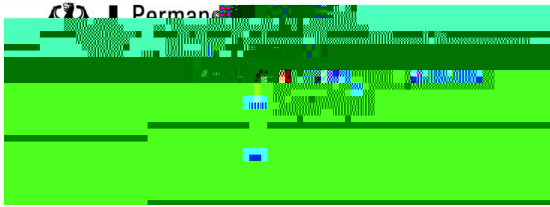


Federal Republic of Germany

Statement 71st ILC Report (20



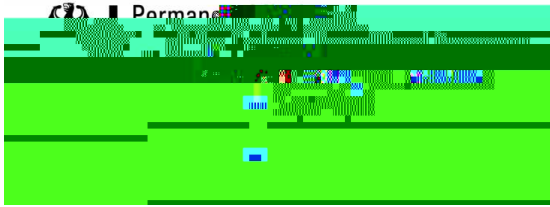
– may enable them to arrive at decisions which are more in harmony with those of other States’ courts in comparable cases. This in turn may enhance the efficacy, credibility and legitimacy of the international rules on the immunity of State officials and alleviate the systemic risk of a fragmentation in this particular area of international law. At the same time, we would like to reiterate that international procedural provisions regarding state officials’ immunities must respect the specific features of domestic legal systems. The procedural safeguards proposed by the Special Rapporteur provide a useful point of departure.



conclude that procedural rules ‘ancillary’ to immunity might not be applicable in such cases as well. The procedural rules in draft articles 8-16, it would appear, often presuppose a situation in which the application of immunity is at least possible – something which could be questioned from the outset in cases falling under draft article 7. In this regard, we note with great interest the provisional adoption by the Drafting Committee of a draft article 8 *ante* which is a positive development regarding the provision of clarity in this respect. We believe that the draft articles should be as far as possible self-explanatory. The new draft article 8 *ante* may indeed add to their quality, coherence and predictability.

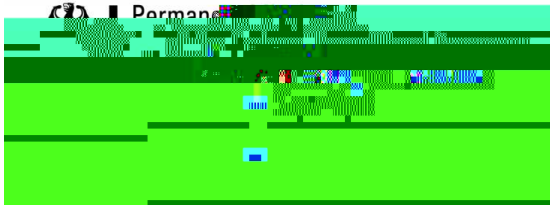
Second, some of the procedural provisions could be more specific regarding situations in which draft article 7 concerns or might apply. This applies especially to draft article 12 and draft article 14. The obligation of early notification and transparency vis-à-vis the State of the official could generate much-needed trust in the draft article 7-cases. Moreover, we share the belief that the instrument of a transfer of proceedings incorporated in draft article 14 proposed by the Special Rapporteur can be particularly useful in the context of draft article 7-cases. It should hence be discussed whether proposed draft article 14 should be specifically tailored to such cases.

Third, and most important in this context, we believe that additional procedural provisions and safeguards which specifically take into account the difficulties underlying draft article 7-cases should be considered and we note with appreciation the Special Rapporteur’s general openness towards additional procedural safeguards. For example, as we have previously stated, the application of draft article 7 would raise difficult questions regarding the applicable standard of proof in determining whether the requirements of draft article 7 are met. So far, neither the report nor the draft articles as initially proposed by the Special Rapporteur provide sufficient guidance in this respect. We welcome, however, the debate in the Commission in this respect and proposals made during the 71st session regarding the necessary evidentiary standard. Moreover, political tensions between the forum State and the State of the official may be particularly high in draft article 7-cases. It should hence be made sure that the decision to pursue criminal proceedings is made by a domestic authority experienced in matters of international law. Often, only high-level authorities within the domestic



administration will be able to assess the far-reaching implications of such cases. Also, the fact that a decision is made by a high-level authority may signal to the State of the official that the forum State is aware of the specific ramifications of the case for the sovereignty of the State of the official and may hence be perceived by the latter as a confidence-building measure.

To sum up: We doubt that the procedural provisions and safeguards as proposed in the seventh report are sufficient to guarantee a smooth operation of draft article 7. We continue to believe that draft article 7 in its present form does not strike a proper balance between the much needed stability in international relations and the interest of the international community in preventing and punishing the most serious crimes under international law.



- As has been discussed in the Commission, the proposed draft articles 8-16 paragraph 2, could be further streamlined. For example, proposed draft article 16.2, in confirming that the ‘safeguards shall be applicable [...] [also] during the process of determining the application of immunity from jurisdiction’ could be deemed to repeat parts of proposed draft article 16.1.

We again thank the Commission for its important work and urge it to carefully consider all that has been said above when proceeding with this project at its next session.

Germany continues to observe this project carefully.

Thank you!



Statement im 6. Ausschuss der VNGV zum ILC-Projekt „Protection of the environment in relation to armed conflicts“

The general outcome of the project:

1. Germany expresses great appreciation for the Commission's work in adopting
of first reading of the draft principles and comments on the complex issue of

“protection of the environment in relation to armed conflict”. For the first time,
comprehensive principles and concepts have been compiled at international



5. These draft principles are, to a large extent, not a codification of existing law, but aim to develop it further. The international community should promote legal development in this area in order to prevent future environmental disasters resulting from armed conflicts. We appreciate the Commission's transparent



Permanent Mission
of the Federal Republic of Germany
to the United Nations
New York

attacks against the natural



13-1-2000

burden on