



**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-third and sixty-fifth sessions (Part III)**

**New York, 5 November 2013**



*Building Bridges for Partnership*  
**THAILAND**

*ASEAN Candidate for the UN Security Council 2017 – 2018*

Mr. Chair,

Today, the Thai delegation wishes to comment on the Report of the International Law Commission in Chapter VI (Protection of Persons in the Event of Disasters), Chapter VII (Formation and Evidence of Customary International Law), and Chapter X (The Obligation to extradite or prosecute – *aut dedere aut judicare*).

### **Chapter VI (Protection of Persons in the Event of Disasters)**

Mr. Chair,

First on Chapter VI of the Commission's report. Thailand would like to commend the progress made by the Special Rapporteur Mr. Eduardo Valencia-Ospina and the Commission and to congratulate them on the conclusion of the draft articles, on which we would like to offer our comments.

Regarding draft article 5<sup>ter</sup>, entitled “Cooperation for disaster risk reduction”, Thailand is of the view that the said draft article must be construed in light of, among others, draft article 11 and draft article 13 on “Consent of the affected State to external assistance” and “Conditions on the provision of external assistance”, respectively. Read together, these draft articles correctly allow the affected State the right to deny offers for assistance if it deems that the offering State or entity harbors some ulterior motive which may prejudice the sovereignty and/or some crucial national interests of the affected States.

## **Chapter VII (Formation and Evidence of Customary International Law)**

Mr. Chair,

With regard to Chapter VII, my delegation joins the other speakers in congratulating the Special Rapporteur, Sir Michel Woods, on his first report. The Thai delegation would like to offer the following observations on this topic.

Thailand is one of those States adopting the dualist approach to international law. We apply provisions of treaties that are implemented in our domestic legislation enacted to fulfill the obligations under such treaties. Thai courts from time to time, but quite rarely, refer to well-established rules of customary international law to settle the disputes before them.

The outcome of the Commission's work on this topic will greatly contribute to informing judges and lawyers on how to identify rules of customary international law. We are particularly interested to

learn how *opinion juris* could be proven to establish a rule of customary international law in the modern era of almost 200 sovereign States. It seems to us that treaties are now the main source of international legal obligations binding upon States, whereas it has become relatively difficult to prove the existence of a rule of customary international law. We hope that the Commission could enlighten us.

**Chapter X (The obligation to extradite or prosecute – *aut dedere aut judicare*).**

With respect to the topic “The Obligation to Extradite or Prosecute”, my delegation would like to welcome the Report of the open-ended Working Group chaired by Mr. Kriangsak Kittichaisaree, which greatly contributes to the development of an indispensable tool for States to fight against impunity.

In this connection, Thailand wishes to offer some comments regarding the Commission's future work on this topic.

The Thai delegation takes note that there are existing gaps in the present conventional regime governing the obligation to extradite or prosecute which need to be closed, especially in relation to most crimes against humanity and war crimes which do not fall in the ambit of grave breaches of the four Geneva Conventions of 1949 and the Additional Protocol I of 1977. Moreover, in relation to genocide, as stipulated by the International Court of Justice in *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide 1948*, article VI of the Genocide Convention only obliges Contracting Parties to institute and exercise territorial criminal jurisdiction and to cooperate with an "international penal tribunal" under certain circumstances.

Therefore, my delegation agrees with the statements made earlier by so many delegations that the Commission be encouraged to develop a model set of *aut dedere aut judicare* provisions to close such gaps. The Thai delegation also highly commends the joint initiative of Argentina, Belgium, the Netherlands and Slovenia for the adoption of a new international instrument on mutual legal assistance and extradition concerning the effective investigation and prosecution of perpetrators of all the major international crimes, including crimes against humanity. My delegation believes that the Commission's work on this topic will definitely assist the said joint initiative.

Regarding the implementation of the obligation to prosecute or extradite, in particular the establishment of the necessary jurisdiction, there is a possible overlap between the obligation to extradite or prosecute and universal jurisdiction when the crimes were committed abroad without any nexus to the forum State. Thus, Thailand would like to suggest that the Commission scrutinize State

practice applying the principle of universal jurisdiction which may be of relevance for the Commission's work on this topic.

Finally, my delegation agrees with the statement of the French delegation last week that the link between the obligation to extradite or prosecute and the mechanisms put in place by international jurisdictions also deserves particular attention.

Mr. Chair, I wish the Commission success and fruitful discussion in the forthcoming session.

Thank you.

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