

The Nordic countries Denmark, Finland, Iceland, Norway and Sweden would like to express their appreciation to the International Law Commission for the opportunity to submit written comments and observations on the thirteen draft conclusions and commentaries on subsequent agreements and subsequent practice in relation to the interpretation of treaties, as adopted by the Commission in first reading in 2016.

The Nordic countries are very grateful to the International Law Commission and Special Rapporteur Professor Georg Nolte for their work on this important topic. The Nordic countries have underlined the importance of uniform and coherent interpretation of treaties in several statements before the General Assembly. We believe that the draft conclusions will contribute greatly to this end. In view of possible further refinement of the draft conclusions, we hereby submit the following comments and observations to the Secretary-General:

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.

Regarding draft conclusion 9 [8] 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.

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 [12].

It is the view of the Nordic countries that 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.

The Nordic countries have expressed that the work of the UN human rights treaty bodies contributes to the understanding, implementation and development of international human rights law – not only through their jurisprudence, following consideration of many individual complaints and communications, but also through adopting general comments and recommendations interpreting treaty provisions.

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. Such agreement cannot be inferred from silence.

The Nordic countries would like to once again thank the International Law Commission and Special Rapporteur Professor Georg Nolte for the important work undertaken on this topic until now. We hope the above comments and observations will be of value to the further refinement of the draft conclusions and commentaries.