



Permanent Mission of the Federated States of Micronesia to the UN

300 East 42 Street, Suite 1600
New York, N.Y. 10017

e-mail: fsmun@fsmgov.org

Telephone: (212) 697-8370

Facsimile: (212) 697-8295

<http://www.fsmgov.org/>

74th UNGA Second Committee

Agenda item 79 [Cluster III]: Report of the International Law Commission on the work of its seventy-first session

Statement by: Jeem Lippwe, Deputy Permanent Representative

New York, 6 November 2019

Check against delivery

Chair,

In this Cluster, Micronesia will comment on the Commission's work on the topic of "General principles of law." In that connection, Micronesia welcomes the first report of Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur on the topic.

General principles of law, as a source of international law, remain under-studied by the Commission when compared to treaties and customary international law. This is reflected in the inconsistencies in views of States and international judicial bodies as well as within the Commission on the nature, scope, and application of general principles of law as well as their relationship to other sources of international law. A key question to be addressed by the Commission is whether general principles of law are sourced just from those principles that are common to national legal systems or also include rules to which States have given their consent at the international level. Clarity on this question is essential in order to ensure the rule of law, particularly at the international level. In that connection, Micronesia supports the final outcome of the Commission's work as being in the form of draft conclusions, in line with the Commission's work on the identification of customary international law. Micronesia also notes the potential overlaps between the Commission's work on general principles of law with the Commission's ongoing work on peremptory norms of general international law, including in terms of general principles of law as possibly serving as bases for *jus cogens*.

Chair,

Micronesia has three main initial comments to make on the Commission's work on the topic so far. First, Micronesia supports a draft conclusion that does not limit general principles of law to those recognized by so-called "civilized nations." The language used in the Statute of the International Court of Justice in this regard is anachronistic, unnecessary, violative of the fundamental principle of sovereign equality of States, at odds with current international practice,

and deeply inappropriate in its insinuation that only those principles that are common to all major Western legal systems are properly considered general principles of law. In this connection, Micronesia welcomes the language used by the Special Rapporteur in his proposed draft conclusion 2 with regard to general principles being “generally recognized by States.” Some work remains to be done on what is meant by the phrase “generally recognized,” but the omission of a reference to “civilized nations” is an important and welcome development.

Second, Micronesia notes that the first report of the Special Rapporteur as well as his proposed draft conclusion 3 favor the notion that general principles of law comprise not just those principles derived from national legal systems but also those “formed within the international legal system.” While the first category of general principles of law is well-grounded in the relevant practice and jurisprudence, the second category needs careful consideration by the Commission, especially in terms of the methodology to be used when determining what is meant by the term “formed” as well as by the term “international legal system.” Along the same lines, do general principles of law that are derived from national legal systems possess a certain normative value that is inferior or superior in some manner to customary international law? What about general principles of law that are “formed within the international legal system”? The non-hierarchical nature of the listing of sources of international law in Article 38 of the Statute of the International Court of Justice seems to argue against such weighting, but the Commission will do well to address this issue anyway.

Third, in connection with the foregoing, Micronesia generally supports the Special Rapporteur’s proposed programme of work for the Commission on this topic, particularly the suggestion that a future report might address the possibility of general principles of law with a regional or bilateral scope of application. To the extent that general principles of law are closely linked with customary international law as key sources of international law, and in recognition that it is permissible to have regional or particular customary international law, it is worth examining whether it is permissible to have regional or particular general principles of law, including on a bilateral basis. In the Pacific region, including sub-regions therein, there are a number of norms that enjoy acceptance and utilization in multiple national legal systems but that might not necessarily enjoy similar treatment beyond the Pacific, including norms regarding the natural environment and certain cultural sources of legal authority. Micronesia looks forward to contributing to the Commission’s discussion of this and other aspects of the topic, including through submission of comments to the Commission by the end of this year.

Thank you, Chair.