

Statement on behalf of the Nordic countries
Resumed session of the 6th Committee on Crimes Against Humanity
10 – 14 April 2023
(International Measures, Articles 13,14 and 15 (and annex))

Thank you Mme Chair.

Speaking on behalf of the five Nordic countries, Denmark, Finland, Norway, Sweden and my own country, Iceland, I would like to begin by thanking colleagues for excellent discussions so far this week.

Now that we move on to discussing international measures, the Nordic countries would like to underline that aspects of international cooperation are vital in reaching the overall goals of prevention and punishment for crimes against humanity.

To close the impunity gap, states need to be able to prosecute at the national level. This requires a clear treaty definition as well as national legislation, but what it also requires is a joint understanding of and clear provisions on inter-state cooperation. Without that, States run a risk of unintentionally becoming safe havens for those who commit core international crimes.

In this regard, the Draft Articles are a strong addition to international law in and of itself, as well as contributing to the implementation of the principle of complementarity as prescribed by the Rome Statute for States Parties. Regarding the latter, the Nordics would like to emphasise that in order to join an agreement based on the ILC proposed Draft Articles, no State would have to become a state party to the Rome Statute.

Ultimately, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

The nature of the Draft Articles calls for the text to be succinct, not unlike the Convention on the Prevention and Punishment of the Crime of Genocide from 1948 that has 153 States Parties. The text should be easily understandable and not unwieldy so as not to deter States from undergoing the obligations set out in the instrument.

The Draft Articles strike the right balance in terms of being effective and broadly acceptable to States. This is evident in the text of Draft Articles 13, 14 and 15, read together with the annex. The text builds on widely adhered to treaty provisions that have been previously accepted by States and is not dependent on adherence to any other treaty. This is certainly one of the strengths of the Draft Articles. The carefully thought-out internal balance is a central element of the Draft Articles, and therefore these particular articles should, as the ILC points out, be considered in the overall context of the draft.

The structure of the Draft Articles incentivises States to strengthen national legislation to end impunity. They also provide a clear overview on international cooperation. The overall structure of draft Articles 13 and 14 is clear and reflects the nature of extraditions and mutual legal assistance in practice. This is complemented by the draft Annex, which is an integral part of the draft articles.

While international law currently lacks a special regime for State-to-State cooperation concerning international crimes, we note that the Mutual Legal Assistance and Extradition initiative is a very positive development. The diplomatic conference taking place in Slovenia next month to negotiate a multilateral treaty that would provide inter-State cooperation mechanisms for the investigation and prosecution of the most serious international crimes is highly welcomed.

Compared to the MLA draft text, which is more detailed and covers mutual legal assistance on more than crimes against humanity alone, the text of these Draft Articles is clear and concise. The Nordic countries take the view that the MLA Initiative and the Draft Articles discussed here today would simply complement each other.

We support Draft Article 13, paragraph 3, which provides that an offence covered by the draft articles shall not be regarded as a political offence and, accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

As regards Draft Article 13, paragraph 11, the ILC commentary points out that this paragraph may strictly speaking not be necessary for an extradition occurring solely pursuant to the present Draft Articles. The Nordics, however, agree with the ILC that paragraph 11 enhances the draft Articles in terms of extradition pursuant to extradition treaties or national law, since this will help prevent extradition requests made on impermissible grounds.

Draft Article 14, paragraph 8, on the application of the Annex, helps close any potential gaps in terms of mutual legal assistance. Notably, point two of the Annex to the Draft Articles, on the designation of a central authority, strengthens effective communication between States for a speedy and effective cooperation.

Lastly, clear provisions on settlement of disputes are necessary for any well-functioning international agreement. Draft Article 15 on the settlement of disputes strikes a careful balance and should lay a good foundation for universal membership of what eventually would become a new international agreement on crimes against humanity.

I thank you.