

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

at the 6th Committee Meeting

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

United Nations General Assembly, 22 October 2018, New York

Mr Chairperson,

I have the honour to speak on behalf of the five Nordic countries Finland, Iceland, Norway, Sweden and my own country Denmark on the topics covered in Cluster 1 of the ILC report.

Mr. Chairperson,

We once again thank the ILC and the special rapporteur Professor Georg Nolte for their work on the important topic of **Subsequent agreements and subsequent practice**. The Nordic countries have participated actively in the discussion with the ILC during its work and would like to take this opportunity to thank the Commission for this constructive and interactive dialogue.

Since this is the last time we have this discussion in the current format, allow me to point to a few of the issues that have been the topic of the dialogue between the Nordic Countries and the ILC:

First – the Nordic countries welcome that the draft conclusions include a definition of subsequent agreements and of subsequent practice. In this regard, we would like to underline that any agreement under article 31 paragraph 3 (a) and (b) of the Vienna Convention on the Law of Treaties requires the awareness and acceptance of the parties.

Second – regarding draft conclusion 9, the Nordic countries agree that the weight of a subsequent agreement or subsequent practice as a means of interpretation depends on its clarity and specificity.

Third – the Nordic countries have commented on several occasions on the issue of pronouncements by expert treaty bodies, which has been included in draft conclusion 13, and agree with the final formulation of the draft conclusions.

Furthermore, the Nordic countries would like to make some additional comments:

General comments and views expressed in individual cases by treaty bodies consisting of independent experts are of importance for States' implementation and interpretation of international conventions at a national level. However,

such comments and views are not legally binding and should not have the purpose of amending a treaty. They can only be regarded as means of interpretation and their legal weight will depend on their content, quality and legally persuasive character.

It is the view of the Nordic countries that a pronouncement of an expert treaty body cannot, in and of itself, constitute subsequent practice that establishes the agreement of the parties regarding the interpretation of the treaty. We do not exclude that in certain cases a pronouncement of a treaty body regarding the interpretation of a treaty may give rise to, or refer to, a subsequent agreement or subsequent practice by the parties themselves. This, however, requires that it is established that all parties have accepted a particular pronouncement of an expert treaty body as a proper interpretation of the treaty. We agree that such agreement cannot be inferred from silence.

The Nordic countries welcome the result of the work of the Commission and supports the recommendation to the General Assembly to take note of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties and ensure their widest dissemination, and to commend the draft conclusions, together with the commentaries thereto, to the attention of States and all who may be called upon to interpret treaties.

Mr. Chairperson,

Turning to the topic of “**Identification of customary international law**”, the Nordic countries would like to congratulate the International Law Commission and Special Rapporteur Sir Michael Wood for the adoption of the draft conclusions and commentaries on the identification of customary international law in second reading. We welcome the successful completion of the work of the ILC on this important topic.

We have taken a keen interest in the work of the ILC on these conclusions and have followed the work closely throughout the years. We appreciate the fact that our views have received a careful consideration and we are pleased with the understanding of customary international law of the draft conclusions. We feel that a balanced outcome was achieved.

We think that the draft conclusions usefully complement the ILC's earlier work on sources of international law and as such help in systematizing and concretizing international law, making it more accessible to practitioners. We are convinced that the draft conclusions will become a valuable guidance for legal professionals facing questions of customary international law.

We are pleased that the ILC decided to maintain "conclusions" as the final form of the provisions. We agree with the scope of the draft conclusions in that they are limited to the identification of customary international law, without focusing on the relationship to other sources of international law or jus cogens.

We note the discussions both in the ILC as well as in the Sixth Committee regarding the role of international organizations in generating or crystallizing customary international law. We agree with paragraph 2 of draft conclusion 4, which states that in certain cases, the practice of international organizations also contributes to the formation, or expression, of rules of customary international law. This relatively modest provision reflects the variety in the mandates, participation and functions of international organizations. The commentary usefully provides a balanced explanation of this provision.

We are also satisfied with draft conclusion 12 that deals with resolutions of international organizations. We are pleased that the commentary singles out the resolutions of the United Nations General Assembly and gives some useful guidance on how to assess the significance of the resolutions in this context.

The Nordic countries would like to express once more our sincere appreciation for the Special Rapporteur and the ILC for the finalization of the work on this important topic.

Mr. Chairperson,

The Nordic States would like to congratulate the Commission on the successful arrangement in **Commemoration of the seventieth session of the Commission**. The programs were excellent both in New York and Geneva and served as a basis for a valuable discussion on the role of and contributions by

the Commission against the background of the changing landscape of international law.

We are aware that the commemoration sessions brought about considerable additional planning and work by all the Members of the Commission that were involved. In addition, we would like to express our special thanks to the staff at Office of the Legal Affairs (OLA) for the work it put into the two events. The event would not had taken off if it were not for you.

Mr. Chairperson,

Finally, on **Chapter XIII of the report**, the Nordic States take note of the decision by the Commission to recommend the inclusion of the topics Universal criminal jurisdiction and Sea-level rise in relation to international law in the long-term programme of work of the Commission. As far as the first of these topics is concerned we would like to refer to the Nordic statement already delivered under the agenda item dealing with the scope and application of the principle of universal jurisdiction. As to the second topic relating to sea-level rise in relation to international law, we suggest that the Commission applies a prudent approach given the topic's factual complexity and that State practice is still rapidly developing.

Thank you.