

Statement on behalf of the Nordic countries

Resumed session of the 6th Committee on Crimes Against Humanity

April 2024

Cluster II: Definition and general obligations, Articles 2, 3 and 4

Mme/Mr Chair,

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

We are pleased to continue the fruitful exchange we begun last year on the substance of the ILC Draft Articles on crimes against humanity. The Nordic countries wish to share the following reflections relating to the definition of crimes against humanity, general obligations of States, and prevention.

Mme/Mr Chair,

To begin with draft Article 2, the Nordic countries strongly support the use of Article 7 of the Rome Statute as the basis for the definition of crimes against humanity, as we have stated previously. We maintain that the Rome Statute definition enjoys wide acceptance in the international community, given its inclusive negotiating process involving all States. Furthermore, two thirds of UN Member States have ratified the Rome Statute. As noted by the ILC, the definition of crimes against humanity in article 7 of the Rome Statute is used by many States when adopting or amending their national laws, including States not parties to the Rome Statute. While the Nordic countries continue to encourage all States to consider ratifying the Rome Statute, we emphasize that accepting its definition of crimes against humanity in no way implies accepting the jurisdiction of the ICC.

While the Nordic countries believe that the definition proposed in the draft articles is reflective of customary international law, we note that the customary law status is not a precondition for basing our future negotiations on this definition. As stated in its report, the ILC's objective was not limited to codification of existing customary international law, but rather to draft

provisions based on widely adhered-to treaties as a basis for a future convention.

Mme/Mr. Chair,

The overall preconditions for an act to be considered as a crime against humanity, according to the draft articles, are that it is committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack. Jurisprudence from both ICTY and ICTR clearly shows that the conditions of ‘widespread’ and ‘systematic’ are disjunctive rather than conjunctive requirements. The Nordic countries therefore support the current formulation in the draft articles that an attack must be either widespread **or** systematic, instead of fulfilling both requirements.

Mme/Mr Chair,

The Nordic countries note that international criminal law is constantly evolving through case law and State practice. While maintaining draft Article 2 as the basis of our future negotiations, the Nordic countries would support reviewing some of the definitions, including ‘forced pregnancy’, ‘enforced disappearance’ and ‘persecution’ in light of developments in international law since the adoption of the Rome Statute.

Furthermore, the Nordic countries believe that a convention on crimes against humanity holds much potential in combatting gender-based atrocity crimes. We reiterate support for not retaining the Rome Statute definition of “gender” which we believe does not reflect current realities and content of international law. Furthermore, our countries are open to discuss whether to incorporate other gender-related crimes in addition to those in the list of acts that may constitute crimes against humanity.

The Nordic countries also support the inclusion of the ‘without prejudice’ clause contained in paragraph 3 of draft Article 2. It allows for more ambitious national legislation, as well as potential future developments in international law through other legal instruments.

Mme/Mr Chair,

Turning now to draft Article 3, the Nordic countries welcome that the general obligation of States ‘not to engage in acts that constitute’ crimes against humanity is made explicit in draft article 3, paragraph 1. We support the phrasing which recognizes that crimes are committed by individuals, but that the ‘acts’ that ‘constitute’ crimes against humanity may be attributable to States under the rules of State responsibility.

The Nordic countries also welcome that paragraph 2 of the same draft Article expressly states that crimes against humanity must be prevented and punished, whether or not committed in time of armed conflict, and whether or not criminalized under national law. We believe both of these elements have ample support from international treaties dating back to the Nüremberg Charter, coupled with State practice and extensive jurisprudence.

Before concluding, the Nordic countries emphasize the paramount importance of prevention. While a new convention on crimes against humanity would strengthen our ability to fight impunity, the primary objective must be to prevent these atrocities from taking place in the first place. We therefore welcome the draft Article 4, which further operationalizes the general prevention obligation contained in draft Article 3. The Nordic countries would also be ready to engage in a conversation on adding a monitoring mechanism to the draft convention to strengthen our collective efforts on prevention.

I thank you, Chair.