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Statement

by

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**Ambassador and Permanent Representative of Thailand
to the United Nations**

before the Sixth Committee

of the 67th Session of the United Nations General Assembly

**Agenda Item 79: Report of the International Law Commission on
the work of its sixty-fourth sessions (Part II)**

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Mr. Chairman,

At the outset, my delegation would like to express our appreciation to Mr. Lucius Caflisch, for his comprehensive presentation of Chapter VI to Chapter XI of the Report of the International Law Commission, as contained in Document A/67/10 last Friday.

Today, Thailand would like to make statement on this part of the ILC report especially on Chapter VI (Immunity of State officials from foreign criminal jurisdiction) and Chapter IX (The obligation to extradite or prosecute).

Mr. Chairman,

With regard to Chapter VI (Immunity of State officials from foreign criminal jurisdiction), my Delegation joins the other speakers in congratulating Ms. Concepcion Escobar Hernandez on her well-deserved appointment as Special Rapporteur on the topic Immunity of State officials from foreign criminal jurisdiction. My Delegation hopes that this first-ever female Special Rapporteur of the ILC will ably discharge her mandate on this highly complex and politically sensitive topic, and that the final outcome of the ILC's work on this topic will be universally accepted.

Mr. Chairman,

The Thai Delegation notes that the Special Rapporteur has frequently referred to the notion of "essential values of the international community", as appeared, for example, in paragraphs 87 and 88 of the ILC Report. My Delegation shares the concerns of several ILC members, as appeared in paragraphs 101 and 102 of the ILC Report, that it would be difficult to give effect to such values, and that certain values cherished by a group of States in a particular geographical region should not be privileged over values of other States in a different geographical region of the world. The balance should be between the need to respect sovereignty of States for the sake of stability in international relations, on the one hand, and the fight against impunity regarding the most serious crimes of international concern, on the other hand. To this end, the Special Rapporteur should initially focus on *lex lata* and include *de lege ferenda* proposals only where there is international consensus in support of such proposals.

Mr. Chairman,

I will now turn to the topic “The obligation to extradite or prosecute”. My Delegation highly commends the efforts of the Working Group on this topic under the chairmanship of Mr. Kriangsak Kittichaisaree, a compatriot of mine. The recent judgment of ICJ in the case *Questions relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal) of 20 July this year underlines the important role of this obligation in preventing and combatting impunity by allowing the enforcement of international criminal law. This topic is of such practical importance to the international community of nations that the ILC should continue to work on it as a matter of priority and produce a final outcome which elaborates rules of international law to guide States in this matter.

ILC reports during these past years seem to reveal that the ILC does not have sufficient information regarding domestic laws and judicial practice of States related to the obligation to extradite or prosecute in order for the ILC to conclude whether the obligation is a rule of customary international law. In any case, States in my part of the world have been actively cooperating in extraditing or prosecuting perpetrators of crimes of common concern, such as international terrorism, drug trafficking and human trafficking, among others. Thailand is a member of the steering group for the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crimes, comprising 46 members and 29 observers. Mr. Kittichaisaree himself coordinated the International Legal Cooperation against Terrorism stream under the framework of the Bali Regional Meeting on Counter-International Terrorism, with more than 20 States from Asia, Oceania, Western Europe and North America participating. The States participating in these two processes feel legally bound to extradite or prosecute perpetrators of serious crimes of international concern under their respective domestic law, and the majority of them can extradite such offenders without a treaty. This kind of practice can crystallize into regional customary law. Therefore, my Delegation shares the view of other Delegations especially the Nordic countries, that despite the absence of a determination on the customary law nature of the obligations, further steps towards the progressive development of international law in relation to this topic of “The obligation to extradite or prosecute” should continue to be undertaken by the ILC. This similar view is also expressed in paragraph 216 of Document A/67/10 that, and I quote, “the focus, taking both progressive development of international law and its codification into account, could be on the obligation to extradite or prosecute as evidenced especially in multilateral treaties, including the material scope and the content of the obligation, the relationship between the obligation and other principles, conditions for the triggering of the obligation, the implementation of the obligation, as well as the relationship between the obligation and the surrender of the alleged offender to a competent international criminal tribunal. ...”

Mr. Chairman,

The ILC can engage in codification as well as progressive development of international law on this important topic. I find the views of the ILC members in paragraphs 95 and 95 in Chapter VI of Document A/67/10 equally appropriate here. Those ILC members opine that, when engaging in progressive development of the law, the ILC assesses State practice even though the law may not have been sufficiently developed or is unclear, or the matter remains unregulated. It is for the ILC to undertake an objective analysis of the relevant evidence of State practice, the doctrine and any emerging trends and, on that basis, propose as appropriate draft articles for the topic.

Mr. Chairman,

While I am having the floor, I would like to remind the International Law Commission that the Commission still has the topic “The fair and equitable treatment standard in international investment law” under its long-term programme of work. Thailand is both a capital importing and a capital exporting country. We therefore wish to see a balanced and predictable regime in international investment law. My delegation strongly urges the Commission to commence working on this topic at the next session, starting with the appointment of the Special Rapporteur to be in charge of the topic.

I thank you Mr. Chairman.
