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Statement of the Republic of Estonia at the 80th Session of the United Nations General Assembly Sixth Committee

Debate on the Report of the International Law Commission

Cluster II – V (Immunity of State officials from foreign criminal jurisdiction) and VII (Subsidiary means for the determination of rules of international law)

November 2025

Chair,

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.

We align with the statement of European Union and its Member States.

Today, I start with addressing the topic of **immunity of State officials from foreign criminal jurisdiction**.

Estonia would like to thank the Special Rapporteur Claudio Grossmann Guiloff and the Drafting Committee for their valuable work that helps to clarify international law rules regarding this important topic.

We note that the Commission was able to provisionally adopt Draft Articles 7, 8 and 9. We limit our comments to these articles. The Special Rapporteur has explained that the aim of the second reading was to streamline the text and to modify it only where there were compelling reasons to do so. He has actually suggested some amendments to these articles that are of particular importance to Estonia.

Draft Article 7 reflects the important principle of international law that immunity of State officials should not serve as a shield against responsibility for the most serious international crimes that are a concern to the international community as a whole. This approach is consistent with customary international law and the jurisprudence of international criminal tribunals. The draft article includes an exhaustive list of the international crimes in case of which immunity *ratione materiae* does not apply. Estonia continues its support to the inclusion of such a list. However, like previously, we suggest that the list of crimes should be open-

ended to take into account any further developments, for example, when new international crimes are established in the future.

Estonia appreciates that the Commission has expanded the list of crimes and has included the crime of aggression. We have consistently suggested the inclusion of this crime and we agree with the Special Rapporteur that the crime of aggression has long been recognised as the "supreme international crime" as originally established by the Nuremberg Tribunal. The exclusion of the crime of aggression would risk creating an artificial, inappropriate hierarchy among the most serious international crimes. The activation of the jurisdiction of the International Criminal Court over the crime of aggression further underscores its contemporary relevance.

Estonia supports the inclusion of slavery and the slave trade to the list of crimes.

Draft Article 8 contains the procedural provisions and safeguards governing the application of immunity of State officials from foreign criminal jurisdiction. Estonia agrees with the Special Rapporteur that these safeguards apply both in case of immunity *ratione personae* and immunity *ratione materiae*. The procedural safeguards ensuring fair trial are indispensable. They are not only practical tools for national authorities but also fundamental expressions of the rule of law in international relations. Also, they help to prevent politicization, to protect against arbitrary or abusive proceedings, and to ensure that officials are treated with fairness and respect for their human rights.

We support the division of Draft Article 8 into two paragraphs to enhance precision. The commentary should elaborate on the relationship between Draft Article 7 and Part Four, making clear that even where immunity does not apply to the most serious international crimes, the procedural safeguards remain in place to ensure fair proceedings in accordance with international standards.

Draft Article 9 addresses the examination of immunity by the forum State. We support the approach that the forum State must examine whether immunity applies before taking any step that might affect a foreign State official. This requirement reflects due process and respect for the sovereignty of other States, and serves to prevent wrongful arrests or coercive measures.

We concur with the Special Rapporteur that the examination of the question of immunity must occur prior to any coercive act, and that it must be guided by good faith, proportionality, and, where appropriate, consultation with the State of the official in question. We support also the inclusion of the phrase "as far as practicable", which appropriately introduces flexibility for urgent circumstances – such as where immediate action is necessary to prevent imminent harm –

without diminishing the overall obligation to examine the question of immunity promptly and in good faith.

Mister Chair,

Now, let me turn to the topic of **subsidiary means for the determination of rules of international law**.

Estonia would like to thank the Special Rapporteur Charles Chernor Jalloh and the Drafting Committee for their valuable work that helps to clarify international law rules regarding this important topic.

We note that Draft Conclusions 1 to 13 were provisionally adopted. We believe that the changes made, during the last session, to draft conclusions as well as their structure and order are going in the right direction and benefit the future outcome of the Commission's work on this matter.

We particularly appreciate the adjustments made to Draft Conclusion 10 regarding the works of expert bodies. We agree with the view that distinguishing between such bodies based on their public or private character has less practical value than focusing on the scientific rigour of the works produced. It is important that characteristics such as independence of the bodies and their members, and objective and impartial scientific methods used are given preference over the public or private character of the bodies, which could be difficult to ascertain.

We agree that certain entities deserve to be specifically mentioned in this context due to their special status – the ICRC, *Institut de Droit International*, the International Law Association, human rights treaty bodies, notable academic institutions as well as the Commission itself. We understand that each of these entities has a distinct character. However, it is important to keep in mind that their works remain nevertheless "works of expert bodies" as subsidiary means for the determination of rules of international law and are not sources of international law.

Consider the example of the ICRC – it has a particular mandate under international law with regard to promoting international humanitarian law and observing compliance of the parties to armed conflict with IHL. Also, it has undertaken the task of codifying customary international humanitarian law, the value of which cannot be underestimated. Yet, its work remains an output of an expert body and, in some cases, contains elements of progressive development of IHL. Nevertheless, their particular role can be reflected in the weight attributed to their works.

We specifically acknowledge the in-depth consideration given to the issue of "weight of the works of expert bodies". We find the additional criteria set out in Draft Conclusion 11 for assessing the weight of the works of expert bodies helpful with the view of determining the right level of weight to be attributed to the specific works of expert bodies in a specific context.

With regard to the "resolutions and other texts produced by international organizations or at intergovernmental conferences", addressed in Draft Conclusion 12, and their weight, addressed in Draft Conclusion 13, we are pleased with the approach taken by the Commission. This serves to further clarify the necessity for a case-by-case assessment and emphasise the possibility of using these resolutions and texts as subsidiary means for the determination of the rules of international law.

Thank you!