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Sixth Committee**

Agenda item 77: Report of the International Law Commission on the work of its seventy-third session, Cluster II

Statement by the delegation of the Federated States of Micronesia

New York, 1 November 2022

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Chair,

Micronesia aligns itself with the statements delivered under this Cluster by Antigua and Barbuda on behalf of the Alliance of Small Island States, and by Samoa on behalf of the Pacific Small Island Developing States.

For this Cluster, Micronesia will focus on the topic of sea-level rise in relation to international law. We are grateful to Mr. Juan Jose Ruda Santolaria and Ms. Patricia Galvao Teles for the second issues paper they prepared on the sub-topics of Statehood and protection of persons affected by sea-level rise for the consideration of the International Law Commission's Study Group on sea-level rise in relation to international law. In the tradition of the stellar work by Mr. Bogdan Aurescu and Ms. Nilufer Oral on the first issues paper pertaining to law of the sea matters, the second issues paper is an important contribution to the Study Group's consideration of the many facets of international law that are implicated by sea-level rise. We look forward to building on the findings of the second issues paper and the Study Group's consideration of the paper going forward.

Chair,

On the issue of Statehood, Micronesia underscores the finding in the second issues paper that "[w]ith regard to small island developing States whose territory could be covered by the sea or become uninhabitable owing to exceptional circumstances outside their will or control, a strong presumption in favour of continuing statehood should be considered." As the second issues paper further indicates, "[s]uch States have the right to provide for their preservation, and international cooperation will be of particular importance in that regard." As the paper additionally notes, "[t]he preservation of statehood is also linked to the preservation of the rights of States affected by the phenomenon of sea-level rise in respect of the maritime areas under their jurisdiction and the living and non-living resources therein."

As a small island developing State that is particularly vulnerable to and specially affected by sea-level rise and other adverse effects of climate change, Micronesia cannot accept any interpretation of international law that deprives us of our Statehood and the rights and entitlements that flow from such Statehood simply because we lose land territory due to the actions and omissions of others, particularly those of developed countries and other major emitters of greenhouse gas emissions. If the criteria for Statehood from the Montevideo Convention on the Rights and Duties of States are to be accepted, then they can only be accepted for determining whether a State has been created. They do not automatically apply when determining whether Statehood persists once initially created. Under international law, the extinguishing of Statehood should be particularly difficult, especially for those States whose claims to Statehood are undermined by acts or omissions of other States beyond the control of the affected States.

The second issues paper lists a number of possible alternatives in the context of Statehood, including a number of alternatives that might allow for a State to maintain some form of international legal personality without territory. One of the alternatives listed is entry into an association by that State with one or more other States. Micronesia notes that this suggested alternative seems to be modeled at least in part on the three Compacts of Free Association that the Republic of Palau, the Republic of the Marshall Islands, and my own country have entered into with the United States. We stress that those Compacts of Free Association were entered into between sovereign and independent States and anticipate that all parties will retain their Statehood without diminishment during the terms of those Compacts. The Compacts do not and will never represent the diminution or extinguishing of any element of the international legal personality of Statehood of any of the parties to them.

Chair,

On the issue of protection of persons affected by sea-level rise, it is clear that while there is a wide range of disciplines of international law that address or otherwise have some substantive relationship to protection of persons affected by sea-level rise, there is no singular international legally binding instrument or dedicated intergovernmental process pertaining to the matter. We note the suggestion raised for the adoption of a new international legally binding instrument on this matter, and we are open to discussing this further, particularly after the Study Group completes its work on sea-level rise in the near future. We also stress that any such work must take fully into account the General Assembly's acknowledgement of the right to a clean, healthy, and sustainable environment; as well as the findings of the International Court of Justice in a possible future advisory opinion on the legal obligations and consequences associated with the adverse effects of climate change, including on the rights of present and future generations.

Chair,

To conclude, we note the Study Group's plan to return to the law of the sea elements of the sea-level rise topic in 2023. We welcome this, in light of recent developments in connection with the 2021 Pacific Islands Forum Leaders Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, including the large number of States from multiple

regions of the world that have welcomed the Declaration. As the Study Group returns to the consideration of law of the sea elements, Micronesia stresses that the Declaration announces the Pacific Islands Forum membership's understanding and application of *existing* international law of the sea. An earlier statement on Cluster II in this Committee by another delegation implied that the Declaration amounted to the formation or announcement of the development of new regional customary international law. That statement misunderstands the Declaration, as the Declaration is not formally meant to establish or announce new regional customary international law. That earlier statement also indicated that no such new regional customary international law can develop if it is in opposition to the views of States from outside the relevant region. For Micronesia, even if we assume that the Declaration represents the formation or announcement of new regional customary international law, the views of States from outside the Pacific Islands Forum region have no bearing on whether such new law can be developed for the region. As the Commission itself has pointed out in its draft conclusions on the identification of customary international law, such regional customary international law applies only to those States that accept it and would not be opposable to States outside the region that do not accept or apply such regional customary international law. We trust that the Commission and its Study Group will keep this in mind going forward.

Thank you, Chair.