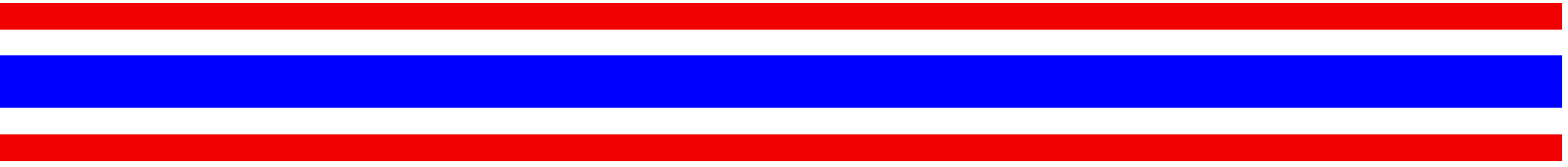


**PERMANENT MISSION OF THAILAND
TO THE UNITED NATIONS**

**136 EAST 39th STREET · NEW YORK, NY 10016
TEL (212) 754-2230 • FAX (212) 688-3029**



Statement

by

Dr. Suphanvasa Chotikajan Tang

Director-General,

Department of Treaties and Legal Affairs,

Ministry of Foreign Affairs of Thailand

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 I)**

New York, 25 October 2023

Please check against delivery

Mr. Chair,

1. Thailand wishes to express our gratitude to all members of the International Law Commission for their invaluable contributions throughout the 74th Session. We also wish to take this opportunity to recognize the Chairs of the Session, Ms. Nilüfer Oral and Ms. Patrícia Galvão Teles, who are both accomplished female lawyers, for their remarkable expertise and leadership during the Session.

2. Thailand also places great importance on the ILC as an institution that brings together highly qualified international lawyers from diverse backgrounds to work towards the progressive development and codification of international law. We are pleased to see the re-establishment of the Planning Group, which will deliberate on the programme, procedures, and working methods of the Commission. In this connection, Thailand wishes to reiterate its belief that the Commission's work should focus on practical topics that directly benefit member States.

Chapter IV (General principles of law)

Mr. Chair,

3. Please allow me now to address some substantive issues that are of particular interest to our delegation, starting with Chapter IV (General principles of law).

4. General principles of law play a vital gap-filling function among sources of international law. Thailand acknowledges the adoption, on the first reading, of the full set of eleven draft conclusions on the topic, and wishes to commend the Commission and in particular Special Rapporteur Mr. Marcelo Vázquez-Bermúdez on this achievement. This important milestone reached by the Commission paves the way for its work on subsidiary means, also considered at the Commission's present session. The Commission is thus on its course to complete its consideration of the various sources of international law as enumerated in article 38(d) of the ICJ Statute.

5. Thailand would like to make **three observations** on this topic.

6. **First**, Thailand wishes to **reiterate our position that the criteria for the identification of general principles of law** must be clear, and distinct from the required elements for the emergence of rules of customary law. In this regard, Thailand believes caution should be exercised regarding the interpretation of **draft conclusion 3(b)**. The suggestion that general principles of law may be formed within the international legal system may risk conflation with the formation of customary international law. An expansive interpretation of draft conclusion 3(b) may go beyond the confines of the concept of general principles of law as intended in Article 38, paragraph (1)(c) of the ICJ Statute. Thus, Thailand welcomes the Commission's acknowledgement of the debate on this doctrine in the commentaries.

7. **Second**, any determination of the existence of a general principle of law must include a comparative analysis of various legal systems in a **representative and inclusive manner**. Indeed, the formation or determination of any law must be done with due consideration for the variety of legal systems and their specific intricacies and characteristics. This regard is essential to ensure that the principle is widely recognized among nations.

8. **Third**, regarding the **legal status of general principles of law**, Thailand considers a general principle of law recognised by civilized nations as, in and of itself, **an independent form of international law** and therefore is concerned that **draft conclusion 6**, which indicates a transposition of a general principle of law to the international legal system, might lead to misunderstanding about its international legal nature.

Chapter VIII (Sea-level rise in relation to international law)

Mr. Chair,

9. I now turn to Chapter VIII, on the topic of sea-level rise in relation to international law.

10. Thailand follows this topic with great interest as no State – regardless of their economic power, geographical size or military might – is immune from the impacts of rising sea-levels. Sea-level rise is not simply an abstract concept; it has a real and direct impact on Statehood and on individuals – individuals who may be forced to leave their homes and become climate migrants. As such, Thailand welcomes the progress of

the Commission's Study Group on Sea-Level Rise, including **the additional paper of the first issues paper**, and wishes to make **two further observations** in this regard.

11. **First**, Thailand would like to reiterate the importance we place on legal stability. We firmly believe that the Maritime boundaries, once determined by treaties or through decisions of international courts and tribunals shall be final regardless of sea-level rise. Furthermore, the sovereign and jurisdictional rights of States in each maritime zone, as guaranteed by the United Nations Convention on the Law of the Sea (UNCLOS), must be protected. On this point, Thailand is pleased to see that its concerns have been addressed by the Commission.

12. **Second**, Thailand also commends the work **on the second issues paper on issues related to statehood and the protection of persons affected by sea-level rise**. As there is no legally binding international instrument to date on the protection of persons affected by sea-level rise, Thailand believes the Commission's suggestions on this topic will be invaluable for States to consider as a way forward to solve this urgent and timely issue.

Chapter X (Other Decisions and Conclusions)

Mr. Chair,

13. We will now turn to the final chapter of the Commission's report on Other Decisions and Conclusions, and would like to make **the following five observations**.

14. **First**, Thailand welcomes the inclusion of the topic of **non-legally binding international instruments** in the Commission's programme of work. The work on this topic will be of great practical use to States as in today's world, we have witnessed many countries utilize such instruments in international relations.

Thailand congratulates **Mr. Mathias Forteau** on his appointment as Special Rapporteur on this topic, and looks forward to his first report. We are particularly keen to follow the Commission's work on this matter, especially regarding the differentiation of such an instrument from a binding agreement, its possible legal effects and general practices surrounding it. Our concern is that this practice may create binding obligations on states, despite its name, and often bypasses domestic requirements otherwise incumbent on treaties.

15. **Second**, in a similar vein, Thailand also believes it would be of much practical value if the Commission would begin its work on topics that will provide greater clarity on international law principles used in international investment agreements. Such important work will provide legal certainty to practitioners, safeguard against fragmentation of international investment law and play a key role in promoting sustainable economic growth, which is very much needed in these challenging economic times.

16. **Third**, Thailand recognizes the benefit in the **trust fund for Special Rapporteurs** to assist them in their important functions, and encourages financial contribution to this mechanism.

17. **Fourth**, Thailand welcomes engagement of the Commission not only with States but also with other bodies and individuals. In this regard, Thailand notes with satisfaction **Section F** of the Chapter on cooperation with other bodies, in particular on the Commission's engagement with **the Asian-African Legal Consultative Organization (AALCO)**.

Thailand attaches great importance to **the International Law Seminar**, which is invaluable in allowing young practitioners and scholars from diverse regions to learn and exchange views on the work of the Commission and international law at large.

18. **Fifth**, and my final point, Thailand wishes to highlight the importance of ensuring that time allocated to each topic under the Commission's consideration is sufficient, proportionate and reflective of its expansive amount of work, whilst adequately balanced with the need for expediency.

Mr. Chair,

19. Allow me to conclude by reiterating Thailand's recognition of the important contribution made by the Commission to **our rules-based multilateral system**. Thailand looks forward to following the progress of the Commission's work, and stands ready to support it.

Thank you, Mr. Chair.
