

Statement on behalf of the Nordic countries

Resumed session of the 6th Committee on Crimes Against Humanity

10 – 14 April 2023

(Definition and general obligations, Articles 2, 3 and 4)

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.

The Nordic countries refer to our previous comments made in statements in the Sixth Committee and our written submissions to the International Law Commission and wish to make the following initial reflections as regards Draft Articles 2, 3 and 4.

Mme/Mr Chair,

As regards Draft Article 2, the Nordic countries strongly support the ILC's decision to retain the definition in Article 7 of the Rome Statute as the material basis for the definition of "crime against humanity". We welcome, however, the decision of the ILC not to retain the Rome Statute definition of "gender", which we believe does not reflect current realities and content of international law.

While reiterating our support for Draft Article 2, we do acknowledge that some elements of the article may merit further consideration and we appreciate this opportunity to exchange views.

The Nordic countries reiterate the importance of the principle of legality in criminal law, which does not permit an expansion of the definition of the crime by analogy to the detriment of a prosecuted person. We wish to highlight, in this regard, Draft Article 2 paragraph (1), subparagraph (k) which provides that a constituent of a "crime against humanity" could also consist of "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health." In our view, this provision resembles a provision permitting analogy and we believe it is important to further reflect on how to ensure that its interpretation is kept reasonably narrow.

Another aspect which might require further reflection pertains to the fact that, as currently drafted, Draft Article 2 only takes the mental element into account in relation to the attack directed against a civilian population. The Nordic countries reiterate our view that the mental

element could be regulated in more detail and that it should be limited to intent and knowledge.

Mme/Mr Chair,

Moving now to Draft Articles 3 and 4, the Nordic countries wish to reiterate that a possible future convention, through its focus on States' obligations to prevent and punish crimes against humanity, would fill an important gap in international treaty law.

We welcome the further operationalisation of the obligation of prevention in Draft Article 4, as international efforts to eliminate these horrendous crimes can only be successful if a future convention devotes sufficient attention to prevention. As we have previously stated, we would support including additional wording to concretise the nature and content of the obligation of prevention to make it more precise and effective.

Finally, the Nordic countries reiterate our support for robust obligations of interstate cooperation in general as well as regards prevention, while also underlining that no such obligations can be construed so as to limit already existing obligations vis-à-vis other crimes.

Thank you.