

**Statement by Sweden on behalf of the Nordic countries  
(Denmark, Finland, Iceland, Norway and Sweden)**

at the

**General Assembly,  
Seventy-third Session**

**Sixth Committee**

**Agenda item 82:  
Report of the International Law Commission on the work of its 70th session  
– Cluster III**

**United Nations, New York**

**30 October 2018**

*– CHECK AGAINST DELIVERY –*

Mr Chair,

I have the honour to speak on behalf of the five Nordic countries Denmark, Finland, Iceland, Norway and Sweden on the topics covered in Cluster III of the ILC report.

The Nordic States express their appreciation for the speed with which the Commission has advanced the work on the topic **Protection of the environment in relation to armed conflicts**. Last year, we commended the establishment of a Working Group chaired by Mr Marcelo Vazquez-Bermudez that enabled the transition of the topic from one Special Rapporteur to another. In particular, we welcomed the appointment of a new Special Rapporteur, Ambassador Marja Lehto. This year, the Commission has once again proved its commitment to the topic. The establishment of a Working Group, under the skilful chairmanship of Mr Marcelo Vazquez-Bermudez, to assist the new Special Rapporteur in preparing the draft commentaries on **draft principles 4, 6 to 8 and 14 to 18** was a fruitful decision since it led to the provisional adoption of these principles and commentaries thereto. These draft principles had been provisionally adopted by the Drafting Committee in 2016, but remained to be provisionally adopted by the Commission as a whole. The Nordic countries will comment these commentaries before the second reading.

The Nordic countries would like to express appreciation for the excellent work of Special Rapporteur Marja Lehto, as reflected in her first report, and for her introductory and concluding remarks during the Commission's plenary debate on the topic. We note with appreciation that she has sought to ensure coherence with the work completed thus far and therefore maintained the methodology already set out by the previous Special Rapporteur and confirmed by the Commission. We would like to commend the Commission for building on what has been done previously and, in so doing, helping to avoid duplication of work and facilitating the conclusion of the topic.

The Special Rapporteur made the wise decision to focus her first report on one particular aspect of the topic, namely, the protection of the environment in situations of occupation and the complementarity between the law of occupation, international human rights law and international environmental law.

As a result, the Commission has been able to move the topic forward. We are aware that the Commission as a whole did not have the time available to consider the commentaries to **draft**

**principles 19, 20 and 21** as provisionally adopted by the Drafting Committee, but we would nevertheless like to offer a few comments on these draft principles.

**First**, we welcome the use of the more generic term ‘occupying power’ rather than ‘occupying State’. However, it is equally important not to exclude a future application of the draft principles in situations when an international organisation may be considered an ‘occupying power’ in the sense that it administers a territory under a mandate from the UN Security Council. Admittedly, such administration is not ‘occupation’ in the ordinary meaning of the term, but many of the responsibilities of an occupying power are also relevant when a territorial area is temporarily administered by an international organisation. We believe that this can be properly elaborated in the commentaries.

**Second**, we regret that the Drafting Committee has chosen to omit the reference in **draft principle 19 [General obligation of an Occupying Power]** to “any adjacent maritime areas over which the territorial State is entitled to exercise sovereign rights”, as originally proposed by the Special Rapporteur. We do not share the conclusion of the Drafting Committee that this element can be omitted in the text of the provision itself since the management of maritime areas are both legally and environmentally important. In addition, inadequate environmental management may endanger the health and well-being of the people dependent on the area. We are not convinced that this concern is addressed by the combination of paragraphs 1 and 2 of draft principle 19 read together with an explanation in the commentaries. At the same time, we welcome the intention to elaborate on the human rights elements in the commentaries.

**Third, draft principle 20 [Sustainable use of natural resources]** reflects both the rights and obligations of an occupying power under the law of armed conflict and the more modern parts of international legal obligations namely, the importance of ensuring sustainable use of natural resources and minimising environmental harm. The Nordic countries welcome the drafting of this principle, and look forward to seeing the legal explanations elaborated in the commentaries.

**Fourth**, we note that a reference to ‘significant harm’ appears both in **draft principle 19** and **draft principle 21** on ‘due diligence’. We see the merit in aligning the terminology with other draft principles and previous work of the Commission. We also hope that the Special

Rapporteur's well-elaborated considerations on the concept of 'due diligence' are reflected in the commentaries.

Mr Chair,

The Nordic countries have taken due note of the Special Rapporteur's plan of work for the remaining part of the topic. We support her plan for the next report in which she intends to address protection of the environment in non-international armed conflicts and questions concerning responsibility and liability for environmental harm in relation to armed conflict. However, we remain reluctant to include detailed principles of responsibility and liability and would prefer a more general reference to existing rules and principles.

In particular, we support the Special Rapporteur's ambition to ensure that the next report will enable the Commission to conclude the topic on first reading in 2019. This will lead to the completion of the draft principles on second reading in 2021, as envisaged in the Commission's plan of work for the remainder of the quinquennium.

Again, we would like to express our deep appreciation for the outstanding work of the Special Rapporteur, and for the engagement and collaboration of other members of the Commission.

