HOMMAGE

DR. MILAN ŠAHOVIĆ AND THE UNITED NATIONS – A FORMIDABLE CAREER DEVOTED TO THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

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ABSTRACT

Dr. Milan Šahović (1924–2017) was an internationally renowned Yugoslav and Serbian jurist and legal scholar, a specialist in international law, international relations and UN issues who represented Yugoslavia in various UN legal bodies. The article deals only with his career within the scope of the UN activities (1952–1986) and is based primarily on the UN documents, domestic archives, Šahović's and other scholars' writings as well as the author's personal knowledge. As a representative in the Sixth Committee, Šahović participated in 19 General Assembly (UNGA) sessions; he was a member of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (1964–1970) and the International Law Commission (ILC) 1974–1981; head of the Yugoslav delegation at three Vienna diplomatic conferences on the codification of international law. His profound knowledge of international law and UN issues, negotiating skills, patience and tact, made him known and respected within the UN while his scholarly and diplomatic works are considered of lasting value and he will be remembered as one who rendered a significant contribution to the codification and progressive development of international law.

*Key words***:** Milan Šahović, UNGA, Sixth Committee, ILC, Friendly Relations Declaration, IIPE

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As a young diplomat, the author was professionally associated with Dr. Milan Šahović and had the honour and pleasure to participate with him in a number of UN meetings and, by writing this paper, would like to pay a special tribute to the memory of Dr. Šahović on the occasion of the 100th anniversary of his birth. The author would like to express his gratitude to the staff of the Diplomatic Archives of the Ministry of Foreign Affairs of the Republic of Serbia, the Historical Archives of Belgrade and the Library of the Institute of International Politics and Economics in Belgrade for assisting him in finding the documents and other sources necessary for writing the paper. The author owes special thanks to Dr. Duško Dimitrijević, Principal Research Fellow at the Institute of International Politics and Economics for his comments that were extremely helpful for finalizing the paper as well as to Larry D. Johnson, former UN Assistant Secretary-General for Legal Affairs, who kindly accepted to read the paper and offer his very useful comments.

INTRODUCTION

Milan Šahović (Belgrade, 20 February 1924 – Belgrade, 5 October 2017) was a renowned Yugoslav and Serbian jurist, specialist in international law and international relations. His work as a researcher, legal scholar, expert and representative of Yugoslavia to various United Nations (UN) bodies received international acknowledgement. He graduated from the University of Belgrade's Law School and joined the Institute of International Politics and Economics in Belgrade (established as a think-tank of the Ministry of Foreign Affairs) in 1948, where he worked until his retirement in 1988.[1] He obtained a doctorate from the same Law School with a thesis on the general issues of codification of international law, the topic he would pursue during his whole career, as a legal scholar and in his activities in the UN.[2] As a legal scholar, he wrote extensively on many topics of international law and international relations, in particular on various UN issues - legal, disarmament, nuclear energy, decolonization, non-aligned movement and other.[3] He was active also as a member of various professional international organizations and associations, such as the International Law Association, *l'Institut de Droit International,* the International Progress Organization, the Permanent Court of Arbitration at the Hague, lecturing two times at the Hague Academy of International Law and at a number of universities in the country and abroad.[4]

The present paper deals only with one area of Šahović's career, the one devoted to his participation in various UN organs and bodies, covering the period from 1952 to 1986. During this period, Šahović was a member of the Yugoslav

[1] During his career at the Institute, Šahović started as a research assistant and later became principal research fellow, head of the Department of International Law (1958-1972) and director of the Institute (1972–1977; 1983–1988). More about his life and career see in: Konstantin Obradović, „Milan Šahović", *Jugoslovenska revija za međunarodno pravo* [*The Yugoslav Review of International Law*], No.1–2, 1996, pp. 11–25 (the issue published on the occasion of Šahović's 70th birthday, in which, in addition to Yugoslav scholars, a number of his foreign colleagues contributed the essays); also in: Branislav Đorđević, "*In Memoriam*: Prof. Dr. Milan Šahović, 1924–2017", *Međunarodna politika [Review of International Affairs],* 68 (1168), 2017, pp. 117–118; Blagoje Babić , „Beseda za poslednji pozdrav", *Ibid.*, pp. 119–121; Vladimir Grečić, „Život i delo istaknutog naučnika i diplomate", *Ibid*., pp. 122–124.

[2] Milan Šahović*, Opšta pitanja kodifikacije međunarodnog prava* [*General issues of codification of international law*], (Beograd: Savez udruženja pravnika, 1958).

[3] Šahović's bibliography contains more than 300 works (books, articles and other papers), see: *The Yugoslav Review of International Law*, No.1–2, 1996, pp. 27–42.

[4] For The Hague Academy courses, see: "Codification des principes du droit international des relations amicales et de la coopération entre les États", in: *Recueil des Cours, Académie de droit international*, 1972-III, Tome 137, (Leyde: A.W. Sijthoff, 1974), pp. 243–310; "Rapports entre facteurs matériels et facteurs formels dans la formation du droit international*",* in: *Recueil des Cours, Académie de droit international*, 1986-IV, Tome 199, (Dordrecht; Boston; Lancaster: Martinus Njihoff Publishers, 1987), pp. 171–232.

delegations to 19 General Assembly (UNGA) sessions as a representative to the Sixth (Legal) Committee. He was also a member of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (1964–1970) and the International Law Commission (ILC) 1974–1981, and head of delegation at three Vienna diplomatic conferences on the codification of international law. The paper is based on various sources, primarily the UN documents, domestic archives, Šahović's and other scholars' writings as well as personal knowledge the author acquired during his collaboration with Šahović that lasted at least for a decade.[5] While Šahović's activities aimed at the codification and progressive development of international law were carried out within different UN organs and bodies, it should be understood that they were closely interrelated and formed an indivisible whole. The fact that they are presented in the present paper within four distinct chapters is done just for the sake of clearer presentation of the matter. Accordingly, the most important activities of Milan Šahović in the UN are described mostly in a chronological order, starting from those related to the Sixth Committee, to be followed by the Special Committee on Principles of International Law concerning Friendly Relations, the International Law Commission and finally, the diplomatic conferences on the codification of international law.[6]

THE SIXTH (LEGAL) COMMITTEE OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS (1952–1984)[7]

The longest period of Milan Šahović's work on codification and progressive development of international law was closely related to the Sixth Committee where he participated for the first time as a member of the Yugoslav delegation in the *Seventh UNGA session* in New York, in autumn of 1952. As an adviser to the delegation, he followed the proceedings of the Committee, but he did not take the floor at that session.[8] His mentor, Prof. Milan Bartoš, the Legal Adviser of the Ministry of Foreign Affairs, as the most experienced and principal

[5] The author refers to his professional collaboration that lasted until Šahović had retired. Afterwards, the author had continued his contacts through the variety of meetings organized on the international law and UN issues and stayed privately in touch with Šahović.

[6] Apart from his UN activities, Šahović was also involved as a member of the Yugoslav delegation during the establishment of the International Atomic Energy Agency (IAEA) and took an active part in diplomatic conferences on the codification of the international humanitarian law leading to the adoption of the Additional Protocols to the Geneva Conventions.

[7] The Sixth Committee is the primary forum for the consideration of legal questions in the General Assembly. All of the United Nations Member States are entitled to representation on the Sixth Committee as one of the main committees of the General Assembly (https://www.un.org/en/ga/sixth/).

[8] See: Seventh UNGA session, Membership of the Sixth Committee, A/C.6/340 of 23 October 1952.

representative to the Committee, took care of most of the Committee's agenda items.[9] In the meantime, until his next participation in the Sixth Committee in 1959, apart from completing his doctorate, Šahović was involved, together with the colleagues of the Institute, in studying the proposals on the revision of the UN Charter.[10]

After a break of seven years, he took part in the *14th UNGA session* in 1959, and thereafter became a regular representative to the Committee, participating in most of its sessions until the 39th in 1984, included. During the 14th session, he intervened on the Report of the ILC on the work of its eleventh session, and expressed the hope that "its [ILC] programme of work would enable it to submit to the Assembly at its fifteenth session the full text of its draft articles on consular intercourse and immunities and … that it seemed desirable to continue the study of the law of treaties without further delay, since the practice of states following the Second World War, as well as United Nations practice, had introduced many new factors worthy of appraisal and codification."[11] Regarding an agenda item on the "Reservations to multilateral conventions: the Convention on the Inter-Governmental Maritime Organization", Šahović drew the attention that "diverse and complex questions were involved, which did not relate solely with the Secretary-General's functions as the depositary of multilateral conventions (...), and that all aspects of the question of reservations, and particularly the effects of [UNGA] resolution 598 (VI), should be studied carefully before a final decision was taken".[12]

At the *15th UNGA session* in 1960, Šahović took the floor only on the question of the publication of a United Nations juridical yearbook. He expressed the surprise of his delegation that "despite the unanimous decision to publish a juridical yearbook taken at the fourteenth UNGA session (Res.1451 (XIV)), the discussion in the Committee had given the impression that the decision could not be carried out. His delegation felt that the decision adopted in 1959 was correct.

[9] Milan Bartoš (1901-1974) was one of the most prominent Yugoslav experts in international law; Full Professor at the Law School, University of Belgrade, Member of the Serbian Academy of Sciences and Arts; Since 1945, participated in Yugoslav delegations to the UNGA; Chief Legal Adviser at the State Secretariat for Foreign Affairs until 1962; member of the ILC and the Institute of International Law; Director of the Institute of International Politics and Economics (1947-1949); Published over 200 books, research articles and policy papers on international law issues.

[10] He was assigned to study chapters related to the trusteeship system and non-self-governing territories as well as the UN Secretariat. The letter from the Institute of International Politics and Economy No. 18 of 4 March 1954, addressed to the Fourth Department of the State Secretariat of Foreign Affairs, Diplomatic Archives of the Ministry of Foreign Affairs of the Republic of Serbia (DA MFA RS), Political Archives (PA), UN,1954, Registry 98, File 3, Doc. No. 44265.

[11] UNGA, 14th session, Official Records, Sixth Committee, A/C.6/SR.604, paras. 28–31.

[12] *Ibid*., A/C.6/SR. 623, paras. 30–35.

The political and legal situation of the United Nations at the present time made the publication of a juridical yearbook very desirable, since the dissemination of the envisaged information would assist the development of international law".[13]

At the *16th UNGA session* in 1961, speaking on the "Enlargement of the International Law Commission", Šahović stated that "his delegation supported the general principle of enlarging the ILC in accordance with the increase in the membership of the United Nations. In that respect, the problem was a clear and unequivocal one. No one could deny the need to increase the membership of the Commission so that the new African Members could be represented. The conclusion to be drawn was that it was necessary to ensure adequate representation of all legal systems in the Commission".[14] Commenting on the ILC Report, regarding the draft articles on consular relations, he expressed his delegation's view that "the Commission had provided a competent draft which could constitute the basis for an international convention on consular relations." His delegation also supported a "proposal that an international conference of plenipotentiaries should be convened" (…) and "welcomed the Commission's desire to find solutions which would combine codification with progressive development of consular law".[15]

At the *20th UNGA session* in 1965, as already experienced in dealing with the Legal Committee's issues, Šahović was assigned to speak on four agenda items. In his comments on the Reports of the ILC on the work of its sixteenth and seventeenth sessions, Šahović considered that "in spite of their preliminary character the draft articles on the law of treaties and on special missions represented a considerable advance towards final drafts".[16] As regards the law of treaties, he underlined that "in the light of the historical evolution of international law he considered that the adoption of such a convention would be an outstanding event which would throw new light on the procedures for entering into and enforcing international legal obligations; it would stress the increased importance of treaties as one of the most binding instruments in international law".[17] With regard to the draft articles on special missions [prepared by Milan Bartoš as Special Rapporteur of the ILC], Šahović suggested that "efforts should be made to obtain the most complete comments possible from Governments so that the Commission could formulate the best possible rules".[18] On the question of:" General multilateral treaties concluded under the auspices of the League of Nations", he stated that "it was not just a question of extending participation in

[13] UNGA, 15th session, Official Records, Sixth Committee, A/C.6/SR.676, para. 1.

[14] UNGA, 16th session, Official Records, Sixth Committee, A/C.6/SR.693, para. 1.

[15] *Ibid*., A/C.6/SR.705, paras. 1–7.

[16] UNGA, 20th session, Official Records, Sixth Committee, A/C.6/SR.842, para. 20.

[17] *Ibid*., para. 22.

[18] *Ibid*., para. 26.

those general multilateral treaties, but also of adapting them and their methods of application to present-day conditions" (…), and expressed the hope "that the States Parties would give serious consideration to the possibility of amending the treaties to make them more acceptable to new States".[19] In his comments on the "Technical assistance to promote the teaching dissemination and wider appreciation of international law," he pointed out that the "Newly independent States, in particular, had urgent need of adequate legal services to facilitate their participation in the development and application of international law".[20] As Šahović was already a member of the Special Committee on Codification of Principles of Friendly Relations that was mandated to draft a declaration on the issue, he made a detailed statement on a very important question for Yugoslavia regarding the "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".[21] He emphasized that "[UNGA] Resolution 1815 (XVII) in particular had recognized seven fundamental principles concerning friendly relations and co-operation among States and had resolved that they should be studied with a view to their progressive development and codification," and… "That outcome of the Committee's work reflected the need to adapt United Nations activities in international law to the new trends in international relations since the Second World War".[22]

At the meetings of the Sixth Committee at the *21st UNGA session* in 1966, Šahović commented on several topics contained in the Reports of the ILC. Speaking on the law of treaties, he assessed that "… Such a convention would be a very significant reflection of current trends in the development of international law in general and would enrich it with a new constitutional element in a field the nature of which had traditionally been such that it was not governed by written conventional rules and was purely contractual".[23] He had also emphasized that "The broad outlook adopted by the ILC had enabled it to give proper importance to the provisions relating, for example, to *jus cogens*, the primacy of the UN Charter and the value of multilateral conventions, without causing conflict with the articles that stressed the importance of the wishes and consent of the parties".[24] He regretted that "the ILC had been unable to settle the question of participation in general multilateral treaties, which, in his delegation's view, should be open for signature by all States. He was also of the view "that the instructions given to the

[19] A/C.6/SR.854, para. 46.

[20] A/C.6/SR.865, para. 28.

[21] A/C.6/SR.875, paras. 22-34. More on the work of the Special Committee (1964-1970) and Šahović's activities therein, see in the following chapter.

[22] *Ibid*., paras. 22-23.

[23] UNGA, 21st session, Official Records, Sixth Committee, A/C.6/SR.907, para. 20.

[24] *Ibid*., para. 21.

Special Rapporteur [Milan Bartoš] on the question of special missions were pertinent".[25] Speaking on the issue who should be invited to participate in the conference on the law of treaties, he expressed the position against any discriminatory formula "as the adoption of a clear and precise formula inviting all States to participate in a conference on the law of treaties would tend to buttress the Organization's prestige by underlining the universal nature of its work in pursuance of Article 13 of the Charter".[26] In addressing the topic the "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", Šahović explained that "his delegation's general position on the questions considered by the 1966 Special Committee could be found in the formulations of the seven principles proposed by the non-aligned States (A/6230)".[27] He pointed out that "Such a declaration, adopted by the General Assembly as the supreme democratic organ of States, could not confirm the *status quo*. Based on the work of jurists who had sought to improve the classical definition of the principles by using the methods of progressive development and codification, it should be a living dynamic instrument, answering contemporary legal questions and opening new prospects for all who wished to see international law become an instrument for co-operation among all States".[28] He welcomed "the statement by some members of the Special Committee that they were prepared to consider the principle of prohibition of the threat or use of force from the stand point not only of *lex lata* but of *lex ferenda*, in particular those that mentioned that States should comply fully and in good faith with the obligations set forth in the Charter with respect to the political development of dependent territories and should do their utmost, also in the light of the relevant General Assembly resolutions, to ensure the peaceful exercise of self-determination by the inhabitants of dependent territories".[29] He also stressed that "Only by adopting a single definition of the idea of force would the Committee be able to elaborate a complete definition of the principle of the prohibition of the threat or use of force. By adopting that definition, it might also find a solution to the question of the relationship between that principle and the principle of non-intervention", and also underlined that "A key question was the role that the principle of equal rights and self-determination of peoples should play in contemporary international law".[30] Šahović pointed out that "In drafting the

[25] *Ibid*., para. 25.

[26] A/C.6/SR.915, para. 41. Article 13/1(a) of the UN Charter provides that the General Assembly "shall initiate studies and make recommendations for the purpose of: (a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification".

[27] A/C.6/SR.928, para. 21

[28] *Ibid*., para. 22.

[29] *Ibid*., para. 26.

