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Summary record of the 1276th meeting

Topic:
Other topics

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treacherous field of semantics by attempting to deal, in one and the same article, with the two problems of capacity and competence. Perhaps it would be desirable to omit the last part of the text, which was not strictly necessary and for which there was no parallel in article 6 of the Vienna Convention.

57. Mr. TSURUOKA said that, generally speaking, he approved of all the provisions of the draft, subject to certain drafting amendments. In particular, he was in favour of retaining article 6, despite the practical difficulties it might cause with regard to the recognition, by States or international organizations parties to the future convention, of the capacity of international organizations to conclude treaties. But as the article in no way prejudged questions relating to the recognition of that capacity by other subjects of international law, it should not give rise to insuperable difficulties.

58. Mr. CALLE Y CALLE said it was essential to retain the key article 6 in the draft. It did, however, raise the problem of the origin or source of capacity. There could be no doubt that an organization, when it entered into an agreement, acted in virtue of an existing capacity, even though that capacity was not set forth in any rule. The question that arose was whether article 6 should purport to attribute capacity to international organizations or simply recognize an existing capacity and possibly limit its scope. On that point, he was strongly of the opinion that international organizations had the capacity to conclude treaties; it was only the exercise of that capacity which was subject to regulation or limitation.

59. Consequently, it was not sufficient for article 6 to refer to the "relevant rules" of the organization; he suggested an expanded formula such as "the constituent instrument and the other relevant rules of the organization". To ascertain the source of the capacity, it was necessary to refer to the constituent instrument of the organization. The other rules related to the exercise of the capacity, the limits of which would depend on the nature and purposes of the organization.

60. In conclusion, he suggested that the Drafting Committee should frame a more elaborate rule for inclusion in draft article 6, introducing the idea of the "extent of the capacity" of international organizations, which was to be found in the Special Rapporteur's alternative text.

The meeting rose at 1 p.m.

1276th MEETING

Wednesday, 12 June 1974, at 10.15 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martinez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Yasseen.

Tributes to the memory of Mr. Milan Bartoš

1. The CHAIRMAN declared open the special meeting which the Commission had decided to hold to honour the memory of its dear friend and distinguished colleague, the late Milan Bartoš. He reminded members that eloquent tributes had already been paid to Mr. Bartoš at the first meeting of the present session by Mr. Castañeda, the Chairman of the Commission's twenty-fifth session, and by the Legal Counsel, representing the Secretary-General, who had conveyed to the Commission not only his own and the Secretary-General's condolences, but also those of the whole Secretariat of the United Nations. On the proposal of the Senior Legal Officer in charge of the Seminar on International Law, the tenth session of that Seminar had been entitled the Milan Bartoš Session. He wished to take that opportunity of expressing his own sorrow at the loss of one who had been a close personal friend of his and indeed of all the members of the Commission.

2. Milan Bartoš had been born at Belgrade in 1901, and had graduated from the Faculty of Law of Belgrade University in 1924. In 1927, he had taken the French Degree of Doctor of Law (*Diplôme d'Etat*) at Paris. He had returned to Belgrade University in 1928, and in 1933 had risen to the position of Associate Professor of the Faculty of Law, becoming a Professor in 1940 and the Dean of the Faculty in 1945. He had personally suffered the horrors of the Second World War as a prisoner of war in a concentration camp—a dreadful experience which had left an indelible mark on him and which helped to explain his intense and unrelenting hostility to all forms of fascism, nazism and tyranny. His high dedication to the service of his country was exemplified by the many distinguished posts he had held. He had joined the Yugoslav Foreign Service in 1946 and been appointed Ambassador in 1950. He had been in charge of many missions and had served his country on numerous delegations, including the Yugoslav delegation to the United Nations from 1946 to 1958. He had held the office of Chief Legal Adviser to the Yugoslav Secretariat of State for Foreign Affairs from 1949 to 1962.

3. His great patriotism, and his devotion to the ideas of socialism and to the Socialist Federal Republic of Yugoslavia had been admired by all his countrymen, and Yugoslavia had honoured him with some of its highest decorations and prizes for his outstanding services. He had been a member of the Permanent Court of Arbitration, of several Academies and of many learned and scientific bodies, including the Institute of International Law, and had been made Honorary President of the International Law Association in 1956. His many learned books, articles and studies were familiar to all.

4. It was, however, as a dedicated and forceful advocate of the codification and progressive development of international law that Milan Bartoš had been best known. He had been one of the "founding fathers" of the Commission, having served on the Committee on the Progressive Development of International Law and its Codification in 1947. His long and dedicated service to the Commission, which had begun in 1957, would

always be remembered by all the members. He had served as Special Rapporteur for the topic of special missions, and also as Rapporteur, First Vice-Chairman, Second Vice-Chairman and Chairman of the Commission. He had thus had the remarkable distinction of serving in every office of the Commission, a fact which showed the deep respect in which he had been held by his colleagues for his vast knowledge of the law and his outstanding intellectual abilities. The Commission owed much of its success to the skill and visions he had brought to it during his seventeen years as a member.

