the Federal Republic of Germany on Cluster 3 (Succession of States in respect of State responsibility and General Principles of Law) in the debate of the Sixth Committee of the Report of the International Law Commission, November 2021

Madam Chair,

> š u Æ š v } µ Œ •] v Œ P Œ š] š µ š } ^ ‰] o Z ‰ ‰ } Œ š µ Œ W À o šZ š }] ^ ^ µ • •] } v } (^ š š •] v Œ • ‰ š } (^ š š Œ • ‰ important] o] š Ç _ v work on this subject during the last session. We specifically note that substantive progress on this topic was made despite the difficulties posed by the COVID 19 pandemic and would like to commend the Special Rapporteur and the Commission for it impressive commitment during these difficult times. ' Œ u v Ç v } š • š Z š š Z ‰ Œ } i š ^ ^ µ • •] } v } (^ š š •] v Œ • ‰ š } (^ and looks forward with interest to the announced fifth report of the Special Rapporteur.

Madam Chair,

as regards this third cluster of ILC topics, Germany would like to focus its comments on the topic ^ ' v Œ o W Œ] v] ‰ o • } (> Á _X > š u P] v Ç š Z v l] v v Œ Bermúdez] o Z ‰ ‰ for his substantive second report. We note with appreciation the extensive analysis presented in the second report which in our view constitutes an excellent basis for a corroboration of the rules on and the methodology for identifying general principles of law. Germany also welcomes the engaged discussions in the Commission on this topic.

We agree with the Special Rapporteur and members of the Commission that a cautious approach is advisable when discussing issues related to such fundamental elements of our international legal system as the rules on the sources of international law. Especially the contentious category of general principles of law formed within the international legal system requires careful consideration.

Germany generally welcomes the provisional adoption of draft conclusions 1, 2, and 4 wih commentaries and generally agrees with the proposed methodology for the identification of general principles of law derived from national legal systems as laid out in Part II of the second report.

Germany agrees that the comparative legal analysis unde Ç] v P š Z   ^ Œ } P v] š] } v _   o u determination of general principles of law derived from national legal systems must cover different Z o P o (u] o] • [µ š u µ • š   o • } ‰ Œ } À]   (} Œ P } P Œ ‰ Z]   o Œ ‰ Œ • v ' Œ u v Ç[À] Á , is of critical importance for the legality and legitimacy of any findings on general ‰ Œ] v] ‰ o • }(o Á X d Z   (} Œ u µ o š] } v • µ P P • š   š Z š š Z   v o Ç •] • Œ ‰ Œ • v š š] À _] v ' Œ u v Ç [• À] Á ‰ š µ Œ • š Z] • Œ ‹ µ] Œ u v š Á o o

In this context, Germany also points to the importance of all States making national legal sources available to an international audience as widely as possible, especially if their respective legal system operates in a language that is not widely spoken. This v P •] U] v ' Œ u v Ç [• À] Á U š Z availability of information on certain legal systems to other States with regard to a particular issue in principle does not alter or reduce the requirements of the representativeness criterion which is inherent in th v } š] } v } (} u u } v o] š Ç } (‰ Œ] v] ‰ o ^ š } š Z   À Œ] } µ • o P cannot absolve those seeking to determine the existence of a general principle from a sufficiently wide and representative comparative analysis and must not lead to premature findings on the existence of such a principle. Germany certainly takes into account that the representativeness criterion does not require the consideration of each and every legal system in the world.

As regards the ascertainment of transposition to the international legal system, the Special Rapporteur inter alia concluded that, for a principle common to the principle legal systems of the world to be š Œ v • ‰ } • š } š Z   ] v š Œ v š] } v o o P o • Ç • š u ê4‡Q• B'#YYR\ YRS Y v o] à