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Agenda item 83: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

Statement by H.E. Jane J. Chigiyal Permanent Representative

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Mr. Chairman,
Excellencies,
Distinguished Delegates.

I would like to congratulate you and the other members of the Bureau for your election to your posts. Your personal and professional qualifications bode well for the success of this Committee's work.

Let me also express my delegation's gratitude to the Secretary-General for his compilation of decisions of international courts, tribunals, and other bodies referencing the draft articles and draft principles before us today, as well as his compilation of comments submitted by governments regarding the same items.

Mr. Chairman,

Each State has a due diligence obligation under international law to take all necessary steps to prevent the probable infliction of significant physical harms by that State's hazardous activities on another State's environment, people, and property. This prevention rule has a storied legacy in international law, dating back to the famed Trail Smelter arbitration and emphasized in numerous multilateral declarations and agreements, as well as in various decisions of international judicial bodies such as the International Court of Justice and the International Tribunal for the Law of the Sea.

The draft articles and draft principles before us are the clearest iterations of that rule to date. They are the commendable products of decades of work by the International Law Commission, in consultation with the Sixth Committee and Member States of the United Nations. They reflect and advance the formation of international law regarding the type of care and consideration that all States must have for each other when engaging in otherwise lawful activities.

Micronesia supports the adoption of a binding international convention incorporating the draft articles and draft principles. A convention will formalize important doctrines and ensure a uniform approach to preventing significant transboundary harms from hazardous activities. This convention must incorporate a mechanism that aids developing States to deal with the consequences of such activities, in light of the limited capacities of those States.

Micronesia understands that there is resistance to such a convention by some Member States. The draft articles and draft principles are a significant step forward, but they must be actively utilized by the international community. If this body cannot endorse the formation of a binding convention, then this body must at least encourage States to put the draft articles and draft principles into greater use in their domestic decision making processes and international relations. States must cooperate with each other, exchange important information, and consult about the transboundary dangers posed by their hazardous activities.

Mr. Chairman,

Micronesia is keenly aware of the dangers of transboundary harms. Micronesia is a nation of many tiny islands, where stewardship of land and marine resources is a cultural imperative and a survival necessity. In close-knit communities with limited resources, the activities of one community tend to affect the ability of other communities to enjoy their own resources. To ensure harmony and balance in our islands, we developed intricate systems of consultation, cooperation, and co-management between communities. This is why my people survived and thrived for thousands of years while isolated in the middle of the Pacific Ocean, unknown to most of the outside world.

As Micronesia has taken its rightful place among the community of nations, it has joined organizations, treaties, declarations, and initiatives that honor the prevention rule and reflect its ancient concerns for the fragility of its environment and the interconnectedness of Nature. Micronesia is a Party to the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Waigani Convention on the Transboundary Movement of Hazardous Wastes in the South Pacific Region. Micronesia is a proud and active State Party to the 1982 United Nations Convention on the Law of the Sea, which recognizes the fragility of maritime resources and obligates all seafaring States to be mindful of the effects of their activities on coastal States. In international fora, Micronesia has repeatedly espoused the prevention rule from the 1992 Rio Declaration on Environment and Development, most recently in the Rio+20 gathering and its Outcome Document. In regional settings, Micronesia has honored the prevention rule when dealing with its Pacific neighbors, particularly in fisheries agreements. And, domestically, Micronesia has implemented the Micronesia Challenge, which seeks to conserve at least 30% of our near-shore marine resources and 20% of terrestrial resources. The Micronesia Challenge is dependent on the cooperation of local communities that own much of those targeted resources. Those communities have cooperated and consulted with one another for millennia for the sake of environmental stewardship. They represent the prevention rule in action at the local level.

Mr. Chairman,

Of all the areas in which the prevention rule plays an important role, climate change is the most pressing for Micronesia. Climate change is, without question, the gravest threat to my people's welfare, livelihoods, and general security. Our very existence is threatened by the harmful effects of excessive greenhouse gas emissions in the atmosphere, effects which poison our root crops, destroy our coral reef systems, and drive many of our people from their ancestral homes. It is the survival issue of our time.

According to Working Group I of the Fifth Assessment Report by the Intergovernmental Panel on Climate Change, it is “extremely likely” that human activities are driving climate change around the world. The physical effects of those activities are significant, including rising sea levels, the melting of massive glaciers, increased incidences of devastating storms, rapid desertification, and dangerous acidification of the world’s oceans. Such effects are, therefore, transboundary, afflicting all countries and all peoples.

Clearly, then, the prevention rule must play a central role in the fight against climate change. Each State is obligated under international law to ensure that its domestic activities do not inflict significant physical harms on other States. In order to uphold that obligation, each State must assess the degree to which its activities produce harmful greenhouse gas emissions and put into place measures that minimize those emissions to the greatest extent possible. International law recognizes that economic and social concerns can factor in those assessments, but they cannot be excuses for inaction. Due diligence for the prevention of transboundary harms is part of the corpus of international law, and no exceptions can be made for harms arising from activities that contribute to climate change.

Micronesia has done its part to put the prevention rule into action in the fight against climate change and is a State Party to the Montreal Protocol on Substances that Deplete the Ozone Layer. Micronesia was the first State Party to submit an innovative proposal to address the dangerous growth of hydrofluorocarbons (HFCs) by phasing down those chemicals under the Montreal Protocol. HFCs inflict significant physical effects on the global environment, contributing to global warming at a more dangerous rate than carbon dioxide emissions. Their eradication will honor the prevention rule.

Finally, Micronesia is a State Party to the United Nations Framework Convention on Climate Change, as well as its Kyoto Protocol. Micronesia has been an active participant in climate change negotiations, despite their constant gridlock. Our national Congress recently ratified the Doha Amendment to the Kyoto Protocol. Once we submit our instrument of ratification, we will be one of a handful of States that have ratified the Protocol’s second commitment period. Nationally, Micronesia operates under a Nationwide Integrated Disaster Risk Management and Climate Change Policy that mainstreams climate change into our governmental and economic decision-making processes. If a small, developing, historically low-emitting State like Micronesia can take such significant steps toward minimizing the transboundary harms of greenhouse gas emissions, then all other States must shoulder the same obligation. International law, by virtue of the prevention rule, mandates this approach.

Mr. Chairman,

In conclusion, as the International Law Commission notes in its commentary to the draft articles: “The ecological unity of the planet does not correspond to political boundaries.” Though vast distances separate many of our States, the world remains deeply interconnected. Let us do our due diligence to be good neighbors and responsible citizens of the world.

Thank you, Mr. Chairman.