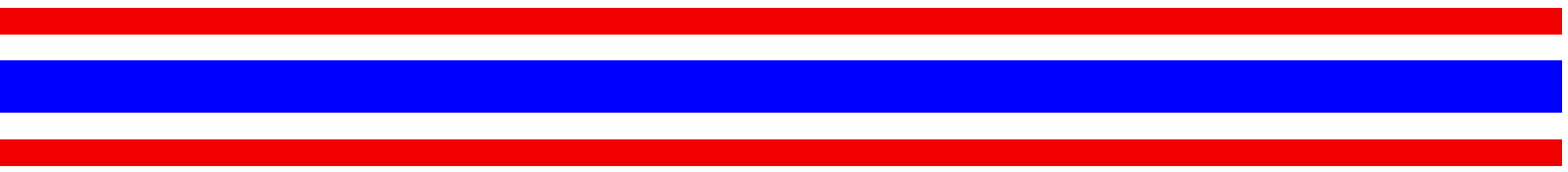


**PERMANENT MISSION OF THAILAND  
TO THE UNITED NATIONS**

**136 EAST 39<sup>th</sup> STREET · NEW YORK, NY 10016**

**TEL (212) 754- 4 5 6 7 8 9 ; -3029**



**Kingdom of Thailand**

**before the Sixth Committee**

**of the 78<sup>th</sup> 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**

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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

We would like to make **four comments** in this regard.

3. **First**, as a general point, Thailand wishes to reiterate its position<sup>1</sup> and echo the statements made by several delegations in previous years<sup>2</sup> **pertinent to**

**international practice**

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,<sup>3</sup> 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.

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<sup>3</sup> Footnote 215 of the ILC Report.



## **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

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

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.

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