Statement by the Federal Republic of Germany on Cluster 2 (Chps: VI (Immunity of State officials from foreign criminal jurisdiction) and IX (Sea-level rise in relation to international law)) in the debate of the Sixth Committee of the Report of the International Law Commission

Thank you Madam/Mister Chair,

Excellencies,

Ladies and Gentlemen,

On behalf of Germany, allow me to c2C5te-182(,L( )-182(G)-.775 408.63r4(t)-5he.)4(y08-18(an)4(y,)-184(al)4(lo,l5

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

Madam Chairwoman/Mr Chairman,

Let me begin by thanking the Special Rapporteur and the Commission for their important and substantive work on the highly complex topic   Immunity of State officials from foreign criminal jurisdiction   t achievements, i.e. the presentation
                                                    th report on the topic, the provisional adoption of a number of draft a

the difficult conditions imposed by the COVID 19 pandemic. With the work on this project hence entering its finalization phase, Germany would like to avail itself of the opportunity to make (1) some general comments on the project and the way ahead before (2) addressing specific issues regarding

mixture of identified *leges latae* and proposed *leges ferendae* (for example with regard to certain procedural safeguards), 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.

Germany urges the Commission to continue, during the finalization phase of the project, to scrupulously examine state practice, including any court decisions and proceedings both regarding exceptions to immunity *ratione materiae* as well as procedural safeguards, but also possible

terms the importance of clearly distinguishing between the various types of immunity under international law and, respectively, the different situations in which questions of immunity under international law might be raised. Beyond their subject and scope of application, the draft articles as well as the concomitant debates and discourses should generally not be interpreted as carrying implications for other immunities such as, in particular, those of states in civil proceedings, etc. The need to scrupulously differentiate between the various types of immunity and the situations in which immunities might be raised is well established in international case-law and was alluded to also in the

Special Rapporteur for her knowledgeable and nuanced 8th report and agrees with the Special Rapporteur that a clear line should be drawn between the present topic on the one hand and the rules governing the functioning of international criminal courts and tribunals (or, respectively, the exercise of criminal jurisdiction in the context of proceedings against State officials before international criminal courts and tribunals) on the other hand. The distinction should be made explicit in the draft articles. In particular, the present topic appears not to be the right context to elaborate on the highly complex interplay of domestic and international criminal justice and prosecutorial systems in cooperation situations in a generalized fashion. Any impression that the draft articles could carry legal implications for the rules governing the operations of international criminal courts and tribunals should be avoided. Ger   -

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implications for stable international relations, economic prosperity and the enjoyment of human rights. It is in particular the small island states as well as states with low-level coastal areas or large river deltas which will be disproportionately affected by the phenomenon.

Being a coastal state, sea-level rise will also have direct effects in Germany, as has recently been recognized also by the Federal Constitutional Court (Bundesverfassungsgericht) in its landmark

Germany urges the Commission to transparently distinguish between findings