

Provisional

For participants only

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International Law Commission
Seventy-fourth session (second part)

Provisional summary record of the 3641st meeting

Held at the Palais des Nations, Geneva, on Thursday, 20 July 2023, at 5 p.m.

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Sompong Sucharitkul and Nugroho Wisnumurti, former members of the Commission

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Present:

Chair: Ms. Galvão Teles

Members: Mr. Argüello Gómez

Mr. Asada

Mr. Cissé

Mr. Fathalla

Mr. Forteau

Mr. Galindo

Mr. Grossman Guiloff

Mr. Huang

Mr. Jalloh

Mr. Laraba

Mr. Lee

Ms. Mangklatanakul

Mr. Mavroyiannis

Mr. Mingashang

Mr. Nesi

Mr. Nguyen

Ms. Okowa

Ms. Oral

Mr. Ouazzani Chahdi

Mr. Paparinskis

Mr. Patel

Ms. Ridings

Mr. Ruda Santolaria

Mr. Sall

Mr. Savadogo

Mr. Tsend

Mr. Vázquez-Bermúdez

Mr. Zagaynov

Secretariat:

Mr. Llewellyn Secretary to the Commission

The meeting was called to order at 5 p.m.

Tribute to the memory of Gaetano Arangio-Ruiz, Guillaume Pambou-Tchivounda, Sompong Sucharitkul and Nugroho Wisnumurti, former members of the Commission

The Chair said that the 3641st meeting of the Commission was dedicated to the memory of four recently deceased former members of the Commission, Gaetano Arangio-Ruiz, Guillaume Pambou-Tchivounda, Sompong Sucharitkul and Nugroho Wisnumurti, who had passed away in September 2022, January 2023, May 2023 and June 2023, respectively.

Mr. Arangio-Ruiz, who had died at the age of 103, had made significant contributions to the theory of international law. He had been a professor at several prestigious universities, had delivered courses at The Hague Academy of International Law in 1962, 1972 and 1979, had taught the general course on public international law there in 1984 and had been a member of the Institute of International Law. He had been elected to the Commission in 1985 and had served on it until 1996. In 1996, the Commission had concluded the first reading of what would later become the articles on responsibility of States for internationally wrongful acts on the basis of the eight reports submitted by Mr. Arangio-Ruiz as Special Rapporteur for the topic “State responsibility”.

Mr. Pambou-Tchivounda had been the author of a number of works, including *La conférence au sommet : Contribution à l'étude des institutions des relations internationales*, *Essai sur l'État africain postcolonial* and *Éléments de la pratique gabonaise en matière de traités internationaux*. Mr. Pambou-Tchivounda had been elected to the Commission in 1992 and had served until 2006, including as Chair of the Commission in 2006.

Mr. Sucharitkul had been a prolific author and had founded a centre for advanced international studies at Golden Gate University, in San Francisco, that now bore his name. He had been elected to the Commission in 1977, serving until 1986. In 1986, the Commission had concluded the first reading of what would later become the articles on jurisdictional immunities of States and their property on the basis of the eight reports submitted by Mr. Sucharitkul as Special Rapporteur. He had been Chair of the Drafting Committee in 1982 and First Vice-Chair of the Commission in 1984.

Mr. Wisnumurti had had a long and illustrious career as a lawyer, diplomat and public servant and had served as the Permanent Representative of Indonesia to the United Nations in Geneva from 2000 to 2004. He had been elected to the Commission in 2007 and had served on it until 2016, including as Chair in 2010.

At the invitation of the Chair, the members of the Commission observed a minute of silence.

Mr. Nesi said that Mr. Arangio-Ruiz had taught in his native Italy and abroad, had participated in Italian delegations to international conferences and, putting his academic interests into practice, had served as an arbitrator or judge on international tribunals, including the Iran-United States Claims Tribunal and the court of arbitration established to delimit maritime areas between Canada and France.

