Statement on behalf of the Nordic countries

Resumed session of the 6th Committee on Crimes Against Humanity

10 ±14 April 2023

(Definition and general obligations, Articles 2, 3 and 4)

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 and wish to make the following initial reflections as regards Draft Articles 2, 3 and 4.

Mme/Mr Chair,

As regards Draft Article 2, the Nordic countries strongly support the ILC·V GHFLVLRQ to retain the definition in Article 7 of the Rome Statute as the material basis for the definition of ´FULPH DJDLQVW KXPDQLW\µ. We welcome, however, the decision of the ILC not to retain the 5RPH 6WDWXWH GHILQLWLRQ RI ´JHQGHUµ, and correctly realizes ZKLFK ZH EH content of international law.

While reiterating our support for Draft Article 2, we do acknowledge that some elements of the article may merit further consideration and we appreciate this opportunity to exchange views.

The Nordic countries reiterate the importance of the principle of legality in criminal law, which does not permit an expansion of the definition of the crime by analogy to the detriment of a prosecuted person. We wish to highlight, in this regard, Draft Article 2 SDUDJUDSK VXESDUDJUDSK N ZKLFK SURYLGHV WK KXPDQLW\µ FRXOG DOVR FRQVLVW RI ´RWKHU LQKXPDQ causing great suffering, or serious injury to body or to mental or physical health. In our view, this provision resembles a provision permitting analogy and we believe it is important to further reflect on how to ensure that its interpretation is kept reasonably narrow.

Another aspect which might require further reflection pertains to the fact that, as currently drafted, Draft Article 2 only takes the mental element into account in relation to the attack directed against a civilian population. The Nordic countries reiterate our view that the mental

element could be regulated in more detail and that it should be limited to internal knowledge.