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**Report of the International Law Commission
on the work of its sixty-sixth session**

Chapters I–III, XIV

Chapter IV: Expulsion of aliens

Chapter V: Protection of persons in the event of disasters

Statement

on behalf of the Nordic countries

by

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(check against delivery)

Mr Chairman/Madam Chair,

I have the honour to make this statement on behalf of the Nordic countries, Denmark, Iceland, Norway, Sweden and my own country, Finland.

In accordance with the work programme of the Committee, I will in this statement address the following two topics on the ILC agenda this year, "Expulsion of aliens" and "Protection of persons in the event of disasters". I will also address the topic "Crimes against Humanity" which the Commission decided to include in its programme of work as well as the topic "*Jus cogens*" included in the Commission's long-term programme of work.

[Expulsion of aliens]

I would like to start with the topic "Expulsion of aliens" and to thank the Commission as well as the Special Rapporteur, Mr. Maurice Kamto, for having finalized work thereon.

Mr Chairman/Madam Chair,

The Nordic countries have participated actively in the Sixth Committee debate on this subject in recent years. Apart from interventions at the debates, we submitted detailed written comments on the draft articles on 12 June 2014 stating our views on a number of substantive issues. Key points have, amongst others, been the importance of the draft articles not undermining important principles of international refugee law, including the prohibition of refoulement and the obligation of States to readmit their own nationals who do not have a legal residence in another country. We have also stressed that the provisions on non-discrimination should expressly include discrimination on the grounds of sexual orientation.

I will not otherwise recap our comments on the individual articles here, but merely underline a couple of more general points:

Firstly, that we - from the very start of the Commission's consideration of this topic - queried the added value of draft articles in a field where detailed global and regional legal regimes regulate rights and obligations of states. We do recognize, however, that during the last few years the topic has yielded interesting debates and information about practice, and in that sense the considerations have been fruitful. This, however, does not modify the second point I would like to make - a point which is also one we have made before: We do not believe that the topic of expulsion of aliens lends itself to incorporation into a convention and therefore we do not support the Sixth Committee taking the matter up with a view hereto.

[Protection of persons in the event of disasters]

Mr Chairman/Madam Chair,

With regard to the topic "Protection of persons in the event of disasters, the Nordic countries welcome the fact that the Commission has brought to a successful conclusion its first reading of all twenty-one draft articles. We would like to thank the Commission and the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for the excellent work done regarding this important topic. Of particular importance have been their efforts to strike a balance between the aspects of the state sovereignty and the needs of international cooperation in protecting persons in the event of disasters. We appreciate the possibility of commenting on all draft articles in writing and will do so in due course.

This time we will limit ourselves to some preliminary remarks regarding draft articles 4 and 18 considered and adopted by the Commission with commentaries. We agree with the use of the term "affected State" which indicates the principal role and responsibility of a State to protect above all persons as well as property and the environment when disasters occur on its territory or otherwise under its jurisdiction. The whole definition seems to be wide enough to also cover complex situations of de facto control that a State may exercise over a territory other than its own.

We agree with the view that a State can be qualified as an "assisting State" once the assistance is being or has been provided. It is also important to recognise the role of diverse types of "other assisting actors" in providing assistance in the present day world, meaning competent intergovernmental, regional and relevant non-governmental organisations or any other individuals or entities, such as the Red Cross and the Red Crescent. We wish to underline the duty of a State to seek external assistance if its national response capacity is not sufficient to cope with a disaster.

The protection of relief personnel, equipment and goods is an essential condition for any relief operation to be carried out. Draft article 18 rightly sets the obligation to the affected State to take appropriate measures in this respect. The Nordic countries agree with the term "appropriate measures" because it allows a degree of flexibility and discretion in matching the measures with the respective circumstances by observing due diligence. We see the term "appropriate" as an obligation of conduct rather than of result owing to several factors beyond the control of the affected State in a disaster situation.