[30] *Ibid*., paras. 27–28.

declaration on the seven principles, it could not disregard the legal aspects of the struggle against colonialism. International law was no longer confined to relations among States; it was increasingly concerned with the legal status of the individual in the international legal order. Omission of a definition of the principle and of the particular aspects of its relationship with the principles of the prohibition of the threat or use of force and of non-intervention could not be justified today, when recognition of that principle was one of the legal obligations of States affirmed by the Charter".[31]

At the *22nd UNGA session* in 1967, speaking on the Report of the ILC on the work of its 19th session, Šahović focused on the draft articles on special missions that were adopted by the Commission. He expressed the view that the draft articles …"could be taken as a working basis for the conclusion of an international convention on special missions"…and that "it were an expression of the need to codify the rules relating to a new diplomatic practice".[32] He offered additional explanations of the topic… "which at first glance had seemed rather simple, had required a thorough study of certain basic theoretical aspects of diplomatic law and a detailed knowledge and close analysis of the everyday practice of States, in order to determine the distinctive legal nature of special missions as compared to permanent diplomatic missions, the rules relating to their work, and the facilities, privileges and immunities granted to them by States". He concluded that, "(…) the fundamental principles on which the draft articles were based - namely, the representative character of special missions, the emphasis laid on the consent of States, the principle of reciprocity, the validity of the rules of customary international law, the priority accorded to permanent missions, and the importance attached to the 1961 Vienna Convention on Diplomatic Relations - showed that the legal status of special missions, as established in the draft articles, came within the bounds of contemporary international diplomatic law".[33] In commenting the draft articles on the law of treaties, Šahović considered that the text…"would provide an excellent basis for the work of the forthcoming conference. The fact that it covered all or nearly all aspects of the law of treaties gave grounds for hoping that the States participating in the conference would be able to approve a final version of it in the form of a convention".[34] In addressing the draft declaration on Territorial Asylum, proposed to be adopted by the UNGA, Šahović pointed out that his delegation, despite imprecision's therein, would support the resolution since "With its humanitarian aims, the declaration would undoubtedly occupy a special place among the instruments adopted by the United Nations for the purpose of strengthening respect for human rights".[35] On the question of methods of fact-

[31] *Ibid*., para. 29.

[32] UNGA, 22nd session, Official Records, Sixth Committee, A/C.6/SR.962, paras. 43–44.

[33] *Ibid*., paras. 45–46.

[34] A/C.6/SR.975, para. 14.

[35] A/C.6/SR.988, para. 26.

finding, Šahović expressed the view "that the present stage of development of international law, which was only a reflection of the evolution of international relations, did not permit the centralization of fact-finding procedures and methods, and that it would be wise not to press that issue at the present time. State practice should be studied by international institutions and associations for some time yet, before more specific proposals were put forward".[36]

During the consideration of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, Šahović appeared in his dual capacity - as Rapporteur of the 1967 session of the Special Committee and representative of Yugoslavia. Speaking as Rapporteur, he introduced the Special Committee's report and informed that "the Special Committee had continued the study of the seven principles set out in Resolution 1815 (XVII), in accordance with the terms of reference given to it by the General Assembly in its Resolution 2181 (XXI). The Special Committee had adopted an agenda drawn up in accordance with that resolution, and had decided to reconstitute its Drafting Committee". He also explained that "The Report had been based on a detailed analysis of the summary records of the Special Committee and gave a virtually complete picture of all the differences of opinion that had arisen during the session. Consequently, it should facilitate the consideration of questions relating to the future study of the seven principles".[37] Speaking later as a representative of Yugoslavia, Šahović added that "he was pleased to note that the progress achieved by the Special Committee (…), indicated that the time for adopting a declaration on the principles in question was slowly approaching. His delegation believed that it was possible to complete the formulation of the three principles for which there was as yet no final text, namely, the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, the principle of equal rights and self-determination of peoples and the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter".[38] On the question of diplomatic privileges and immunities, Šahović "welcomed the action taken by the Secretary-General to have the question (...), included in the agenda of the General Assembly. It was an indication of the importance which the Secretary-General attached to the performance by States of the obligations incumbent on them in that respect". He further underlined that "Yugoslavia had a wealth of experience in connexion with the application of privileges and immunities, and it favoured a reaffirmation of the obligations involved. It agreed with the proposal that States which had not yet done so should be requested to accede to or ratify

[36] A/C.6/SR.989, para. 38.

[37] A/C.6/SR.992, para. 3, 5. For the Report, see: A/6799.

[38] A/C.6/SR.996, para. 1.

the relevant conventions as soon as possible. It hoped that the Committee would unanimously adopt a text which would make a new and genuine contribution to the strengthening of international law and of the legal order".[39]

At the *23rd UNGA session* in 1968, Šahović focused primarily on the Report of the ILC on the work of its 20th session and the draft articles on special missions. Referring to the general aspects of the Commission's activities, Šahović emphasized that "it was necessary for the Commission, together with the Sixth Committee, to keep track of the practice of international law and give constant attention to the needs of States, so that it would be able to identify in good time topics which might be studied with a view to codifying them. Only in that way could the Commission and the Sixth Committee continue to contribute effectively to the strengthening of the role of international law in international affairs and to work for the implementation of the principles of the Charter".[40] In regard to the draft articles on representatives of States to international organizations, he stated that "it was necessary to continue trying to determine what elements could find a natural place in the draft. That was a difficult task, for in regulating relations between States and international organizations it was necessary to draw on sources of law other than the law which governed diplomatic relations in general, the statutes of international organizations, and agreements between international organizations and host States".[41] With respect to the question of the succession of States and Governments, his delegation agreed in principle with the broad division of the subject into two parts, one relating to succession in respect of matters other than treaties, and the other to succession in respect of treaties.[42] Regarding the Draft Convention on Special Missions [prepared by Prof. Bartoš], Šahović fought heavily in the Sixth Committee in order to retain the ILC's text as it stood.[43] He warned that the "The Committee should not lose sight of the fundamental differences between diplomatic relations and relations between States sending and receiving special missions".[44] He concluded that the discussion had shown that there was general agreement on the idea expressed by the ILC regarding the framework within which the special missions would be sent.[45]

At the *24th UNGA session* in 1969, the Sixth Committee devoted considerable time to the consideration of the Draft Convention on Special Missions in order to finalize the text. Šahović assessed that the text" represented a compromise between the divergent views expressed in the Committee. The diversity of opinion on the

[39] A/C.6/SR.1013, paras. 16–17.

[40] UNGA, 23rd session, Official Records, Sixth Committee, A/C.6/SR.1030, para. 17.

[41] *Ibid*., para. 20.

[42] *Ibid*., para. 21.

[43] A/C.6/SR.1041, para. 36.

[44] *Ibid*., para. 39.

[45] A/C.6/SR.1048, para. 11.

subject reflected not only the existence of different legal systems but also the fact that States were considering what their position would be in the event of accession to a multilateral convention on the subject of special missions."[46] He offered detailed comments on various provisions of the draft convention, such as the question of special missions and civil claims which had to be regulated, the possibility of restricting the application of the provisions of the Convention, the optional protocol system, and was in favour of those proposals which gave any State an opportunity to become a party to the future Convention on Special Missions.[47] On another for Yugoslavia very important topic, which was also in the focus of the Committee, the "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", Šahović had to extend his full support to the efforts, especially of the non-aligned countries to finalize the text of the declaration. He pointed out that: "The Yugoslav delegation had always regarded the study of the seven principles concerned as a duty incumbent on all the Members of the United Nations. It [his delegation] was therefore glad that the study and formulation of the principles and the drafting of the declaration had quickly become a single common goal for all the Members of the Organization. The strengthening of the role of international law in international relations and more particularly the strict observance of the principles of the Charter, as fundamental principles of the contemporary international legal order, was naturally one of the basic prerequisites for the maintenance of international peace and security, the development of relations of peaceful coexistence, active co-operation among all States, and the final eradication of colonialism (...). The Yugoslav delegation was also in favour of settling world problems through respect for the common interests of all mankind, and it therefore supported the proposal submitted in 1969 by Cameroon, India and the United Arab Republic (...). In addition, the Special Committee should be given time, after its regular session, to prepare the final text of the draft declaration for submission to the General Assembly on the occasion of the twenty-fifth anniversary of the United Nations".[48]

At the *25th UNGA session* in 1970, Šahović invested additional efforts in order for an agreement to be reached on the final text of the Draft Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter. He stated that, "his delegation which had been a member of the Special Committee since its establishment in 1964, was satisfied with the final result of its work, and was particularly glad that after very difficult negotiations agreement had been reached on the formulation of the first, third and fifth principles of the draft Declaration. The formulation of those

[46] UNGA, 24th session, Official Records, Sixth Committee, A/C.6/SR.1128, para.7.

[47] See in particular: A/C.6/SR.1136, para. 15; A/C.6/SR.1139, para. 4; A/C.6/SR.1147, para. 6; A/C.6/SR.1149, para 20.

[48] A/C.6/SR.1159, paras. 10, 12, 13.

three principles, as well as the preamble and the final provisions, which had also been formulated during the 1970, had been based on the opinions expressed in the Sixth Committee concerning the importance and the legal value of the Declaration, and they reflected the general concern and the proposals of the majority of the Members of the United Nations. He believed that the text as a whole deserved to be adopted by the General Assembly at its twenty fifth anniversary session, which was very special moment in the history of the Organization and demanded striking action by the Committee". He pointed out that: "His delegation approved the text, even though it contained a number of statements that did not satisfy it completely, and was well aware that other delegations would be in the same position", and added that "the Heads of State and Government of the non-aligned countries had at the recent Lusaka Conference endorsed the text of the draft Declaration and recommended its adoption by the General Assembly during the commemorative session". In conclusion, he expressed the belief of his delegation "that the text of the draft Declaration and the summary records of the Sixth Committee and the Special Committee deserved to be studied carefully as they pertained to the field of scientific research. Lastly, it should be remembered that the Special Committee had been the first legal body to be entrusted with the task of studying the practical implementation of the principles of the Charter in the light of the changed requirements of the international community".[49] The UNGA adopted the Declaration by consensus at its commemorative session held on 24 October 1970.[50] Speaking on the Report of the ILC on the work of its 22nd session, Šahović advanced the comments on several topics of importance. He noted that at the second reading of the draft articles [on relations between States and international organizations], "the Commission might consider differentiating more precisely between arrangements for permanent missions of Member States, permanent observer missions and delegations to organs of international organizations and conferences. Those arrangements should be based on the statutes, rules, goals and principles of the organizations in question and the functions of observer missions and delegations to organizations and conferences rather than on international law in general."[51] With regard to the topic on Succession of States, he "appreciated the fact that the Commission had studied that question within the general framework of the law of treaties, but considered that it might be useful to undertake a parallel study of succession in respect of treaties and succession in respect of matters other than treaties. Consideration of the various problems of succession would help to crystallize the general legal rules which were to be applied in all situations involving the problem of succession… That was particularly important in view

[49] UNGA, 25th session, Official Records, Sixth Committee, A/C.6/SR.1178, paras. 18, 22, 23, 24.

[50] A/RES/2625(XXV), Annex. See the next chapter with more details on its consideration and adoption.

[51] A/C.6/SR.1190, para. 52.

of the presumption of continuity, with which the Special Rapporteur and the Yugoslav delegation disagreed, since the principle of self-determination militated against the recognition of a legal presumption of continuity".[52] As to the draft articles on State responsibility, he considered that "a questionnaire would enable Member States to express their opinions on the questions considered by the Commission and would enable the Commission to harmonize the method of progressive development with the opinions of Governments".[53]

After an absence of three years, Šahović again participated in the work of the Sixth Committee at the *28th UNGA session in 1973*, where he was elected Vice-Chairman.[54] At the same session, he was also entrusted with a function of the Chairman of the Drafting Committee, mandated to finalize the Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons.[55] During the consideration of the Report of the ILC on the work of its 25th session, Šahović advanced several comments regarding the Commission's programme of work and made concrete suggestions on the topics under consideration. He approved the cautious approach of the Commission and felt that "the time had come to round off the work on State responsibility and Succession of States and, as far as international waterways were concerned, to start by appointing a special rapporteur." He expressed the hope that "it would be possible to examine in greater depth the question whether it was really desirable to make so sharp a distinction between responsibility for internationally wrongful acts and liability arising out of the obligation to make good any injurious consequences arising out of the performance of certain lawful activities, especially those which by their very nature entailed risk. It was of course clear that the legal bases of those two types of responsibility differed. But the question was whether and to what extent the difference should affect the formulation of the content of the notion of State responsibility and that of the principles and the general rules of law concerning it. Perhaps it would be useful to study side by side with the question of responsibility for wrongful acts that of the responsibility for hazards, a subject of unquestionable practical importance." He pointed that the Commission had "quite rightly given priority to the question of succession of States in respect of matters other than treaties - a highly topical question for all States established as a result of the process of decolonization", and expressed the satisfaction "at the real progress made in the study of the most-favoured nation clause". In conclusion, he pointed that "the Commission should remain free of any direct political pressure so that it could devote itself to the search for solutions in line with the interests of the contemporary international community".[56] Since the Sixth Committee decided

[52] *Ibid*., para. 53.

[53] *Ibid*., para. 54.

[54] UNGA, 28th session, Official Records, Sixth Committee, A/C.6/SR.1399, para. 8.

[55] A/C.6/SR.1409, para.6.

[56] A/C.6/SR.1401, paras. 20–25.

to examine the Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, article by article, as Chairman of the Drafting Committee, Šahović was obliged to report to the Sixth Committee almost at every meeting on the progress achieved in the Drafting Committee and to make use of his expertise and diplomatic skill in order to explain the intricacies of particular provisions of the draft convention.[57] As a result, he was not in a position to speak as a Yugoslav representative at the Sixth Committee as often as he might have wished, but we believe that during the drafting work he certainly advocated the position of his country.[58] With regard to the "Respect for human rights in armed conflicts", Šahović stated that this topic "which was of very particular interest to his delegation and, for some years, had been a source of concern for the international community. Yugoslavia had been involved in various activities, primarily through the International Committee of the Red Cross, which had culminated in the convening by the Swiss Federal Council of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict.[59] The draft additional Protocols to the Geneva Conventions of 12 August 1949, prepared by the International Committee of the Red Cross for consideration at the Diplomatic Conference in 1974, were a further point of departure for the same debate (...). It went without saying that new methods must be found of ensuring the more effective application of existing rules, and that there must be new definitions of military objectives, protected objects, protected persons and combatants, as well as of the status of resistance movements-and more especially movements fighting for self-determination or freedom from colonial domination. New rules must be formulated to prohibit the use of weapons and methods of warfare indiscriminately affecting civilians and combatants, as well as for the prohibition or restriction unnecessary suffering. Rules must also be formulated to facilitate humanitarian relief in armed conflicts and there must be a definition of armed conflicts of a non-international character which should be subject to rules additional to those contained in the Geneva Conventions of 1949".

Early in 1974, Yugoslavia expressed its interest in the chairmanship of the Sixth Committee at the 29th UNGA session in the Eastern European regional group.[60] The candidature of Milan Šahović for the Chairman was subsequently agreed and

[57] A/C.6/SR.1409, para. 7; For Šahović's statements as Chair of the Drafting Committee, see in particular: A/C.6/SR1412, A/C.6/SR.1423, A/C.6/SR.1432-1437, A/C.6/SR.1445-1447.

[58] See, for instance, the comments Šahović made in his national capacity: A/C.6/SR.1410, A/C.6/SR.1422.

[59] A/C.6/SR.1448, para. 47. Šahović took an active part in the process of the codification of the International Humanitarian Law that resulted in the adoption in 1977 of the two Protocols additional to the 1949 Geneva Conventions.

[60] Telegram from the Yugoslav Mission to the UN in New York to the Federal Secretariat for Foreign Affairs, No. 336 of 22 February 1974, DA MFA RS, PA 1974, UN, Registry 198, File 3, No. 48394.

he was elected by acclamation at the first meeting of the Committee on 18 September 1974.[61] At the next meeting of the Committee, before embarking on the regular agenda items, Šahović had a sad duty to invite the Committee members to pay a tribute to the memory of two former Committee members, his mentor, Prof. Milan Bartoš and Talat Miras of Turkey, who passed away earlier that year.[62] As Chairman, in his introductory statement, Šahović pointed to the current stage of development of international relations "which had reached a high level of complexity and were fraught with uncertainties and problems, the importance of the role which the Sixth Committee was called upon to play could not be over-emphasized. It was clear from the programme of work entrusted to it by the General Assembly that at the current session the Committee would be called upon to contribute very concretely to strengthening the role of the Charter and of international law in the world."[63] He also informed members of the Committee about the programme of work of the Committee which contained 15 agenda items, to be disposed within the 77 Committee meetings envisaged for that purpose.[64] Šahović rightly focused the work of the Committee on the issues that ought to be completed at that session. When introducing the item regarding the Report of the Special Committee on the Question of Defining Aggression, he congratulated the Special Committee on the completion of its lengthy and arduous task with which the Sixth Committee had been concerned since 1968, and he hoped that its deliberations at the current session would be successful.[65] Following the lengthy discussions and negotiations, a compromise draft resolution was agreed and adopted without a vote, in which the Chairman and the Yugoslav delegation played an important role.[66] Since Šahović was performing the function of the Chairman, he could not have addressed one of his favoured topics – the Report of the ILC, which had to be done by some other Yugoslav representative. However, we are sure that he played a considerable part in drafting a resolution that was adopted by consensus.[67] Under his Chairmanship, a number of other important decisions were taken, for instance, on the need to consider suggestions regarding the review of the Charter of the United Nations, the review of the role of the International Court of Justice, the participation in the UN Conference on the Representation of States in Their Relations with International Organizations, and on the introduction in the Committee's agenda of the question of international terrorism.[68] As Chairman of

[61] The meeting was chaired by the UNGA President, Abdelaziz Bouteflika, Foreign Minister of Algeria, UNGA, 29th session, Official Records, Sixth Committee A/C.6/SR.1460, para. 2.

