

Statement on behalf of the Nordic countries

Resumed session of the 6th Committee on Crimes Against Humanity

10 – 14 April 2023

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

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. We reiterate our view that Draft Articles 6 to 10 constitute a good basis for a possible future convention and wish to make the following initial reflections as regards Draft Articles 6, 7 and 10.

Mme/Mr Chair,

First, the Nordic countries reiterate our [full] support for the obligation under Draft Article 6 pertaining to criminalization under national law and we welcome in this regard paragraph 5 and 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 individual criminal responsibility. We note however, as clarified by commentaries of the ILC, that this paragraph 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 conventional 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.

Second, the Nordic countries attach great importance to due process considerations – which we will come back to later this week – but we do nonetheless wish to point to the obligation in Draft Article 6, paragraph 7, to ensure that crimes against humanity shall be punishable by appropriate penalties. We reiterate in this regard our view that this provision should under no circumstances include the death penalty as an applicable penalty.

Mme/Mr Chair,

Third, as regards States' obligation to take the necessary measures to establish its jurisdiction over crimes against humanity, the Nordic countries consider it instrumental – in order to eliminate the risk of impunity – that States establish a relatively wide range of jurisdictional bases under national law. We welcome in this regard Draft Article 7 and note that, in addition to territorial jurisdiction, Draft Article 7 obliges States to establish active personality jurisdiction over nationals. States may also establish jurisdiction over stateless persons residing in their territories as well as passive personality jurisdiction, if considered appropriate. We also welcome that Draft Article 7 does not exclude the exercise of a broader jurisdictional base, if provided for in national law.

Last, I turn now to the obligation to extradite or prosecute set out in Draft Article 7, together with Draft Article 10. The Nordic countries note that in order to *effectively* support the *aut dedere aut judicare* obligation, national courts may, depending on the circumstances, sometimes be required to resort to a jurisdictional base other than just territorial or active personality jurisdiction in order to try the alleged offender if he or she is not extradited or surrendered. We welcome therefore that the draft articles encourage States to establish a relatively broad range of jurisdictional bases. This is crucial to close the impunity gaps.

Thank you.