**Sixth Committee – Agenda item 77-II**
**Immunity of State officials from foreign criminal jurisdiction**

**Statement by the Federal Republic of Germany**
**28 October 2022**

Madam Chairwoman/Mr. Chairman,

On behalf of the Federal Republic of Germany, please allow me to comment on the present Report of the International Law Commission with regard to its Chapter VI, "Immunity of State officials from foreign criminal jurisdiction".

I would like to commence this statement by thanking the Commission and the Special Rapporteur Concepción Escobar Hernández for their thorough and excellent work on this highly relevant dossier. The adoption of the draft articles on first reading as well as the adoption of the commentaries to the draft articles both by the Commission in its latest 73rd session constitute a significant milestone close to the conclusion of the overall endeavor. Especially the procedural safeguards, which constitute the most substantial point of progress of this 73rd session, provide a useful starting point for harmonizing the application of the law on immunity by states and their domestic courts. We would like to use this opportunity today primarily to make general comments as well as comments on selected sections of the draft articles deserving particular attention:

Firstly, Germany would like to reiterate its commitment to the fight against impunity, notably for the most serious crimes under international law. Reports about atrocities committed in the course of Russia's war of aggression against Ukraine are a sad reminder about the importance of this fight against impunity. This fight constitutes one of the most significant tenets of German justice and foreign policy. The investigation and prosecution of crimes under international law by domestic prosecutors and courts under certain conditions constitute an indispensable element of our international criminal justice architecturst3 (n1 (m)31 (t)4c4 (ec)4 (t)6 ( 2 (s)-3 ( co (d)6 (er i(s)1 rei)3 (g-u)3 (gg-u)3 (g2ðt)4 (s)c)4

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Madam Chairwoman/Mr. Chairman,

We believe that a reasonable balance between this need for effective prosecution of international crimes and for stability in international relations can best be struck by States. For this purpose, a transparent distinction in the draft articles between *lex lata* and *lex ferenda* remains essential. In our view, an extensive and clear methodological distinction between the findings of established law by the Commission and its proposals for progressive development of the law will promote a broader acceptance of the draft articles. In this context, Germany would like to re-emphasize that any substantial change of international law in this area proposed by the Commission would have to be agreed upon by States by treaty. With the present impressive ground-laying work by the Commission, this topic appears to us to be well prepared to be taken up by a State conference.

Secondly, against this backdrop, we would like to outline our positions on selected sections of the draft articles, while reserving the option to submit written comments and observations in accordance with articles 16 to 21 of the statute of the Commission:

Germany welcomes the present adopted version of draft article 8. It provides much needed clarity on the scope of application of Part IV with regard to

Madam Chairwoman/Mr. Chairman,

 We would further like to commend on the considerations in Chapter IX "sea-level rise in relation to international law" in the present Report of the International Law Commission. Germany deems this dossier highly relevant and topical: Climate change continues to pose an existential threat to states, individuals and to international security. The rising sea-level raises multiple legal questions of which the second issues paper is focusing on the matters of statehood and the protection of individuals affo