



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

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**Statement**

by

**His Excellency Mr. Norachit Sinhaseni**

**Ambassador and Permanent Representative of Thailand**

**to the United Nations**

**before the Sixth Committee**

**of the 68<sup>th</sup> Session of the United Nations General Assembly**

**Agenda Item 81: Report of the International Law Commission on the  
work of its sixty-fifth sessions (Part I)**

**New York, 30 October 2013**



Building Bridges for Partnership  
THAILAND 2017-2018  
Candidate for the UN Security Council

Mr. Chairman,

At the outset, my delegation wishes to congratulate the International Law Commission on the success of the sixty-fifth session. The Thai delegation would like to express our appreciation to Mr. Bernd H. Niehaus, for his excellent chairmanship, as well as other members of the bureau for their hard work and dedication during the current session. Our appreciation also goes to all members of the Commission for their contribution to further the progressive development and codification of international law.

Thailand would like to give some comments on the current work of the Commission on Chapter IV regarding Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, Chapter V Regarding Immunity of State Officials from Foreign Criminal Jurisdiction, and Chapter XII: Other decisions and conclusions of the Commission.

Chapter IV : Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties

Mr. Chairman,

With regard to Chapter IV, my delegation joins the other speakers in congratulating Professor Georg Nolte on his first report. The Thai delegation would like to offer some of our observations on the Commission's provisionally adopted draft conclusion on Subsequent Agreements and Subsequent Practice in Relation to Interpretation of Treaties as follows.

Firstly, Thailand supports the conclusion that "a subsequent agreement" is an authentic expression of the will of the parties. We also agree that such subsequent agreement does not need to have the same title as the agreement being interpreted as long as it is an agreement regarding the interpretation of the treaty or the application of its provision. Subsequent agreement can be in whatever form the parties to the original treaty may choose.

Secondly, my delegation reserves our position regarding the accuracy of the statements in paragraph 6 in the Commentary to draft Conclusion 3. This is because the terms accompanied by footnotes 92 to 95 are those cited by Judge Guillaume in his Declaration in *Dispute regarding Navigational and Related Rights*. The Declaration is the learned Judge's personal view and, with due respect, does not necessarily reflect the judgments of the courts or tribunals concerned. In this context, my delegation also reserves our position regarding the accuracy of the reference to the term "watershed"

which is added by the Commission in footnote 92 of Document A/68/10, although Judge Guillaume never mentions this term at all in his aforesaid Declaration.

Thirdly, on paragraph 2 and 3 of Conclusion 4, especially the use of the word “conduct” as part of the definition of subsequent practice, we look forward to a clarification for the selection of the word at a later stage of the work on this issue, which is already used in the Commission’s draft articles on the responsibility of States for internationally wrongful acts.

Lastly, regarding Conclusion 5 on attribution of subsequent practice, Thailand would appreciate further explanation and elaboration on paragraph 2, on the conduct by non-state actors which may be relevant when assessing the subsequent practice of parties to a treaty. Non-state actors have roles and purposes on the international plane which differ from those of State Parties. In order for conducts of non-state actors to be relevant, they should be proven with a degree of certainty that they do not conflict with how State Parties intend to interpret the treaty. Therefore, clearer criteria might need to be adopted.

#### Chapter V Immunity of State Officials from Foreign Criminal Jurisdiction

Mr. Chairman,

Allow me to turn to Chapter V on “Immunity of States officials from foreign criminal jurisdiction”.

First of all, Thailand would like to commend Special Rapporteur Madame Concepcion Escobar Hernandez and other ILC members and congratulate them on the conclusion of the draft articles. At a preliminary stage, we wish to share some observations.

Regarding the substance of the topic, we would like to begin by presenting a clear picture of Thai domestic law which might have several characters in common with other national legislations. As a party to the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963, Thailand grants immunity from criminal jurisdiction to persons indicated in both Conventions. Thailand also accords immunity to persons covered by host country agreements between Thailand and intergovernmental organization.

Beyond the aforesaid, Thai courts have had no experience in dealing with the immunity of foreign State officials from Thailand’s criminal jurisdiction. Thailand is not a State Party to the Convention on Special Missions, either. Therefore, Thailand wishes to reserve our position on the ILC’s work on this topic until a later stage, when we can judge whether the ILC’s work achieves the right

balance between, on the one hand, according immunity to, and, on the other hand, ending impunity of State officials in foreign criminal jurisdiction.

In any case, the term “official” may be defined differently under the domestic law of different States. Therefore, the Commission ought to carefully choose the right definition for this term, taking into due consideration the practice of States in their domestic law.

With respect to Heads of State, Thailand, as a State with a highly revered constitutional monarchy, wishes to remind the ILC that Heads of State who might be subject to criminal prosecution must actually be in a position effectively to exercise control over or to direct the executive power of a State, as recognized, for example, by Article 8bis, paragraph 1 of the Rome Statute of the International Criminal Court . In other words, a Head of State must not be prosecuted for a crime committed by some State mechanisms merely because of his or her nominal or ceremonial role as Head of State in that State.

In addition, my delegation is of the view that immunity enjoyed by Heads of State, Heads of Government and Ministers for Foreign Affairs, as stipulated in draft article 3, is indeed not subject to dispute. Such immunity has long been recognized by the International Court of Justice and is necessary for Heads of State, Heads of Government and Ministers of Foreign Affairs due to their “special situation of having a dual representational and functional link to the State in the ambit of international relations”, expressed in paragraph (2) of the ILC’s Commentary to draft Article 4.

Finally, regarding immunity *rationae materiae*, which the ILC will consider next year, my delegation wishes to emphasize that international law must recognize the immunity granted by the domestic law of the State to government agents or law enforcement officials for their acts undertaken to maintain law and order but without the intent to commit human rights violations.

## Chapter XII: Other decisions and conclusions of the Commission

Mr. Chairman,

My delegation would like to congratulate Professor Shinya Murase on his appointment as Special Rapporteur for the topic “Protection of the Atmosphere”. However, the conditions attached to the inclusion of the topic, as appeared in paragraph 167 of the ILC report (A/68/10), make us wonder as to what is left to be of use to the international community regarding the ILC’s work on this topic.

Mr. Chairman,

In the past few months, the international community has raised concerns over the protection of personal data in transborder flow of information. Since this topic has already been included in the ILC's long-term programme of work since 2006, my delegation suggests that the ILC take up this topic at its next session so that States can benefit from the ILC's work in this highly topical matter.

I thank you Mr. Chairman.

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