[62] A/C.6/SR.1461, paras. 1–2.

[63] *Ibid*., para. 3.

[64] See: A/C.6/427; A/C.6/L.978; A/C.6/SR.1462, paras. 8, 35.

[65] For the Report, see: A/9619 and Corr. 1; A/C.6/SR.1471, para. 10.

[66] A/C.6/SR.1503, paras. 6 and 8. The Definition of aggression was annexed to A/RES/3314 (XXIX).

[67] A/C.6/SR.1509, para. 36; A/RES/3315 (XXIX).

[68] A/RES/3349 (XXIX), A/RES/3232 (XXIX), A/RES/3247 (XXIX).

the Sixth Committee, Šahović was a member of the General Committee, chaired by the UNGA President, Abdelaziz Bouteflika of Algeria, which dealt with the inscription and allocation of agenda items.[69] His role in that Committee was not limited to the Sixth Committee matters only, but he had also acted as a representative of Yugoslavia during the deliberations on several other issues.[70]

After skipping one year, Šahović participated again in the Sixth Committee at the *31st UNGA session* in 1976. In his very elaborate comments on the Report of the ILC, he noted with satisfaction that the ILC had completed the first reading of its draft articles on the most favoured-nation clause, and "that some remedial provisions to benefit the developing countries and land-locked States had been included in the text, and also on the subject of frontier traffic". He wondered, however, "if the Commission had given sufficient study to the interrelationship between the application of the clause and the position of the developing countries which should be given further study". With regard to the draft articles on State responsibility, he stressed "the importance of the codification and progressive development of the rules concerning that question for the strengthening of the legal order based on the UN Charter; the historical significance of the Commission's work on the topic was becoming increasingly evident". His delegation believed that "the work on Succession of States in respect of matters other than treaties was proceeding satisfactorily and that it should be possible to complete it in the relatively near future. Although the formulation of general rules relating to the various categories of State property was useful, the Commission had taken the right course in deciding to make a separate study of the question of archives". With regard to the substance of the articles proposed by the Commission, he considered that "the latter had acted wisely in stressing respect for the right of peoples to self-determination, internal constitutional legal systems and the sovereignty of States over their natural resources. Moreover, there was no doubt that a special place should be accorded to cases of succession arising from the decolonization process". As regards the topic of the non-navigational uses of international watercourses, Šahović was of the opinion that "it raised very delicate problems, whose solution would depend primarily on how the Commission defined the general rules of international law relating to that topic and formulated articles which took into account the diverse interests of States".[71]

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[69] The General Committee, chaired by the UNGA President, consists of 21 Vice-Presidents and Chairmen of the main committees.

[70] At a meeting held in the very beginning of the session, on 19 September 1974 (A/BUR/SR.219), Šahović made statements on the following items: Amendment to the Statute of the International Court of Justice, Korea, Question of Palestine, Cyprus, (*Ibid*., paras. 1, 23–24, 74–76, 101–102). At a meeting held on 8 November 1974 (A/BUR/SR.222), convened in order to discuss the progress of work at the session, Šahović reported as Chairman of the Sixth Committee on the state of affairs in the Committee (*Ibid*., paras. 20–21).

[71] UNGA, 31st session, Official Records, Sixth Committee, A/C.6/31/SR.30, paras. 37–39, 42, 45–47.

At the same session, Šahović was elected, together with other 24 candidates, to the ILC for a term of five years beginning 1 January 1977.[72]

At the *32nd UNGA session* in 1977, speaking on the Report of the ILC on the work of its 29th session, Šahović insisted, "(…) that the role assigned to the Commission in its statute should be preserved: the Commission should continue to be an organ composed of specialists in international law, representing the principal legal systems of the world and the main forms of civilization and responsible for the codification and progressive development of international law". He endorsed "the ongoing work programme proposed by the Commission and the inclusion in its long-term work programme new topics (of the question of 'jurisdictional immunities of States and their property' and the 'Draft Code of Offences against the Peace and Security of Mankind'), but suggested that it should review the current state of international law as a whole and, after consulting the Sixth Committee and the regional legal committees, should draw up a new general programme reflecting the needs of the international community and the general trends in international law".[73]

At the *33rd UNGA session* in 1978, Šahović focused only on the Report of the ILC on the work of its 30th session. He concluded that, in accordance with UNGA Resolution 32/151, the ILC "had speeded up its work; that had enabled it to submit a report which included a number of recommendations and suggestions on various topics, in addition to a final draft of articles on the most-favoured-nation clause. His delegation supported the Commission's recommendation that the General Assembly should recommend the draft articles to Member States with a view to the conclusion of a convention on the subject. The draft articles took due account of the *de facto* inequality resulting from the application of the clause to countries which had not achieved the same level of development. His delegation fully agreed with the conclusions of the Commission regarding the residual character of the proposed legal rules: the rules should be consistent with the Vienna Convention on the Law of Treaties but the granting State and the beneficiary State could always agree on different stipulations. In their final form, the draft articles took account of the political and economic realities, clarifying the position of the developing countries. In that connexion, articles 23, 24 and 30 were the *sine qua non* of the approval of an international convention relating to the most-favoured-nation clauses".[74]

[72] The Yugoslav Government presented the candidature of Šahović to the ILC for elections at the 31st UNGA session on 21 April 1976. See: The Note of the Permanent Mission of the SFR of Yugoslavia to the United Nations in New York, No. 741/76 of 21 April 1976, addressed to the Permanent Missions of the Member States of the United Nations in New York (Historical Archives of Belgrade (HAB), Personal Fond of Milan Šahović (PFMŠ) (2096), Box 28, Item 253). During the secret ballot elections on 17 November 1976, Šahović obtained the highest number of votes, 127 out of 143 total members casting ballots. See: UNGA, 31st session, Official Records, Plenary Meetings, A/31/PV.68, A/DEC/31/308.

[73] UNGA, 32nd session, Official Records, Sixth Committee, A/C.6/32/SR.39, paras. 45–46.

[74] UNGA, 33rd session, Official Records, Sixth Committee, A/C.6/33/SR.3578, paras. 3–5.

At the *34th UNGA session in 1979*, Šahović, as Chairman of the 31st ILC session, introduced in the Sixth Committee its report. He stated that, at its 31st session "the Commission had managed to consider almost all the items on its agenda and that it had continued its work in three main directions. Firstly, the Commission had made further progress in the elaboration of draft articles which it had undertaken to prepare several years earlier. Thus, it had completed the first reading of the draft articles on succession of States in respect of matters other than treaties. Moreover, it had only two or three more articles to prepare in order to complete, in first reading, the series of articles which constituted the first part of the draft articles on the responsibility of States for internationally wrongful acts. Lastly, with the adoption of 22 articles on treaties concluded between States and international organizations or between two or more international organizations, the Commission had entered on the final phase of the preparation of a draft on the subject. Secondly, the Commission had deemed it necessary, in the light of its future activities, to take up consideration of subjects recently selected for the codification and progressive development of international law, namely those which concerned, on the one hand, the law of the non-navigational uses of international watercourses and, on the other, jurisdictional immunities of States and their property. Thirdly, in accordance with specific requests made to the Commission by the General Assembly in the light of the needs of the Sixth Committee, the Commission had considered the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The Commission had continued in a satisfactory manner its co-operation with the International Court of Justice and with regional organizations".[75] Following the debate on the ILC report,[76], after having analyzed the positions of various delegations, Šahović as Chairman of the ILC, offered the following very pertinent conclusions that were both of practical and theoretical value: "The ILC had to examine thoroughly comments made and the questions raised during the discussions in the Sixth Committee; it should do so at its next session or during the second reading of the relevant drafts. During the discussions, a number of questions had been raised concerning the methods used by the Commission, the basic principles of specific drafts and the length of the commentaries and their relation to the sources of international law. Such questions not only reflected the diversity of opinion concerning a series of solutions proposed by the Commission, but were also related to the basic question of understanding the Commission's mandate and its role in the codification and progressive development of contemporary international law. In principle, there were no differences of opinion on the basic question either among States or in the writings of jurists. The Commission was a permanent subsidiary organ of the General Assembly, composed of experts participating in their personal capacity and representing

[75] UNGA, 34th session, Official Records, Sixth Committee, A/C.6/34/SR.38, paras. 12–15.

[76] See for the debate: A/C.6/34/SR. 39–52.

various legal systems, who, in the light of political, legal, economic and other imperatives, had the task of formulating draft articles, after examining items approved by Member States and the General Assembly, and of making proposals with a view to their codification and progressive development. Although it was an autonomous organ, it was in constant contact with the Sixth Committee. In examining the various items, the Commission had to bear in mind the trends in the development not only of the question being considered but also of international law as a whole, and had to try to reflect those trends in the drafts in the most appropriate manner. In reaching its conclusions, it had to reflect two conditions: on the one hand, it had to be guided by the views of the vast majority of Member States, and, on the other, it had to follow the genera1 trend in the development of international law. Based on the Charter of the United Nations, the Commission should move towards establishing a system of legal principles and rules that could serve as a basis for building a better world. In many cases, the Commission's proposals had initially been considered too daring, but they had eventually been approved and included in international conventions. The fact that the Commission could not always satisfy all shades of opinion was due to the fact that international law was in the midst of change and transition and also to the present state of international political relations." He had also described "the conditions in which the Commission functioned with a view to better responding to the questions raised with regard to its report. Although the commentaries on the draft articles on succession of States in respect of matters other than treaties could undoubtedly have been shorter, it is not feasible to omit a whole host of historical, economic and other points or to fail to explain that the Commission, in examining the practice of States, had to take into account the relevant conclusions for the solution of problems of succession emanating from various United Nations declarations and resolutions. The Commission was also concerned with the status of the formal sources of contemporary international law and had therefore turned its attention towards the formulation of draft articles which could serve as a basis for the conclusions of international conventions. Without prejudice to the importance of customary law, it must be recognized that the purpose of codification and progressive development as ways of drafting legal rules could only be the adoption of conventional formal instruments, which alone had a direct bearing on positive international law. Accordingly, although the Commission had never insisted that its draft articles must absolutely result in international agreements, the present method was clearly the most effective way for it to realize its objectives in the present state of affairs in the international community. In connection with the question of the responsibility of states for illegal actions, the Commission considered the responsibility of states as such, as primary subjects of international law and thus sought to develop the idea of establishing a comprehensive and objective international legal order that should be beyond the control of individual states. The same applied to the question of treaties concluded between States and international organizations or between two or more

international organizations. The transposition of the provisions of the Vienna Convention on the Law of Treaties was the means or even the pretext. The main point was the development of the international legal responsibility of international organizations as subjects of international law. It had been pointed out the overlapping between some of its provisions. This situation, however, was nothing more than a reflection of the doubts that existed in the Commission during the debates on this topic. It should also be borne in mind that international law had not been sufficiently crystallized in that area. Generally speaking, it could be argued that the Commission should take some step towards a possible reorganization of the presentation of its work in its reports. Although there were several options open to it, it was essential, in any event, to retain the commentaries on articles, which were of exceptional theoretical and practical value. As to the comments made concerning the section of the Commission's report on the review of the multilateral treaty-making process, if the General Assembly requested the Commission to make a new contribution to the examination of the question, the Commission would do its utmost to comply with that request".[77]

After three years, Šahović was back to the Sixth Committee at the *37th UNGA session* in 1982. Since Šahović participated in the 1982 Geneva session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,[78] he took an active part in the discussions on the draft Manila Declaration on Peaceful Settlement of Disputes and on the Report of the Special Committee. Speaking on the draft Manila Declaration, he said that "his delegation was glad to see that the Special Committee had been able to submit the draft of the Manila declaration with a view to its consideration and approval by the General Assembly at its current session". He also pointed out that "The draft declaration stated, on the one hand, the legal content of the fundamental norm and the norms of conduct of States in its application, and on the other hand, it indicated the means for putting it into practice through the machinery of the Charter, emphasizing the adaptation of the activities of the General Assembly, the Security Council and International Court of Justice to the conditions arising out of the recent experience of international life, which unfortunately was very negative. The Manila declaration would represent a contribution to the perfecting of that principle, but it should be understood that it constituted merely one new step forward from what had already been achieved within the framework of the Declaration on co-operation among States. It was essential to develop the peaceful settlement of international disputes in conformity with the new needs of States and of the international community and with contemporary trends in the development of international law". He emphasized the decisive role played at all

[77] A/C.6/34/SR. 52, paras. 1–8.

[78] Geneva, from 22 February – 19 March 1982, see: The Report of the Special Committee, UNGA, Official Records, 37th session, Supp. No. 33 (37/33). The author of this paper was also a member of the Yugoslav delegation.

stages of its formulation by the delegations of the non-aligned and the Group of 77 developing countries.[79]

Speaking on other issues discussed by the Special Committee, Šahović recalled that the "General Assembly had for some years accorded priority to proposals for maintaining peace and international security and, more recently, had emphasized those concerning the functioning of the Security Council, the peaceful settlement of disputes and the rationalization of existing United Nations procedures. His delegation supported those priorities, but believed it essential to emphasize that the Special Committee must be asked above all to speed up its work and make concrete proposals and recommendations next year to improve the effectiveness of the United Nations. The necessary conditions for that work had been fulfilled during the latest session of the Committee, with the completion of the first reading of the draft recommendation presented by Egypt on behalf of its non-aligned members. That draft tried, while remaining within the framework of the Charter, to meet the concerns of the majority of Members of the United Nations which were rightly protesting against abuse of the unanimity rule by the permanent members of the Security Council".[80] Although after 1981 Šahović was not any more member of the ILC, he continued to focus on its work in the Sixth Committee. In his thorough analysis, he "welcomed the completion of the draft articles on the law of treaties between States and international organizations or between international organizations. That was a question of particular significance in an interdependent world in which international organizations were playing an increasingly important role but could contribute effectively to the solution of international problems only if their status as parties to international agreements was established. His delegation accordingly endorsed the recommendation…of the Commission's report that the General Assembly should convoke a conference to conclude a convention. The draft articles dealt very successfully with a number of sensitive issues relating to the juridical character and competence of international organizations, especially with the crucial question whether they could be treated on an equal footing with States as subjects of international law". He felt that it was also necessary for the Commission "to resolve as soon as possible the question of the nature of the juridical regime [for the question of international liability for injurious consequences arising out of acts not prohibited by international law] which it intended to produce: a single universal regime or a number of sets of rules relating to the various sectors of international law. In the meantime, it might be useful to concentrate on formulating a number of principles for implementation of the fundamental legal rule which his delegation regarded as the key to the question: the rule prohibiting States from undertaking activities

[79] UNGA, 37th session, Official Records, Sixth Committee, A/C.6/37/SR.23, paras. 11–15. The draft resolution containing in its annex the Manila Declaration was later adopted by consensus (A/C.6/37/SR.29, para. 66) as A/RES/37/10, Annex.

[80] A/C.6/37/SR.26, paras. 22–23.

which might cause injury to the territory, citizens or property of other States".[81] On another issue which was the result of the work of the ILC, a draft resolution on the convening of a UN Conference on Succession of States in respect of State Property, Archives and Debts, Šahović strongly supported the non-aligned views to bring about the consensus on it, in order for the conference to be convened during the following year.[82]

At the *38th UNGA session* in 1983, Šahović addressed two topics: the Report of the ILC and the Draft code of offences against peace and security of mankind. On the ILC Report, he noted the relatively small number of draft articles submitted to the Sixth Committee by the ILC and expressed the hope that the Commission would soon be able to overcome the obstacles which "it …had encountered and present the General Assembly with complete sets of draft articles, so as to enable Member States to contribute more concretely to the codification and progressive development of contemporary international law, that being an invaluable tool for the promotion of political co-operation between States and the creation of an international law which would better meet the needs of the international community as a whole". He pointed out that "The authority of the Charter as the main source of international law had been secured and, through the adoption of universal international conventions, the conduct of international relations had ceased to be governed exclusively by customary law, the development of which had in the past been the privilege of the big and powerful developed countries. New prospects for the further development of international law had appeared since then, in particular, mechanisms for its implementation and for an international jurisdiction had begun to take shape. At the same time, the Organization must continue to educate the public whose scepticism and ignorance of the great potential of international law for the settlement of international disputes was constantly being fuelled by the increasing use of force as an instrument of the foreign policy of States. The authority of international law was bound to be strengthened by successes achieved in its codification and progressive development." The subject of State responsibility deserved to be given priority in the Committee's programme of work… He emphasized that …"Formulation of the rules relating to the law of the non-navigational uses and its protection of international watercourses was not an academic exercise; the fact that the vital interests of riparian States were involved meant that there must be strict respect, in all situations, for the principle of the sovereignty of States, particularly, their permanent sovereignty over natural resources, and for the principle of good-neighbourly relations as the basis for solutions to practical problems arising from co-operation between States. The new concept of a shared natural resource was in keeping with current development trends, but it could not be applied unless

[81] A/C.6/37/SR.39, paras. 1–2, 7.

