



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

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Statement

by

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before the Sixth Committee

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**Agenda Item 78: Report of the International Law Commission on
the work of its sixty-sixth session (Part II)**

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Building Bridges for Partnership
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Mr. Chair,

Today, my delegation wishes to share its view on the current work of the Commission, on Chapter VI (Obligation to extradite or prosecute) and Chapter IX (Immunity of State officials from foreign criminal jurisdiction) of the ILC report.

Chapter VI: Obligation to extradite or prosecute (*aut dedere aut judicare*)

Mr. Chair,

My delegation wishes to commend the work of the International Law Commission on the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)”, as well as the Chair of the Working Group, Professor Kriangsak Kittichaisaree of Thailand, for the invaluable contribution in an efficient and expeditious manner. My delegation takes note with appreciation that the Working Group has exhausted consideration of all the issues relating to this topic which the Sixth Committee has accorded a top priority. My delegation is particularly interested in the clarifications provided in the Final Report on the gaps in the existing conventional regime; the legal relationship between the surrender of a suspect to an international or special court or tribunal and the obligation to extradite or prosecute; and the relationship between the obligation to extradite or prosecute and *erga omnes* obligations or *jus cogens* norms.

My delegation is of the view that the work provides useful guidance for States in their cooperation to combat impunity and in the promotion of the rule of law.

Chapter IX: Immunity of State Officials from foreign criminal jurisdiction

Mr. Chair,

On the topic “Immunity of state officials from foreign criminal jurisdiction”, the Thai delegation commends the Special Rapporteur, Madame Concepción Escobar Hernández, for her invaluable and insightful work on this topic.

Our delegation would like to begin by presenting a clearer picture of the Thai domestic law, which might have several characteristics similar to many States’. As a State Party to the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963, Thailand grants immunity from criminal jurisdiction to persons entitled to such immunity under the respective Conventions. Thailand is not a State Party to the Convention on Special Missions. However, we accord immunity to persons covered by host country agreements between Thailand and international organizations.

Apart from these agreements, Thai courts hardly have experience in dealing with granting immunity to foreign State officials from the Thai criminal jurisdiction. Therefore, we believe that the ILC's work on this topic must be carried out carefully and should achieve the right balance between according necessary immunity to State officials from foreign criminal jurisdiction, on the one hand, and combating impunity, on the other.

With respect to persons enjoying immunity *ratione materiae*, the focus should not be on the identification of who is an "official". This is because such term has yet to be firmly defined by international law while it is defined differently under various regimes of domestic law. It is therefore important that the Commission take due consideration of State practice in this area. Furthermore, my delegation wishes to point out that it would be very difficult, if not impossible, to draw up a list of all the office or post holders who would be classified as "officials" that are acceptable to all States. The persons covered by immunity *ratione materiae* can only be determined using "identifying criteria" which are to be applied on a case-by-case basis.

In this connection, Thailand is of the view that the immunity *ratione materiae* should not be extended to individuals or legal persons who are private contractors hired by their government or government agency to act on its behalf. We believe that there is no sound legal basis to extend the scope of such immunity to non-State officials who cannot be in a position to exercise "inherently governmental authority".

The Thai delegation emphasizes that international law must recognize the immunity granted by domestic law to government agents for their acts which are necessary to perform official functions or to maintain law and order, but without the intent to commit violations of human rights.

Finally Mr. Chair, it is our belief that any exception to the immunity of State officials from foreign criminal jurisdiction should not undermine the immunity of the Head of State, particularly when his or her constitutional role is a ceremonial one with no *de facto* authority to direct or influence an act or omission which constitutes a core crime proscribed by international law.

I thank you, Mr. Chair.