5. The Commission had lost a man whose spirit and personal qualities set him apart. He was a truly cultured man, gracious and warm, a friend to all. His dedication and, indeed, love for peace, for international law and for humanity, would stand as an example to all. The Commission, his country and the whole international community would miss him greatly, but the greatest loss had been suffered by his faithful and devoted wife who had been his friend, companion and supporter for many years. He wished to convey his sincere condolences to Mrs. Bartoš, who was present at the meeting.

6. Bearing in mind the exceptional achievements of Milan Bartoš, he called on the members of the Commission to dedicate themselves to following his remarkable example so that his memory might live.

7. Mr. EL-ERIAN said that, in their contributions to the work of the Commission, members differed according to their background and outlook, their doctrinal approach and their practical experience. Some enriched the doctrinal value of the proceedings, while others drew upon a wealth of diplomatic experience and practice. Each member contributed his share, in his own way, to the harmonious mosaic and rich repertoire of the Commission. But the contribution of Milan Bartoš had been colossal and unique.

8. In contributing his modest share to a day of remembrance and homage to a great jurist, diplomat and fighter for peace and for the rule of law, but above all to a man, he wished to single out three aspects of the immense contribution made by Milan Bartoš to the Commission's work. In the domain of doctrine, his statements had always been profound and enriching. In the domain of practice, his incomparable memory, which had enabled him to cite diplomatic correspondence, arbitral awards and judicial cases, had earned him the name of "the walking encyclopaedia".

9. The colossal volume of his contribution was matched by a second aspect: the pioneering character of his ideological approach. In a recent book published by a number of his students and edited by a member of the Commission, Mr. Šahović, it was recorded that as early as 1956, and especially at the Dubrovnik session of the International Law Association, he had been working for codification of the principles of international law relating to peaceful co-existence, which the Sixth Committee of the General Assembly had only taken up in 1960. That work had been crowned in 1970 by the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, annexed to General Assembly resolution 2625

(XXV). His work as Special Rapporteur on the topic of special missions had likewise been of a pioneering character, and his lectures at the Hague Academy of International Law had focused early attention on the new phenomenon of *ad hoc* diplomacy.

10. The third aspect of Milan Bartoš's contribution was the fighting and forceful expression of his ideas. He had fought for his ideas because he knew from personal experience, both as a prisoner of war and as a fighter for freedom, the meaning of violations of the basic rules of conduct of States.

11. He would always be remembered as one of the founding fathers of the Commission, who had later become one of its most faithful and loyal sons.

12. Mr. AGO said he well remembered the day in 1957 when, for the first time, he had taken his seat in the Commission beside Mr. Bartoš. He had been struck at once by his neighbour's human qualities and had acquired a deep admiration and respect for him, accompanied by feelings of sincere affection. In return, Mr. Bartoš had shown him very great and constant friendship. They had met regularly at the sessions of the Commission; they had represented the Commission in the General Assembly; and they had come together again with equal pleasure at the Institute of International Law and the Academy of International Law at the Hague.

13. The most striking characteristic of Mr. Bartoš had been his exceptional culture. When he had spoken in the Commission, his statements had been replete with historical references, and listeners had been impressed by his erudition, his memory and his inestimable contribution to the Commission's work. Endowed with an outstanding scientific intelligence and trained in the best European schools of law, he had been extraordinarily devoted to the Commission. The submission of his report on special missions had been for him an opportunity to show how much he valued that branch of diplomatic law and how pleased he was at the progress it was making towards codification.

14. One of Mr. Bartoš's many qualities had been his courage, which he had proved not only at the time of his imprisonment during the war, but on many other occasions and even in the Commission. He had never taken a position in a debate for reasons of mere expediency. He had defended an idea only when he had been deeply convinced of its rightness, and, at the risk of offending his best friends, he had spoken only according to his conscience; and when he had supported ideas which he found good, he had done so with great force. More than once, when he (Mr. Ago) had joined battle in the Commission to vindicate his own ideas, he had afterwards turned to Mr. Bartoš to see if he would support him. Mr. Bartoš had been rather like the good giant in the fable who helped the child in trouble. He had always been able to rely on Mr. Bartoš's support when the latter had approved of his ideas, and that support had been invaluable, because the strength of his conviction had generally carried the day. He had sometimes become angry, but his anger had always been of short duration and he had never hesitated to acknowledge his mistakes or to apologize to those whom he had misunderstood.

