



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 1]: Report of the International Law Commission on the work of its seventy-first session

Statement by: Clement Yow Mulalap, Legal Adviser

New York, 29 October 2019

Check against delivery

Mr. Chair,

In this Cluster, Micronesia will comment on the Commission's work on the topic of "Peremptory norms of general international law (*jus cogens*)" as well as briefly comment on the Commission's decision to place on its long-term programme of work the topic of "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law."

Mr. Chair,

Micronesia congratulates the Commission on its adoption of draft conclusions on peremptory norms of general international law (*jus cogens*) on first reading as well as commentaries thereto. Micronesia particularly congratulates Mr. Dire Tladi for his outstanding work as Special Rapporteur on this topic. The draft conclusions and their commentaries are a major contribution to the study and implementation of international law, underscoring the notion that there are certain norms that command the attention and compel the action of the international community as a whole.

On that note, Micronesia appreciates the decision by the Commission to annex to the draft conclusions a non-exhaustive listing of norms of general international law that the Commission has referred to in previous sessions as having a peremptory nature. While a full listing of all existing peremptory norms of general international law is admittedly outside the scope of the Commission's work on this topic, it is still useful to have a sense of what the Commission itself has identified in its over seven decades of work as being *jus cogens*.

In that connection, in the commentary to draft conclusion 23, there is a reference to the Commission's expressed view in past sessions that the "obligations 'of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas'" are peremptory norms of general international law. Micronesia fully endorses this view. The protection of natural environments of importance to the international community as a whole—such as the Ocean and the atmosphere—is, in accordance with draft conclusion 3, an objective that reflects and protects fundamental values of the international community, including ensuring safe and healthy natural environments for present and future generations. While such natural environments might be subject to various legal regimes that draw lines demarcating sovereignty and other State rights, it is indisputable that harmful impacts to any part of one such natural environment will very likely harm other parts of such a natural environment, regardless of artificial lines. The wide range of multilateral environmental agreements and processes pertaining to natural environments, including the Ocean and the atmosphere, attests to the paramount importance that the international community places on the conservation, protection, and sustainable use of such natural environments and the resources they contain.

By logical extension, Mr. Chair, in line with draft conclusions 17 and 19, each State is obligated to the international community as a whole to take all necessary steps to safeguard and preserve natural environments of importance to humankind. The gross or systemic failure of a State to discharge that obligation is a serious breach of *jus cogens*. In such a situation, States are obligated to cooperate through lawful means to end such a breach. Unfortunately, there are numerous examples of States engaging in massive pollution of natural environments of importance to humankind without taking all necessary steps to curb such massive pollution, including greenhouse gas emissions that severely damage the atmosphere and the Ocean. These are serious breaches of *jus cogens* that demand collective international efforts in response. Micronesia is grateful to the Commission for laying out very clearly the relevant international law on this point. At a time when challenges to multilateralism intensify in lock-step with mounting challenges to natural environments of importance to the international community as a whole, it behooves the international community to bear in mind the clear conclusions drawn by the Commission with respect to the relevant *jus cogens*. We as States are obligated to work together to correct harms that affect us all.

Mr. Chair,

To conclude, with regard to the Commission's decision to place on its long-term programme of work the topic of "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law," Micronesia welcomes this decision and looks forward to the Commission actively examining the topic in its programme of work. Micronesia notes that footnote 16 in the syllabus for the proposed topic asserts that the Commission's focus on international human rights law and international humanitarian law may influence other areas of international law that are separate from those two areas, including international environmental law. It is Micronesia's view, however, that there exist clear and compelling overlaps between international human rights law and international environmental law. There is growing acceptance in the international community that there is a human right to a healthy environment—or, at the very least, that the enjoyment of numerous human rights is dependent on the enjoyment of a healthy environment. The ongoing work by the United Nations

Special Rapporteur on Human Rights and the Environment is a very useful resource in this regard, as it canvasses existing law and practice in the international community to reinforce that notion in a convincing manner. If the Commission decides to actively examine the proposed topic, then Micronesia strongly encourages the Commission to broaden the scope of its consideration of international human rights law to discuss relevant international environmental law, including available and necessary reparations to individuals for actions that severely harm their use and enjoyment of relevant natural environments.

Thank you, Mr. Chair.