



**PERMANENT MISSION OF THAILAND  
TO THE UNITED NATIONS  
351 EAST 52<sup>nd</sup> STREET • NEW YORK, NY 10022  
TEL (212) 754-2230 • FAX (212) 688-3029**

**Statement**

**by**

**Mr. Sun Thathong**

**Representative of the Kingdom of Thailand**

**before the Sixth Committee  
of the 72<sup>nd</sup> Session of the United Nations General Assembly**

**Agenda Item 81:  
Report of the International Law Commission on the work of  
its sixty-ninth session (Cluster III)  
New York, 1 November 2017**

**Please check against delivery**

Mr. Chair,

At this session, my delegation wishes to comment on Chapters VIII and X of the International Law Commission's report.

### **Chapter VIII Peremptory norms of general international law (*jus cogens*)**

On the topic of peremptory norms of general international law (*jus cogens*), Thailand would like to thank the Special Rapporteur, Professor Dire Tladi, for his second report on the subject, which responds to some of the concerns raised by Member States during the previous session of the Sixth Committee and puts forward six additional draft conclusions.

Thailand recognizes the importance of *jus cogens* and the challenges in establishing the criteria for identifying them. It is our hope that the Commission will continue its deliberation to shed more light on the nature and definition of *jus cogens*.

Mr. Chair,

Having studied the Special Rapporteur's reports, Thailand would like to make the following comments.

First, Thailand welcomes the Special Rapporteur's approach in using the definition of *jus cogens* in Article 53 of the Vienna Convention on the Law of Treaties (VCLT) as basis for his analysis, given that it is the most commonly used definition of *jus cogens* today.

However, we note that there is no reference to the customary rule of treaty interpretation as codified in Articles 31 and 32 of the VCLT in the Special Rapporteur's report. It should be stressed that the definition of *jus cogens* in Article 53 is only [quote] *for the purposes of the present Convention* [unquote] and that this definition itself is part of a treaty. The interpretation of the definition of *jus cogens*, as contained in Article 53, should therefore follow the steps laid down in Articles 31 and 32 of the VCLT, respectively. This approach would help ensure that the context of Article 53, as well as the object and purpose of the VCLT, are fully taken into consideration in the Special Rapporteur's analysis.

Second, regarding the question of whether or not there should be an illustrative list of *jus cogens*, Thailand is of the view that establishing such a list may hinder the development of *jus cogens*, which is dynamic and evolving in nature.

Third, and more specifically, on the meaning of "international community of States as a whole", paragraph 3 of draft conclusion 7 suggests that, for the purpose of identifying *jus cogens*, acceptance and recognition by a large majority of States is sufficient and, therefore, that recognition by all States is not required. Thailand wishes to highlight that during the negotiation of Article 53 there was some uncertainty surrounding the term "as a whole". In fact, some States voted against

Article 53 precisely because the phrase was unclear. In our view, paragraph 3 of draft conclusion 7 does not accurately reflect what the negotiators of Article 53 intended, and the term “as a whole” requires a much higher threshold than simply a “large majority”. We would like to see more concrete evidence based on state practice from the Special Rapporteur in support of his conclusions in this regard.

Finally, Thailand wishes to emphasize that it is most important not to rush into drawing concrete conclusions in areas where state practice is unclear or limited. At the same time, the Commission should continue to identify and assess developments in international law pertaining to *jus cogens* that took place after the adoption of the VLCT in order to ascertain the understanding of *jus cogens* that most clearly reflects the current intention and practices of all States.

### **Chapter X Protection of the environment in relation to armed conflicts**

Mr. Chair,

On the topic “Protection of the environment in relation to armed conflicts”, my delegation wishes to commend the work of Ms. Marie Jacobsson, former Special Rapporteur, and Mr. Marcelo Vázquez-Bermúdez as Chair of the Working Group. We also welcome Ms. Marja Lehto as the new Special Rapporteur, who will ensure the continuity of the discussion on this important topic.

Mr. Chair,

The damage caused by armed conflicts on the environment can have long-term devastating impacts on both the earth’s ecological well-being and the people’s livelihood, potentially reversing years of hard-earned developmental gains. Yet little attention has been given to the prevention and mitigation of such damages. Therefore, Thailand is following with great interest how the interrelation between international environmental law and international humanitarian law will be further developed in this regard.

My delegation wishes to highlight the need for active engagement with those international organizations, which have relevant experience and expertise, such as the United Nations Environment Programme (UNEP), United Nations Educational, Scientific, and Cultural Organization (UNESCO), and the International Committee of the Red Cross (ICRC). Such engagement would help enhance our understanding on the environmental consequences of armed conflicts and the appropriate preventive and remedial measures that may be taken.

Finally, we encourage the Commission to continue working on refining the draft principles and elaborating the draft commentaries in an expeditious manner, and we look forward to engaging in future discussions on this important topic.

Thank you, Mr. Chair.

\*\*\*\*\*