Mr. Arangio-Ruiz's views on the relationship between international and domestic law had had a pervasive influence on his research. He had adopted a dualistic/pluralistic approach that was based on the discontinuity between the domestic and international legal orders and that rejected theories that accepted the direct incorporation of international law into domestic legal systems. He had believed that the many problems posed by international law could be properly resolved only by fully understanding the structure of international law and had therefore placed significant emphasis on the subjects of international law. In his view, States coexisted within an egalitarian, relational system of written and unwritten rules created by States themselves.

Consequently, he considered issues relating to international organizations to be matters of treaty law. Such organizations simply reflected a more sophisticated version of the basic horizontal system of international relations, with no hierarchical relationship between an organization and its member States. In his view, the binding force of the instruments issued by an international organization depended on the consent given by States in the intergovernmental agreement establishing the organization, which excluded any possibility

of legislative powers being delegated to the international organization. At the same time, however, he had recognized the existence of an inter-individual order within the United Nations system, which was distinct from the inter-State provisions comprising the Charter of the United Nations and other international instruments.

Mr. Arangio-Ruiz had also studied reservations relating to domestic jurisdiction, including under Article 2 (7) of the Charter. While the majority view had been that such reservations were limits *ratione materiae* that were intended to exclude certain matters from the scope of application of international law, Mr. Arangio-Ruiz had considered them to be rules intended to protect the sovereignty of States by prohibiting interference in the reserved powers of States. The primary aim of Mr. Arangio-Ruiz's research had been to establish more equitable relations between States and other subjects of international law, an aim clearly reflected in his work as Special Rapporteur on the topic of State responsibility. His eight reports on the topic had represented a major contribution to the analysis of the obligation of States to cease wrongful conduct and provide reparation, as well as the limits of the self-defence measures that could be taken by the affected State. He had also addressed issues relating to the mechanisms for the settlement of international disputes and had contributed to the debate on the use of the advisory jurisdiction of the International Court of Justice as an instrument of control over the activities of international organizations.

Mr. Arangio-Ruiz had dedicated the entirety of his long life to the study of international law and the education of future generations: Shortly before his death, he had established a cultural association and a foundation to provide funding for young scholars doing doctoral and postdoctoral work in international law.

Ms. Mangklatanakul, speaking on behalf of the Thai Ministry of Foreign Affairs and the Group of Asia-Pacific States, said that Mr. Sucharitkul had represented Thailand at the Sixth Committee and led the Thai delegation to a number of important conferences on international law. He had helped promote his country's involvement in the development of international law in many areas, including the law of the sea, having on a number of occasions headed the Thai delegation to sessions of the United Nations Conference on the Law of the Sea. He had also played a role in the negotiations leading to the establishment of the Association of Southeast Asian Nations and had made an immense contribution to the codification and progressive development of international law through his work at various international forums. The work that he had done as Special Rapporteur while a member of the Commission had laid the groundwork for the negotiation of the United Nations Convention on Jurisdictional Immunities of States and Their Property. His dedication and achievements had been and would continue to be a source of inspiration for international lawyers in Thailand.

Mr. Sall said that Mr. Pambou-Tchivounda had been an exceptionally passionate teacher and scholar. His publications spanned topics relating to international law, political science and administrative law. His extremely wide range of interests had encompassed not only theoretical matters but also practical ones, as evidenced by the book on Gabonese treaty practice, mentioned by the Chair, that he had co-authored with an eminent member of the Gabonese Ministry of Foreign Affairs who had participated in many international negotiations. Because of his expertise in constitutional law, Mr. Pambou-Tchivounda had been sought out by States in the process of introducing constitutions. Mr. Pambou-Tchivounda had negotiated with international organizations on behalf of Gabon and, in 2022, had been appointed to the legal team representing Gabon at the International Court of Justice. In his own single encounter with Mr. Pambou-Tchivounda, he had been struck by the latter's affability and helpfulness.

Mr. Mavroyiannis said that Mr. Arangio-Ruiz had been a person of strong convictions, and his personality had been a unique and remarkable combination of unending curiosity, extraordinary passion and great humility. He had been unfailingly respectful of the views of others and had never wanted his words to carry more weight than those of others simply because of who he was.

The meeting rose at 5.45 p.m.