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The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) commend the work of the International Law Commission (ILC), which at its 71st Session (2019) adopted the

jurisdictions and, as recognized in the preamble, it is the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity

The Nordic countries agree that the effective prosecution of such crimes must be ensured by taking measures at the national level and by enhancing international cooperation, including with respect to extradition and mutual legal assistance. We reiterate that the elaboration of a convention, on the basis of the articles, would constitute a valuable contribution to this effect

The Nordic countries also welcome the reference to the rights of victims, witnesses and others in relation to crimes against humanity, as well as the right of alleged offenders to fair treatment.

The Nordic countries consider that Article 1 contributes to legal clarity and certainty regarding the scope of the articles. The provision clarifies that the draft articles have two overall objectives: the prevention and the punishment of crimes against humanity. As highlighted by

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“acts” that “constitute” crimes against humanity may be attributable to States under the rules of State responsibility.

The Nordic countries welcome the clarification in Article 3, paragraph 2 supported by treaty practice, jurisprudence, and settled acceptance by States that crimes against humanity are crimes under international law that should be prevented and punished whether or not committed in time of armed conflict, and whether or not criminalized under national law.

The Nordic countries also welcome the clarification in Article 3 paragraph 3 that no exceptional circumstances whatsoever may be invoked as a justification of crimes against humanity.

The Nordic countries also support Article 4 and further operationalisation of the obligation to prevent crimes against humanity in conformity with international law. We reiterate that international efforts to eliminate these horrendous crimes can only be successful if a future convention devotes sufficient attention to prevention. In that spirit, the Nordic countries would like to follow up on the proposals made by other member states and build on earlier discussions within in the ILC to add a monitoring mechanism to the existing draft convention.

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The Nordic countries consider the legal obligation in Article 6 paragraph 1 pertaining to criminalization under national law to be of critical importance. We welcome in this regard also paragraph 5 which provides that the official position of the alleged perpetrator is not a ground for excluding criminal responsibility. We note, 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 immunities shall not apply to acts that constitute crimes against humanity.

provided for in national law (paragraph 3). In the latter regard, the Nordic countries are the widely held view that under international law, crimes against humanity give rise to universal jurisdiction.

Article 8 clarifies that investigations must be prompt, th

for in Article 19(2) of the Charter of Fundamental Rights of the European Union as reflected in the jurisprudence of the European Court of Human Rights

The Nordic countries attach great importance to due process considerations, which are particularly pertinent in the context of criminal law. We welcome the broad scope of Article 11, which concerns the fair treatment of any person against whom measures are being taken at all stages of the proceedings from investigation to imprisonment.

We agree that an alleged offender shall at all stages of the proceedings be guaranteed fair treatment and full protection of his or her rights under applicable national and international law, including international human rights law, as reflected in Article 11. As we have previously stated, the right to a fair trial is a key element of fair treatment and procedural means to safeguard the rule of law.

The Nordic countries welcome Article 17, which addresses the rights of victims, witnesses and other persons affected by the commission of a crime against humanity. We reiterate that victims and survivors are at the heart of international criminal justice and welcome, in this regard, the provisions of the Rome Statute of the International Criminal Court.