



**UN General Assembly – Agenda item 79  
Report of the International Law Commission on the work of its seventy-fifth session**

**Statement by the Federal Republic of Germany  
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**21 October 2024**

Madam Chairwoman/Mr Chairman,  
Excellencies,  
Ladies and Gentleman,

regarding the first cluster, Germany intends to address both topics. Allow me first to address the topic of “**Sea-level rise in relation to international law**”.

Germany would like to commend the Co-Chairs and the Study Group on their considerations and on the progress made that is reflected in Chapter X of the present Report of the Commission. The two issues papers and the additional paper to the first issues paper presented in 2020, 2022 and 2023 by the Co-Chairs of the Study Group set out the main legal questions raised in connection with rising sea-levels. Germany would like to congratulate the Co-Chairs, Ms. Galvão Teles and Mr. Ruda Santolaria, in particular, on the preparation of the additional paper to the second issues paper, which focuses on the question of Statehood in relation to sea-level rise.

Germany welcomes the Commission’s analysis of possible pathways forward in order to tackle the many challenges posed by sea-level rise regarding the matter of Statehood. The Commission rightfully seeks to provide practical guidance from the perspective of international law to those States that are most directly affected by sea-level rise. Germany attaches great importance to the global fight against the adverse effects of climate change. Climate change poses an existential threat not only but certainly in particular to Small

Island Developing States. Therefore, Germany decided to support the Rising Nations Initiative, where solutions aimed at preserving Statehood and cultural heritage of small island developing States were developed – solutions such as digitally documenting State’s cultural heritage and designing a blueprint for digital citizenship.

Furthermore, Germany appointed a special envoy for international climate action, a special envoy responsible for responding to climate change and its consequences for Pacific Island States, as well as a special envoy for climate in the Caribbean Island States. Germany is committed to finding solutions to the urgent matters concerning small island States, not least with regard to the many complex issues of international law. Germany is therefore working with its partners on key legal questions connected to sea-level rise. A lot of work has been done already regarding the law of the sea-related aspects of sea-level rise and a high level of convergence has been achieved around the preservation of maritime zones. The discussions on the preservation of statehood can benefit from these findings. In order to preserve the international legal personality of island States that are subject to submergence or that increasingly become uninhabitable a spectrum of viable solutions based on international law are conceivable. Currently, some of the most vulnerable countries are developing innovative approaches as they are expecting significant loss of territory within this very century.

Germany would like to thank the Commission for its legal analysis in the present paper and for differentiating between the “presumption of continuity of Statehood” and the “principle of continuity of Statehood”. Germany will submit a written statement on this crucial issue by 1<sup>st</sup> of December in which it will further elaborate on how Statehood may be preserved in accordance with international law.

Madam Chairwoman/Mr Chairman,

I shall now turn to the topic of **“Immunity of State officials from foreign criminal jurisdiction”**.

Allow me to commence by expressing Germany’s thanks to the newly appointed Special Rapporteur, Claudio Grossman Guiloff, for his first report as well as the Commission for

its work on this highly relevant topic. The topic indeed remains of the utmost importance to Germany. We therefore welcome the Commission's decision not to rush to a second reading but rather closely to evaluate and examine the numerous comments and observations submitted by States in 2023. The ILC is one of the most respected and prestigious institutions in the field of international law. This is not least due to the impeccable care and highest standards it adheres to when making its determinations. Also, it is the close ties that the Commission maintains with and the privileged access that it enjoys to States that sets it apart from other highly qualified expert bodies. It is, therefore, only fitting that the Commission should decide to allow for more time to consider the opinion of States.

Turning to the substantive questions at hand and in particular draft article 7 on the exceptions from immunity *ratione materiae*, Germany wishes to update the Commission on important developments in Germany's national legal system. In its written comments and observations in November 2023, Germany has already drawn the Commission's attention to a judgement by the German Federal Court of Justice dating from 28 January 2021. To recapitulate: In that decision, the German Federal Court – the highest Court in the field of criminal law – found that immunity *ratione materiae* does *not* prevent a State from criminally prosecuting a foreign State official on charges of war crimes, at least when the official in question only holds subordinate rank.

More recently the Court further extended its case law. On 21 February 2024, the Federal Court of Justice held that *no* State official, i.e., *independent* of his or her rank, is protected by functional immunity when it comes to international crimes as defined under the German Code of Crimes against International Law, which is Germany's national law criminalizing the core crimes contained in the Rome Statute of the International Criminal Court.

Following this decision, the *Bundestag*, the German parliament, adopted an act that made the principle contained in these judicial decisions part of German national law. According to newly incorporated Section 20 of the German Courts Constitution Act it is now an explicitly stated principle that functional immunity does not prevent the extension of

German criminal jurisdiction to the prosecution of international crimes as defined in German law.

Finally, and to give the full picture, in its decision of 27 August 2024, the Federal Court of Justice also confirmed its previous case law that the functional immunity of State officials does not apply to espionage and acts of secret service violence.

Madam Chairwoman/Mr Chairman,

German law therefore clearly recognizes the existence of exceptions to the principle of functional immunity. To be clear on the scope of these exceptions: they do not refer to immunity *ratione personae* as enjoyed by the so-called “troika”, i.e. Heads of State or Government and Foreign Ministers. Rather, Section 20 of the German Courts Constitution Act expressly refers to “functional immunity”. In addition, it should be noted that the exceptions as recognized now in German law apply to *criminal* jurisdiction only. The German practice just described should therefore not be interpreted as pertaining to the immunity of States in other contexts, e.g. and in particular, in the field of civil proceedings. Finally, Germany wishes to point out that Section 20 of the Courts Constitution Act speaks of international crimes as defined in the German Code of Crimes against International Law – these crimes include the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Germany will submit a written statement to the Commission by 15<sup>th</sup> November on the most recent German State practice.

Thank you.