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Agenda item 78: Report of the International Law Commission on the work of its seventy-sixth session [Cluster III]

Statement by: Delegation of the Federated States of Micronesia

New York, 5 November 2026 **Check against delivery**

Chair,

In this Cluster, Micronesia will comment on the Commission's work on the topics of "Due diligence in international law" and "Compensation for the damage caused by internationally wrongful acts".

Micronesia takes emphasizes that they are interconnected issues. As affirmed in the Advisory Opinion by the International Court of Justice ("ICJ") on *Obligations of States in Respect of Climate Change*, "a State that does not exercise due diligence in the performance of its primary obligation to prevent significant harm to the environment, including to the climate system, commits an internationally wrongful act entailing its responsibility."

On "Due diligence in international law," Micronesia welcomes the first report of Special Rapporteur Dr. Penelope Ridings and takes note of the Commission's consideration of this topic during its eighty-first session. Micronesia reiterates its view, shared by several Commissioners, that the distinction between obligations of conduct and obligations of result must not be rigid. We also agree that "obligations of conduct could require the achievement of specific results and could be as demanding as obligations of result."

Micronesia endorses the ICJ's treatment of due diligence as a stringent standard of conduct for assessing compliance with the customary obligation to prevent significant harm to the environment. According to the ICJ, this standard must be assessed objectively against the best available science, the risk of harm, the urgency and the State's capacities. This cannot be reduced to a duty to take reasonable steps without regard to the outcome.

It is Micronesia's view that the diligence owed by States must rise with the risk. That is, the content of this obligation must be shaped by the result it exists to prevent. In the climate context, a rigid reading of due diligence might enable a State to satisfy its obligations through process alone, without regard to irreversible loss and damage to another State. For instance, States' mitigation obligations should be assessed against the 1.5 degree temperature goal so that national contribution measures are not shielded from scrutiny, even if they are adopted in good faith. Relaxing the distinction between conduct and result means a State's climate plan must be tested against the outcome it exists to deliver. In this circumstance, due diligence would only be satisfied if a State's conduct aligns with the temperature goal.

Chair,

On "Compensation for the damage caused by internationally wrongful acts," Micronesia thanks Special Rapporteur Martins Paparinskis for his first report and takes note of the Commission's consideration of this topic during its eighty-first session. We strongly support the Commission's efforts to provide greater clarity on the topic's scope and application and would particularly welcome Commission's identification of good practices for determining the compensation owed in the context of climate change and environmental damage.

Micronesia supports the focus under this topic on article 36 of the Articles on the Responsibility of States for Internationally Wrongful Acts, as that is the most germane to the matter. However, care must be taken to avoid undermining the careful work undertaken by the Commission in drafting and adopting article 36. The current work is to unpack and apply article 36, rather than to recast it.

Micronesia agrees that the international community must recognize and have recourse to the full suite of legal consequences for internationally wrongful acts. Micronesia also agrees with the approach of the Special Rapporteur to include non-State entities and private actors in the scope of the topic, as being potentially entitled to compensation for internationally wrongful acts by a State.

In response to the potential questions to be examined by the Commission on this topic, we wish to make three points.

First, Micronesia notes the Special Rapporteur's suggestion in paragraph 68 of his first report that the Commission consider compensation in the form of global sums as a solution to particular institutional challenges. As likewise noted in the report, the ICJ has said that in the climate change context, compensation in the form of a global sum may be most appropriate, stating "where there is uncertainty with respect to the exact extent of the damage caused, compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations, may be awarded on an exceptional basis." The Commission's further study of the appropriate use of global sums as compensation for the damage caused by climate change would therefore be welcome. Micronesia does stress, however, that the science of attribution for specific climate change harms has matured greatly in recent years, and so recourse to global sums should not be a default approach in this matter.

Second, Micronesia welcomes the Special Rapporteur's focus on the requirement of causality as stated in Article 36 of the Articles on State Responsibility and its specific application in the climate change context. In this regard, we wish to highlight the ICJ's finding that the Articles on State Responsibility are in principle "capable of addressing a situation in which there exists a plurality of injured or responsible States," and that "the fact that the damage was the result of concurrent causes is not sufficient to exempt [a State] from any obligation to make reparation."

Third, we reiterate the ICJ's finding in *Costa Rica v. Nicaragua* that environmental damage in itself and expenses resulting from such damage are compensable under international law.

I thank you.