



NORWAY

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Agenda item 79:

Report of the International Law Commission on
the work of its seventy-first session

Cluster I

Statement by Norway on behalf of the Nordic countries

Mme./Mr. Chair,

I have the honour to speak on behalf of the five Nordic countries Denmark, Finland, Iceland, Sweden and my own country Norway. Before I comment on the substantial topics covered in Cluster I, I would like to use this opportunity to make some general remarks regarding Chapters I, II, III and XI of the Report of the International Law Commission.

First, I want to reiterate the Nordic countries' appreciation of the work of the International Law Commission and the Commission's contribution to the progressive development and codification of international law in accordance with its mandate. We welcome the Commission's Report on the work of its seventy-first session

The Commission has a comprehensive workload and it has achieved important results. The adoption this year on second reading of the entire set of draft articles on prevention and punishment of crimes against humanity stands out as a particularly significant achievement. We are also pleased with the substantial progress made on the other topics

on the Commission's agenda, including the adoption on first reading of the draft conclusions with commentaries on peremptory norms of international law (*jus cogens*) and the draft principles with commentaries on the protection of environment in relation to armed conflicts.

We welcome the decision to include "Sea-level rise in relation to international law" in the Commission's programme of work. As was just confirmed in the IPCC's Special Report on the Ocean and Cryosphere in a Changing Climate, the Global mean sea level is rising, and continues to rise at an increasing rate. A trend that is projected to continue beyond 2100. Sea-level rise has serious implications, particularly for small islands and low-lying coastal areas. Consideration of its relation to international law raises broad and complex questions, and the Commission is well suited to move this work forward.

Mme./Mr. Chair,

The Nordic countries take note of all the requests for information contained in Chapter III of the Report. Examples of State practice are particularly pertinent for many of the topics currently under consideration and the Nordic countries will make every effort to provide the Commission with relevant information, where available, and encourage other States to do the same.

The Nordic countries welcome the draft model clauses on provisional application of treaties contained in Chapter XI of the Report and will provide written comments on the topic, including the model clauses in due time.

The Nordic countries would like to use this opportunity to emphasize the importance of the Commission's interaction with stakeholders. We welcome the Commission's tradition of exchanges of information with relevant bodies throughout the year.

Mme./Mr. Chair,

As for the International Law Commission's efforts that led to the adoption of the draft articles on prevention and punishment of crimes against humanity and their commentaries on second reading, we would especially like to extend our compliments to the Special Rapporteur Mr. Sean D. Murphy and express our deep appreciation for his outstanding contributions to this significant achievement.

Our comments last year pointed out that the definition of gender retained from article 7 paragraph 3 of the Rome Statute did not reflect current realities and content of international law, which acknowledge the social construction of gender, and the accompanying roles, behaviors, activities and attributes assigned to women and men, boys

and girls. While we would have preferred a definition that took these into account, we are pleased to see that the Commission decided not to include the definition of “gender” found in article 7, paragraph 3 of the Rome Statute. This allows the term to be applied for the purposes of the present draft articles based on an evolving understanding as to its meaning.

The Nordic countries would like to reiterate that we attach great importance to due process considerations, which are particularly pertinent in the context of criminal law. In relation to the obligation to ensure that crimes against humanity shall be punishable by appropriate penalties that take into account their grave nature, we pointed out in last year’s comments that the relevant draft article should draw inspiration from article 77 of the Rome Statute, which does not include the death penalty as an applicable penalty. We regret that the death penalty was not excluded in draft article 6 paragraph 7.

Mr./Mme. Chair,

The draft articles and their commentaries have significant potential for great practical relevance to the international community. The Nordic countries welcome the ILC’s recommendation to the General Assembly to elaborate a convention on the basis of the draft articles, on prevention and punishment of crimes against humanity, either by the General Assembly itself or by an international conference of plenipotentiaries. Among the three core international crimes, only crimes against humanity lack a convention. International norms can in turn contribute to national laws, national jurisdiction and cooperation among States in the fight against impunity. The Nordic countries continue to steadfastly support this work that is a timely and welcome contribution to the fight against impunity

Mme./Mr. Chair,

Turning to the topic of peremptory norms of general international law (*jus cogens*) the Nordic countries would firstly like to thank the Special Rapporteur, Mr. Dire Tladi, for his fourth report, dealing particularly with the issue of regional *jus cogens* and the question of the illustrative list of peremptory norms.

Mme./Mr. Chair,

The 6th Committee now has before it the draft conclusions adopted by the Commission on first reading, including the illustrative non-exhaustive list of peremptory norms, in an annex to the draft conclusions

This is an important topic with potential significant effects not only on the understanding of international law as a legal system, but also with possible practical effects, including on litigation. It is, however, also a topic that in our view does not easily lend itself to codification, considering the relatively limited and varying practice. This calls for caution when moving forward.

As stated last year, the Nordic countries continue to hold the view that the topic is best dealt with by the Commission through a conceptual and analytical approach, rather than with a view to elaborating a new normative framework for States.

Mme./Mr. Chair,

Allow me to touch briefly on a few substantial issues regarding the draft conclusions adopted by the Commission on first reading.

As we reiterated last year, we remain unconvinced about the possibility to reconcile "regional *jus cogens*" with the notion of *jus cogens* as peremptory norms of general international law. Therefore, we are pleased with the exclusion of norms of regional character from the scope of the topic.

As to the non-exhaustive list of *jus cogens* norms in the annex to the draft conclusions we reiterate our reservations against such a list, but we note that according to draft conclusion 23 the list is without prejudice to the existence or subsequent emergence of other peremptory norms of general international law (*jus cogens*).

Mme./Mr. Chair,

The Nordic countries look forward to the continued work of the ILC on this topic. 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.

We look forward to engaging further in discussions on the draft conclusions and their commentaries and will also take the opportunity to submit written comments prior to the deadline of 1 December 2020.

I thank you.