15. Before his period of incarceration in a Nazi concentration camp, Mr. Bartoš had been in a prison camp near Parma. When he had mentioned that period, it had never been to recall the suffering he had endured, but to emphasize the ties of friendship he had formed with the local population—with a people whose language he had learned and whose great human qualities he had admired regardless of the régime to which it was subjected.

16. His only fault had been not to take care of himself; and as if by a miracle, at a time when his state of health had been most precarious, Mrs. Bartoš had appeared and had forced him to do so. Thanks to her, the Commission had been able to benefit from his valuable advice for many more years. Now that he had gone, his colleagues constantly wondered what his opinion would have been on particular questions. In the Commission, Mr. Bartoš was still alive and would live for ever.

17. Mr. ŠAHOVIĆ said he was well aware that to pay a fitting tribute to the person and work of Professor Milan Bartoš in the International Law Commission was an extremely difficult task. As a member of the Commission since 1957, as a participant in the work of the Sixth Committee of the General Assembly since 1946 and in the major codification conferences of the 1960s, and as a member of the Committee on the Progressive Development of International Law and its Codification, Milan Bartoš had identified himself to a great extent with the results achieved by the United Nations in the legal sphere. Having been his pupil, colleague and friend, he well knew the friendship, full of that human warmth and devotion which were characteristic of him, that Milan Bartoš had felt for the members of the Commission and its secretariat. Those things were well known, and, in referring to them, he thanked the Commission for having decided to devote a meeting to tributes to the memory of Professor Bartoš.

18. In considering his contribution to international law, the point that should be mentioned first was the exceptional importance which Milan Bartoš had attached to the Charter of the United Nations and its role as a fundamental source of positive international law. In all his studies and articles, he had developed that thesis, which was now almost universally accepted and formed the foundation of contemporary international law. Having understood the dialectic of the establishment and operation of the rules and institutions of international law, he had carefully followed the application of the Charter and the changes which had taken place in the machinery of the United Nations. He had reacted to every innovation, endeavouring to demonstrate that, while respecting the letter of the Charter, it was essential to take account of the necessities and requirements of life, and to interpret the Charter on the basis of its context, in particular its purposes and principles, which for him had remained the ultimate criteria for determining the direction in which international law should be developed. In that connexion, Milan Bartoš had never forgotten the interdependence of politics and law, which many jurists had not yet been prepared to accept during the early post-war years, and he had liked to speak of

the “indissoluble marriage between politics and law”—an expression which had become famous.

19. In assessing Milan Bartoš's contribution to the work of the legal organs of the United Nations, it was impossible not to mention also his statements and studies concerning the adoption of a definition of aggression. Now that the work on that question was about to be concluded, it could be recalled that, speaking on behalf of the Yugoslav Government, he had been one of the authors of the “mixed” definition formula.

20. Milan Bartoš had been firmly convinced that codification and progressive development were the best means of consolidating the rules of international law and adapting them to reality, and also of strengthening the role of law in the international community. He had seen in codification and progressive development an effective instrument in the campaign for the democratization of international law, the sovereign equality of all States, large and small, regardless of their political systems, and the elimination of the vestiges of colonialism.

21. One of his remarkable qualities had been his capacity to translate theoretical thought into practical action. As President of the Yugoslav International Law Association, he had succeeded in organizing the Conference of the International Law Association at Dubrovnik, in 1956, and in having placed on its agenda, as a subject for study, the question of the legal aspects of peaceful and active co-existence. It had not been until the Tokyo Conference, in 1964, that the International Law Association had completed its study of that question. At the time, that had been an outstanding achievement, because the cold war had been in progress and the world had only just begun to seek the ways of *détente*. The Dubrovnik Conference, over which Milan Bartoš had presided, had contributed effectively to the process of *détente*; it had been at that Conference that, for the first time in many years, jurists from Western countries had met jurists from the Soviet Union and other socialist countries including the People's Republic of China.

22. During his long membership of the International Law Commission, Milan Bartoš had succeeded in representing harmoniously his own ideas, the point of view of Yugoslav doctrine and the aims of Yugoslav foreign policy. His country had paid a tribute to his personal qualities and to his work as a teacher, a man of learning and a diplomat. He (Mr. Šahović) was convinced that, thanks to his contribution to the work of the International Law Commission, Milan Bartoš would be accorded a place of honour in the history of Yugoslav doctrine on international law.

23. Mr. KEARNEY said that in his country the expression “a little big man” was used to describe someone who, though small in size and not really strong, could, because of his character and force of will, achieve results beyond the reach of other men. He would say that Milan Bartoš had been a “big big man” because of his physical, intellectual and moral dimensions. All those who had had the privilege of working with him would always remember his bigness in every respect. As far as he (Mr. Kearney) was concerned,

what had impressed him most had been the amazing range of erudition of a scholar who, during the discussion of any question, could produce an enormous wealth of historical precedent in a most fascinating manner.

