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Statement

by

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Agenda Item 82:
Report of the International Law Commission on the work of its seventieth session (Cluster I)

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Mr. Chair,

On behalf of my delegation, I wish to thank Mr. Eduardo Valencia-Ospina, current Chair of the International Law Commission, for his comprehensive report on the work of the seventieth session of the Commission. We would also like to express our appreciation to all the other members of the Commission for their contribution to further the progressive development and codification of international law and congratulate the Commission for the successful conclusion of the session.

Mr. Chair,

With respect to the designated Cluster I of the ILC Report, Thailand welcomes the adoption of the draft conclusions on **Chapter IV "Subsequent agreements and subsequent practice in relation to the interpretation of treaties"** and **Chapter V "Identification of customary international law"** and their respective commentaries. We express our deep appreciation to the Special Rapporteurs, Mr. Georg Nolte and Sir Michael Wood respectively, for their hard work. The completion of these two topics will help guide States and those who may be called upon to interpret treaties or identify rules of customary international law in their deliberations, thus further strengthening the international legal framework and advancing the rule of law.

Concerning the adoption of the draft conclusions on **Chapter IV**, Thailand wishes to give the following substantive comments.

First, Thailand is of the view that subsequent agreements and practice, as referred to in Article 31 of the VCLT, are to be considered solely within the context of treaty interpretation. Therefore, any subsequent agreement with a view to or with the effect of amending the treaty is subject to Article 39 of the Convention, and subsequent practice can never result in amending the treaty. Any amendment or modification of treaty provision must be subject to the relevant rules of Article 39 of the VCLT in order to guarantee the certainty, stability and predictability in international relations that treaties are meant to provide.

Secondly, subsequent agreements and subsequent practice under Articles 31 and 32 would mainly help, together with the context, to shed light on the ordinary meaning of a treaty provision at the time of its adoption. Therefore, they support only the contemporaneous interpretation. In our view, using the subsequent

agreements and subsequent practice for an evolutive interpretation should be considered with caution as not to create uncertainty regarding the treaty obligation or result in defeating the objectives and purposes of the treaty. The evolutive interpretation should be limited to certain circumstances or some categories of treaties for a specific purpose. A treaty reflects the established intention of the parties through the carefully selected languages notwithstanding how the meaning of a treaty language might evolve over time. Taking into account new development and new context where a treaty applies, a treaty term might be construed in a broader meaning than its ordinary meaning at the time of its adoption so as to keep the application of a treaty meaningful/dynamic/relevant. We would therefore recommend using the "evolutive interpretation" only in this context where the subsequent agreements and subsequent practice are used to determine the intention of the parties whether to allow an evolving meaning of a treaty term. In this case, careful attention is needed for States to explain to their domestic constituencies regarding the application of a treaty provision in an unforeseen situation.

Also, if the evolutive interpretation of treaties were to be indulged, Thailand is of the view that only the use of subsequent agreements can be accepted to this end, since only subsequent agreements can truly reflect the concurring opinion of the parties, whereas the determination of the subsequent practice to be used in the process of evolutive interpretation is subject to the appreciation of a third party, which could give rise to a new obligation not intended by the State parties and not agreed upon by all the parties concerned. Additionally, the interpretative role of subsequent agreement must be limited to the interpretation of ambiguous treaty provisions and not open-textured provisions. This predicament has become more evidenced in the field of investor-State dispute settlement where the MFN clause has been interpreted to include procedural matters when in reality, it may have been the intention of the State parties not to include those procedural matters into the treaty in the first place.

Finally, having stated the above, we therefore appreciate the clarification made on the distinction between subsequent agreement and subsequent practice as referred to in article 31 paragraphs 3 (a) and (b) of the VCLT which both reflect the expression of the parties' intention, as appears in the conclusion 4.

Mr. Chair,

Turning to **Chapter XIII**, Thailand welcomes the Commission's timely decision to include the topics "Universal criminal jurisdiction" and "Sea-level rise in relation to international law" in its long-term programme of work.

For the former topic, Thailand is of the view that the Commission should first and foremost focus its work on giving clarity to the definition, nature, scope and application of the principle of universal criminal jurisdiction. In this regard, we wish to make the following comments.

First, the definition of the principle of universal criminal jurisdiction needs to be distinct from the obligation to extradite or prosecute (*aut dedere aut judicare*) as well as the jurisdiction of international criminal courts/tribunals and other forms of jurisdiction including territoriality and nationality. To this end, the principle of universal jurisdiction can be applied only by default of any other applicable jurisdiction. Second, to ensure the respect of the principle of sovereign equality of States, the principle of universal criminal jurisdiction should not be an exception to the application of immunity *ratione personae*.

With regard to the topic Sea-level rise in relation to international law, as States continue their battle against the impacts of climate change and global warming, we will follow the discussions on this topic with great interest with regard to the legal implications of sea-level rise in the ambit of the law of the sea, statehood and the protection of persons affected by sea-level rise.

Mr. Chair,

Thailand wishes to congratulate the Commission on the occasion of its seventieth anniversary this year. The role of the Commission is indispensable in our continued efforts to make the UN relevant to the people. Today, the United Nations must step up its efforts to strengthen the international legal framework and advance the rule of law, in large part to safeguard multilateralism amidst the many challenges resulting from the widening fragmentation and diversification of international law in recent years. This work is also crucial to the achievement of the Sustainable Development Goals. The ILC's exemplary role in the codification and progressive development of international law provides common understanding, clarity,

predictability, and universality of the positive law. It is therefore, our hope that the close relationship and dialogue between the ILC and the Sixth Committee is further strengthened in the years to come.

Furthermore, this important area of work should not be confined within the ILC and the Sixth Committee. Rather, we need to integrate it into the wider UN agenda across the whole UN system, since the effect and benefits of our work go far beyond this room.

I thank you, Mr. Chair.

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