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78th Session of the United Nations General Assembly
Sixth Committee
Agenda item 79: Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions

Statement by: H.E. Jeem S. Lippwe, Permanent Representative

New York, 25 October 2023 **Check against delivery**

Chair,

Micronesia aligns itself with the statements delivered under this Cluster by Fiji on behalf of the Pacific Islands Forum and to be delivered by Samoa on behalf of the Alliance of Small Island States.

For this Cluster, Micronesia will touch on the topics of general principles of law and sea-level rise in relation to international law.

On general principles of law, Micronesia acknowledges the Commission's adoption on first reading of a complete set of draft conclusions and accompanying commentaries. We reiterate the views we expressed on the topic in this Committee last year. In particular, we stress our support for a draft conclusion recognizing the formation of general principles of law within the international legal system, underscore the challenge of understanding what is meant by those general principles of law being "intrinsic" to the international legal system, and welcome 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.

We also recall our references last year to the relevance of the customary laws and related practices of Indigenous Peoples and local communities to multiple national legal systems as well as to the international legal system. In this connection, we note paragraph 3 of draft conclusion 5 and the associated commentary, which identify "other relevant materials" as forming part of a comparative analysis of national legal systems in order to determine the existence of a principle common to the various legal systems of the world. As the commentary indicates, such "other relevant materials" could include "customary law," among other things, which Micronesia takes to include the customary laws and related practices of Indigenous Peoples and local communities, such as those throughout the Pacific and elsewhere in the world.

Micronesia also notes that with respect to identifying general principles of law within the international legal system, the commentary to draft conclusion 7 refers to the methodology in draft conclusions 4 to 6 as being applicable to the "intrinsic" analysis in draft conclusion 7. It is Micronesia's view that such a methodology includes recourse to "other relevant materials" beyond treaty law and decisions of international tribunals, similar to the approach in paragraph 3 of draft conclusion 5. This is not completely clear, however, and perhaps draft conclusion 7 and/or its commentary should be revised to reflect this clarity.

On sea-level rise in relation to international law, Micronesia is grateful to Mr. Aurescu and Ms. Oral for producing an additional paper to their first issues paper on the topic focusing on issues relating to the law of the sea. We are also grateful for the robust and rich discussion on the additional paper and related matters by the Commission's Study Group on sea-level rise in relation to international law. Micronesia wishes to focus on four of the issues addressed by the additional paper and the Study Group.

First, on the issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones, Micronesia highlights the report's reference to the 2021 declarations of the Pacific Islands Forum and the Alliance of Small Island States on the matter. As those declarations assert, and as much of the international community has echoed after the adoption of those declarations, the United Nations Convention on the Law of the Sea ("UNCLOS") imposes no affirmative obligation to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates of points once deposited with the Secretary-General of the United Nations in accordance with UNCLOS. In this connection, and as discussed in the Commission's report, there exists subsequent practice that is relevant as a means of interpreting UNCLOS in line with the declarations of the Pacific Islands Forum and the Alliance of Small Island States, and perhaps even subsequent agreement with respect to the same, at least among those States that have adopted those declarations. On subsequent practice, in response to paragraph 161 of the Commission's report, we stress that a lack of action also qualifies as practice, especially when such lack of action is explained and justified by public declarations grounded in law such as the ones in 2021 by the Pacific Islands Forum and the Alliance of Small Island States, which represent sovereign intent to maintain the status quo with respect to baselines and outer limits of maritime zones in the face of climate change-related sea-level rise once established in accordance with UNCLOS and deposited with the United Nations Secretary-General.

Second, on the issue of self-determination, Micronesia echoes the point in paragraph 170 of the Commission's report that the principle of the right of peoples to self-determination implies that the States formed by those peoples must not lose their right to territorial integrity or their permanent sovereignty over their natural resources as a result of climate change-related sea-level rise, including maritime natural resources. This is a point that applies to all pillars of the Commission's work on sea-level rise, not just to law of the sea issues.

Third, on equity, Micronesia supports the views expressed by some members of the Commission that equity, as a method under international law to achieve justice, should be applied in favor of preserving existing maritime rights and entitlements in the face of climate change-related sea-

level rise. In this context, we underscore the particular vulnerabilities of small island developing States like Micronesia to such sea-level rise as well as our minimal fault for causing such sea-level rise. We are specially affected States in this regard, and equity argues in our favor.

Fourth, on the principle of permanent sovereignty over natural resources, Micronesia echoes the observation in the additional paper that this is a principle of customary international law which, among other things, has played a vital role in the achievement of self-determination and economic development of developing countries and applies equally to maritime resources as terrestrial resources. We underscore the observation in the additional paper that the loss of maritime resources as a result of climate change-related sea-level rise would be contrary to this principle, and that the legal preservation of rights and entitlements to such resources would be in alignment with this principle. Indeed, as a general matter, international law favors legal stability with respect to the existence and scope of State sovereignty once lawfully established, including with respect to permanent sovereignty over natural resources.

To conclude, Micronesia emphasizes the need for the international community to be careful about characterizing climate change-related sea-level rise as an existential threat, at least with respect to the rights and entitlements that flow from the establishment and depositing with the United Nations Secretary-General of baselines and maritime zones in accordance with UNCLOS as well as with respect to the continuity of Statehood. Such sea-level rise does pose an existential threat in a ***physical*** sense, especially to the atolls and low-lying islands and their residents like those in Micronesia that are particularly vulnerable in an environmental and human sense to the adverse effects of anthropogenic greenhouse gas emissions. However, this is separate from ***legal*** considerations and whether those are truly threatened by such sea-level rise. As the growing body of State practice canvassed by the Commission in this topic attests, the international community appears to be coalescing around the view that international law protects States from being threatened in a legal sense by such sea-level rise, at least with respect to law of the sea matters and Statehood. We encourage the international community and the Commission to maintain this distinction between physical existential threats on the one hand and legal considerations on the other hand with respect to climate change-related sea-level rise.

I thank you.