

Statement of the Republic of Estonia

Concerning draft Article 6 paragraph 4 we note that it could be useful to clarify the extent of obligations and responsibility arising from an internationally wrongful act that could be transferred to the successor State. Likewise, we think it would be useful to clarify how a newly independent State could be defined or clarified in the commentaries to the draft articles. In addition, with regard to draft Article 7 paragraphs 2 and 3 it would be helpful to have explanations and examples on the

Estonia also supports the comments of some delegations made already last year that it would be very helpful to know which aspects of the draft articles contain existing State practice and which aspects have to be considered *de lege ferenda*.

Coming to the end of our comments on this chapter, we note the proposal by the Special Rapporteur on the subjects of subsequent reports and upcoming deliberations of the Commission. We consider the way forward proposed by the Special Rapporteur to be reasonable and we wish the Special Rapporteur and the members of the Commission success.

Mr Chairman,

Estonia welcomes the continuation of work by the Commission on **immunity of State officials from foreign criminal jurisdiction** and in this context we would like to express our appreciation to Special Rapporteur Ms Concepción Escobar Hernández for her dedicated work in preparing the 6th report on this important and complex topic.

limitations and exception of immunity of State officials were discussed as they are also reflected in the 6th report. Estonia raised the issue that the crime of aggression should also be listed in draft Article 7 paragraph 1 among the list of crimes in which immunity *ratione materiae* do not apply. At that time this position did not get much support

Penal Code does already contain a specific article on crimes of aggression, which

Finally, we would briefly like to comment on three components of procedural aspects as suggested in the report and discussed by the Commission. What concerns timing of addressing immunity issues, we concur with the views expressed that the question of immunity should be raised and addressed at an early stage of the proceedings or at the earliest opportunity, otherwise it can lead to nullifying the effective use of the immunity rule. The acts of a forum State to which immunity applies as listed by the Special Rapporteur – detention, appearance as a witness and precautionary measures – are all relevant and deserve further attention. As most of the acts performed during criminal proceedings constitute constraining coercive measures and have a direct influence on the exercise of functions by an official, analysis of these aspects deserve particular attention.

What concerns the national authority who should determine immunity, it is for the court of the forum State to decide on the substance of the issue, whether immunity exists or whether there exist exceptions to immunity, although the role of other national authorities, such as investigative authorities or Public Prosecutors cannot be ruled out, in particular in the initial stage of criminal proceedings. The court may ask opinion from other relevant national authorities, for instance from foreign ministries.

We would also like to mention the role of international cooperation in these questions and raise a possibly more active role of the Security Council in referring cases to the ICC.