24. It had been his good fortune to join the Commission in 1967, during the final phase of the work on special missions, when as Special Rapporteur, Mr. Bartoš had been at his very best in moving through the Commission the important set of draft articles which had later become the 1969 Convention on Special Missions.

25. It could be said that, within the ranks of the Commission, Mr. Bartoš had himself performed a special mission. The members came from many varied schools of thought and of social, economic and political belief, and it was at times difficult to reconcile the conflicts which resulted from those differences. It had been the special mission of Milan Bartoš to provide a bridge which had enabled members to cross the gaps separating them and reconcile their differing views. It was significant that he had succeeded in doing so without ever compromising his own fundamental and firmly held beliefs. He had been able to do so not only because of his unique range of legal knowledge, which had always so much impressed his colleagues, but even more because of his devotion to the ideal of world law. All members would miss him greatly, remember him always and remain grateful to Mrs. Bartoš, whose loyal support of her husband had rendered such great service to the Commission.

26. Mr. REUTER described the first occasion—in 1964—on which he had seen Mr. Bartoš in the Commission. Having hung his celebrated Panama hat on the peg, Milan Bartoš had walked into the conference room, greeted his colleagues and all the members of the Secretariat, and taken his seat beside Mr. Ago and Mr. Amado; he had obviously been pleased to be there. He had then taken out his newspaper and, out of a kind of affectation, had pretended to interrupt his reading only with reluctance once the meeting had begun. He had lighted a cigarette from which a cascade of white ash had slowly rolled down his jacket, attesting to his contempt for minor mishaps, and his certainty that there were people at his side who would look after him and deliver him from mundane cares. When he had spoken, it had been slowly and deliberately, in a voice whose range was remarkable; sometimes he had spoken so low as to be hardly audible. He would twist his thumb and forefinger in a familiar gesture, as if taking apart the works of a clock. Sometimes his voice would rise to express great principles or an idea he had held dear.

27. Mr. Bartoš could speak at length, for his knowledge had been universal. He (Mr. Reuter) had recently learned from one of Mr. Bartoš's pupils that he had never taught international law, but only private law.

28. Why had Mr. Bartoš seemed to be so happy to be participating in the Commission's work? Because he had been a believer: he had believed in justice and in the progress of law in absolute terms. His freshness and

faith had not been without merit, for he had known the reality of international life in all its aspects. If, with forefinger outstretched, he had sometimes violently attacked a member of the Commission, it had been because he had suspected him of denying justice in some way or defending some privilege; hatred of colonialism, love of *jus cogens*, but above all the excesses of the Great Powers could unleash his wrath. In surroundings where courtesy received a degree of priority that could not be accorded to sincerity, his outspoken probity had played a valuable part. He had spoken the French language with distinction. He had loved France; but not just any France, and he had made that quite clear.

29. None of all those characteristics had prevented him from having the tenderness of the strong. That tenderness he had devoted first of all to his faithful wife, whom he could not bear to be sick or absent; he had also shown it as soon as he had sensed sincerity in another. But why should Mr. Bartoš have been afraid of anything? Was he not a Yugoslav and a Serb?

30. Mr. TAMMES said that in recalling a life as rich and full of experience as Mr. Bartoš's had been, the exceptional place held by a personality such as his in contemporary intellectual and diplomatic life became clearly apparent. Having begun his career as a teacher at a number of European universities during the 1920s, he had for half a century taken an active part in events which had profoundly changed the political and legal structure of the world. Those experiences, combined with a prodigious memory, had made Mr. Bartoš a kind of personification of the continuity of international law. His remarkable memory had also been the source of a certain love of detail, he had often surprised the commission by citing historical cases unknown to its most erudite and specialized members. Although apparently rather remote from the subject of discussion, his examples drawn from practice had always proved pertinent in the end.

31. It was his liking for the exceptional case that had enabled him to prepare his draft on special missions—a living and fascinating subject. But it had not been only historical precedents which had interested him. He had followed closely, through his favourite newspapers, the details of day-to-day political life—during the Commission's discussions it was true, but without ever missing a word of them. Thus he had often given him (Mr. Tammes) detailed information on somewhat complex political events concerning his country.

32. It might be wondered how men like Milan Bartoš and Gilberto Amado had managed to be always present among the members of the Commission, even when they had not been able, for some time, to take part intensively in all the technical aspects of its discussions. It was probably because they had been not only good jurists, but also great characters, as Mr. Bedjaoui had so well put it.

33. For him, Professor Bartoš would always be a model of independence of mind—a mind always open to new and progressive ideas—and of belief in justice. He was happy to be able to express his great esteem for their late colleague in the presence of Mrs. Bartoš.

