

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

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Mr. Chairman,

At the outset, my delegation wishes to congratulate the International Law Commission on the success of the sixteenth 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 have to be 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 provisions. 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 set out by Judge Guillaume in his Declaration in Dispute regarding Navigation and Related Rights. The Declaration is the one 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 "water."

which is added by the Commission 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 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 work 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 in 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 conduct of non-state actors to be relevant, they should be proved 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 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 characteristics in common with other national legislation. 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 treaty agreements between Thailand and intergovernmental organizations.

Beyond the aforesaid, Thai courts have had experience in dealing with the immunity of foreign State officials from Thai 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

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 ~~Term~~ programme of work since 2006, my delegation suggests