is done, you may rest in peace, for we may say with certainty of you that you had a rich, long and fulfilled life marked by unstinting intellectual industry, admirable knowledge and wisdom. You have lived surrounded until the end by the love of your relatives, the affection of your friends and the respect and admiration of your fellow judges.

What is more, you have passed away peacefully, without suffering. You will always remain to us a model of moral honesty, intellectual vigour and admirable gentleness.

# My friend Li Haopei

*Wang Tieya*

On 6 November 1997, Judge Li passed away in The Hague after a short period of sickness. I was deeply saddened when I suddenly received the news in Beijing. The Chinese international law community lost a great scholar of no equal in his time, whose death was like a giant star falling from the sky.

On 20 May 1997, I was elected to be a Judge of the UN International Criminal Tribunal for the Former Yugoslavia. I expected to meet him in The Hague. Unfortunately he was gone before I was to go to The Hague. I lost the last chance to listen to his talk about the work of the Tribunal and his experiences. This is my greatest regret.

Haopei and I were friends for sixty years. In 1937 I went to the London School of Economics and Political Science to pursue further studies when Haopei had already been there for one year. I had a feeling that we had known each other for a long time when we met for the first time. We became bosom friends at once. He was a couple of years older than I was. We called each other brother. It has been sixty years since then.

At the London School of Economics and Political Science, I studied public international law. Haopei studied private international law as well as public international law. We were together from morning till evening studying diligently in the library. Haopei always studied until late at night. He kept up his diligence and industriousness throughout the following decades. This trait of his character is admirable and no one can match him in this regard. His great academic achievements owed a lot to his exemplary hard work.

Haopei and I taught and conducted research together on many occasions during the past six decades. I was introduced by him and recommended by Mr Zhou Gensheng to teach at Wuhan University located at Leshan, Sichuan province during the war against the Japanese invaders. Haopei was teaching jurisprudence and private international law at the Faculty of Law. I was teaching international law and history of foreign affairs at the Department of Politics. We encouraged each other and learned from each other by exchanging views, which gave me a good start in my teaching career. Haopei taught conscientiously, lectured at once simply and profoundly, analyzed issues point by point, and gave a clear presentation. This was highly appreciated by the students.

I left Wuhan University two years later and taught at Chungqing University and

Beijing University successively. Haopei also left to teach at Zhejiang University. We had little contact during that period. However, Haopei came to Beijing soon after the liberation. He first worked at the Bureau of Legislative Affairs of the State Council, and then as a legal advisor at the Ministry of Foreign Affairs. Our contact resumed and increased as my teaching and his work were closely linked. We had more opportunities to see each other, especially after 1978. At that time international law scholarship and teaching was entering a new stage in China. We were often together to discuss international law issues and to cooperate in the work of international law development.

Haopei never gave up teaching when he was engaged in practical work. He was invited to lecture as a part-time professor at Beijing University and was well received by the students. Haopei was very much concerned about the development of international law in China. He participated in the activities of the Chinese Society of International Law since it was founded. Haopei made great contributions to improving the academic standard of the *Chinese Yearbook of International Law* which was launched in 1982. After Professor Chen Tiqiang passed away in 1983, Haopei and I became the co-editors-in-chief of the *Yearbook*. He was in charge of going over the manuscripts in the field of private international law. He performed his duty carefully and conscientiously. In 1993, I was in charge of editing the International Law volume of the *Chinese Encyclopedia of Law*. I invited Haopei to be an editor of the section on private international law. He made a great effort to make the book a unique and fairly comprehensive international law dictionary of high standard. Having collaborated with Haopei on several occasions, I deeply admired him for his profound and immense learning.

Haopei had a fine command of English. He also read and wrote French, Russian, German and Latin. He translated various classics in English, French and German into Chinese. It is rare in China that a person can use materials and references in English, German and other languages to do research on international law issues as he could.

Haopei conducted research on private international law for a long time. His research achievements were known in China and overseas. He lectured on private international law at The Hague Academy of International Law in 1989. The lecture appeared in the *Collected Courses* and has been well received.

Haopei also accomplished many outstanding achievements in public international law. His classic work, *The Law of Treaties*, contains a wealth of data and materials and firmly establishes his views. This study received favourable review in the *Chinese Yearbook of International Law* (1989, 607–24) and the *Heidelberg Journal of International Law* (ZaöRV, 1991, 245–46), and won a coveted prize in China. He also published a study on sources of international law and numerous articles on public international law.

His work at the ICTY demonstrated his learning and his talents. He was known as a judge of independence, having absolute integrity and deep knowledge of international law. This is evident from the comments on his work made by various contributors in this volume. He was unique in present-day China in that he was a learned jurist in both public and private international law.



Haopei was gone abruptly and unexpectedly. I felt sad and was at a loss. Only the works he left behind remain. They are our precious heritage in international law. His diligent study and profound learning set an example for us, from which we must make great efforts to learn and with which we will promote the development of international law in China. Only in this way will we not let Haopei down.