[Crimes against humanity]

Mr Chairman/Madam Chair,

I would now like to address the topic "Crimes against humanity". The International Law Commission decided to include it in its programme of work and to appoint Mr Sean D. Murphy as Special Rapporteur. The Nordic countries commend this decision and are following the progress of work on this topic with great interest.

We would like to draw your attention to our comments last year after the Commission decided to add this topic in its long-term programme of work.

Firstly, we consider it important that the definition of crimes against humanity in Article 7 of the Rome Statute is retained as the material basis for any further work of the Commission on this topic.

Secondly, robust interstate cooperation for the purposes of investigation, prosecution and punishment of crimes against humanity is crucial, as is the obligation to extradite or prosecute alleged offenders, regardless of their nationality. This work could benefit from a legal analysis of the obligation to extradite or prosecute with a view to identifying the scope of application of that obligation with regard to crimes against humanity. In this respect, the Commission's report this year on the topic *aut dedere aut judicare* provides an excellent starting point.

Thirdly, it is our assessment that international efforts to eliminate these crimes can only be successful if sufficient attention is also devoted to the prevention of crimes against humanity. We would therefore encourage the Commission to explore and articulate the relevant responsibilities pertaining to prevention. In this regard, we encourage the Commission to consider innovative measures and mechanisms to ensure effective prevention.

Finally, while welcoming development towards further recognition of a duty of prevention and obligations of interstate cooperation, the Nordic countries underline that no such obligations can be construed so as to limit either already existing, similar obligations vis-à-vis other crimes, or already existing legal obligations in this field.

Mr Chairman/Madam Chair,

We commend the important work which has already been conducted by the Commission on related topics and trust that it will conduct its discussions on the basis of the widely available array of international case-law relating to crimes against humanity and regarding particular minorities exposed to persecution.

The Nordic countries support the continuation of this topic and look forward to providing our further input as the work of the Commission progresses, and encourage other States to do the same.

[Jus cogens]

Mr Chairman/Madam Chair,

I will now turn to the topic "*Jus cogens*". Let me start by stating that we note with interest the Commission's inclusion of a new source-related topic in its long-term programme of work. "*Jus cogens*" is a theme where more clarity would be beneficial.

In recent years, there are some court decisions at international and national level referring to *jus cogens*, which may contribute to shedding some light on the content of the concept. In this regard, the jurisprudence of the International Court of Justice is of particular importance.

Still, we do agree with the Commission that the precise nature of *jus cogens* norms, as well as the requirements for the identification of such norms and legal consequences remain relatively unclear. The Commission's future work on this topic could thus contribute to clarify the exact legal content of *jus cogens*, including the process by which international norms may qualify as peremptory norms.

Nevertheless, we would like to emphasize that the Commission should be somewhat prudent in its approach. We would, in any case, welcome any additional information to this Committee on the Commission's envisaged approach to its work on *jus cogens*, including a more precise delimitation of the topic.

Mr Chairman/Madam Chair,

Jurisprudence from the International Court of Justice in recent years referring to *jus cogens*, have qualified a limited number of international norms as peremptory. Although it is not the intention of the Commission to elaborate an exhaustive list of norms having achieved the status of *jus cogens*, it is our view that the elaboration of such a list, as suggested in the Annex to the ILC report, even if merely illustrative, would entail a risk that other equally important rules of international law would in effect be granted a status inferior to those included on such a list.

Furthermore, there is a certain risk that the elaboration of such a list could hamper a dynamic evolution in this area of law that would otherwise take place. Maybe better results could be achieved in terms of clarity and acceptance without such a list.

On a general note, the Nordic countries are of the view that it would still be valid to address some of the concerns put forward by the Commission twenty years ago when it concluded that it would be premature for the Commission to enter into this kind of study. The contours and legal effects of *jus cogens* still remain unclear and somewhat contentious, as stated in the Report before the Commission. In addition to already existing jurisprudence by the International Court of Justice and other relevant judicial bodies, any future jurisprudence may also prove to be beneficial for the elaboration of more detailed provisions on *jus cogens*. The right timing of addressing the topic will be of importance to the prospects of success.

I thank you.