



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

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Statement

by

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Counsellor

**before the Sixth Committee
of the 79th Session of the United Nations General Assembly**

Agenda Item 79

**Report of the International Law Commission on the work
of its seventy-fifth session (Cluster II)**

New York, 25 October 2024

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Mr. Chair,

1. For **Cluster II** of this Agenda Item on the Report of the International Law Commission, Thailand wishes to share the following observations.
2. Starting with **Chapter IV: Settlement of disputes to which international organizations are parties**, we thank the Special Rapporteur, **Mr. August Reinisch**, for his well-written second report and for **draft guidelines 3 to 6**, which the Commission provisionally adopted at the session. On this particular topic, Thailand wishes to make the following four observations:
3. **First**, the growing presence of international organizations come with **practical need** for legal clarity in settlement of disputes to which they are parties — practical need that is ever-growing and could be multifold. For the current session, we take note of the Commission’s efforts in addressing the issue of **access** to dispute settlement mechanisms. We also note that international organizations’ limited access to dispute settlement mechanisms available to States is one among several difficulties identified in the 2016 syllabus on the topic. In going forward, we urge the Commission to leave no stone unturned identifying and addressing difficulties common to settlement of disputes to which international organizations are parties. Doing so will ensure that the Commission’s work will be as useful as possible.
4. **Second**, with regard to draft guideline 6 on requirements for arbitration and judicial settlement, Thailand takes note of the Drafting Committee’s discussions on **the use of “shall”** in this context. We take note that, as explained in the commentaries, the mandatory term is used to indicate that independence and impartiality are legal obligations under applicable rules of international law. Nonetheless, we stress that the use of such

obligatory language does not change the nature of this work as that of simply draft guidelines. We view that the question of the final form of this work should be decided as a separate matter.

5. **Third**, we wish to underscore the importance of including disputes of a private law nature in the scope of the Commission's work. Disputes of a private law nature are abundant in practice. They raise not only one of, if not the most, pressing questions, but also practical implications for States. Nor is every dispute entirely isolated from issues in national law. It is against this background that my delegation supports the inclusion of **disputes of a private law nature in the scope of the Commission's work, and looks forward to the Special Rapporteur addressing this in his next report.**
6. **Fourth**, as stated by my delegation in our previous statements, it is imperative to reflect current State practice in the work of the Commission. For this particular topic, practice of international organizations has to also be considered. Thailand urges the Commission to ensure the representativeness of its work by taking into consideration current practice of States and international organizations from regions of the world.
7. Turning now to **Chapter V: Subsidiary means for the determination of rules of international law**, Thailand wishes to thank the Special Rapporteur, **Mr. Charles Chernor Jalloh**, for his second report and newly proposed **draft conclusions 6, 7 and 8**. We have followed with interest the deliberations on this topic and the Commission's provisional adoption of **draft conclusions 4 to 8**, together with the accompanying commentaries. We have **four observations in this regard.**
8. **First**, Thailand takes note of **the inclusion of national court decisions as subsidiary means** for the determination of rules of international law, as appears in draft conclusion 4. However, it is

crucial 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 address the interpretation or application of international law**. This is despite the fact that national courts' decisions can at times possess practical and persuasive value, in cases where concepts of international law stem from domestic legal concepts.

9. **Second**, Thailand supports the Commission's approach in **expressly providing in the first paragraph of draft conclusion 6** that "[s]ubsidiary means are not a source of international law". The clear distinction between subsidiary means and sources of law is of considerable importance and should continue to be drawn throughout the work. **We are also pleased with the current formulation of the second paragraph of draft conclusion 6**, which provides **a without-prejudice clause** for other uses of materials used as subsidiary means.
10. **Third**, Thailand recognizes that there exists no *stare decisis* in general international law. We, therefore, **support the current draft conclusion 7**, which confirms such recognition that there exists no *stare decisis* in international courts or tribunals under international law.
11. **Fourth**, and my final observation, **Thailand is very pleased that the current draft conclusion 8 deals with the weight of decisions of courts or tribunals by setting specific criteria of assessment**.
12. Moreover, as the criteria set forth in draft conclusion 8 complement the general criteria in draft conclusion 3, Thailand views that if the Commission is to revisit these two draft articles for further clarity on first reading, which we fully support, **they should be read together to ensure consistency**.

13. To conclude, **Thailand reaffirms its unwavering support to the work of the Commission.** We will continue to engage constructively in any further developments on these two topics by the Commission.

I thank you, Mr. Chair.

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