

JOINT LETTER TO THE INTERNATIONAL LAW COMMISSION REGARDING DRAFT ARTICLE 7 OF THE DRAFT ARTICLES ON IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

17 April 2025

1. In anticipation of the Seventy-sixth Session of the International Law Commission (ILC) beginning on 28 April 2025, members of the Global Initiative Against Impunity for International Crimes and Serious Human Rights Violations (GIAI) write to provide comments to the ILC on article 7 of the draft articles on immunity of State officials from foreign criminal jurisdiction (Draft Articles). This is without prejudice to our common or individual organisations' views on personal immunities.
2. The GIAI brings together nine civil society organisations to promote victim-centred, trauma informed and gender sensitive justice and accountability for gross human rights violations and core international crimes. This strategic partnership comprises the following consortium members: Civil Rights Defenders, the Coalition for the International Criminal Court, the European Center for Constitutional and Human Rights, Impunity Watch, the International Federation for Human Rights, Parliamentarians for Global Action, REDRESS, TRIAL International, and Women's Initiatives for Gender Justice.
3. The members of the GIAI welcome the formulation of article 7 of the Draft Articles as proposed in the 'Second report on immunity of State officials from foreign criminal jurisdiction by Claudio Grossman Guiloff, Special Rapporteur' dated 29 January 2025 (Second report). In particular, we commend the addition of the international crimes of aggression, slavery and the slave trade to the list of crimes enumerated under paragraph 1 of draft article 7. The incorporation of these crimes is both appropriate and necessary, as the prohibitions thereof are recognised as peremptory norms of general international law (*jus cogens*),¹ thereby reinforcing the imperative of ensuring accountability for these crimes.
4. We recognise that draft article 7 has been the subject of much debate reflecting "different positions [...] on [...] the existence or non-existence of limitations and exceptions to immunity *ratione materiae*".² We strongly support the position ultimately taken by the Commission in the Draft Articles that limitations and exceptions to immunity *ratione materiae* do exist under international law. These limitations and exceptions are necessary for the coherence of the existing international legal framework, including developments in international criminal law on the definition of the most serious crimes, the scope of accountability and the need to eradicate impunity.³ As noted by the Special Rapporteur in the Second report, there have been significant recent developments in State practice which have "reaffirmed the existence of exceptions to immunity *ratione*

1 See International Law Commission (ILC), Report of the International Law Commission Seventy-third session (18 April-3 June and 4 July-5 August 2022), Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), Conclusion 23, [UN Doc A/77/10](#), 16.

2 *ibid* 230.

3 *ibid* 196.

materiae in cases involving crimes under international law”.⁴

5. In the Special Rapporteur’s Second report, he notes that several States have raised concerns about the exclusion of certain crimes from the list provided in paragraph 1 of draft article 7 and some States questioned the criteria relied upon to include or exclude crimes in draft article 7.⁵ The Special Rapporteur further notes that “[s]ome states were concerned about including an exhaustive list and its potential to freeze the development of international law in this area”.⁶ We share this concern.
6. Consequently, the Special Rapporteur suggested that the ILC ought to “clarify in the commentary [to draft article 7] that the list in paragraph 1 of draft article 7 is non-exhaustive and to provide a clearer basis in the commentary regarding the international crimes to which immunity *ratione materiae* is not applicable”.⁷
7. The GIAI recommends that the non-exhaustive nature of the list of crimes in paragraph 1 of draft article 7 be expressly reflected in the text of draft article 7 itself, and not solely in the commentary. We concur with the position expressed by Amnesty International, namely that “it is [...] crucial that these draft articles are formulated in a way that enables their application in light of possible future developments in international law”,⁸ as the draft articles will not easily be amended in the future, and national and international actors will turn to these as authoritative guidance on the topic of immunity of State officials from foreign criminal jurisdiction.⁹ It is critical that draft article 7 be unequivocal from the outset, accounting for the potential future evolution of international law.
8. The GIAI therefore urges the ILC to consider the inclusion in Article 7(2) of a ‘catchall’ provision in a newly added subparagraph (j) with the following wording: ‘*Any other crime accepted and recognized under international law as of concern to the international community as a whole*’.¹⁰

Global Initiative Against Impunity for International Crimes and Serious Human Rights Violations

REDRESS

European Center for Constitutional and Human Rights

International Federation for Human Rights

Parliamentarians for Global Action

TRIAL International

Women’s Initiatives for Gender Justice

4 ILC, Second report on immunity of State officials from foreign criminal jurisdiction by Claudio Grossman Guiloff, Special Rapporteur (29 January 2025) [UN Doc A/CN.4/780](#), para 53.

5 *ibid* paras 34-40.

6 *ibid* para 37.

7 *ibid* para 78.

8 Amnesty International, Comments and Observations on the Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction by the International Law Commission (8 April 2025) [IOR 40/9214/2025](#), 5.

9 *ibid*.

10 Rome Statute of the International Criminal Court (2021), Preambular para 4.

