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**77th Session of the United Nations General Assembly
Sixth Committee**

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

Statement by the delegation of the Federated States of Micronesia

New York, 2 November 2022

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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 third 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-third session. We wish to make several points in this regard.

First, Micronesia takes note of the additional elaborations in the Special Rapporteur's third report on the issue of transposition of principles common to the various legal systems of the world to the international legal system. The two-step approach for the ascertainment of the transposition of such principles to the international legal system adopted by the Commission is a sensible approach to determining general principles derived from national legal systems. Existing differences between national legal systems and the international legal system require at least some form of reflection on the transferability of a principle common to national legal systems to the international level. Micronesia welcomes the changes made to draft conclusion 6 which retain the two-step approach, while not being overly prescriptive. However, Micronesia believes that the goal of providing more diverse sources of legal systems and traditions recognized in the discussion of the methodology for the identification of general principles of law during the 72nd session of the Commission should be better reflected in the context of draft conclusion 5, for example by referring also to legal systems of Indigenous Peoples in draft conclusion 5 and its commentary.

Second, Micronesia appreciates the continuing efforts of the Special Rapporteur and the Commission in examining a potential second category of general principles of law, namely those formed within the international system. Micronesia generally is open to such a second category of general principles of law. It stands to reason that the international legal system like all other

legal systems should be capable of bringing forth general principles from within itself. Indeed, in his first two reports, the Special Rapporteur presented practice recognizing the existence of such principles, citing as examples among others the precautionary principle and the polluter pays principle, the principle of respect for human dignity, and the principle of *uti possidetis juris*. However, Micronesia remains concerned about the difficulty of distinguishing general principles of international law formed within the international legal system from customary rules of international law. The amendments made to draft conclusion 7 do not fully address these concerns. In particular, Micronesia finds it necessary to ensure a clear understanding of what is meant by the requirement of recognition of a principle as “intrinsic” to the international legal system, which is not sufficiently explained in the commentary to draft conclusion 7.

Third, Micronesia welcomes the clarification that there is no formal hierarchy between general principles of law and the other sources of international law listed in Article 38 of the Statute of the International Court of Justice (“ICJ”). It is Micronesia’s position that any hierarchy among the sources of international law listed in Article 38 of the Statute of the ICJ can only result from the qualification of certain norms as peremptory. The qualification as *jus cogens*, however, is unrelated to any particular source of an international legal norm, be it treaty, custom or general principle. We agree that apart from the case of *jus cogens* norms, any conflict between a general principle of law and a rule in a treaty or customary international law can be adequately addressed by relying on the generally accepted techniques of interpretation and conflict resolution in international law.

Fourth, Micronesia supports the suggestion made by some members of the Commission to include in the draft conclusions a non-exhaustive list of general principles of law, similar to draft conclusion 23 of the Commission’s topic “Identification and legal consequences of peremptory norms of general international law (*jus cogens*)”. We believe such a non-exhaustive list can help clarify the concept of general principles of law. In this context, consideration should be given to such principles as the polluter pays principle, the precautionary principle, the transboundary harm principle, the duty of the international community to cooperate to address major environmental harms and natural disasters, and the right to self-determination of Indigenous Peoples.

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Micronesia once more encourages the examination of whether general principles of law of a regional character or some other type of grouping can exist, and whether such principles would be applicable to a specific or special topic beyond such a region or grouping. In doing so, Micronesia suggests studying the practice of States and Indigenous Peoples in the Pacific region.

Finally, Micronesia commends the Special Rapporteur for his goal of concluding the work on the topic of general principles of law at the Commission's 2024 session, while at the same time recalling that the debate should not be rushed, particularly in such an important field of international law as the sources of international law. We look forward to the Special Rapporteur's next report on this topic and the Commission's continued careful consideration of the matter.

Thank you, Chair.