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Statement

by

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before the Sixth Committee

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Agenda item 77

**Report of the International Law Commission
on the work of its seventy-third session (Cluster I)**

New York, 26 October 2022

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Mr. Chair,

1. Thailand **welcomes the report of the work of the International Law Commission (ILC) at its seventy-third session**, and wishes to **congratulate Mr. Dire Tladi (ดิเร ทลาดิ)**, **Chair of the seventy-third session**, and **all members of the Commission** for the successful conclusion of the session. We also wish to express our appreciation to all members of the Commission for their contribution to the promotion of the progressive development and codification of international law.

2. With respect to the designated Cluster I of the Commission's Report, allow me to highlight the following points.

3. First, Thailand **notes with appreciation** the work concluded by the Commission at its seventy-third session, namely, first **the adoption of the draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)**, and second **the adoption of the draft principles on protection of the environment in relation to armed conflicts** with their respective commentaries. We recognize the efforts and devotion of the Special Rapporteurs, Mr. Dire Tladi (ดิเร ทลาดิ) and Ms. Marja Lehto (มาชา เลโท), respectively, in completing the work on these two important topics of international law.

Chapter IV Peremptory norms of general international law (jus cogens)

4. Second, Thailand recognizes the significant implications of **the draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)**, given the extraordinary legal effects of peremptory norms of general international law on the international community. Thailand, therefore, wishes to reiterate that for a norm of general international law **to meet the criteria of being accepted and recognized by the international community of States as a whole** as having a peremptory character, **it is necessary and must be required that the norm in question be universally accepted and recognized across regions, legal systems and cultures**, among others.

5. Third, Thailand takes note of the **non-exhaustive list of norms of general international law having peremptory status**, which is found in the annex to the present draft conclusions. We also take note that draft conclusion 23 clearly states that the list is non-exhaustive and that it is without prejudice to the existence or subsequent emergences of other peremptory norms of general international law.

6. In this regard, Thailand wishes to underscore that the list merely provides indicative examples of suggested peremptory norms of general international law as prepared by the Commission. It could be used as **a reference point when**

considering whether a certain norm is universally accepted and recognized, or in other words, meets the criteria of being accepted and recognized **by the international community of States as a whole**, as having a peremptory character.

7. Fourth, regarding **draft conclusion 14 on rules of customary international law conflicting with *jus cogens***, Thailand is content with its general approach since the Commission's first reading and welcomes, in particular, paragraph 1 of draft conclusion 14 that reads "a rule of customary international law does not come into existence if it would conflict with an existing peremptory norm of general international law (*jus cogens*)", while recognising also the possibility of a current *jus cogens* norm being modified by a subsequent *jus cogens* norm. Thailand shares the view expressed in the commentary that, even if the constituent elements of customary international law were to be present, a rule of customary international law would not come into existence if the putative rule conflicted with *jus cogens*. In this context, the phrases "does not come into existence", "ne peut voir le jour" in French, and "would conflict with", "créerait un conflit avec" in French, are appropriate.

Chapter V Protection of the environment in relation to armed conflicts

8. Fifth, on the topic of protection of the environment in relation to armed conflicts, Thailand recognizes the crucial role that relevant actors, including **international organizations**, can play **with respect to post-armed conflict environmental assessments**. Given their experiences and expertise, cooperation with such international organizations, for example UNEP, UNESCO, and ICRC, will throw light on how to identify and address environmental consequences of armed conflicts as well as their risks to health, livelihoods and security with a view to bringing the affected communities back on their feet.

9. Thailand also wishes to emphasize that, given the level of dependence that many individuals rely upon the environment for their livelihoods and survival, it is incumbent upon mankind to be protective of the environment, both in times of conflict and peace.

Chapter X (Other decisions)

10. Sixth, Thailand takes note of the International Law Commission's decision to include new topics in its work program which include (a) "Settlement of international disputes to which international organizations are parties"; (b) "Prevention and repression of piracy and armed robbery at sea"; and (c) "Subsidiary means for the determination of rules of international law", and congratulates the three special rapporteurs appointed respectively for these three new topics. In this regard, we also would like to stress the importance of completing work on these

important topics on the basis of sufficient State practice. We will follow with interest the report of the Commission on the progress of the work undertaken both on these three new themes and on sea-level rise in relation to international law, to which we attach particular importance.

11. Seventh, considering the extensive impacts of COVID-19 on livelihoods and economic well-being deeply felt in every corner of the globe as well as the critical importance of international investment on post COVID-19 recovery, Thailand believes it would be of much practical value if the Commission would embark its work on topics that will provide greater clarity on international law principles used in international investment agreements, in particular the fair and equitable treatment (FET) standard, which is already on the Commission's long-term programme of work. 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 in need in this challenging economic climate.

12. Eight, Thailand attaches great importance to the promotion of a better knowledge of international law, and therefore is very pleased of the resumption of the International Law Seminar earlier this year. We recognize the invaluable contribution that the Seminar has on legal capacity building of young international lawyers, particularly those from developing countries, and wish to encourage continued voluntary contributions to the United Nations Trust Fund for the Seminar for this very important purpose.

13. On our part, Thailand cooperates closely with the United Nations in promoting knowledge of international law. We will co-host, for the eighth time, the Regional Course in International Law for Asia-Pacific with the support of the United Nations in November and December 2022.

Mr. Chair,

14. To conclude, Thailand wishes to underscore the vital importance of the work of the Commission to the maintenance of international peace and security as well as friendly relations and cooperation among States. Given the significance of the work of the Commission, it is therefore of equal importance that the work of the Commission reflects and addresses all voices, needs and concerns of Member States. An enhanced interaction between the Commission and Member States, through the Sixth Committee, through both formal and informal channels, is indispensable for the work of the Commission to be both inclusive and timely responsive. On our part, Thailand stands ready to support the Commission, including by exchanging views with members of the Commission, to further promote progressive development and

codification of international law, which in turn is key to justice, peace, security and friendly relations and cooperation among States.

Thank you, Mr. Chair.
