

**PERMANENT MISSION OF THAILAND
TO THE UNITED NATIONS**

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Statement

by

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Third Secretary,

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before the Sixth Committee

of the 78th Session of the United Nations General Assembly

Agenda Item 79

**Report of the International Law Commission on the work of its seventy-third
and seventy-fourth sessions (Cluster III)**

New York, 1 November 2023

Mr. Chair,

1. Thailand is pleased to provide the following observations on Chapter VII, Subsidiary means for the determination of rules of international law, and Chapter IX, Succession of States in respect of State responsibility.

Chapter VII (Subsidiary means for the determination of rules of international law)

Mr. Chair,

2. My delegation will first turn to the topic of subsidiary means for the determination of rules of international law. Thailand congratulates

Mr. Charles Chernor Jalloh on his appointment as Special Rapporteur on this topic. We take note of his first report and the Commission's provisional adoption of draft conclusions 1, 2 and 3. We would like to make **four comments** in this regard.

3. **First**, as a general point, Thailand wishes to reiterate its position¹ and echo the statements made by several delegations in previous years² that the Commission's work should be as **pertinent to international practice** as possible. The Commission's consideration of this topic, therefore, must go beyond an academic exercise to include a careful appraisal of the **utility of subsidiary means** and address the question of how States may make use of this particular work of the Commission.

¹ Thailand ([A/C.6/76/SR.18](#), para. 31).

² Austria ([A/C.6/76/SR.18](#), para. 56); Iran ([A/C.6/76/SR.16](#), para. 66); The Netherlands ([A/C.6/76/SR.18](#), para. 50); Romania ([A/C.6/76/SR.17](#), para. 28); [Korea](#) (page 4).

4. **Second**, my delegation will now turn to **draft conclusion 2(a), which states that subsidiary means for the determination of rules of international law include decisions of courts and tribunals.** Draft conclusion 4(2), as provisionally adopted by the Drafting Committee,³ further provides that decisions of national courts may be used, in certain circumstances, as a subsidiary means for the determination of the existence and content of rules of international law.

5. In this regard, Thailand believes it is important to highlight **the distinction between the use of national court decisions as evidence of State practice and thus a constitutive element of customary international law, and its use as a subsidiary means for the determination of rules of international law.** The former function is undisputed. However, the inclusion of national court decisions as a subsidiary means for the determination of rules of international law should be exercised with caution. It is imperative to acknowledge the difference between dualist and monist legal systems. In dualist States, such as Thailand, international law must be transposed into national law before it can be enforced by national courts. Thus, most of the decisions from national courts in dualist States may not directly pertain to the application and interpretation of international law. This means that, in practice, the decisions of national courts of dualist States often do not lend themselves to easy usage as subsidiary means.

³ Footnote 215 of the ILC Report.

6. **Third**, Thailand will turn to **draft conclusion 2(c), which indicates that subsidiary means include “any other means generally used to assist in determining rules of international law.”** Thailand observes that the formulation of this subparagraph is quite open-ended, and that the Special Rapporteur intends to include, *inter alia*, work of expert bodies as well as resolutions of international organizations in the analysis in his third report. However, **Thailand remains unconvinced of the existence of subsidiary means other than the two enumerated in Article 38(1)(d) of the ICJ Statute.** Thailand also wishes to recall that the focus of Article 38(1)(d) is on the two listed items – namely, judicial decisions and teachings, and “subsidiary means” is referred to in order to describe how the two elements are to be used. Identifying additional subsidiary means risks misinterpreting Article 38(1)(d), and could create confusion rather than clarity. In Thailand’s view, the Commission’s work is best limited to studying the two elements rooted in Article 38(1)(d), which has been explicitly approved by States.

7. **Fourth**, my delegation will now turn to comment on **draft conclusion 3 on the criteria for the assessment of subsidiary means for the determination of rules of international law.** Thailand attaches importance to the methodology used to assess the weight of each subsidiary means. We note with appreciation the effort made by the Commission and the Special Rapporteur to identify some illustrative factors for determining the weight of subsidiary means. Regarding the weight to be given to the judicial decision, Thailand is of the view that consistency of prior judicial decisions on a specific legal issue could also provide evidence of the existence of international law and should therefore be included among these general criteria.

Chapter IX (Succession of States in respect of State responsibility)

8. My delegation will now briefly turn to **Chapter IX, Succession of States in respect of State responsibility**. Thailand takes note of the Commission's consideration on how to proceed on the topic. Should the Commission decide to continue substantive consideration on this topic, Thailand wishes to reiterate its position that the draft guidelines must be grounded on widely accepted State practice and have practical legal significance.

Conclusion

Mr. Chair,

9. Permit me to conclude by **expressing our appreciation to the International Law Commission and the United Nations Codification Division** for their dedication in shouldering the Commission's solemn mandate in the codification and progressive development of international law. Thailand stands ready to support the Commission and the contribution it makes to our rules-based international order.

I thank you.
