

**Statement on behalf of the Nordic Countries
(Denmark, Finland, Iceland, Norway and Sweden)**

**72nd Session
of the General Assembly of the United Nations**

6th Committee

**Agenda item 81:
Report of the International Law Commission on the work of its
sixty-ninth session – Cluster I**

**New York
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Mme/Mr Chair,

I have the honour to speak on behalf of the five Nordic countries, Denmark, Finland, Iceland, Norway – and my own country, Sweden, on the topics covered in Cluster I.

IV – Crimes against humanity

Crimes against humanity are among the most serious crimes of concern to the international community as a whole. They are clearly prohibited under international law. Despite this these unimaginable atrocities continue to torment civilian populations and the perpetrators are not brought to justice. We must redouble our efforts to end impunity for these heinous crimes. The Nordic countries therefore welcome the draft articles on crimes against humanity adopted by the Commission on its first reading.

First, we would like to extend our compliments to the Special Rapporteur, Mr Sean D. Murphy, and express our deep appreciation and support for his thorough work on the third report and the new draft articles on *non-refoulement, victims, witnesses and others, extradition, mutual legal assistance and settlement of disputes*.

We would also like to take this opportunity to reiterate our commitment to this valuable project on the prevention and punishment of crimes against humanity, and thank the International Law Commission for the adoption in first reading of this set of draft articles, a draft annex, and commentaries. We believe this to be a significant achievement. We look forward to providing the Commission with written comments on the set of draft articles as a whole by 1 December 2018.

At this time we wish to draw attention to a few points in the current set of draft articles.

The Nordic countries are pleased to see that the draft article on non-refoulement has been moved upwards in the draft. Now it follows immediately after draft article 4, which pertains to prevention. This placement is logical, since the principle of non-refoulement itself is concerned with prevention. The current draft article 5 is an important provision for the purpose of preventing persons from being exposed to crimes against humanity. Although the provision is focused on avoiding exposure of a person to crimes against humanity, this provision is without prejudice to other obligations of non-refoulement arising from treaties or customary international law

The Nordic countries fully support the obligation under draft article 6, which pertains to criminalization under national law. We welcome the obligation of each state to take the necessary measures to ensure that the official position of an alleged offender is not a ground for excluding criminal responsibility. We would like to emphasise that this principle, firmly rooted in international law, is of great importance in this context, given the grave nature of crimes against humanity.

We would also like to highlight and give support to the draft article pertaining to the rights of victims of crimes against humanity, although we note that the draft article does not contain a definition of a victim of such crimes. We attach great importance to the rights of victims, including, importantly their ability to raise their case with competent authorities. In this respect, we would also like to express our support to the obligation of each state to ensure that victims of crimes against humanity have the right to obtain reparation for material and moral damages, as stated in draft article 12.

Mr/Mme Chair,

The draft articles on crimes against humanity have a significant potential for great practical relevance to the international community. Among the three core international crimes, only crimes against humanity lack a convention seeking to build up national laws, national jurisdiction and cooperation among States in the fight against impunity. We will continue to support this project that we consider a welcome and timely contribution to the fight against impunity. The draft articles may serve as a good basis for a future convention on the prevention and punishment of crimes against humanity.

Thank you, Mr/Mme Chair.

V - Provisional application of treaties

Mr. Chairman,

Turning next to the issue of provisional application of treaties, the Nordic countries are pleased to learn about the progress made at this year's session with the provisional adoption by the Commission of eleven draft guidelines and commentaries thereto. They appear to reflect well our earlier comments and observations. We continue to support the efforts of the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, and the Commission on this topic. While it is clear that domestic legislation plays an important role in the context of provisional application of treaties, the topic also presents a number of questions of an international law character that, in our view, merit consideration.

The Nordic countries welcome the memorandum by the Secretariat reviewing State practice in respect of treaties that have been deposited or registered in the last 20 years with the Secretary-General and that provide for provisional application, as well as treaty actions related thereto. We look forward to the Commission's consideration of the memorandum at its next session.

The Nordic countries have earlier suggested that it might be useful if the Commission could develop model clauses on provisional application. At the same time, we have acknowledged the challenges involved due to the diversity of the national legal systems. However, in some

cases provisional application may provide a suitable instrument for bringing a treaty into effect sooner than the actual entry into force. In this regard, model clauses may be of assistance. We are therefore happy to discover from the Commission's report that, apart from additional draft guidelines, the Special Rapporteur aims to propose model clauses in his report to the next session of the Commission.

Similarly, we are delighted to note that the Commission has scheduled for 2018 the completion of the draft guidelines on first reading and for 2020 on second reading. The Nordic countries are looking forward to the fifth report of Mr. Gómez-Robledo and the further work of the Commission on this subject.

XI - Other decisions and conclusions of the Commission

Mme/Mr Chair,

Finally, we welcome the inclusion of the two new topics in the long-term programme of work, namely, (a) general principles of law and (b) evidence before international courts and tribunals. We believe that priority should be given to the first topic: general principles of law. As Mr Vazquez Bermudez correctly pointed out in the syllabus, the Commission could provide an authoritative clarification on the nature, scope and function of this important source of law, which in doctrinal discussions has been distinguished from other concepts such as 'general principles of international law' or 'fundamental principles'. Despite this, international courts and tribunals have applied – more or less explicitly – 'general principles of law' as a source of law. The methods used to identify such 'general principles of law' often present a conundrum, and the Commission could help by clarifying the criteria and methods to identify general principles of law from other sources than municipal law.

Regarding the second topic, namely *Evidence before international courts and tribunals*, the Nordic countries are of the view that the syllabus needs further elaboration before the Commission can include it in its current programme of work.

Mr/Mme Chair,

The Nordic countries note with appreciation the Commission's contribution to advancing the rule of law.

Finally, we very much welcome the planning of the commemoration of the 70th anniversary of the Commission and look forward to taking part in the anniversary programme.