34. Mr. HAMBRO said that following those warm and eloquent tributes to Mr. Milan Bartoš, his contribution to international law and his work in the Commission, he wished to add a personal note.

35. All the members of the Commission had known that they had a treat in store when Milan Bartoš was about to speak at a meeting. His statements had been illuminated by his philosophical conception of law, history and politics and had invariably been enriched by illustrations drawn from his vast experience. Because of his truly staggering memory and colossal capacity for work, but also because of his personality, he had reminded one of Dr. Johnson, one of the greatest and most admired figures in English literary life 200 years ago. He had had the same compelling and forceful personality. Of his qualities, those that would be most cherished and constantly remembered in the Commission were his courage, endurance and rectitude, which had made him truly monolithic. He was a staunch and loyal friend whose memory would live very long and who illustrated well the words of a great English poet:

Yet meet we shall and part and meet again,
Where dead men meet, on lips of living men.

36. Mr. USHAKOV said that Mr. Bartoš's life, as a professor, ambassador and scholar had been very closely bound up with the history of the science of international law. The name of Milan Bartoš would appear in legal encyclopaedias among those of the great internationalists. He had been the glory of Yugoslav legal science and contemporary international law, and his outstanding works had won him high distinctions in his own country. Like many great men, he had been, in a way, a grown-up child, always kindly and loved by everyone. When he had been angry, his anger had never been taken for anything more than a child-like fit of temper, for it had not lasted.

37. He had always shown unqualified loyalty and devotion to the Commission. At the time of his death, which was felt by the Commission as a very great loss, he had been its senior member, not only in age, but also in length of service.

38. A teacher for nearly half a century, Mr. Bartoš had left behind him a number of students who now formed a large group of jurists and who would always be grateful for the knowledge he had imparted to them; he had been the real head of his country's school of international law. His scientific works included not only a treatise on international law in three volumes, which would remain one of the standard works on the subject, but also his drafts for the Convention on Special Missions. Those drafts had contributed both to the codification of contemporary international law on the topic and to its progressive development. For the application and interpretation of the Convention, States would inevitably have to refer to Mr. Bartoš's preparatory and subsequent work.

39. Mr. Bartoš had also been a great politician, who had worked to build the new socialist society in his country. Rich in experience gained at the head of the legal department of the Yugoslav diplomatic service, he

had given the Commission the full benefit of it by drawing frequently on his infallible memory.

40. Expressing his sincere condolences to Mrs. Bartoš, he assured her that her husband's memory would remain for ever present in the hearts of members of the Commission.

41. Mr. TABIBI said it was beyond the capacity of anyone to pay a really adequate tribute to Milan Bartoš. He had been an outstanding jurist and a pioneer of peace in the movement for a new legal order for the troubled world; he had worked for a more perfect system of law with worldwide participation to suit the new community of nations and the present generation, which was yearning for co-operation, international brotherhood and peace.

42. He had been a kind and faithful friend, a great scholar, a fountain of knowledge and, above all, a great patriot who had served his country in war and in peace; he had continued to serve it as a teacher, as a legal adviser, as a diplomatic negotiator and as a member of the Academy of Sciences, until his last breath.

43. It was a law of nature that all living beings sooner or later had to leave dear ones behind and move on toward the unknown, like a caravan or a silver river, until they reached their final destination. Moslems, and the faithful of all religions, believed that they would join the departed in a more permanent and peaceful life. Islamic mystics like Moulavi Balkhi (Rumi) and Farid-ud-din Attar had said in their immortal poems that mankind was always restless until it had completed its temporary journey on earth and joined the Creator, who was the permanent source of love, light, peace and happiness. But fortunate were those like Milan Bartoš who had left a good name behind them after a lifetime of service to their fellow men; for the prophet Mohammed—peace be upon him—had said that the best were those who were good to their fellow men.

44. He had first met Milan Bartoš when just beginning his career in 1948, in the early days of the United Nations at Lake Success. The Sixth Committee had then been the gathering place of many distinguished jurists, such as Amado of Brazil, Krylov of the USSR, Sir Benegal Rau of India, Rollin of Belgium, Spiropoulos of Greece, Manley Hudson of the United States, Lord Shawcross and Sir Gerald Fitzmaurice of the United Kingdom, and, of course, Bartoš of Yugoslavia. As a young jurist, it had been very thrilling for him to be in the company of those scholars of world renown and, since at that time the seats of Yugoslavia and Afghanistan had been next to each other, he had had the privilege of being the neighbour of Milan Bartoš during the meetings of the Sixth Committee and had felt like a sapling growing under the shelter of a great strong tree.

