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Statement of the Republic of Estonia

79th Session of the United Nations General Assembly Sixth Committee

Report of the International Law Commission

Cluster I - Chapters: VII (Immunity of State officials from foreign criminal jurisdiction), X (Sea-level rise in relation to international law) and XI (Other Decisions and Conclusions)

October 2024

Mr Chairperson,

Estonia would like to express its continuing appreciation for the work of the International Law Commission and wishes to thank all the members of the Commission for their contribution.

Mr Chairperson,

Today, I start with addressing the topic of **immunity of State officials from foreign criminal jurisdiction**. Firstly, I would like to congratulate Mr Claudio Grossman Guiloff for assuming the post of the Special Rapporteur and for his report to the ILC. Secondly, Estonia highly appreciates continuous dedication of the ILC to this important topic as well as adoption of the draft articles at the first reading in 2023.

Estonia notes that the report covers Articles 1 to 6 to allow more time to reflect on the topic, and next report covering Articles 7 to 18 will be presented in 2025. The Special Rapporteur has suggested modifications to some draft articles that we highly appreciate because they reflect several issues raised by States.

The scope of the draft articles is stated in paragraph 1 of Article 1. Although the draft articles apply to the immunity of State officials from the criminal jurisdiction of another State, Estonia welcomes that draft paragraph 3 of Article 1 also contains reference to the rights and obligations of States in relationship to criminal jurisdiction of international criminal courts and tribunals. We find it very important that draft articles include developments of international criminal law, and includes reference to international criminal courts and tribunals where specific rules apply to their international criminal jurisdiction.

The modified paragraph 3(a) of Article 1 refers to "treaties establishing international criminal courts and tribunals as between the parties to those agreements". This new text uses at the same time the terms "treaties" and "agreements", while the previous text used only the term "agreements". We would like to suggest to take one more look at the wording of paragraph 3(a) of Article 1, whether it is necessary to use different terms here. Also, we would like a clarification why we need a specification "as between the parties to those agreements". Our preference is to delete this specification.

There are different types of international and hybrid courts and tribunals which have different legal constituting basis. Most current courts and tribunals probably fall outside the scope of *international* criminal courts and tribunals under paragraph 3(a) of Article 1 because they are not established by treaties. But also such courts and tribunals play an important role in the development of international law and they should be included.

Paragraph 3(b) of Article 1 covers international criminal courts and tribunals established by binding resolutions. We support the inclusion of this provision as it covers the courts and tribunals established by the Security Council. However, we would like to raise the question why the Security Council resolutions are not explicitly mentioned? What are the possible other binding resolutions? Or, perhaps it would be better to leave out the word "binding" and use another term instead of "resolutions", for example, "instruments", in order to cover the possible role of other organs or institutions in establishing international criminal courts and tribunals, for example, of the General Assembly.

We find it relevant to mention that the General Assembly has practiced such a role by authorising the Secretary-General to conclude an agreement between the United Nations and a State to establish a special tribunal to investigate and prosecute the most serious international crimes. Even though General Assembly resolutions are not legally binding on Member States, the resolutions supported by the wide majority of Member States carry strong political weight, influencing the international community as a whole. The Extraordinary Chambers in the Courts of Cambodia and the Special Court for Sierra Leone are prominent examples. Therefore, the provision in question could be further reviewed.

Regarding Article 2 that provides the definitions of "state official" and "act performed in an official capacity", Estonia agrees with the proposed text. However, as the definitions relate directly to Articles 4 to 7, the discussion of

Article 2 should be suspended until the entire text of the draft article has been considered.

When it comes to immunity *ratione personae* under Articles 3 and 4, we agree that, in principle, they reflect customary international law. However, we would like to point out that because of the developments of international law and international jurisprudence, the troika (head of state, head of government and minister of foreign affairs) does not enjoy, during the term of office, personal immunity before international courts and tribunals for international crimes. The troika should not hide behind personal immunity in order to escape accountability for the most serious international crimes.

Regarding Article 5, we agree with the proposal of the Special Rapporteur to delete "acting as such" after the words "state officials" as redundant.

Article 6 provides that state officials enjoy immunity *ratione materiae* only with regard to acts performed in an official capacity. In principle, we agree that this provision reflects customary international law. At the same time, we believe that not every act performed in an official capacity by a state official is covered by immunity *ratione materiae*. Notably, it cannot cover the commission of the most serious international crimes which are a concern to the international community as a whole.

Mr Chairperson,

Now, let me turn to the topic of **sea-level rise in relation to international law**. Estonia aligns itself under this topic with the statement made by Latvia on behalf of three Baltic states and the statement made by the European Union, and adds the following comments in its national capacity.

Estonia would like to thank the Co-Chairs Patrícia Galvão Teles and Juan José Ruda Santolaria and the Study Group for their valuable work that helps to clarify international law rules regarding this important matter.

We are glad that the additional paper to the second issues paper highlighted the legal effects and implications of sea-level rise. The different views of States show that the legal issues related to sea-level-rise are significant and that there is a lack of clarity, necessitating further exploration of these matters.

In the second issues paper, it is observed that there is a strong presumption of the continuity of statehood in the case of States whose land surface may be totally or partially submerged or rendered uninhabitable by rising sea levels caused by climate change. Indeed, we need to preserve legal stability, security, certainty and

predictability in international relations. Therefore, whatever approach is taken, it is important to have a clear basis in international law for the continuity of statehood.

We read with interest about the possible alternatives to address the continuity of statehood and to find innovative legal and practical solutions. One of the options that was put forward was how to provide adequate assistance to the nationals of a State affected by the phenomenon of sea-level rise by organising or strengthening digital platforms in order to connect the nationals scattered around the world with the affected State. For example, Estonia offers more than 600 e-services to its nationals, residents, and businesses, and 99 per cent of public services are available online 24 hours a day. Estonia's experience as a digital society confirms that this is a measure that is not difficult to implement and may be suitable for small States affected by sea-level rise.

Estonia agrees to the importance of international cooperation, which was stressed by the Study Group. International cooperation is crucial in addressing sea-level rise in particular with regard to the continuity of statehood and the protection of persons affected by sea-level rise, because its impacts often transcend national borders, requiring collective action for effective adaptation and mitigation. Therefore, we agree with the suggestion that the Study Group could consolidate and further develop the existing rules on cooperation.

We would like to note that the Study Group raised a number of relevant issues of international law that need to be further analysed. We consider that there needs to be a connection between all three subtopics – law of the sea, statehood and protection of persons affected by sea-level-rise – to ensure coherence between them. We see that the outcome of the work by the ILC will be of great influence to international law; so, we wish the ILC and the Study Group all the success in finalising the report in 2025.

Mr Chairperson,

Turning now to the topic **other decisions**, Estonia welcomes the recommendation to include two topics in the long-term programme of work of the ILC. We consider the topics "compensation for the damage caused by internationally wrongful acts" and "due diligence in international law" to be timely and practical. Estonia supports the inclusion of these topics in the long-term programme and hopes that the ILC can start its work on these topics as soon as practicable.

Thank you for your attention.