[82] A/C.6/37/SR.41, para. 52; Adopted subsequently as A/RES/37/11.

account was also taken of the need to reconcile the rights and interests of all system States, whose inherent sovereignty over the parts of the waters belonging to them must in no way be called in question. Consequently, the formulation of rules concerning the mechanisms for co-operation and the rights and duties of the States concerned must be preceded by a precise indication of the respective sovereign rights of the riparian State. Along with the principles of good faith and good-neighbourly relations (…) the Special Rapporteur's preliminary draft should include the basic principles of international law relating to sovereign equality, renunciation of the threat or use of force and non-interference in the internal affairs of States and such other principles as might appear necessary. Furthermore, the use of the term 'international watercourse system' should be reconsidered. With the introduction of modern means of exploitation of international watercourses, however, new problems had arisen. Unless both historical aspects and future needs are taken into account, little progress would be made in this regard. In a way, it was a subject which belonged to the twenty-first century, and a start must be made now on trying to combine the traditional types of regulation with ones that would suit the future." The same applied to the topic of liability for injurious consequences arising out of acts not prohibited by international law. "That was one of the most important subjects in the present stage of development of inter-State relations and of international law (…). The solutions adopted in existing conventions and other international instruments on the use of various scientific and technological advances for peaceful or military purposes could form the basis for at least progress in that area".[83] Speaking on the Draft code of offences which was a relatively new topic considered by the ILC, Šahović underlined that "the general trends in international political relations and the development of international law since the Second World War demonstrated the need for a Code of offences against the peace and security of mankind. With the adoption of the Code, international law would begin a new phase of development as an integrated system of international legal norms and principles. The Code would supplement norms relating to the prohibition of the threat or use of force, the struggle against aggression and the maintenance of international peace and security. Current conditions appeared better suited for resumption by the ILC of its consideration of the question. There was no denying the political imperatives and international law had reached such a stage of development that the elaboration of the Code could be envisaged with optimism." He also suggested that (…), "the Commission should concentrate primarily on determining the legal nature of offences against the peace and security of mankind and on identifying such offences. It was particularly important to define the criteria for differentiating between offences against the peace and security of mankind and other international crimes, bearing in mind the need to consider an additional element not specifically referred to in

[83] UNGA, 38th session, Official Records, Sixth Committee, A/C.6/38/SR.43, paras. 35–37, 43–45.

the Special Rapporteur's report. It was agreed that the basic criteria should be the extent of the calamity or its horrific character and that the offences covered should be the most serious of the most serious international offences, in other words, offences at the top of the scale." He agreed that more in-depth consideration should be given to "the question of determining the criminal responsibility of States (…), while stressing the need for careful reflection and a creative approach if the concept of criminal responsibility was to be broadened and adapted to the specific nature of the State as a sovereign juridical person".[84]

At the *39th UNGA session* in 1984,[85] Šahović again addressed his favoured topic, the Report of the ILC. Speaking on the Draft Code of Offences against the Peace and Security of Mankind, he recalled that "The problems that had been encountered at the last two sessions of the Commission with regard to the topic were difficult but not insurmountable, and with a little more boldness, the Commission could prepare a draft which would respond to contemporary needs." He made that point because he felt that "the Commission was not addressing the fundamental problems involved in preparing the Code: with regard to the content *ratione personae*, it had decided not to concern itself with the criminal responsibility of States, with regard to the content *ratione materiae*, it was not specifying criteria nor formulating a definition of crimes…If the Commission had available more precise legal criteria, the problem of the length of the list and the nature of individual crimes would not pose a major problem (…). On the other hand, in order to identify the most serious crimes against the peace and security of mankind, the current interpretation of 'the peace and security of mankind' should be examined…In that context, the use of nuclear weapons could be considered only as an international crime against mankind of the first order". He also assessed that "The work on State responsibility was not advancing quickly enough (…), and (…). The scepticism and opposition of a minority towards certain aspects of Part One should not be allowed hinder the completion of work to on a structure which had already begun to exert a major influence on the development of international law". As regards the topic of the "International liability for injurious consequences arising out of acts not prohibited by international law", he pointed to its "particular relevance to the international community, and that in view of the current scientific and technological revolution, the problems of liability for the injurious consequences of legal activities were worthy of systematic study". Šahović concluded that "The approach adopted by the Special Rapporteur on the topic entitled 'The law of the non-navigational uses of international watercourses' was a realistic one and opened the way for constructive work on an extremely difficult subject. He agreed with the comments made on the need to arrive at a viable instrument of international law and to strike

[84] A/C.6/38/SR.52, paras. 33, 36–37.

[85] This was Šahović's last participation in the Sixth Committee and the first UNGA session of the author of this article as a representative of Yugoslavia to the Committee.

the right balance between the various principles and interests involved. Thus, the search for legal solutions had become much clearer and more in line with the basic principles of international law and the interests of riparian countries, whose sovereign rights should not be jeopardized by the progressive development of appropriate rules of international law which would otherwise be based exclusively on technical considerations". He assessed that "The problem with the draft articles on jurisdictional immunities lay in the impossibility of taking into account the range of solutions adopted by all existing national legal systems".[86]

It should also be noted that Šahović participated in 1983 and 1984 as a member of the UNITAR Panel of Experts in the preparation of an analytical study which was submitted to the UNGA at its 39th session, under the item on the Progressive development of the principles and norms of international law relating to the new international economic order, considered by the Sixth Committee.[87]

THE SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES (1964–1970)

The origins of the consideration of the principles of international law concerning friendly relations and co-operation among States in the UN can be found in the initiatives of newly liberated, later non-aligned countries in the mid-fifties (Bandung Conference) and beginning of the sixties (Belgrade Conference) of the 20th century that advocated the need for peaceful and active coexistence among States. They made considerable influence, especially following the adoption of UNGA Resolution 1505 (XV) in 1960, that decided to place on the agenda of its next session an item entitled "Future work in the field of codification and progressive development of international law" in order to prepare a new list of topics and invited Member States to submit in writing any views and suggestions on the matter. President of Yugoslavia, Josip Broz Tito, in his address at the 15th UNGA session, gave also very important support to that initiative.[88] Based on the comments submitted in 1961 by Member States,[89] the UNGA at its 16th session in 1961, adopted a Resolution 1686 (XVI) by which it decided to place on the provisional agenda of its 17th session the question entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United

[86] UNGA, 39th session, Official Records, Sixth Committee, A/C.6/39/SR.42, paras. 52–56.

[87] See, in particular, A/38/366, A39/504/Add.1; Šahović wrote an analytical paper on the principle of "Participatory equality of developing countries in international economic relations" which became a part of the UNITAR's study.

[88] See: President Tito's statement at the UNGA, 15th session, Official Records, Plenary, A/PV.868 of 22 September 1960, in particular paras. 152–163, 169.

[89] A/4746, Annex (comment by Yugoslavia, pp. 26–30).

Nations".[90] At its 17th session in 1962, the UNGA resolved, by its Resolution 1815 (XVII): "(...) to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application (...)". It decided, accordingly, to study four such principles at its eighteenth session, namely: "(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; (b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; (c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; and (d) The principle of sovereign equality of States".

At the following, 18th UNGA session, a Resolution 1966 (XVIII) was adopted establishing a Special Committee to study that topic[91]. The Special Committee which consisted of the representatives of 27 Member States, among them Yugoslavia, was mandated to study also the following three additional principles: (a) The duty of States to co-operate with one another in accordance with the Charter; (b) The principle of equal rights and self-determination of peoples; and (c) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter. It was recommended to the governments to appoint jurists as their representatives on the Special Committee.[92]

The first session of the Special Committee was held in Mexico City in 1964.[93] The Committee started the consideration of the first four principles mandated by UNGA Resolution 1815 (XVII). In addition, the question of methods of fact-finding was discussed, but no recommendation on that topic was adopted as there was opposition of some Member States as to the idea of that question and the creation of machinery for fact-finding purposes. Since the very outset, Yugoslav delegation took an active part in the deliberations by submitting a proposal on

[90] See the explanation given by Robert Rosenstock (Legal Adviser of the US Mission to the UN in New York, and a member of the Special Committee) on the change of terms, from the principles of "peaceful coexistence" to "friendly relations", in his article: "The Declaration of principles of international law concerning friendly relations: a survey", *AJIL*, 65, October 1971, pp. 713–735.

[91] See: A/PV.1281, 16 December 1963.

[92] A Commission of the State Secretariat for Foreign Affairs of Yugoslavia on the elaboration of principles of coexistence and proposals for their codification was appointed [with Dr. Milan Šahović as its member], early in 1964; See: Decision by the State Secretary for Foreign Affairs, Koča Popović, No. 42868 of 25 January 1964, HAB, PFMŠ (2096), Box 27, Item 249.

[93] The session was held from 27 August to 1 October 1964. Yugoslavia was represented by Jože Vilfan and Milan Šahović and was also appointed to the Drafting Committee. See: The Report of the Special Committee, A/5746.

the principle concerning "the threat or use of force".[94] During the very detailed debate that ensued on the various elements of the principle, Šahović explained in detail the rationale of the Yugoslav proposal adding that "in fact his delegation prepared proposals for all four principles under consideration as they should not be considered in isolation from one another believing that the ultimate goal of the study was the progressive development and codification of seven principles as an integral whole, it had felt that the Committee should not enter into excessive detail but should formulate the results of its discussions in general terms, recognizing the interdependence of the principles as the basic legal rules governing friendly relations and co-operation among all States. His delegation also tried to make its formulations reflect the trend of recent developments in the application of principles under study, having in mind on the one hand the evolution of the application of the Charter principles and on the other the current needs of States".[95] In defending the Yugoslav proposal against the views of some representatives that considered it too broad, Šahović replied that his delegation could not accept the view of those that held that the Special Committee should limit itself to producing a "restatement" (...). He pointed out that "if the Committee was to succeed in carrying out the task assigned it by the General Assembly, it must be guided by not only the letter but also the spirit of the Charter. It was. For that reason, that his delegation had been unable to leave aside the question of the right of self-determination of peoples and the connexion between that principle and the prohibition of force".[96] During the discussion of the principle of non-intervention, Šahović also announced the withdrawal of his delegation's previous proposal in favour of the three-power proposal.[97] In response to some criticism of the three-power draft and regarding the criteria which should guide the Committee in its study of the four principles, Šahović agreed with the Indian representative, who had stressed that under UNGA Resolution 1966 (XVIII), "the Committee was to study principles of international law…[and] The Charter was to be the basis of the Committee's work, but the Committee was free to take into the consideration new elements arising since the signing of the Charter for the purpose of the progressive development and codification of the four principles. While the Charter contained no provision dealing explicitly with the principle of non-intervention, that principle must be regarded as implicit in it".[98] Regarding the principle of sovereign equality of States, Šahović tried to explain the purpose of the Yugoslav proposal which was to clarify the principle and facilitate its

[94] See: A/AC.119/L.7, which was later withdrawn as its main ideas were included in the joint proposal by Ghana, India and Yugoslavia, known as the "three-power proposal" (A/AC.119/L.15).

[95] See: A/AC.119/SR. 4.

[96] See: A/AC.119/SR. 9.

[97] The "Three-power "proposal: A/AC.119/L.27; Šahović's statement: A/AC.119/SR.29, 17.

[98] A/AC.119/SR.31, 11–12.

application and observance as this was the keystone of the United Nations edifice.[99] At the end of the session, the draft report was adopted unanimously.[100] The report was presented at the 19th UNGA session[101] in 1964, but it was only considered at the 20th session in 1965, as there was no Special Committee session in 1965. Under a new UNGA resolution,[102] the Special Committee was reconstituted and met in New York in 1966.[103]

At the 1966 session, six non-aligned delegations tabled the new proposal and Šahović again had to explain the rationale of the principle of non-intervention[104]. He particularly drew attention to a paragraph that constituted a formal recognition of the fact that the principle of non-intervention had acquired a new universally valid dimension: the provision of assistance to peoples oppressed by any form of foreign domination, far from being a form of intervention in the internal affairs of a State, was in fact the duty of all States.[105] He also referred to the Declaration on the Inadmissibility of Intervention, which he had to defend it.[106] And he was strongly against those delegations that wished to reopen questions on which the UNGA had already taken the position [in its Resolution 2131(XX)].[107] Šahović had also to explain the history of the principle of equal rights and self-determination of peoples which was one of the fundamental norms of contemporary international law that had gained particular relevance in the context of the struggle of peoples against the colonial yoke.[108] During the discussion of the principle that States should fulfil in good faith the obligations assumed by them, Šahović pointed out that "this was one of the essential principles of international law, being closely linked to the maintenance of international peace and security, the peaceful settlement of disputes and the development of co-operation among States (…), the Committee should stress that the duty of every State to comply with its obligations in good faith applied to obligations arising not only from international treaties but also from other sources of international law".[109]

The new session of the Special Committee was held in Geneva in 1967.[110] Šahović was elected Rapporteur which meant that he had to follow attentively

[99] A/AC.119/SR.33, 9–11.

[100] A/AC.119/L.34 and add.1.

[101] A/5746.

[102] A/RES/2103(XX).

[103] From 8 March to 25 April 1966; For the Report of the Special Committee, see: A/6230.

[104] A/AC.125/L.12.

[105] A/AC.125/SR.10, 4–6.

[106] A/RES/2131(XX), Šahović's statement: A/AC.125/SR.14, 13–15.

[107] A/AC.125/SR.17, 8.

[108] A/AC.125/SR.40, 9–11.

[109] A/AC.125/SR.45, 3–5.

[110] From 17 July to 19 August 1967, pursuant to A/RES/2181(XXI). For the Report of the Special Committee, prepared by Šahović, see: A/6799.

the discussion in the Committee and to attend also meetings of the Drafting Committee in order to prepare a report for the UNGA session that should faithfully describe the results of the Special Committee's session. At the same time, he still needed to intervene as a Yugoslav representative in order to strengthen the position expressed in the proposal of the non-aligned countries. Šahović pointed out that he was striving for a broad definition of the term "force" against the interpretation of some Western countries who favored the narrow interpretation.[111] Speaking on the principle of equal rights and self-determination of peoples, Šahović said that "a positive decision by the Special Committee on the formulation of the principle under discussion was bound to have a favourable effect on the codification and progressive development of all seven principles concerning friendly relations and co-operation among States, and on the formation of the new law based on the United Nations Charter. Any modern formulation of the principle must stress its legally binding character and its universality; in his delegation's view, it constituted a general rule of contemporary international law".[112] Šahović reported on the session of the Special Committee at the Sixth Committee during the 22nd UNGA session in autumn of 1967. Following the discussion in the Sixth Committee, a new resolution was adopted which enabled the Special Committee to focus on the unresolved issues on the following year.[113]

The Special Committee held its new session in New York from 9 to 30 September 1968. As one of the leading representatives in the Committee, Šahović was elected Chairman of the Drafting Committee, which meant that he had to use all his knowledge and skill in order to try to reconcile different drafting points on the principles under discussion.[114] Following the consideration of the Report of the Special Committee,[115] the Sixth Committee approved a draft resolution by acclamation.[116]

In recognition to his important role during the consideration of the principles under discussion, Šahović was elected Chairman of the *1969 Special Committee session*.[117] In view of the debate in the Sixth Committee at the 23rd UNGA session, the Special Committee was mandated to complete its work on seven principles and to submit to the 24th UNGA session a comprehensive report. Accordingly, the Committee during its session focused on completing its work on the

[111] For the proposal of non-aligned countries see: A/AC.125/L.48; Šahović's statement: A/AC.125/SR.65, 12–15.

[112] A/AC.125/SR.69, 4–7.

[113] For the Report, see: A/6799; A/RES/2327(XXII).

[114] See: A/7326, para. 19.

[115] For the Report, see: A/7326.

[116] A/RES/2463(XXIII).