45. He had ever since been attracted by the philosophy of Milan Bartoš; they belonged to two traditionally non-aligned countries and their positions on every issue in the United Nations and at legal conferences had been similar. Milan Bartoš had believed firmly in the United Nations and its high principles, and had been dedicated to non-alignment; he had wanted the world to be fashioned under a new international law to serve the cause

of peace and justice. Their friendship had been further cemented in the Commission since 1962, at many international conferences and while he (Mr. Tabibi) had served as Ambassador of his country at Belgrade. Everywhere, in Yugoslavia and outside that country, he had seen evidence of the great esteem in which Milan Bartoš had been held for his depth of scientific knowledge of the law and his courage in fighting for peace and justice. He would always be remembered, not only by his beloved wife, but by all his countrymen and by the whole legal community throughout the world.

46. The Convention on Special Missions would remain as a permanent monument to an outstanding Special Rapporteur. It had been a fitting gesture to name the present session of the Seminar on International Law after him, because Milan Bartoš had believed in youth and trusted the present generation of jurists to shape a better international law that would fulfil the expectations of the contemporary community of nations. Milan Bartoš had departed, but the memory of his friendship, his ideals and his principles would always be present in the Commission, all of whose members shared in the deep grief of his devoted wife and his great country.

47. Mr. YASSEEN said that the death of Mr. Bartoš was a great loss for the international community and, in particular, for the Commission. He had always admired him as a great internationalist and valued him as an unusually devoted friend.

48. Mr. Bartoš had not been an internationalist like so many others: his learning had been infused with true humanism. He had not hesitated to abandon out-of-date techniques and support the solutions that were necessary for healthy change in the international community. He had been active in many international bodies, particularly international codification conferences and learned societies, such as the Institute of International Law. He had been listened to with the greatest respect, for everyone knew that he always had something new to say and a valuable contribution to make. In the Commission, he had been an inexhaustible source of information and had contributed a very wide and deep knowledge of international practice. With his astonishing capacity for analysis and synthesis, he had been as much concerned to defend his own views as to respect those of others.

49. His devotion to his ideals had been matched only by his devotion to his friends. His generosity had been exemplary, and his kindness of heart had caused him to lavish discreet advice on the new generation of lawyers, of whom he had been one of the best loved masters.

50. Despite his age, Mr. Bartoš had remained young in spirit. Until the end, he had urged the need to adapt the international legal order to the new facts of international life.

51. Both scientifically and personally, he (Mr. Yasseen) owed much to Mr. Bartoš and it was on his advice that he had stood as a candidate for election to the Commission in 1960.

52. Expressing his heartfelt sympathy to Mrs. Bartoš, he said that her husband's great virtues and human

qualities, his exceptional scientific achievements and his outstanding services to the international community would assure him of a high place among the immortals.

53. In the absence of Sir Francis Vallat, and at his request, he referred to the lasting ties of close collaboration which Sir Francis had maintained with Mr. Bartoš, and on his behalf conveyed his sincere condolences to Mrs. Bartoš.

54. Mr. QUENTIN-BAXTER said that, to his regret, he had served on the Commission during only the last two years of Professor Bartoš's long period of membership. He would leave it to those with a better right, to recall Mr. Bartoš's wide range of legal scholarship, and the richness and diversity of his human interests.

55. His own, most personal, memories of Mr. Bartoš went back to his work in the Third Committee of the General Assembly. It was only natural that a man like Mr. Bartoš, who had always believed firmly in the close relationship between law and politics, should not have spared himself the discomfort of involvement in political affairs. In the early 1950s, when some of the original promise of the United Nations had already begun to fade, there had been a great need for courageous men of Mr. Bartoš's stamp, who were prepared to cross the barriers of purely national interest and provide an inspiration for the coming generation of international jurists. Many of the members present could no doubt recall the fire which Mr. Bartoš had brought to the discussion of such questions as the right to self-determination—a fire which had kindled the enthusiasm of his less inspired colleagues. He would always be grateful that he had known Mr. Bartoš, both at the beginning of his own career and at the close of that of the doyen of the International Law Commission.

56. He hoped it would be of comfort to Mrs. Bartoš that her husband, during his distinguished career, had influenced so many lives in the direction of the pursuit of United Nations ideals and the progress of international law. Milan Bartoš had been a man of whom it could truly be said that he had treasured the past, lived in the present and believed in the future.

57. Mr. TSURUOKA said he had made Mr. Bartoš's acquaintance in New York, but had known him mainly at Geneva, in the Commission and outside it. For more than ten years Mr. Bartoš had guided him in the work of codification and progressive development of international law and had never ceased to show him the warmest friendship. He had been, for him, an example of the good, the just and the true, but above all, he had been an apostle of peace. His kindness had gained him many friends throughout the world, and that had served the cause of peace, for the more friends he had had the more easily his views had been disseminated.

