

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

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 the same terms as the previous text, while the previous text used only "treaties and 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. Also, we would like to suggest to use the same terms 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. So 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.

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 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 of 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.

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 nationals of a State affected by the phenomenon of sea level rise by organising or strengthening digital platforms in order to connect nationals scattered around the world with the affected State. For example, Estonia offers that 600 e-services to its nationals, residents and businesses, and 99 per cent of public services are available online 24 hours a day.

Our society confirms that this is a measure that is 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.

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