



Permanent Mission
of the Federal Republic of Germany
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Statement by

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on the occasion of

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6th Committee

Statement 67th ILC Report (2015)

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Immunity of State officials from foreign criminal jurisdiction
Special Rapporteur: Concepción Escobar Hernández (ESP)

Madam Chairwoman/Mr Chairman,

We thank Special Rapporteur Ms Concepción Escobar Hernández for her fourth report on the “Immunity of State officials from foreign criminal jurisdiction” and welcome the two draft articles provisionally adopted by the Commission.

I would like to make three points with regard to the report, and please allow me also to make some general remarks.

Draft Articles

Germany welcomes the fact that the Commission has refrained from mentioning a link with crime in the text of draft article 2 lit. f. We concur with the view that to define an “act performed in an official capacity” *inter alia* by the criterion that such an act must constitute a crime could have been construed erroneously to mean that by nature any official act is a criminal act.

Moreover, Germany greatly appreciates the Commission’s decision to clarify in the commentary the fact that the criminal nature of an act does not, in itself, disqualify this act from being an official act.

We also welcome the replacement of the expression “governmental authority” with “State authority”, since the expression “governmental” authority could have been interpreted in an overly restrictive way so as to exclude legislative, judicial or even administrative acts from the definition.

General Remarks

When assessing the Commission’s work this year on this highly pertinent topic, one cannot fail to notice the absence of commentaries on the new draft articles. Although the statement of the Chair of the Drafting Committee provides some insight into the content of the future commentaries, the absence of a Commentary is nevertheless regrettable as it would have enabled States to make a more substantiated assessment.