[117] Held in New York, from 18 August to 19 September 1969. For his election, see: A/AC.125/SR.97.

formulation of the principles concerning the prohibition of the threat or use of force and the principle of equal rights and self-determination of peoples, which needed additional discussion. At the end of the session, Šahović as Chairman, felt that the Special Committee could be satisfied with its work, because it had obviously built a solid foundation for the final formulation of the two principles and he believed that it should be possible to formulate the declaration in time for its adoption at the twenty-fifth session of the General Assembly.[118]

At the 24th UNGA session in 1969, a group of the non-aligned countries (Yugoslavia included) submitted a draft resolution which requested the Special Committee to endeavour to resolve the remaining questions relating to the formulation of the seven principles, in order to complete its work, and to submit to the General Assembly at its 25th session a comprehensive report containing a draft declaration on all of the seven principles.[119]

The Special Committee held its session at Geneva, from 31 March to 1 May 1970. Šahović again rendered a significant contribution to making the finishing touches to the remaining principles, as can be seen from the statement of the Indian delegation "who thanked, among others [Mr. Blix, Chair of session] and Šahović, who by their skill, energy and tact, coupled with their great experience, had made valuable contributions to the Special Committee's work".[120] Summarizing the work of the Special Committee, Šahović concluded that "his delegation was gratified by the Special Committee's success in completing the draft declaration in time for submission to the General Assembly on the occasion of the twenty-fifth anniversary of the United Nations. The text of the draft declaration was, on the whole, very satisfactory and reflected the great efforts made within the Special Committee since its establishment in 1964 and within the framework of the Sixth Committee of the General Assembly. It was, moreover, an indication of the limits within which it was possible to pursue the codification and progressive development of the principles of international law concerning friendly relations and co-operation among States in present political, economic and juridical conditions. His delegation considered that the declaration would prove to be a historic document and it would spare no efforts to ensure that it was adopted by the General Assembly. In view of its desire that the text should be the authentic expression of the views of all members of the Special Committee, his delegation had favoured: the method of consensus and was glad to see that, generally speaking, that method had been applied in elaborating the text. While the method of consensus clearly enhanced the legal importance of the declaration, it had the disadvantage that all delegations were obliged to some extent to sacrifice

[118] See the Report of the Special Committee, A/7619, paras. 204, 217.

[119] The draft was unanimously adopted as A/RES/2533(XXIV). Šahović spoke in the Sixth Committee, see: A/C.6/SR.1159, paras. 8-13.

[120] A/8018, para. 222.

their particular viewpoints in order to arrive at a common denominator. The text established by that method, however, could be used as a basis for future work on the principles studied, and his delegation was convinced that approval of the draft declaration by the General Assembly would open up new prospects for the work of United Nations legal bodies, particularly the Sixth Committee".[121]

The Declaration on Principles of International Law concerning Friendly relations and Co-operation among States in accordance with the Charter of the United Nations was adopted during the twenty-fifth anniversary commemorative session of the General Assembly on 24 October 1970,[122] under the Presidency of Edvard Hambro (Norway), who also made a significant contribution during the Special Committee's work. On that occasion, the President stated that he is, as a man of law, particularly happy since this "marks the culmination of many years of effort for the progressive development and codification of the concepts from which basic principles of the Charter are derived. The Assembly will remember that when we first embarked upon these efforts many doubted that it would be possible to obtain a result which would be acceptable to all the various political, economic and social systems represented in the United Nations. Today those doubts have been overcome. In a sense, however, the work has just begun. We have proclaimed the principles; from now on we must strive to make them a living reality in the life of States, because these principles lie at the very heart of peace, justice and progress".[123]

While Šahović represented Yugoslavia at the Special Committee, he organized his colleagues of the Department of International Law at the Institute and some other scholars, to study the principles, to write and publish articles on the matter under consideration. This has resulted in the publication under his guidance of the collection of essays covering all seven principles, already in 1969 (in Serbo-Croat) and later, in 1972 (in English).[124] In his introductory study, Šahović underlined the importance of the adoption of the Declaration as a legal act of the General Assembly, "whose historical value was strongly emphasized by all the members of the United Nations who had taken part in the debate (…). Since this is the first document after the adoption of the Charter to elaborate its basic principles and fully reaffirm their universal legal force the unanimous adoption of the Declaration places it in the category of official interpretative acts whose binding force derives from consensus of all members of the United Nations" and

[121] Ibid., paras.158–163.

[122] A/RES/2625(XXV), Annex.

[123] A/PV.1883, paras. 8–9.

[124] See: *Kodifikacija principa miroljubive i aktivne koegzistencije* [*Codification of the principles of peaceful and active coexistence*], (Zbirka radova, ur. Milan Šahović), (Beograd: Institut za međunarodnu politiku i privredu, 1969); *Principles of International Law Concerning Friendly Relations and Cooperation* (ed. by Milan Šahović), (Beograd: The Institute of International Politics and Economics; Oceana Publications Inc., Dobbs Ferry, 1972).

he concluded that the significance of the Declaration "may only grow as time goes on and as international law becomes more and more efficient as a comprehensive system of legal rules governing the relations between States and the life of the international community as a whole".[125]

THE INTERNATIONAL LAW COMMISSION (1974–1981)[126]

Following the untimely death of Prof. Milan Bartoš in March of 1974, who was a member of the ILC since 1957, the Yugoslav government immediately nominated Šahović to succeed him, as the *26th ILC session* was scheduled to begin in Geneva on 6 May 1974.[127] Since Bartoš passed away before the expiration of his full term, the election was held by the Commission itself at a private meeting (Filling of casual vacancies).[128] Although Šahović did not yet come to the ILC, it was already decided to appoint him to a five-member sub-committee to consider the topic of non-navigational uses of international watercourses.[129] Mohammed Bedjaoui (Algeria), while paying tribute to the memory of Prof. Bartoš, said that "it would be difficult to replace him at the ILC, but Šahović could certainly do so better than anyone else".[130] The ILC members finally welcomed Šahović on 20 May 1974.[131] In view of his profound

[125] Milan Šahović, "Codification of the legal principles of coexistence and the development of contemporary international law", in: *Principles of International Law Concerning Friendly Relations and Cooperation,* pp. 48–50.

[126] Under Article 13, paragraph 1, of the Charter of the United Nations, the General Assembly is required to "initiate studies and make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification." As a means for the discharge of these responsibilities, the General Assembly, in 1947, established the International Law Commission; See, in: "Foreword", *The Work of the International Law Commission, Eighth Edition, Volume I*, (New York: United Nations, 2012), p. XIII.

[127] The 26th ILC session was held in Geneva, from 6 May – 26 July 1974 (YILC, 1974, Vol. I).

[128] The result of the election was announced publicly on 9 May 1974 (YILC, 1974, Vol. I, 1254th meeting). Following Šahović's election, the membership of the ILC was as follows: Roberto AGO (Italy), Mohammed BEDJAOUI (Algeria), Ali Suat BILGE (Turkey), Juan Jose CALLE Y CALLE (Peru), Jorge CASTANEDA (Mexico), Abdullah EL-ERIAN (Egypt), Taslim O. ELIAS (Nigeria), Edvard HAMBRO (Norway), Richard D. KEARNEY (United States of America), Alfredo MARTINEZ MORENO (El Salvador), C.W. PINTO (Sri Lanka), Robert Q. QUENTIN-BAXTER (New Zealand), Alfred RAMANGASOAVINA (Madagascar), Paul REUTER (France), Zenon ROSSIDES (Cyprus), Milan ŠAHOVIĆ (Yugoslavia), Jose SETTE CAMARA (Brazil), Abdul Hakim TABIBI (Afghanistan), Arnold J.P. TAMMES (Netherlands), Doudou THIAM (Senegal), Senjin TSURUOKA (Japan), Nikolai USHAKOV (Union of Soviet Socialist Republics), Endre USTOR (Hungary), Sir Francis VALLAT (United Kingdom of Great Britain and Northern Ireland), Mustafa Kamil YASSEEN (Iraq). (YILC, 1974, Vol. I, p. ix).

[129] *Ibid.*, 1256th meeting.

[130] *Ibid*., 1256th meeting, para. 3.

[131] *Ibid*., 1260th meeting.

knowledge on the ILC matters and previous experience in commenting the topics on the ILC's agenda at the Sixth Committee, Šahović very quickly adapted to the work of the Commission and focused mainly on the draft articles on the succession of States in respect of treaties, prepared by Sir Francis Vallat (United Kingdom) as Special Rapporteur. As this was the second reading of the draft articles, Šahović stated that he supported the Special Rapporteur's approach to the topic and approved of the draft articles in general.[132] He intervened during the ensuing debate on the same subject at several meetings.[133] He also took an active part in commenting the draft articles on State responsibility, prepared by Roberto Ago (Italy), as well as the draft articles on Treaties between States and international organizations or between two or more international organizations.[134] He also joined other ILC members by speaking at a special session devoted to the tribute to the memory of late Prof. Bartoš.[135]

At the *27th ILC sessio*n (Geneva, 5 May - 25 July 1975), Šahović was elected second Vice-Chairman.[136] Speaking on the State responsibility, he endorsed the fundamental position taken by the Special Rapporteur in the new version of article 10, which seemed to include some progressive development of the rule on the responsibility of States.[137] On the Succession of States in respect of matters other than treaties, regarding the provisions on the property of third States that might be affected, Šahović expressed his opinion that it could not be examined in the context of the general provisions and that he was in favour of examining each phenomenon as a whole.[138] During the consideration of the draft articles on the most favoured nation clause, a number of ILC members agreed with Šahović's suggestions [especially on the saving clause] on how to improve the wording.[139] Regarding the draft articles on the Treaties between States and international organizations, Šahović thought that, "in view of the meaning given to it in the Vienna Convention [on the Law of Treaties], the term 'ratification' could also apply to the practice of international organizations. The expression proposed in paragraph 1b^{bis} represented a compromise between the views expressed in the general discussion. He could therefore accept it, although he regretted that the Commission had not considered it advisable to use the word 'ratification' for international organizations and hoped the question might be

[132] *Ibid*., 1266th meeting, para.6.

[133] See, in particular: *Ibid*, 1267th, 1268th, 1270th, 1279th, 1281st, 1282nd, 1286th, 1293th meetings.

[134] *Ibid*., 1278th and 1274th meetings.

[135] *Ibid*., 1276th meeting.

[136] YILC 1975, Vol. I, 1302nd meeting, paras. 23-24.

[137] *Ibid*., 1307th meeting, para.7.

[138] *Ibid*., 1324th meeting, para. 26.

[139] *Ibid*., See: Sette-Camara (1332 meeting, para 17), Ustor (1335 meeting, para 55; 1339th meeting, para 31), Ushakov (1337th meeting, para 18).

settled in a more satisfactory manner in the future". Hambro and Kearney entirely agreed with his opinion.[140]

At the *28th ILC session* (Geneva, 3 May – 25 July 1976), Šahović was elected Chairman of the Drafting Committee.[141] Regarding the draft articles on the State responsibility, he underlined that "In view of the development of international law in recent years and the need to take account of the international legal order recognized by States as a whole, there should be a proviso excluding the application of the general principle in the case where a peremptory rule of international law transformed into required conduct an act which, at the time it was performed, had to be considered as a breach of an international obligation. He therefore approved the content of paragraph 2, particularly since the Special Rapporteur, at the present meeting, had said that he had not envisaged all the cases where *jus cogens* operated, but only those in which *jus cogens* made it mandatory to perform an act of the same kind as the act which, at the time it was performed, had been considered as wrongful".[142] On the draft articles on the Most-favoured nation clause, Šahović expressed some doubts with regard to the need to draft a special regime for the frontier traffic, which was also shared by Ago and Reuter.[143] He added that "The Commission therefore had two tasks to perform at the present session. It had to situate the draft articles in the general context of international law and to take account of the political and economic problems which arose in the day to-day life of the international community. Those extra-juridical factors were particularly important because of the present economic crisis, and the Commission should take those circumstances into account and endeavour to find solutions".[144] Several members of the ILC agreed with Šahović's suggestions on various articles and in particular on the need to define the position of developing countries.[145] On the Succession of States, Šahović pointed out that "if the Commission decided to delve deeper into the question of archives, it would have to take account of peace treaties as a source of the rules to be enunciated. In recent times, State practice in that matter had been based mainly on peace treaties".[146] As to the wording of the articles under consideration, he observed, "first, that paragraph 1 of article 14 began with the reservation 'Unless otherwise agreed or decided', which appeared in other provisions of the draft. He wondered whether it would not be preferable to draft a general provision emphasizing the residuary character of the rules in the draft

[140] *Ibid*., 1353rd meeting, paras. 6–7.

[141] YILC 1976, Vol. I, 1360th meeting, paras. 49–52.

[142] *Ibid*., 1368th meeting, para. 33.

[143] *Ibid*., 1381st meeting, paras. 17–19.

[144] *Ibid*., 1383rd meeting, paras. 30–35

[145] *Ibid*., See, in particular, Ustor, 1387th meeting, paras. 55–56.

[146] *Ibid*., 1392nd meeting, para. 29.

and reserving the faculty of States to settle their problems by special agreements".[147] He shared the view of the Special Rapporteur on the need to emphasize the economic concept of sovereignty of States.[148] Towards the end of the session, Šahović as Chairman of the Drafting Committee, introduced the relevant draft articles considered by the Drafting Committee, on the State Responsibility, the most-favoured nation clause, and the Succession of States.[149]

At the *29th ILC session* (Geneva, 9 May – 29 July 1977),[150] Šahović was appointed to the Drafting Committee.[151] On the Succession of States, Šahović asked a very pertinent question "whether the Special Rapporteur really intended to end his draft articles with the question of succession to State debts, as he had said in introducing his report. It was stated in the Commission's report on the work of its twenty-eighth session that the Commission intended to study other questions, such as those of archives and the peaceful settlement of disputes".[152] He also stated that "It was important to bear in mind the orientation the Commission had so far given to its study of succession of States in respect of matters other than treaties. That orientation was based on an empirical analysis which should bridge the gap and resolve the contradictions between doctrine and jurisprudence. In order to formulate modern rules appropriate to current needs, the Commission should make a special effort to study the practice followed after the Second World War in respect of succession to State debts, particularly by international banks. As there were no universally acceptable customary rules in that field, the general debate should be continued and, in accordance with the Commission's practice, the formulation of definitions should be left until the final stage of its work".[153] He had asked for the

[147] *Ibid*., 1394th meeting, para. 20.

[148] *Ibid*., para. 19.

[149] *Ibid*., 1401st meeting, paras. 2, 4; 1402nd meeting, para. 3; 1404th meeting, paras. 2, 4, 6, 9, 11, 28, 37, 40, 47, 53; 1405th meeting, paras. 2, 10, 20, 54.

[150] As a result of the elections held at the 31st UNGA session in 1976, the ILC consisted of the following members: Roberto AGO (Italy); Mohammed BEDJAOUI (Algeria); Juan Jose CALLE Y CALLE (Peru); Jorge CASTANEDA (Mexico); Emmanuel Kodjoe DADZIE (Ghana); Leonardo DIAZ GONZALEZ (Venezuela); Abdullah Ali EL-ERIAN (Egypt); Laurel B. FRANCIS (Jamaica); Edvard HAMBRO (Norway); S. P. JAGOTA (India); Frank X. J. C. NJENGA (Kenya); Christopher Waiter PINTO (Sri Lanka); R. Q. QUENTIN-BAXTER (New Zealand); Paul REUTER (France); Willem RIPHAGEN (Netherlands); Milan ŠAHOVIĆ (Yugoslavia); Stephen M. SCHWEBEL (United States of America) Jose SETTE CAMARA (Brazil); Sompong SUCHARITKUL (Thailand); Doudou THIAM (Senegal); Senjin TSURUOKA (Japan); N. A. USHAKOV (Union of Soviet Socialist Republics); Sir Francis VALLAT (United Kingdom); Stephan VEROSTA (Austria); Alexander YANKOV (Bulgaria). YILC 1977, Vol. I, xi. Šahović has obtained the highest number of votes in the secret ballot - 127 out of 143 total members casting ballots (A/31/PV.68).

[151] YILC 1977, Vol. I, 1425th meeting, para. 35.

[152] *Ibid*., 1416th meeting, para. 34.

[153] *Ibid*., 1417th meeting, para. 39.

clarification with regard to triangular relationship between the Predecessor State, the Successor State and the third State, as that relationship [in his view] was essential.[154] With regard to the special category of State debts "odious debts" which were more in nature of a theoretical concept deriving from doctrine which the Special Rapporteur was proposing to make into a juridical concept by according it a separate place in international law, he was wondering whether they should be made an exception to the general rules concerning succession in respect of State debts in view of their non-transferability.[155] Regarding the draft article on newly independent States, for his part, Šahović fully supported the text adopted by the Drafting Committee in the light of the explanations provided by its Chairman. "It not only accorded with the Special Rapporteur's views, but was also in keeping with both past and existing practice in regard to State debts. It was incumbent on the Commission to draw up rules that would reflect existing law and contribute to the solution of future problems".[156] As to the draft article on Treaties between States and international organizations, Šahović was of the opinion that "international organizations should be permitted to formulate reservations to treaties concluded between several international organizations. Although he had no definite ideas about the rules to be formulated, he had a preference for a liberal solution. The Commission should agree on general principles and leave drafting problems till later".[157] He was against introducing different regime for international organizations which would mean an element of discrimination which might undermine the foundation of the draft article as it should be based on a presumption of the full equality of the parties to treaties.[158] Šahović considered, like Ushakov, that a distinction should be made in article 30 with regard to treaties between international organizations and treaties between States and international organizations, but he thought the rule should be the same for both categories. The problem posed by Article 103 of the Charter seemed to him extremely complex and he saw no alternative but the one proposed in paragraph 6.[159] Concerning the Preliminary report on the second part of the topic of relations between States and international organizations, prepared by El-Erian, Šahović stated that "In his preliminary report, the Special Rapporteur had indicated the general evolution of law on the subject, but he should now proceed to a much more concrete analysis of the situation, taking account of new developments. His first task should be to make sure of the value of the existing conventional rules on which he intended to base his work. To that end, it was important to make a comprehensive study of practice. It was necessary

[154] *Ibid*., 1423rd meeting, para. 24.

