



Island Developing States. Therefore, Germany decided to support the Rising Nations Initiative, where solutions aimed at preserving Statehood and cultural heritage of small

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 a State official, i.e., a person 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