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Agenda item 82: Report of the International Law Commission on the work of its seventy-second session

Statement by: H.E. Ambassador Jane J. Chigiyal, Permanent Representative of the Federated States of Micronesia to the United Nations

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Chair,

In this Cluster, Micronesia will comment on the Commission’s work on the topic of “General principles of law.” Micronesia welcomes the second report of Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur on the topic and takes note of the Commission’s consideration of the topic during its seventy-second session. We have several points to make in this regard.

First, Micronesia welcomes the general agreement in the Commission that the term “community of nations” should be used instead of “civilized nations” when discussing the sources of general principles of law. The original phrase is anachronistic and connotes a hierarchy of propriety that has no place in international law and discourse today.

As a corollary, although the term “nations” typically equates to “States,” we stress that the term is expansive enough to include, for example, Indigenous nations that might not necessarily be called “States” by the international community. We note that several members of the Commission supported the use of the term “nations” in this manner in order to “provide a more diverse source of legal systems and traditions than the word ‘States,’ and that the discussion of this matter in draft conclusion 5 references legal systems of Indigenous and First Peoples. We strongly agree with this consideration. In Micronesia’s view, customary rules and practices emanating from Indigenous nations and their traditional legal systems can be deemed to be general principles of law, if they are common to many across Indigenous nations around the world and are ultimately reflected in some form or another in the international legal system. Such customary rules and practices include careful and precautionary stewardship of natural resources and environments, respect for cultural practices, equitable management of community interests, and constant attention to the needs of future generations, for whom such nations act

today. These customary rules and practices can today be found in, for example, international climate change law, international biodiversity law, and the law of the sea. Micronesia encourages the Commission to consider these customary rules and practices as foundations for important general principles of law in the international legal system today.

Second, Micronesia appreciates the Special Rapporteur's careful efforts to distinguish between general principles of law arising from national legal systems on the one hand, and general principles of law formed within the international legal system on the other hand. We raised this concern in response to the Special Rapporteur's first report on the topic. In his second report, the Special Rapporteur has done a commendable job in canvassing existing international law and practice to identify potential general principles of law formed within the international legal system, including those that are widely recognized in treaties, such as the polluter pays-principle, the Martens clause, and the Nurnberg principles; those that underlie general rules of conventional and customary international law, including a general principle of respect for human dignity; and those that are basic features and fundamental requirements of the international legal system, including the principle of consent to jurisdiction as well as the principle of *uti possidetis juris*. However, Micronesia cautions against sweeping conclusions at this stage, given how murky this potential second category of general principles remains, including how to distinguish such principles from treaty law and customary international law. We also note that the second report's reference to the principle of land dominating the sea as being basic and fundamental to the international legal system needs some reconsideration and possible refinement, given ongoing discussions at the Commission and elsewhere – including, notably, the endorsement by Pacific Islands Forum Leaders this past August of the *Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-level rise* – about the preservation of maritime zones in the face of climate change-related sea-level rise even if such sea-level rise inundates parts of landmasses that generate such maritime zones.

Third, Micronesia encourages the Special Rapporteur and the Commission to examine whether general principles of law of a regional character or some other type of grouping can exist, and if such principles would be applicable to a specific or special topic beyond such a region or grouping. If it is possible to have customary international law that is regional or otherwise situated in some grouping that is smaller than the international community as a whole, then it might stand to reason that the same applies for general principles of law. The Pacific region could be a useful source of study in this regard, considering the laws and practices of the States as well as Indigenous nations in the region.

Micronesia looks forward to the Special Rapporteur's next report on this topic and the Commission's continued careful consideration of the matter.

Thank you, Chair.