[155] *Ibid*., 1426th meeting, paras. 15–19.

[156] *Ibid*., 1449th meeting, paras. 15–19.

[157] *Ibid*., 1430, paras. 24–25.

[158] *Ibid*., 1431st meeting, paras. 38–45.

[159] *Ibid*., 1438th meeting, para. 4.

to avoid drafting provisions which duplicated those already embodied in international conventions".[160] On the State responsibility, Šahović was not sure "what importance should be attached to the distinction between the result aimed at by an international obligation and the means used to achieve that result. Article 20 centred on specific means. However, from a general point of view, it should not be forgotten that it was the result which mattered. Furthermore, article 20 could play a not insignificant part in the development of the law relating to international obligations and State responsibility, and thus contribute to strengthening the role of international law in a world where the development of internal law and that of international law were interdependent".[161] He considered, "first, that the content of the international obligation referred to in article 21 should be defined in that article (…). It was necessary to determine how and when an initial course of conduct led to a situation incompatible with the required result. It was also necessary to determine how and when a treaty obligation permitted the State to rectify such a situation".[162] He also questioned the nature of the exhaustion of local remedies in article 22.[163] At the same time, Šahović "regretted that article 22 as reformulated applied only to aliens. The Special Rapporteur had rightly extended the scope of the article to cover nationals but the majority of the Commission had expressed a preference for a more restrictive provision. Yet the Commission must always have the development of international law in mind, and it was conceivable that the rule stated in article 22 would come to apply more and more to nationals. He asked that his point of view should be reflected in the Commission's report".[164]

At the *30th ILC session*, Šahović was unanimously elected first Vice-Chairman and also appointed Chairman of the Planning Group.[165] Commenting on article 22 of the draft articles on the State responsibility, Šahović underlined that "From the point of view of State practice, the need to provide against the possibility of a breach of an international obligation to prevent a particular event was indisputable. It was clear from doctrine, international jurisprudence and State practice that there could be no doubt whatsoever concerning the value of the rule stated in the article. However, its application might cause some problems, and it must therefore be stated in terms that left no room for differences of interpretation".[166] Regarding article 24 (*Time of the breach of an international*

[160] For the Report, see: A/CN.4/304; for Šahović's view:1452nd meeting, paras. 31–34.

[161] YILC 1977, Vol. I, 1455th meeting, paras. 15–17.

[162] *Ibid*., 1460th meeting, paras. 3–7.

[163] *Ibid*., 1465th meeting, paras. 30–34.

[164] *Ibid*., 1469th meeting, para. 32.

[165] Held in Geneva, from 8 May-28 July 1978 (YILC 1978, Vol. I), 1474th meeting, paras. 15–17; 1486th meeting, para. 1. At that session, the author, being a participant of the International Law Seminar and observer at the ILC meetings, established the first contact with Šahović.

[166] *Ibid*., 1477th meeting, para. 21.

obligation), Šahović considered "that was only one aspect of the problem, the notion of time being one of the constituent elements of the breach of the international obligation, and therefore of international responsibility. As it stood, article 24 did not stress that point sufficiently. Perhaps an effort should be made to bring out clearly, in the first paragraph of the article, the importance of the time element for the entire section on the objective element of the internationally wrongful act. To that end, emphasis would have to be placed on three main aspects of the problem: the breach of an international obligation, the internationally wrongful act and the duration of the international obligation whose breach, through an internationally wrongful act, engendered international responsibility".[167] As to the implication of a State in the internationally wrongful act of another State, Šahović stressed that in connexion with that question "the Commission had at previous sessions discussed the concepts of incitement, assistance, complicity and indirect responsibility. In embarking on chapter IV, it should perhaps have explained the relationship between those different concepts".[168] During the second reading of the draft articles on the Most-favoured nation clause, Šahović thought that "the Commission ought to consider the draft articles in the light of the written and oral comments of Member States and international organizations, and to respond to the wishes expressed in those comments by analysing in the commentary certain questions relating to the structure, wording and general presentation of the draft".[169] Šahović also considered that "for practical reasons as well as for reasons of principle, no change should be made in the text of article 1. The Commission had been right to limit the scope of the draft articles to most-favoured-nation clauses contained in treaties concluded between States. Since the entire draft had been prepared with that limitation in mind, any extension of its scope would entail the amendment of several articles".[170] He pointed out that it was necessary "to bear in mind the role played by the most-favoured-nation clause in international relations, especially in economic relations, and to place it in a realistic setting. The clause, however, was only one instrument among many in a world that was trying to establish a new international economic order. For instance, account should be taken of the Charter of Economic Rights and Duties of States".[171] He expressed an opinion that "the Commission had made a laudable effort and shown that it was capable of resolving the problems raised by the application of the most-favoured-nation clause to developing countries. Nevertheless, to meet the wishes of States, particularly of developing States, it should go a step further and take account of

[167] *Ibid*., 1481st meeting, para. 2.

[168] *Ibid*., 1518th meeting, para. 10.

[169] *Ibid*., 1483rd meeting, para. 5.

[170] *Ibid*., 1484th meeting, para. 32.

[171] *Ibid*., 1489th meeting, paras. 30-33. "Charter of Economic Rights and Duties of States", A/RES/3281(XXIX), Annex.

the possible impact of the expansion of economic and trade relations among developing countries on the application of the clause. That was a question of crucial importance, to which the Commission should devote a separate article".[172] He also agreed with those who had emphasized the importance of the problem of customs unions, but thought that its importance should not be exaggerated; the Commission was not dealing with the issue for the first time and had already succeeded in defining a good many of its aspects. The problem was indeed a real one, whose importance was emphasized by the political pressures exerted by certain groups of States. The Commission should adopt a clearer position on the subject so that States would be enabled to express their views more precisely. A solution should be sought on the basis of the Charter of Economic Rights and Duties of States (Art. 12).[173] As to the draft articles on the Succession of States, Šahović said that "The question arose, however, whether the Special Rapporteur had been right to emphasize in the report the distinction to be drawn between the situation of a unitary State and that of a federal State. The rule enunciated in article 25 should be broad enough to cover both situations, for in either case dissolution of a State was involved, and he hoped the Drafting Committee would formulate a sufficiently clear rule in that respect. The commentary, moreover, should indicate that the rule was a general one and applicable both to unitary and to federal States".[174] With regard to article on the 'Effects of a treaty to which an international organization is party with respect to third States members of that organization', Šahović thought that "the term 'third States members' was unsatisfactory [as] it was not immediately apparent what case article 36 bis was designed to cover, and an attempt should be made to find a better expression".[175] El-Erian, Special Rapporteur on the topic of "Relations between States and international organizations" quoted Šahović, who had suggested that a much more practical analysis should be made of the situation, taking account of recent developments in the international community and of their impact on international organizations. It had also been suggested that, in dealing with the legislative sources of the legal status, privileges and immunities of international organizations, a thorough study should be made of national legislation, which supplemented conventions and headquarters agreements.[176] Regarding the "Review of the multilateral treaty-making process", Šahović said that "the Working Group's excellent report provided a basis for a thorough discussion on a subject to which many States Members of the United Nations attached great importance. The Sixth Committee of the General Assembly had considered that the Commission was the body most competent to examine the multilateral treaty-

[172] *Ibid*., 1496th meeting, para. 5.

[173] *Ibid*., 1499th meeting, paras. 30–35.

[174] *Ibid*., 1504th meeting, para. 9.

[175] *Ibid*., 1511th meeting, para. 13.

[176] *Ibid*., 1522nd meeting, para. 26.

making process and was expecting it to make a detailed study of that question. The Commission should therefore set aside a sufficiently large number of meetings at its next session for that purpose. It should analyse the experience it had itself acquired and shed light on general world practice in the matter".[177]

Šahović was unanimously elected Chairman of the *31st ILC session* (Geneva, 14 May - 3 August 1979).[178] Šahović thanked the Commission for having elected him to the Chair and said that he would endeavour to show himself worthy of the trust the members had placed in him. As the UN Legal Counsel, informed that the ILC members had been granted, for the duration of the ILC session in Geneva, the same privileges and immunities to which the judges of the ICJ are entitled and these are the privileges enjoyed by the heads of missions accredited to international organizations at Geneva, Šahović stated that "the status of the members of the Commission was of special importance owing to the duration of the Commission's sessions. The way in which the problem had been settled would certainly give the members of the Commission full satisfaction. The decision of the Federal Council, to which he expressed the Commission's sincere thanks, was further evidence of the constructive co-operation between Switzerland and the United Nations, which, in the particular case, served the cause of the codification and progressive development of international law".[179] Commenting on the State responsibility in his personal capacity, Šahović said that "article 28 would have to be drafted in more explicit terms, so as to answer the questions raised in the course of the debate, in particular with regard to the nature and degree of the responsibility referred to in that provision. It was also important to take account of positive international law, as Riphagen had shown by emphasizing the relationship between fact and law. The Commission should therefore base its deliberations on the United Nations Charter, since the terms of the Charter offered the decisive test for saying that a given situation was lawful or unlawful. It would be necessary to formulate precise rules relying on the Charter and on positive international law, as a basis for determining the lawfulness of the situation envisaged".[180] Under Šahović's Chairmanship, the Commission had elected at a private meeting, Jens Evensen (Norway), Boutros-Ghali (Egypt) and Julio Barboza (Argentina), to fill the vacancies caused by the election of Roberto Ago,

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[177] *Ibid*., 1526th meeting, para. 16.

[178] YILC 1979, Vol. I, 1530th meeting, paras. 13-14. Tsuruoka (Japan) nominated Šahović, whom he described as both a scholar and a skilful diplomat and as particularly qualified for the office of Chairman on account of his sense of justice and his kindness coupled with efficiency. Ushakov (USSR), Reuter (France), Thiam (Senegal), Sir Francis Vallat (United Kingdom), Jagota (India) and Tabibi (Afghanistan) seconded the nomination. The author of this article had the honour to be one of the Chairman's assistants that were taking the turns during the session.

[179] See the statements of Eric Suy and Šahović, Ibid., 1531st meeting, paras. 1–3.

[180] *Ibid*., 1535th meeting, paras. 18–21.

Abdullah El-Erian and Jose Sette-Camara as judges of the International Court of Justice.[181] Speaking on the State responsibility, Šahović said that "chapter V, entitled 'Circumstances precluding wrongfulness', was necessary to the draft. In his preliminary considerations (A/CN.4/318 and Add. 1–3, paras. 48–55), [Special Rapporteur] Ago had demonstrated that need, but the discussion on the first article of chapter V, namely, article 29, gave reason to fear a Pandora's box. In tackling the question of circumstances precluding wrongfulness, the Commission was running the risk of having to take a position on certain aspects of general international law for the first time, since it had not as yet had occasion specifically to consider those special circumstances. In several of its reports on previous sessions, the Commission had already made reference to the various special circumstances that it had intended to study. It was now confronted with preliminary issues that might make the elaboration of the articles in chapter V much more complicated. To overcome those difficulties, it might perhaps be advisable to draft an article that could be placed at the beginning of chapter V and would explain the context in which the circumstances precluding wrongfulness were to be considered".[182] As Chairman of the ILC, Šahović had also the opportunity to welcome the good colleagues he worked with previously in the Sixth Committee, and who were in the meantime elected judges of the ICJ: Sir Humphrey Waldock, President of the ICJ, T.O. Elias, Vice-President of the Court, and N. Morozov, a judge of the Court, who addressed the meeting.[183] Speaking on the co-operation with other bodies, he congratulated on behalf of the Commission, the Observer for the Asian-African Legal Consultative Committee (ALCC) on his outstanding statement and pointed out how useful it was for the Commission to keep in touch with the activities of regional organizations which, like the ALCC, were working on the codification and development of international law. Year after year, the Committee had been reviewing the juridical problems studied by the Commission and endeavouring to find solutions to them.[184]

As temporary Chairman, Šahović opened the *32nd ILC session* on 5 May 1980, with a tribute to the memory of Marshal Josip Broz Tito, President of Yugoslavia, who passed away a day before. A number of ILC members took the floor on that occasion.[185] As Šahović was Chairman of the previous session, he recalled that "by [UNGA] resolution 34/141, concerning the report of the Commission on the work of its thirty-first session, the General Assembly had expressly recognized: the importance of referring legal and drafting questions to the Sixth Committee,

[181] *Ibid*., the result of the elections was announced at the 1541st meeting.

[182] *Ibid*., 1542nd meeting, paras. 41–42.

[183] *Ibid*., 1546th meeting, paras. 1–7.

[184] *Ibid.*, 1568th meeting, paras. 63–65.

[185] Held in Geneva, from 5 May – 25 July 1980; YILC 1980, Vol. I, 1584th meeting, paras. 1–3.

including topics which might be submitted to the International Law Commission, thus enabling the Commission further to enhance its contribution to the progressive development of international law and its codification, something which seemed to indicate that, in its concern to participate more effectively in the work of the Commission, the Sixth Committee was showing increased interest in the question of methods of considering the Commission's reports".[186] Commenting on the Question of treaties concluded between States and international organizations or between two or more international organizations, regarding the concept of the permanent disappearance or destruction of an object indispensable for the execution of the treaty, Šahović rightly pointed out that "the object must not be only a physical one, but might conceivably also be invoked in the case of the disappearance of a legal situation, regardless of whether the relevant treaty was between States, between States and organizations, or between two or more organizations." And he gave the example of treaties relating to Trust Territories that had been concluded between the UN and certain States. When those Territories ceased to be subject to the regime of trusteeship, the Organization ceased to be bound to perform the obligations arising under such treaties.[187] He was also of the opinion that new kinds of relations which might be established between States and international organizations should be studied in greater depth.[188] Šahović said that draft article 66 was closely bound up with the annex relating to procedures established in application of the article; the annex should be studied, if not at the same time as the article, at least immediately thereafter. He saw no reason why the future Convention should not have such an annex.[189] Šahović noted that the questions of succession and outbreak of hostilities "deserved the Commission's full attention and (…), that there was no difficulty as to the substance of the draft article, but clarification was needed on certain points, and particularly on the interpretation to be given to the expression 'aggressor State'. He was not opposed to the idea that, in the Definition of Aggression, the term 'State' might include the concept of 'a group of States', but he wondered whether international organizations could be completely assimilated with groups of States".[190] According to his opinion, "there were two types of problem to be solved: problems of principle and technical and adaptation problems. As far as the problems of principle were concerned, he gathered that many members regarded the debate on the annex as an opportunity for considering the general lines to be followed by the draft, since the questions raised by the use of various methods of settlement of disputes had to be dealt with at that stage. In

[186] *Ibid*., 1584th meeting, para. 4.

[187] *Ibid*., 1586th meeting, paras. 11–14.

[188] *Ibid*., 1588th meeting, para. 7.

[189] *Ibid*., 1589th meeting, para. 12. Riphagen voiced his general support for the views expressed by the Special Rapporteur and Šahović, Ibid., para.16.

[190] *Ibid*., 1591st meeting, para. 37 and 1592nd meeting, para. 35.

that respect, he considered that the Commission should follow the Vienna Convention [on the Law of Treaties], since the annex was principally concerned with Part V of the draft, relating to the invalidity, termination and suspension of the operation of treaties, and particularly to section 4 thereof, on procedure. It would not be desirable to extend the scope of articles 65 and 66, nor, consequently, that of the annex. The authors of the Vienna Convention [on the Law of Treaties] had made a choice, and, as the Special Rapporteur had said, the Commission should follow that precedent".[191] At the end of consideration of the draft articles, Šahović drew attention to the contribution which the draft articles would make to the codification and progressive development of contemporary international law. He reminded the Commission that two former members, Hambro and Kearney, had been convinced, from the outset, of the need to codify the topic. "But their enthusiasm had never been generally shared, and it was to be feared that the draft articles might still be treated with some reserve in the Sixth Committee or at a future codification conference. There was no denying that the draft added a new dimension to the concept of the legal personality of international organizations".[192] With regard to the State responsibility, Šahović felt that "further consideration was needed on the problem of the relationship between responsibility for an internationally wrongful act and responsibility for an act not prohibited by international law…and that in his view, the Commission should continue to deal concurrently with all those problems, indicating possible solutions but taking care not to place too much emphasis on their possible links".[193] Also, draft article 33 "had to be examined not only from the point of view of the draft articles as a whole, and particularly chapter V thereof, but also from the point of view of general international law. From that angle, the article seemed to be justified, although it might be necessary to specify more clearly the limits within which state of necessity could be taken into consideration".[194] Special Rapporteur Ago mentioned that Šahović had set the problem of the state of necessity in its proper perspective within both the system of international law and systems of domestic law. His view, with which he (Ago) concurred, was that the field of application of the notion of state of necessity must be precisely delimited. However, Šahović also held that it was essential that the draft articles should contain a provision relating to state of necessity (…), and (…) had suggested that the terms of the draft articles should be strengthened, and that perhaps an express clause should be added relating to compensation for possible damage. The Commission might possibly accede to that suggestion, although it should remember that during the discussion of an earlier draft article raising the same problem, Riphagen had taken the view that it would be preferable to include a

[191] *Ibid*., 1595th meeting, paras. 21–26.

