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Report of the International Law Commission on the work of its sixty-seventh session

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Mr. Chairman,

As this is the first time that my delegation is taking the floor this session, please allow me to congratulate you and your Bureau on your elections to your posts. Micronesia has full confidence in your abilities to lead this Committee and stands ready to assist you in the discharge of our work.

Mr. Chairman,

Micronesia is grateful to the International Law Commission for producing a comprehensive and instructive report of its sixty-seventh session. As the United Nations commemorates its 70th anniversary, we would be remiss if we do not acknowledge one of this institution's most important accomplishments: the establishment of the International Law Commission. Nearly 70 years since the creation of the Commission, there remains a pressing need for a body of eminent experts to identify, develop, and codify existing and emerging rules and principles of international law in an authoritative manner. This is particularly pressing at a time when States resort less often to multilateral treaties to promulgate and enshrine international law. The specter of fragmentation is real in international law, and the work of the Commission is needed more than ever to dispel that specter.

In that light, Micronesia is especially grateful to Special Rapporteur Mr. Shinya Murase for leading the Commission's consideration of the topic of the protection of the atmosphere and welcomes Mr. Murase's second report on the topic. Micronesia strongly believes that the protection of the atmosphere remains the most pressing challenge facing humankind today. While States bicker over the fairness of international trade measures, butt heads over how to properly define terrorism, and quibble over whether this particular land grab or that particular

maritime encroachment is permissible under international law, our planet—our home—is falling apart around us. Storms of historic intensities ravage islands and major continents alike, desertification entraps and upends rural and nomadic societies, unprecedented warming melts glaciers and the globe's polar regions, sea levels rise and threaten coastal communities in all coastal States, and warming and acidifying waters endanger the maritime food chain and kill coral reefs at alarming rates. All these ills afflicting our planet have their roots in humankind's bombardment of the planet's atmosphere with excess gases, pollutants, and other harmful substances, all of which degrade the atmosphere and set off chain reactions of catastrophic consequences around the planet.

It is precisely because of the importance of this matter that Micronesia submitted Comments to the Commission in January of this year on the topic of the protection of the atmosphere. In those Comments, Micronesia echoed Mr. Murase's warning from his first report that the planet is ill-served by the "patchwork of instruments" that currently address the protection of the atmosphere. Micronesia asserted in its Comments that "[o]nly through the establishment of a comprehensive global regime to regulate the protection of the atmosphere in a robust manner can we safeguard the livelihoods—and the lives—of present and future generations of humankind."

Micronesia is therefore concerned about the approach taken by the Commission in its consideration of Mr. Murase's second report. In that report, Mr. Murase recommended a revised draft guideline 3 that asserted that the atmosphere is a "natural resource essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems, and hence the degradation of atmospheric conditions is a common concern of humankind." However, the Commission decided to convert that draft guideline into a preambular paragraph, thereby stripping the text of its operative essence. Furthermore, and more alarmingly, the Commission modified the revised guideline to state that "the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole." This alteration is subtle but profound. As the Commission's report indicates, the use of the phrase "pressing concern of the international community as a whole" is meant to be a factual statement rather than the normative statement about the "common concern of humankind" contained in the former draft guideline. In other words, the Commission shies away from explicitly acknowledging that the degradation of atmospheric conditions is a common concern that all States are legally obligated to address cooperatively, comprehensively, and urgently.

The Commission notes in its report that it was reluctant to make that acknowledgement in part because the "concept of common concern still might not be clear or established in international law and lack sufficient support in State practice." The Commission also hesitated to make that acknowledgement because it did not consider that the prevention of transboundary air pollution has become a common concern of humankind, at least not to the extent that the prevention of ozone depletion and climate change has. However, these explanations do not really jibe with the current state of international law. The first paragraph of the preamble to the United Nations Framework Convention on Climate Change underscores that "change in the Earth's climate and its adverse effects are a common concern of humankind." The third paragraph of the preamble to the Convention on Biological Diversity asserts that "the preservation of biological diversity is a common concern of humankind." And, more recently, the first paragraph of the preamble to the Minamata Convention on Mercury defines mercury as "a chemical of global concern owing

to its long-range atmospheric transport.” These are just several of numerous examples in international law that the Commission itself cites in its report when it discusses the notion of “common concern of humankind” in relation to the protection of the atmosphere. Additionally, the Commission has provisionally adopted draft guideline 5, which recognizes that States have the obligation to cooperate with each other and international organizations to protect the atmosphere. The Commission has thus already laid the groundwork for accepting Mr. Murase’s revised draft guideline 3 on this matter.

Micronesia is strongly of the view that the degradation of the atmosphere is a “common concern of humankind.” This is a normative statement that triggers the corollary obligations of all States under international law to act individually and jointly to tackle the degradation of the planet’s atmosphere in a comprehensive and urgent manner. Such obligations are obligations *erga omnes*, with each State being obligated to the international community as a whole to take concrete, collaborative, and comprehensive steps to protect the atmosphere. It is simple logic—not to mention scientific fact as well as legal truism—that all States have common community interests in ensuring that the planet they inhabit can continue hosting them for generations to come. If the degradation of our common home is not a shared concern triggering shared legal obligations, then nothing is. Micronesia respectfully urges the Commission to reconsider its reluctance in this matter.

Mr. Chairman,

Micronesia continues to do its part to meet its obligations to its fellow States to protect our atmosphere. For example, Micronesia is taking the lead among developing countries to promote the phase down of the production and consumption of hydrofluorocarbons (HFCs) under the Montreal Protocol on Substances that Deplete the Ozone Layer. HFCs are short-lived but potent greenhouse gases whose elimination will have significant near-term climate change mitigation effects. In 2009, Micronesia was the first Party to the Protocol to call for an amendment to the Protocol to phase down the production and consumption of HFCs. Today, thanks to the enthusiastic support of small island developing States, the solidarity of African States, the endorsement of the European Union, and recent steps proposed by the United States and China, over 100 States Parties to the Protocol have called for phasing down HFCs. Indeed, during the 27th Meeting of the Parties to the Protocol this week in Dubai, Micronesia is working closely with its allies and other interested States to finalize the adoption of the amendment to the Protocol. This is an example of States acknowledging a serious threat to the planet’s atmosphere and working collaboratively and constructively to address that threat in a comprehensive manner.

Mr. Chairman,

Micronesia continues to follow the work of the Commission on the topic of the protection of the atmosphere with great interest and remains grateful that Mr. Murase and the Commission are treating the topic with the thoughtfulness and depth that it deserves. The Commission’s work on this topic will provide a foundation of draft guidelines that will inform and catalyze the efforts of States to protect the atmosphere.

Thank you, Mr. Chairman.