

Cluster III: National measures (Articles 6, 7, 8, 9, and 10)

New York, 1-5 april 2023

(5-6 minutes)

Mme/Mr Chair,

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

The Nordic countries refer to our previous comments made in statements in the Sixth Committee and our written submissions to the International Law Commission. We reiterate our view that Draft Articles 6 to 10 constitute a good basis for a future convention and wish to make the following reflections.

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On Article 6, the Nordic countries reiterate our full support for the obligations under Paragraph 1 pertaining to criminalisation under national law. We welcome Paragraph 2 but emphasize that criminalization may happen in accordance with domestic legal tradition. We note the suggestion made by others to consider whether other modes of liability, such as incitement or financing, should be added to the text. We also welcome Paragraph 5, which provides that the official position of the alleged perpetrator does not constitute grounds for excluding criminal responsibility. This

principle, which is firmly rooted in international law, is of great importance given the grave nature of crimes against humanity.

This means – as has been clarified in the commentaries of the ILC – that an alleged offender cannot raise the fact of their official position as a substantive defense so as to negate any criminal responsibility. We note, however – as has also been clarified by commentaries of the ILC – that Article 6, Paragraph 5, has no effect on any procedural immunity that a foreign State official may enjoy before a national criminal jurisdiction, which continues to be governed by treaty law and customary law. We equally note that Article 7 of the ILC Draft Articles on Immunity of State officials from foreign criminal jurisdiction states that immunity *ratione materiae* shall not apply in respect of crimes against humanity.

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As regards Article 6, Paragraph 7, the Nordic countries note the obligation to ensure that crimes against humanity shall be punishable by appropriate penalties. We reiterate in this regard our view that the death penalty under no circumstances can constitute an appropriate penalty.

In addition, the Nordic countries support the clarification in Article 6, paragraph 6, that crimes against humanity shall not be

subject to any statute of limitations. The provision could possibly be further enhanced by making the prohibition clearer.

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As previously stated, the Nordic countries support Article 7, which imposes an obligation to establish a relatively wide range of jurisdictional bases for domestic investigations and prosecutions. Ensuring that States do not become safe havens for perpetrators of crimes against humanity is instrumental in reducing the impunity gap.

The Nordics also welcome that Article 7 provides flexibility and allows for the exercise of a broader jurisdictional base, if provided for in national law (paragraph 3). In this regard, we share the widely held view that under international law, crimes against humanity give rise to universal jurisdiction.

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As regards Article 8, which clarifies that investigations must be prompt, thorough and impartial, the Nordic countries agree with the observation made in the commentaries that investigations must be conducted in good faith.

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Article 9 provides for certain preliminary measures to be taken by the State in the territory under whose jurisdiction an alleged offender is present. In this regard, the Nordic countries recall that an alleged offender shall be guaranteed – at all stages of the proceedings – fair treatment and full protection of their rights under applicable national and international law, including human rights law and international humanitarian law.

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Lastly, the Nordic countries welcome the provision on *aut dedere aut judicare* as contained in Article 10, read together with Article 7, paragraph 2. As previously stated, we consider these provisions to be critical in the fight against impunity and we welcome the acknowledgement of the role of international courts and tribunals in this fight. In this regard, we note the suggestion made by others to consider the need to add a provision, which explicitly prohibits blanket amnesties for crimes against humanity.

Thank you.