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# Statement

**By**

**His Excellency Mr. Virachai Plasai**

**Ambassador and Permanent Representative of Thailand**

**to the United Nations**

**before the Sixth Committee**

**of the 71st Session of the United Nations General Assembly**

## Agenda Item 78:

## Report of the International Law Commission on the work of its sixty-eighth session (Part I)

**New York, 25/26 October 2016**

***Please check against delivery***

Mr. Chairman,

Ladies and Gentlemen,

At the outset, my delegation wishes to thank Mr. Pedro Comissário Afonso, Chairman of the International Law Commission, for his comprehensive report on the work of the 68th session of the Commission. We would like to congratulate the Commission for a successful and fruitful session. We recognize the important role of the Commission in promoting the progressive development of international law and its codification and very much appreciate the valuable contribution and dedication of all members of the Commission in this regard.

With respect to the first cluster of the Report, we wish to commend the three Special Rapporteurs for their hard work. My delegation welcomes the completion of the topic "the Protection of persons in the event of disasters". The Kingdom of Thailand attaches great importance to international cooperation on disaster risk reduction and response. We view those draft articles that consolidate existing rules of international law as a useful guide for such international cooperation. For those draft articles that reflect proposals for progressive development of the relevant international law, we will carefully consider them.

At present, Thailand is working with other countries in the Southeast Asian region to respond jointly to disasters and reduce losses under the framework of the ASEAN Agreement on Disaster Management and Emergency Response. It is our view that disaster relief must always be carried out in accordance with the rules of international human rights and international humanitarian laws, as well as the principles of independence, sovereignty and non-interference.

Regarding the identification of customary international law, my delegation appreciates the good progress made on this topic. Customary international law is an important source of public international law. The draft conclusions will serve as a useful guidance in the analysis of whether a given practice is customary law.

We support the two-element approach taken in the draft conclusions, that is the identification of a rule of customary international law requires an assessment of both general practice and acceptance of that practice as law. These elements, which need to be separately ascertained, are well reflected in Article 38 of the Statute of the International Court of Justice. While "acceptance as law", or *opinio juris*, may be considered as the "subjective element", it requires a careful assessment as the formation of a rule of customary international law should not be lightly regarded as having occurred, and it is what makes a rule of customary international law distinguishable from "mere usage" or "observed regularities in international conduct".

With regard to inaction, its importance should neither be overlooked nor overstressed. It is appropriate that inaction cannot be both a possible form of practice (Conclusion 6) and a form of evidence of *opinio juris* (Conclusion 10). We appreciate it that the term "inaction" in Conclusion 10 has been replaced by the term "failure to react over time to a practice" which is more precise.

Mr. Chairman,

The Kingdom of Thailand attaches great importance to the law of treaties, including the customary rules of treaty interpretation as codified in the Vienna Convention on the Law of Treaties, 1969. We therefore welcome the successful conclusion of the first reading of the draft conclusions on subsequent agreements

and subsequent practice in relation to treaty interpretation. We note that the name of this topic has been changed from "Treaties over time"; and that this is the first time all the draft conclusions have been presented together to give the whole picture of the topic.

It is our view that subsequent agreements and subsequent practice, within the meaning of Article 31 of the Convention, are indeed to be considered for the purpose of treaty interpretation only. Subsequent agreements with a view to or with the effect of amending treaty are subject to Article 39 of the Convention, while the possibility of modification of treaties by subsequent practice of the parties has long been excluded from the law of treaties since the Vienna Conference in 1968 completely rejected the proposal for an article to that effect. As such, we do not recognize the possibility of amending or modifying a treaty by subsequent agreement or subsequent conduct within the meaning of Article 31 of the Convention.

Furthermore, we fully support the view that amendment procedure provided for in a treaty must not be circumvented and that the possibility of modifying a treaty by subsequent practice, or other informal means, could create difficulties for domestic constitutional law concerning treaty making authorization. Treaties are meant to provide certainty, stability and predictability in international relations. It is therefore not acceptable – nor desirable, for that matter - that an informal means of identifying agreement as subsequent practice could modify a treaty.

We reserve the right to make further comments at a later stage.

Thank you.