[192] *Ibid.*, 1639th meeting, para. 26.

[193] *Ibid*., 1599th meeting, para. 14.

[194] *Ibid*., 1615th meeting, para. 5.

separate general provision—a solution that seemed preferable to him".[195] Šahović further commented that "The debate on draft article 34 had afforded an opportunity to discuss general questions which went beyond the framework of that provision. For example, a parallel had been drawn between the concepts of self-protection or self-help embodied in general international law and of self-defence as embodied in Article 51 and other provisions of the Charter of the United Nations. In his opinion, there was no doubt that the content of Article 51 of the Charter clearly reflected the progress made in the development of general international law with regard to the concept of self-defence. That article had been drafted in the light of the prohibition of recourse on the use of force, and it regarded self-defence, whether individual or collective, as an inherent right. In any event, the Commission should move in that direction so as to carry out its task of promoting the progressive development of international law. In order to formulate the article under consideration, it must also take account of the facts. The application of Article 51 of the Charter had given rise to enormous dispute, and the actual situations in which it had been applied had always been so delicate and had involved so many political interests that it had not been possible to adopt a clear position, something that might be pointed out in the commentary to draft article 34".[196] Ago, in his reply to the comments made by Commission members, stated that Šahović had taken "a courageous and at times almost audacious stand." He had pointed out that Article 51 of the Charter was at present the expression of general international law and had examined the meaning of the term "self-defence". Šahović had also pointed out that, just as self-defence was in the forefront of circumstances precluding wrongfulness in internal law, it should be in the forefront of the circumstances enumerated in chapter V of the draft articles. He had even regretted that Ago had not gone further than had been the case in the positions he had adopted on some points of interpretation of the Charter. Actually, as the draftsman of a set of articles, he (Ago) had deliberately—although regretfully—shown the greatest caution in that respect. Lastly, Šahović had expressed his preference for a reference to the Charter as a whole rather than to Article 51 alone.[197] Regarding the topic of the non-navigational uses of international watercourses, Šahović stated that "From the purely legal point of view, the ultimate aim was the codification and progressive development of international law on the topic, in other words, to regulate the relations between the rights and duties of riparian States that used the waters of an international watercourse as they could be used with existing technical possibilities. It was necessary, therefore, to reconcile respect for the rights of States with the requirements of legal regulation of international cooperation, and in particular the respect for the principle of good neighbourliness, which had underlined all

[195] *Ibid*., 1615th meeting, para.17–18.

[196] *Ibid*., 1621st meeting, paras.13–19.

[197] *Ibid*., 1629th meeting, para. 23.

solutions of such problems adopted for decades. The Commission should therefore take positive law as the starting point, and, as the Special Rapporteur proposed, seek solutions by which the principles derived from positive law could be adapted to modern situations".[198] Schwebel [Special Rapporteur], summing up, fully agreed with Šahović that the Commission should strain out customary international law from the treaties and jurisprudence on the topic.[199] At the same time, Šahović regretted that the principle of the permanent sovereignty of States over their natural resources had not been mentioned in the draft report in connexion with article 5, because he thought one could not speak of shared natural resources without taking that principle into account.[200] With regard to the draft articles on the Jurisdictional immunities, Šahović explained that he would prefer the Commission to study mainly contemporary practice. Reuter had said he was not sure that a principle of State immunity existed in contemporary practice; the Commission must prove the existence of such a rule in contemporary international law before trying to formulate it. "The Commission should not be hasty with such a complex subject, and it was in no way bound to study one, not to say two, drafts of articles every year. It might perhaps be preferable to let the study of such a delicate matter ripen slowly".[201] On the Status of the diplomatic courier and the diplomatic bag not accompanied by a diplomatic courier, Šahović was of the opinion that "The legal basis for the study was to be found in the Vienna conventions on diplomatic law and more particularly in the articles concerning the diplomatic courier and bag. However, in regard to application of the rules already adopted in those conventions, there were a number of problems arising out of State practice in the matter. In his opinion, however, elaboration of those rules should not be carried too far, and they should not be raised, in the hierarchy of the norms of diplomatic law, to the same level as the general basic rules already codified by the Commission in the Vienna conventions and approved by the international community as part of general international law. It would be enough to prepare a draft of articles that could be adopted in the form of an additional protocol to the Vienna convention on diplomatic law".[202]

At the *33rd ILC session* (Geneva, 4 May – 24 July 1981), Šahović was elected second Vice-Chairman and at the Planning Group.[203] Regarding the Question of treaties concluded between States and international organizations or between two or more international organizations, Šahović commented on the content of articles 6 and 27 that might seem to militate in favour of retaining the definition of the

[198] *Ibid*., 1607th meeting, para. 34.

[199] *Ibid*., 1612th meeting, para. 3.

[200] *Ibid*., 1641st meeting, para. 78.

[201] *Ibid*., 1624th meeting, paras. 24–27.

[202] *Ibid.*, 1636th meeting, paras. 9–12.

[203] YILC 1981, Vol. I. This was Šahović's last session, as he did not seek to be re-elected.

expression 'rules of the organization'. He pointed out that "it was perhaps only the novelty of the expression that had made the Commission wish to define it, whereas the expression 'internal law of the State' did not need to be defined. The Commission would probably be better able to take a final position on that point when it had examined all the articles and had been able to study the use of the expression in the various texts forming the draft. For his part, he was inclined to favour the inclusion of a definition of that expression in the draft".[204] He was also in favour of the equality of States and international organizations.[205] Šahović said that he shared the views expressed by Sir Francis Vallat on the problem of reservations to bilateral and multilateral treaties. Indeed, "he seemed to recall that, when the Commission had elaborated its draft articles on the law of treaties, it had not clearly indicated in the commentary what course should be followed. Perhaps it would be wiser not to take a final decision at the present time either. On the one hand, practice should not be prevented from developing, and on the other, the Commission did not seem to be entirely clear whether States should be able to formulate reservations to bilateral treaties".[206] He was afraid the Commission might be attaching too much importance to objections to reservations, which were simply the consequence of the right to enter reservations. "It might even be said that they were corollary to the right to enter reservations".[207] Turning to the new wording proposed by the Special Rapporteur, Šahović noted that "it was concerned with the effects of treaties as well as with the question of assent. It was arguable that all the States members of international organizations must, as States possessing a legal personality of their own, be treated as third States with respect to treaties concluded by the organization of which they were members and which had its own legal personality and was capable of concluding treaties independently. In practice, however, only certain States members might be parties to treaties concluded between an international organization and States, and some States members would be third parties with respect to a treaty concluded by it".[208] As regards the topic of the Jurisdictional immunities of States and their property, Šahović advised the Special Rapporteur to concentrate his analysis on State practice and to propose to the Commission draft articles that would carry its work beyond the preliminary stage (…). As to the "new point of departure" mentioned in paragraph 9 of the report, he thought that "the general basis of the draft should rather be the principle of cooperation between States, which should make it possible to settle the practical question of jurisdictional immunity, taking the mutual interests of the States

[204] *Ibid*., 1645th meeting, paras. 3–6. Sucharitkul (Ibid., para. 7) and Reuter, Special Rapporteur, (Ibid., para. 38) agreed with Šahović and Sir Francis Vallat was of the very similar opinion (*Ibid*., para. 13).

[205] *Ibid*., 1649th meeting, paras. 20–21.

[206] *Ibid*., 1650th meeting, paras. 18–19.

[207] *Ibid*., 1651st meeting, paras. 21–23.

[208] *Ibid*., 1675th meeting, para. 27, 1676th meeting, para. 37.

concerned into account. Any other solution would inevitably lead to a deadlock through the opposition of two rival sovereignties of equal strength".[209] Šahović stated that "the Special Rapporteur had indicated the main elements which made State consent a general rule in the field of the jurisdictional immunities of States. However, paragraphs 1 and 2 of article 8 did not appear to cover all the aspects of that rule. Their defect was not that they were too general, but rather that they were insufficiently precise concerning the elements that constituted a general rule".[210] Like Sir Francis Vallat, Šahović thought that "the Commission should look only to international law as revealed by practice and devise general rules falling within the context of international law as such, with no reference to the internal law of States".[211] Concerning the draft articles on the Succession of States in respect of matters other than treaties, Šahović felt that "since the Commission had decided in principle to mention State archives in article 1, there would have to be a separate part of the draft on that subject. That part should obviously be aligned with the part concerning State property, but combining those two parts was impossible".[212] He also observed that a definition of State debt [in article 18] was not yet sufficiently clear.[213] On the Part 2 of the draft articles entitled "The content, forms and degrees of international responsibility", Šahović noted that "chapter I (General Principles) was presented by the Special Rapporteur as covering the entire topic of Part 2 of the draft articles on State responsibility. However, the reading of the three articles which formed that chapter created the impression that it did not cover the topic as a whole, and that the principles set forth in it were concerned primarily with the situation of a State which committed a breach of an international obligation. To ensure that chapter I really covered the entire question of the content, forms and degrees of State responsibility it would be necessary for it to enunciate some further general principles relating to the new inter-State relationships resulting from a breach of an international obligation. To that end, account would have to be taken in particular of the second and third parameters mentioned by the Special Rapporteur, namely, the new right of the 'injured' State, and the position of the 'third' State in respect of the situation created by the internationally wrongful act".[214] He was of the opinion that the difficulties being encountered by the Commission "were the difficulties inherent in getting any ambitious and difficult project under way. It has to be recognized that in preparing Part 1 of the draft the Commission had overturned the traditional theory of State responsibility, by taking account both of the Charter of the United Nations and of the changes in the attitude of the States as a whole towards the establishment of an objective international

[209] *Ibid*., 1655th meeting, paras. 8-14.

[210] *Ibid.*, 1663rd meeting, para. 7.

[211] *Ibid*., 1664th meeting, para. 36.

[212] *Ibid*., 1660th meeting, para. 33-34.

[213] *Ibid*., 1672nd meeting, para. 49.

[214] *Ibid*., 1668th meeting, para.12.

legal regime of responsibility. Admittedly the sovereignty of States must be safeguarded, but it was no less true that States, as subjects of international law, were being brought under a much more general regime which, more and more, was determining their rights and duties independently of their will. Thus, the Commission could not devise a universal regime of State responsibility without considering the relevant trends in international crimes and international delicts. It had been Commission [that] had drafted article 19, relating to international crimes and international delicts. It had been well aware that such an article might raise many difficulties when the provisions for the content, forms and degrees of State responsibility came to be prepared".[215] On the Status of the diplomatic courier and the diplomatic bag not accompanied by a diplomatic courier, Šahović stated that "he sometimes had the impression that the Commission exaggerated the importance of the subject under consideration. It was actually a fairly modest subject, although it had its practical aspects, as the Special Rapporteur has pointed out. At all events, no controversial legal problems were involved, for the general status of the diplomatic courier and the diplomatic bag had already been laid down in various multilateral conventions which had codified the rules of customary law. That raised the question how an examination of the subject by the Commission could contribute to the codification and progressive development of international law. From the outset, the Commission had emphasized the need to pinpoint those new and practical aspects of the subject that were the outcome of progress in the field of communications and of the abuse of certain privileges and immunities. The need, then, was to introduce the necessary innovations and provide the information essential for the guidance of States in the application of the existing rules of international law. It followed that, in future, the Special Rapporteur should concentrate his research on State practice, with a view to determining which legal problems called for regulation. Any other approach might lead to a work of codification for which positive law would be the sole basis".[216]

DIPLOMATIC CONFERENCES ON THE CODIFICATION OF INTERNATIONAL LAW

United Nations Conference on Succession of States in Respect of Treaties (1977–1978)

Šahović did not participate in the first part of the Vienna Conference (4 April – 6 May 1977).[217] However, he took part as head of the Yugoslav delegation in its

[215] *Ibid*., 1669th meeting, para. 43.

[216] *Ibid*., 1693rd meeting, para. 7.

[217] United Nations Conference on Succession of States in Respect of Treaties, First session, Vienna, 4 April – 6 May 1977, Official Records, Volume I, Summary records of the plenary meetings and the meetings of the Committee of the Whole (A/CONF.80/16).

resumed session in 1978.[218] He also participated in the work of the Drafting Committee of the Conference. Šahović intervened in the debate in the Committee of the Whole just on a few occasions, as he preferred to let the other members of the delegation to be active in order to gain the necessary experience at a diplomatic conference. When commenting on various articles of the draft convention, Šahović had a great advantage as he already participated in the ILC in drafting the initial articles in question and therefore he was very much familiar with the *travaux préparatoires*. Thus, speaking on article 33 [Succession of States in cases of separation of parts of a State], he explained that "the reason why the ILC had included that article was to take account of the variety of circumstances in which a part of the territory of a State might separate and become a State, for the future convention must deal with all the practical problems that might arise. Not only was paragraph 3 and exception to paragraph 1, it was a genuine saving clause". He concluded that the ILC "had been right to provide, in paragraph 3, for the exceptional application of the 'clean slate' rule. Perhaps the wording of the paragraph was not entirely satisfactory and the Drafting Committee could improve it".[219] On article 6 [Cases of succession of States covered by the present articles], Šahović said he was "pleased to note that it was recommended to adopt the text of that article as proposed by the ILC, without change, since he considered that that text would help to reinforce international lawfulness". With regard to article 7 [Non-retroactivity of the present articles], he unreservedly supported the text "which would help to bring about the speedy application of the convention".[220] Speaking on the provisions on the establishment of foreign military bases and the principles of sovereignty over natural resources, Šahović said that "his delegation, which had already stated its position during the first part of the session, considered proposals concerning articles 12 and 12bis [Other territorial regimes] to represent a compromise, but a compromise that was reasonable in the light of contemporary international law and the balance of forces within the Conference. Approval of those proposals was essential if the future convention was to have any chance of entering into force. While his delegation would have preferred to see the contents of both proposals incorporated in article 12, it would vote for the provisions in the form in which they had been put before the Committee".[221] As Yugoslavia co-sponsored a draft resolution on Namibia, Šahović supported it, which was subsequently adopted by the Conference.[222]

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[218] United Nations Conference on Succession of States in Respect of Treaties, Resumed session, Vienna, 31 July - 23 August 1978, Official records, Volume II, Summary records of the plenary meetings and of the meetings of the Committee of the Whole (A/CONF.80/16/Add. l).

[219] Summary Records, Committee of the Whole, 48th meeting, para. 15.

[220] *Ibid*., 50th meeting, paras. 14–15.

[221] *Ibid*., 54th meeting, paras. 32–33.

[222] A/CONF.80/L.1.

At the end of the Conference, the Vienna Convention on the Succession of States in respect of Treaties with the accompanied resolutions was adopted at the 14th and 15th Plenary Meetings.[223]

United Nations Conference on Succession of States in Respect of State Property, Debts and Archives (1983)

In accordance with the previous understanding on the distribution of the seats of officials of the Conference among various regional groups, Šahović as head of the Yugoslav delegation, was elected Chairman of the Committee of the Whole, which was mandated to discuss, negotiate and agree on the draft Convention before submitting its text for the final adoption to the Plenary, presided by Dr. Seidl-Hohenveldern, as representative of Austria, the host country.[224] Mohammed Bedjaoui, Special Rapporteur of the ILC on succession of States in respect of State property, archives and debts, who was in the meantime elected judge of the ICJ, acted as special consultant in order to explain and comment on the draft articles.

As Šahović had to chair almost all the meetings of the Committee of the Whole, obviously he could not have taken the floor as representative of Yugoslavia during its meetings, but only afterwards, in the Plenary. That was not an easy task, since he had to chair the Committee for almost six weeks and 44 meetings in total, and had to intervene at all times in order to steer the meetings and accommodate different views on the respective draft articles, so as to come to an agreed solution. His work was accordingly recognized, as at the 10th plenary meeting, the Conference adopted a resolution by which it expressed deep appreciation of and gratitude to "Dr. J. Seidl-Hohenveldern, President of the Conference and to Dr. Milan Šahović, Chairman of the Committee of the Whole, who, thanks to their sagacity and wisdom in directing the deliberations, together contributed to the success of the Conference".[225] Šahović thanked (…), the Conference for the resolution it had just adopted and pointed that "He, and all who had held office during the Conference, had done their best to contribute to the preparation of the Convention, whose final conclusion had been immeasurably facilitated by the work of all members of the Secretariat, with whom he shared the appreciation expressed".[226]

Before the final vote on the draft convention, there was a sharp division of positions between the non-aligned countries, on the one side and the Western

[223] See: United Nations Conference on Succession of States in Respect of Treaties, 1977 session and resumed session, Vienna, 4 April – 6 May 1977 and 31 July – 23 August 1978, Official records, Volume III, Documents of the Conference (A/CONF.80/16/Add.2).