Mr Chair,

Turning to the topic of **Succession of States in respect of State Responsibility**, the Nordic countries would like to thank the Special Rapporteur Pavel Šturma for his second report on the Succession of States in respect of State responsibility. We note that the Special Rapporteur had proposed seven new draft articles, which allow for a preview of the main contours of the intended structure of the project. We are pleased to note that the Special Rapporteur has taken into account in his second report the comments from the delegates in the Sixth Committee. The Nordic countries value a transparent and inclusive cooperation between the ILC and the Sixth Committee.

The Special Rapporteur states that he considers that the general theory of non-succession should not be replaced by another theory favoring succession, but that a more flexible and realistic approach is needed. We agree with this proposition.

This time we will focus our comments on the parts that were provisionally adopted by the Drafting Committee.

The Nordic countries are pleased to note that the subsidiary nature of the draft articles is clearly articulated in the draft. Thus, we support the new paragraph 2, added to draft article 1, setting out that the draft articles apply in the absence of any different solution agreed by the parties.

We also see some merit in the inclusion in the draft articles of a provision on the "legality" of succession modelled after the 1978 and 1983 Vienna Conventions on State succession. We note the discussion in the Commission regarding whether the rationale underlying the two Vienna Conventions applies in this context. We also acknowledge certain uneasiness about the question whether the draft article 5 would not provide an "advantage" to unlawful successor, "exempt" it from responsibility. We tend to agree with the Drafting Committee in that this issue can be addressed in the commentaries that would indicate that issues of State succession may arise in complex situations where the legality of succession is contested and that in such situations the general rules of State responsibility would apply to unlawful successor States. It should also be realized that including illegal situations within the scope of the draft articles would mean that unlawful successors could benefit from the *rights* relating to State succession.

We note that there were extensive discussions in the Commission regarding the proposal of the Special Rapporteur for draft article 6. We also note that the Commission will revert to this draft article at a later stage. It should come as no surprise that there is a need for thorough debates regarding this article, which is central for defining the relationship of this topic to the articles on State responsibility. As the draft article currently stands, more drafting seems to be needed for increased textual clarity. We would also like to see how the rest of the draft articles will develop before we can take a stance on whether such a provision is needed as a logical premise for the subsequent draft articles.

Finally, as is well known, State succession is a rare occurrence and the availability of State practice is limited. The Nordic countries would therefore caution against rushing this work forward and we see merit in following a prudent approach.

Mr Chair,

I will now turn to Chapter XI of the ILC report, concerning **Immunity of State officials from foreign criminal jurisdiction.**

The Nordic countries would again like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her sixth report on this topic. This year's report summarized the debates in the Sixth Committee and the Commission on draft article 7 as well as addressed some of the procedural aspects of immunity. The Nordic countries find both elements of the report useful in terms of advancing the Committee's consideration of the topic.

Mr Chair,

Let me make three concise points on behalf of the Nordic countries.

**First**, we believe it is imperative that the Commission strikes an appropriate balance between the fight against impunity for serious international crimes within the sphere of national jurisdictions, and the need to preserve a legal framework for stability in inter-State relations.

Rules pertaining to immunity before international courts play an important role and deserve to be emphasized; particular relevance has to be given to the Rome Statute of the International Criminal Court, and in this respect in particular article 27, which declares the irrelevance of official capacity when it comes to the covered crimes.

We would, again, like to express our unequivocal view that for the gravest international crimes no rules of immunity should apply in national jurisdictions. In this respect, we wish to reiterate our support for draft article 7, which the Commission provisionally adopted during last year's session. We especially wish to support that genocide, crimes against humanity and war crimes were included in the list of crimes exempted from immunity *ratione materiae*.

**Second**, the Nordic countries appreciate the Special Rapporteur's determination to analyze the procedural aspects of immunity. A proper consideration of the procedural aspects can assist in providing important legal clarity to both the forum State and the State of the official, in addition to ensuring that procedural safeguards under international law are respected.

We note that the Commission's deliberations were confined to three procedural aspects, namely (i) timing (ii) the kind of acts affected (iii) the determination of immunity. Generally, the Nordic countries support the approach taken by the Special Rapporteur as regards these three issues. We are particularly intrigued by the timing-issue and agree with the Special Rapporteur that "an early stage" is not easy to define. We look forward to providing more granular comments as we receive the Committee's draft articles in next year's report.

The Nordic countries place a high premium on adequate procedural safeguards to avoid the politicization and abuse of the exercise of criminal jurisdiction with respect to foreign

officials. It is imperative to ensure the protection of all procedural safeguards under international law, in particular international human rights law. Only by robust mechanisms based on the rule of law, will foreign officials be protected against politically motivated or otherwise illegitimate proceedings. The Nordic countries appreciate the Commission's clear intention to address the particular issue of procedural safeguards as part of its overall consideration of the procedural aspects of immunity.

**Third**, the Nordic countries would like to express our support for the work plan suggested by the Special Rapporteur. We especially appreciate that she intends to present a complete set of draft articles pertaining to procedural aspects in her next report.

Mr Chair,

The Nordic countries look forward to the continued work of the ILC on this topic and the seventh report of the Special Rapporteur. We encourage the Commission to seek to reach consensus on the most difficult aspects of this important topic, thereby creating the best possible conditions for its work and for seeking guidance from Member States.

Thank you.