58. Milan Bartoš had defended all that was just to the extreme limit. Many members of the Commission had already praised his courage. His love of justice had, indeed, given him courage, and being brave he had dared to attack—sometimes quite violently—those who represented the greatest powers of the time. But as everyone knew his love of justice, his quarrels had borne fruit: he had always succeeded in obtaining a compro-

mise which was to the advantage of the whole international community.

59. Milan Bartoš had, above all, been a lover of truth. All the members of the Commission had spoken of the breadth and depth of his knowledge; but he (Mr. Tsuruoka) wished to stress, particularly, his intellectual integrity. Everyone had respected and admired him and borne him deep friendship. That admiration, friendship and respect had enabled him to serve all the better the Commission and, through the Commission and the General Assembly, the cause of world peace.

60. He welcomed the presence of Mrs. Bartoš, who had always stood by her husband and helped him in his work. The memory of Milan Bartoš would remain alive, and his example would inspire the Commission with the courage, love of justice and respect for truth which it needed in its work.

61. Mr. SETTE CÂMARA, speaking also on behalf of Mr. Calle y Calle and Mr. Martínez Moreno, said that the International Law Commission was meeting in sadness at the present session without its beloved doyen, Mr. Milan Bartoš. The members of the Commission were so used to seeing him among them, to benefiting from his knowledge and his long experience of international problems and to sharing in the blessing of his warm friendship, that they could not help feeling that their work would hardly be the same without him.

62. He recalled the first time he had met Mr. Bartoš in the Sixth Committee, before his coming to the Commission. His great size had attracted the attention of everyone. He would sit at his place, quietly, sometimes dozing over a newspaper. One would think he was completely aloof from the debates. But as soon as he asked for the floor, prompted by some remark, the slumbering giant would show how attentive he was to the business on hand. His insight, his deep legal analysis of facts, his knowledge of the practice of States, his sense of realism, his disposition to fight for good solutions, would enhance the tone of any debate.

63. Gilberto Amado, whom he had replaced as the doyen of the Commission, used to call him "*la tour juridique de l'Europe centrale*". He had indeed been a towering personality, not only physically, but morally and intellectually. That living tower had been a stronghold of legal culture and international jurisprudence who had honoured his country and enriched the records of the Commission's work.

64. Fate had not permitted Mr. Bartoš to be present when the Commission had commemorated its twenty-five years of existence; but no member had made a greater or a better contribution to the record of those twenty-five years than he had. His absence had cast a shadow of grief and sadness over the festivities of the anniversary; but the fortitude of his example would continue to be present, setting a pattern to be followed. It was on men like Mr. Bartoš that the prestige of the International Law Commission rested. His ascetic devotion to research, study and teaching, his independence of mind, always assuring the primacy of scientific judgement, his modesty of attitude and heart, would remain

an ideal model for present and future members of the Commission.

65. The fact that the Commission was honoured by the presence of Mrs. Bartoš at the present meeting would give special meaning to its tribute to the memory of her great and eminent husband. She, who with estimable devotion had always helped him to fulfil his tasks and responsibilities, could go back to her homeland with the assurance that his colleagues would always cherish the memory of Milan Bartoš and endeavour to follow his unique example.

66. Mr. RAMANGASOAVINA said that the untimely death of Mr. Bartoš had deeply distressed the Commission. It was true that he had shown the weight of the years and the scars of the suffering he had endured for his patriotism; but in view of his courage, his lively mind and his lucid intelligence, the Commission had been entitled to hope that it would benefit for a long time yet from his science and learning. For science and learning had been the qualities which Mr. Bartoš had displayed throughout the years of his membership of the Commission, and, allied to them, love of his work, devotion, good faith and trust, and a great gift of persuasion. Beneath a sometimes gruff exterior, he had concealed great kindness of heart and understanding.

67. As a newcomer to the International Law Commission, when Mr. Bartoš had been the Special Rapporteur for the topic of special missions, he (Mr. Ramangasoavina) had admired the exceptional range of his experience and the depth of his knowledge. Mr. Bartoš had begun his statements with the rather stereotyped phrase: "I wished to say . . .", which had been, for him, a way of urging and persuading, and, where necessary, of adapting his position to the majority view.

68. Other members of the Commission had already retraced Mr. Bartoš's dual career as a diplomat and a lawyer. He had represented his country at several international conferences; he had been a member of various learned societies; and in 1945 he had represented Yugoslavia on the Reparations Committee which had met at the Palais du Luxembourg in Paris. Well known at the United Nations, particularly in the Sixth Committee of the General Assembly, he had impressed his personality on the International Law Commission and made substantial contributions to its work. And it had been as a member of the Sixth Committee that he had taken part in setting up the International Law Commission. Starting as a member of the committee of jurists which had drafted the Statute of the International Law Commission, he had become a founder member and subsequently the doyen of the Commission, whose work he had inspired and encouraged and in which he had successively held the offices of Special Rapporteur, General Rapporteur, Second Vice-Chairman, First Vice-Chairman and Chairman.