[224] See: United Nations Conference on Succession of States in Respect of State Property, Debts and Archives, Vienna, 1 March – 8 April 1983, Official records, Volume I, Summary records of the plenary meetings and of the meetings of the Committee of the Whole (A/CONF.117/16 (Vol. I), 2nd plenary meeting, para. 3. The author of this article acted as a delegate for Yugoslavia, in collaboration with and under the supervision of Dr. Šahović.

[225] *Ibid*., 10th plenary meeting, paras. 157–158.

[226] *Ibid*., 10th plenary meeting, para. 162.

countries, on the other. The former supported the text while the latter announced that they would vote against.[227] The Yugoslav position was clearly explained by Šahović, who said that "his delegation would vote in favour of the draft convention as a whole and welcomed the fact that the Conference had fulfilled its mandate under the terms of General Assembly resolution 37/11 of 15 November 1982. His delegation considered that all delegations were to be congratulated on the results of the Conference notwithstanding the differences which had arisen. The draft convention expressed the intentions of the international community on the issue of succession of States in respect of State property, archives and debts. As a result of the Conference, the rules relating to a very important chapter of international law, which had not previously been clearly defined, had been codified. The Conference had faced a number of very difficult problems but there was no denying that the results achieved were valuable. While the text of the draft convention might not satisfy all delegations, it nevertheless reflected the intent of the international community. The progress which had been made on many articles demonstrated that the Conference had been able to conclude its work with success. Those who opposed the draft convention should reconsider their attitude in the light of historical and current trends".[228] The text of the draft Convention as a whole was adopted on 7 April 1983, having obtained the required two-thirds majority.[229]

United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (1986)

Milan Šahović's last official participation as a representative of Yugoslavia was at the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, held at Vienna in 1986.[230] He acted as head of the delegation during the period from 6

[227] The main problem were the provisions on the "Newly independent States" to which a special status was envisaged.

[228] *Ibid*., paras. 54–55.

[229] *Ibid*., 31. The result of the vote was as follows: 54 in favour, 11 against, with 11 abstentions. For the text of the Convention and other relevant documents adopted at the Conference, see: United Nations Conference on Succession of States in Respect of State Property, Debts and Archives, Vienna, 1 March – 8 April 1983, Official Records, Volume II, Documents of the Conference (A/CONF.117/16 (Vol. II)). The author of this paper published his account of the Conference in the Yearbook of Šahović's Institute; see: Bratislav Đorđević, "Konferencija Ujedinjenih nacija o sukcesiji država u pogledu državne imovine, arhiva i dugova", *Godišnjak Instituta za međunarodnu politiku i privredu 1983*, (Beograd: Institut za međunarodnu politiku i privredu 1983), pp. 277–289.

[230] See: United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, Vienna, 18 February – 21 March 1986, Official records, Volume I, Summary records of the plenary meetings and the meetings of the Committee of the Whole (A/CONF.129/16 (Vol. I)).

March to the end of the Conference.[231] Speaking in the Committee of the Whole on draft article 73, Šahović said that "if the Austrian amendment to paragraph 1 was adopted, the formulation of the article would be much broader than what had been proposed by the International Law Commission. That point might perhaps be referred to the Drafting Committee; all the same, his delegation preferred the Commission's text. He agreed that the consideration of the three-organization amendment should be deferred, as suggested".[232] As a former ILC member, Šahović was very much familiar with the discussion regarding article 36bis [Obligations and rights arising for States members of an international organization from a treaty to which it is a party] in the Commission, and he tried to elucidate the very purpose of the article by stating that his views on that article had changed more than once during the lengthy process of preparation of the draft articles. He stated that his delegation had finally "concluded that the International Law Commission had been right to include the article in the text in the form it had proposed. In the early stages of preparation, there had been considerable feeling that the subject-matter of the article might be dealt with in connection with third States; later it had become clear that the issue had far broader implications for international organizations and their status in international law than had been supposed. The political and legal issue of the relationship between international organizations and their members had assumed serious proportions, and it would appear that the intention behind article 36bis was to contribute substantially to a strengthening of the role of those organizations and a clarification of that relationship. That was something which should be stressed, because the adoption of the draft, and any consequent decisions, would mark a new stage in the development of the personality of international organizations in international law—in the evolution of what was known as the 'organized' international community. Furthermore, article 36 ^{bis} was one of the few articles which implied a decisive step forward in the progressive development of international law. Although it might be argued, and had been, that practice was not yet sufficiently mature for the Conference to codify a general rule such as the article contained, it would not be the first time that such a step had been taken by a codification conference. Moreover, the arguments which had been advanced in favour of the adoption of the article them demonstrated that the issue was one which called for legal clarification as a matter of principle. Looking at the matter from a more technical point of view, he observed that all the proposals to alter the wording of

[231] See: The List of participants, A/CONF.129/INF.2/Rev.2, 33. Head of the delegation during the first part of the Conference was Prof. Borut Bohte, Legal Adviser of the Federal Secretariat for Foreign Affairs.

[232] Article 73 (Cases of succession of States, responsibility of a State or of an international organization, outbreak of hostilities, termination of the existence of an organization and termination of participation by a State in the membership of an organization); Committee of the Whole, Summary records, 23rd meeting, para. 9.

the article presumed the formulation of a rule; they sought to improve the product of the International Law Commission's lengthy cogitations, and particularly to render more explicit the conditions under which the rule should be applied—for example, by reducing the uncertainty created by the word 'otherwise' in the Commission's draft. It was his delegation's view that to omit from the draft convention any reference to the question of obligations and rights arising for States members of an international organization from a treaty to which it was a party would be to neglect an important element of the Conference's task; it therefore believed that article 36bis should be retained. An acceptable formulation for it which accommodated the various proposals for altering the text proposed by the International Law Commission might perhaps be found by the Drafting Committee".[233]

At the 30th meeting of the Committee of the Whole, Šahović explained the vote of his delegation [on an amendment on the provisions on arbitration and conciliation] by stating that his delegation "had voted in favour of the eight-Power amendment because it contained two elements which it regarded as decisive: a régime based on article 66 of the 1969 Vienna Convention on the Law of Treaties which Yugoslavia had ratified without reservation and which provided for recourse to the International Court of Justice, and the idea underlying the Commission's proposal".[234] Šahović acted jointly with the representatives of Brazil, Cameroon, Egypt and India, in submitting the proposal on article 81 on the final clauses of the Convention, which was successfully adopted.[235]

The Convention with the other accompanying documents was adopted on 20 March 1986.[236]

CONCLUSION

Milan Šahović's career as an expert and representative of Yugoslavia in various UN legal bodies lasted 34 years, from the early fifties to the late eighties of the 20th century. This was, quite unusual that someone who was not a career diplomat, stayed for such a long time engaged by working in the various UN legal bodies. Šahović participated in 19 UNGA sessions in total, six sessions of the Special Committee on Friendly Relations Declaration, eight years as a member of the ILC and at three diplomatic conferences on the codification of international law. He

[233] *Ibid*., Summary records, 25th meeting, paras. 39–43.

[234] *Ibid*., Summary records, 30th meeting, para.10.

[235] A/CONF.129/C.1/L.79, *Ibid*., Summary records, 30th meeting, para. 37.

[236] See: United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, Vienna, 18 February - 21 March 1986, Official records, Volume II, Documents of the Conference (A/CONF.129/16/Add.1 (Vol. II)); Summary Records, 7th and 8th Plenary Meetings, UN Conference, Vol. I (A/CONF.129/16), pp. 24–36.

was fortunate enough to be involved from his early days at the Institute in variety of the UN issues, working on the preparation of papers on the legal issues for the Ministry of Foreign Affairs, which brought him subsequently to participate in the Sixth Committee. Šahović was privileged to have been working side by side with great jurists and diplomats of several generations, from all over the world, thus obtaining very important and unique experience in dealing with legal matters. As a result of his scholarly research, his interventions at UN meetings were always meticulously prepared with lots of arguments, and that, coupled with the continuity in his participation in the UNGA sessions, made him the pillar of the Sixth Committee for many years, not only for the Yugoslav delegation. His profound knowledge of almost all areas of international law, of the Charter and of the UN practice, with his excellent knowledge of French (in which he usually intervened at official meetings) as well as very good English, his negotiating skill, patience and tact, made him known and respected within the UN.

As the topic of the Special Committee on Friendly Relations had a special political and legal significance for Yugoslavia as a non-aligned country, during seven years of consideration of the principles, Šahović invested all his knowledge and skill, which contributed to the successful adoption of a Declaration at the 25th anniversary UNGA session in 1970, as a major achievement in progressive development and codification of international law. At the Special Committee meetings, he further forged the relationship, especially with its members from non-aligned countries, by submitting joint proposals, but also with representatives from some other countries that took part in the proceedings. When one reads the reports and summary records of the Special Committee, the immediate impression was how detailed and deep discussions were pursued, exposing variety of theoretical views, but also invoking the relevant international practice on each and every principle discussed. In all of that, Šahović had rendered his scholarly and diplomatic contribution which was considered by many of lasting value.[237]

Another very significant year for Šahović was 1974. In May of that year, Šahović was elected a member of the ILC, thus becoming one among the 25 most significant legal minds, members of the Commission.[238] And, in September of the same year, he was elected Chairman of the Sixth Committee at the 29th UNGA

[237] See, for instance, a letter from the Legal Adviser of the Foreign and Commonwealth Office of the United Kingdom, I.M. Sinclair [who also took part in the work of the Special Committee], dated 16 October 1970, addressed to Šahović on the occasion of the adoption of the Declaration [in the Sixth Committee]…"I am glad that your efforts over so many years, beginning in Mexico City in 1964, have been so amply rewarded. I well know to what extent the Declaration bears the mark of your personal contribution. It must have been a source of great satisfaction to you to be present at this conclusion of this extended work; I was only sorry I was not there myself". Historical Archives of Belgrade (HAB), Personal Fond of Milan Šahović (PFMŠ) (2096) Box 26, Item 246.

[238] During Šahović's membership, the Commission consisted of 25 members. It was enlarged to 34 after the expiration of his mandate in 1981.

session. At the age 50, with the great experience acquired at the UN, he was more than ready for new challenges. As he was involved in the consideration of the ILC's reports in the Sixth Committee for more than a decade, and in view of his scholarly works on its topics, Šahović quickly adapted to the Commission's work and his thoughtful comments were very often met with the acclaim by other members of the ILC. The culmination of Šahović's activities in the ILC certainly represents his election as Chairman of its 31st session in 1979. His membership in the Commission during eight years, as this is an organ consisting of persons of recognized competence in international law,[239] gave him an opportunity to speak in his personal capacity and explore the ideas and concepts on how he understands the codification of international law and its progressive development. And he always insisted that the proposed solutions be based not only on the existing rules, but always in connection with the current UN practice and in relation to new trends in international law and international relations, particularly as far as interests of newly independent States were concerned. As Chairman of the Sixth Committee, Šahović had shown his ability to successfully manage and steer its work that resulted in reaching consensus on a number of important, but also controversial issues, such as the Definition of Aggression.[240]

When his term in the ILC was about to expire in 1981, Šahović did not seek to be re-elected. He thought that the Yugoslav members were occupying the seat in the Commission for a long time and that it should be relinquished, so as to give an opportunity to some other candidate from the Eastern European group. In the ensuing years, he continued to participate in the Sixth Committee meetings, focusing mainly on the reports of the ILC and letting others in the delegation to deal with other topics.[241]

Many Šahović's colleagues, not only in Yugoslavia, but also in the UN circles, considered that a natural continuation of his career should be in the ICJ. That opportunity arose in 1984, when a (second) term of judge Manfred Lachs (Poland) was about to expire. The Yugoslav National Group in the Permanent Court of Arbitration, in spring of 1984, after fulfilling the necessary procedure,[242] decided to propose to the Government to officially nominate the candidature of Milan Šahović to the ICJ, at the elections to be held at the 34th UNGA session in autumn of the same year. However, surprisingly, the Government did not positively respond to that recommendation, and the nomination of Šahović was never

[239] Statute of the International Law Commission, Art. 2, para. 1.

[240] A/RES/3314 (XXIX) 1974.

[241] Throughout his participation in the Sixth Committee, Šahović had never tried to monopolize his privileged position acquired in the delegation over the years. On the contrary, he insisted that his younger colleagues should be engaged on the issues so as to obtain the necessary experience.

[242] Article 6 of the Statute of the International Court of Justice.

forwarded to the UN Secretary-General.[243] In the opinion of many, a great opportunity was missed to put forward Šahović's candidature, as it was thought that he would have stood a good chance to be elected, particularly having in mind that judge Lachs was seeking the third term and that Šahović was coming from Yugoslavia, a country that enjoyed prestige and support, particularly among non-aligned member States. Unfortunately for Šahović, there would not be another opportunity, as when judge Lachs passed away towards the end of his term in 1993, the break-up of Yugoslavia had already happened.

Milan Šahović's last official participation in the UN was in the 1986 Vienna Conference on the Law of Treaties between States and International Organizations or between International Organizations. He retired from the Institute in 1988, where he worked for 40 years. Afterwards, Šahović remained active in various professional associations in the country and abroad, and had continued to write on current issues of international law and international relations almost until his demise in 2017.[244] With more than 30 years of participation in UN activities and more than 60 years of research and scholarly work, Šahović had never ceased to be active in exploring the current trends of international law, believing in its strength and worth struggling for its reaffirmation. As he once stated in the Sixth Committee, he strongly believed that the UN "must continue to educate the public whose scepticism and ignorance of the great potential of international law for the settlement of international disputes was constantly being fuelled by the increasing use of force as an instrument of the foreign policy of States. The authority of international law was bound to be strengthened by successes achieved in its codification and progressive development".[245]

All those who had the privilege of working with Milan Šahović, the author of this paper included, would always be grateful for the great care and understanding he had always shown towards his younger colleagues during those wonderful years of collaboration. His work, both scholarly and as a legal expert and diplomat at the UN is of the lasting value and he certainly will be remembered as one who

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[243] In the recollection of the author of this paper, who as a diplomat was closely involved in the process of nomination, such a decision of the Government was justified by political reasons, in order not to harm the interest of Poland ("that recently started on a path to democracy"). As a result, the author of this paper remembers sitting with Šahović in the Plenary of the 34th UNGA session, on 7 November 1984, and casting a vote during the secret ballot elections of judges of the ICJ (See: A/39/PV.53).

[244] The author of this paper remembers while serving as a diplomat in Brussels that he assisted Šahović in his transfer to Bruges to the session of the Institute of International Law held in September of 2003. On that occasion, the author was given the autographed issue of the *Yugoslav Review of International Law*, published on the occasion of Šahović's 70th anniversary, with his personal dedication, which the author is keeping as a very valuable memory of his long-time association with this great man.

[245] UNGA, 38th session, Official Records, Sixth Committee, A/C.6/38/SR.43, paras. 36–37.

rendered a significant contribution to the codification and progressive development of international law.

DR MILAN ŠAHOVIĆ I UJEDINJENE NACIJE – JEDNA IZVANREDNA KARIJERA POSVEĆENA KODIFIKACIJI I PROGRESIVNOM RAZVOJU MEĐUNARODNOG PRAVA

APSTRAKT

Dr Milan Šahović (1924-2017), bio je jugoslovenski i srpski pravnik, stručnjak za međunarodno pravo i međunarodne odnose, kao i za pitanja UN, koji je stekao međunarodnu reputaciju, posebno kao predstavnik Jugoslavije u raznim pravnim telima UN. Članak opisuje njegove aktivnosti vezane za UN (1952-1986) i prvenstveno je zasnovan na dokumentima UN, domaćim arhivima, Šahovićevim i radovima drugih stručnjaka, kao i na ličnim saznanjima autora. Kao jugoslavenski predstavnik u Šestom (Pravnom) komitetu, Šahović je učestvovao na 19 zasedanja Generalne skupštine UN (GSUN), bio je član Specijalnog komiteta za principe međunarodnog prava o prijateljskim odnosima i saradnji među državama (1964–1970), Komisije za međunarodno pravo (KMP) (1974–1981), a kao šef jugoslovenske delegacije učestvovao je na tri diplomatske konferencije o kodifikaciji međunarodnog prava. Njegovo duboko poznavanje međunarodnog prava i problematike UN, pregovaračke sposobnosti, strpljenje i takt, doprineli su da postane poznat i poštovan u krugovima UN. Naučni rad dr Šahovića i njegovo praktično delovanje u UN od trajne su vrednosti i sigurno je da će biti zapamćen kao neko ko je značajno doprineo kodifikaciji i progresivnom razvoju međunarodnog prava.

Ključne reči: Milan Šahović, GSUN, Šesti komitet, Deklaracija o prijateljskim odnosima, KMP, IMPP

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