69. Milan Bartoš had left them all with the memory of a great man of generous mind and wide learning. He would never forget the warm welcome he had been given by him on joining the International Law Commission. Milan Bartoš had been particularly helpful to the representatives of young States, whom he saw as exemp-

lifying the renewal of the international community and the transformation which had taken place in the world. He extended his heartfelt sympathy to Mrs. Bartoš.

70. Mr. RYBAKOV (Representative of the Secretary-General, Director of the Codification Division) said that during the present session of the Commission there had been two commemorative meetings, one in honour of the Commission's twenty-fifth anniversary and the other in honour of Milan Bartoš, a great jurist, a great scientist, a great diplomat, a great man and a great and highly esteemed friend of all the members of the Commission and the Secretariat. To his mind that seemed symbolical, because twenty-five years of the Commission's work at the same time represented twenty-five years of the work of Mr. Bartoš in the Commission, twenty-five years of his constant and valuable contribution to the work of the Commission on the codification and progressive development of international law.

71. Today, the Commission was paying its tribute to a man who, as had rightly been said, was one of its spiritual fathers; a man who from the very outset had been an active proponent and partisan of real progress, of real historical and noble trends in modern international law; a man whose legal philosophy had not been formed and influenced by scientific research and scholarly study alone, but who had acquired his legal convictions, his professional conscience and his human dignity through years of fighting against the plague of fascism, through his experiences in concentration camps and during the liberation, through his noble struggle for the triumph of the principles of non-aggression and peaceful co-existence, and through years of both hot and cold war, down to the political *détente* which represented the most remarkable trend in modern international relations. Mr. Bartoš would certainly be satisfied that through his words and deeds, through his contribution to the progressive development of international law, he had made his own valuable contribution to that historical trend.

72. All those now present could be satisfied, too, that it was a man like Mr. Bartoš, an active anti-fascist, internationalist and humanist, who had been the spiritual father of the International Law Commission, the teacher, colleague and friend of its members and of members of the Secretariat. He would always be remembered not only as a remarkable jurist, scientist and diplomat, but also as a remarkable man who was highly respected and esteemed by all members, both past and present, of the Commission and the Secretariat. Today's meeting served to prove the words of Mr. Ago, that Milan Bartoš was not dead, but still among them.

73. Mrs. Bartoš had asked him to thank all the members of the Commission and the Secretariat, on her behalf, for the tributes paid to her husband and for their kind invitation to her to be present on that occasion, as well as for the sincere friendship they had shown for so many years to that really remarkable man, Milan Bartoš.

74. The CHAIRMAN read out the following telegram from Sri Lanka, which he had just received from Mr. Pinto. "Very much regret inability participate in

Milan Bartoš commemorative session June twelfth due commitments here. Association of Milan Bartoš with Commission as founding father, most dedicated and active member and Chairman make his contribution to international law incalculable. His prodigious knowledge sound judgement and appreciation of what was practical in the prevailing political context, together with a sympathetic understanding of human beings and values, all contributed to his stature as legislator and human being. Grateful convey my sympathy and respects to Madame Bartoš."

75. Mr. EL-ERIAN said he had received a message from Mr. Bedjaoui and Mr. Elias, who regretted their inability to be present and wished to associate themselves with the tribute paid to the memory of their beloved friend and colleague, Milan Bartoš.

76. The CHAIRMAN said that the records of the special commemorative meeting and of the opening meeting of the session would be forwarded to Mrs. Bartoš and to the Government of Yugoslavia, with an appropriate covering letter.

The meeting rose at 12.15 p.m.

1277th MEETING

Thursday, 13 June 1974, at 10.15 a.m.

Chairman: Mr. Endre USTOR

Later: Mr. José SETTE CÂMARA

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasavina, Mr. Reuter, Mr. Šahović, Mr. Tabibi, Mr. Tsu-ruoka, Mr. Ushakov, Mr. Yasseen.

Question of treaties concluded between States and international organizations or between two or more international organizations

(A/CN.4/277; A/CN.4/279)

[Item 7 of the agenda]

(resumed from the 1275th meeting)

ARTICLES 2, 3, 4 AND 6 (continued)

1. Mr. HAMBRO commended the Special Rapporteur for the fidelity with which he had sought to express the Commission's views. If that had sometimes led him to diverge from his earlier work, it was only because international law on the subject had evolved.

2. He would not comment on draft articles 2, 3 and 4, but would confine his remarks to article 6. In that connexion, it should be remembered that the Commission had two aims: the codification and the progressive development of international law. Codification of the law must be based on practice and custom; but there were gaps in the custom relating to the topic under