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

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Mr. Chairman,

As this is the first time that Micronesia 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 an instructive report of its sixty-eighth session. The Commission continues to tackle knotty and complex issues of international law with care and comprehensiveness. The fragmentation of international law is a serious concern for the international community, including developing countries like Micronesia that wish to utilize international law to advance national interests and meet obligations to the international community but which are challenged by the sprawling nature of international law. Micronesia encourages the Commission to keep the dangers of fragmentation at the forefront of its deliberations, so as to ensure the development of as uniform a body of international law as possible.

In this statement, Micronesia wishes to focus on the Commission's consideration of the topic of the protection of the atmosphere, with particular emphasis on draft guideline 3 on the obligation of States to protect the atmosphere. In that connection, Micronesia welcomes Mr. Murase's third report on the topic. Mr. Murase's work on the topic has been detailed, careful, and far-reaching, allowing for rich discussions of various facets of the topic and uncovering links between the topic and other disciplines of international law. Micronesia is pleased that the Commission was able to hold an interactive dialogue with scientists on this topic. International law is meaningless if it is detached from the facts on the ground—or in the atmosphere, in this case. Micronesia strongly believes that the protection of the atmosphere remains the most pressing challenge

facing humankind today. The scientific evidence for the central role played by humanity in the degradation of the atmosphere is clear, comprehensive, and compelling, and international law must be similarly clear, comprehensive, and compelling in guiding the protection of the atmosphere by the international community. Toward that end, as Micronesia noted in its Comments to the Commission on this topic submitted in January 2015, “[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 pleased that the Commission provisionally adopted draft guideline 3 on the obligation of States to protect the atmosphere, as this is perhaps the core guideline in the entire exercise. Micronesia notes the Commission’s adoption of Mr. Murase’s proposal to differentiate between two dimensions of the protection of the atmosphere, one on transboundary atmospheric pollution and the other on global atmospheric degradation. While Micronesia appreciates the Commission’s efforts to distinguish between transboundary atmospheric pollution and global atmospheric degradation in a legal sense, it is Micronesia’s view that there is no practical distinction between those two dimensions. The atmosphere “above” a particular State is not divisible and distinct from the global atmosphere. As defined in draft guideline 1, which the Commission has provisionally adopted, the “atmosphere” is an “envelope of gases surrounding the Earth” in its entirety. Logically, then, the effects of a State’s activities on the atmosphere “above” it will invariably affect the atmosphere “above” other States as well as “above” areas beyond national jurisdiction, as there is a singular global atmosphere. Atmospheric pollution invariably leads to atmospheric degradation.

It seems that the Commission’s main hesitation with regard to conflating transboundary atmospheric pollution and global atmospheric degradation stems from the difficulty of ascribing or tracing the particular harms in the global atmosphere to specific activities of individual States. However, it is Micronesia’s view that this difficulty is immaterial with regard to the individual and collective obligations of all States to protect the atmosphere. As the Commission’s interactive dialogue with scientists on this topic demonstrates, there are clear links between transboundary atmospheric pollution and global atmospheric degradation, especially in the form of climate change. There is one global atmosphere, and any activity of a State that harms the atmosphere “above” it or an area beyond national jurisdiction has the potential to harm the global atmosphere as a whole. That potential is enough to trigger the obligation of the State to take appropriate measures individually or in cooperation with other States to protect the atmosphere.

Because there is no practical distinction between the two dimensions identified by the Commission, it is Micronesia’s view that the obligation to protect the atmosphere is an obligation *erga omnes*. As there is a singular global atmosphere, and as the harms inflicted by one State on any part of the atmosphere can potentially harm the global atmosphere as a whole, that State owes an obligation to the entire international community to take appropriate measures to prevent, reduce, or control the harmful impacts of its activities on the atmosphere.

Micronesia notes that the Commission, in its commentary for draft guideline 3, signals a distinction between measures taken by States to address transboundary atmospheric pollution on the one hand and global atmospheric degradation on the other hand. The implication is that international law provides clearer guidance for how States can address the transboundary atmospheric pollution they cause than it provides for how States can address the harmful impacts they have on the global atmosphere. However, as the Commission itself notes, there is significant support in international law for the notion that States have a general obligation to prevent, reduce, or control global atmospheric degradation, especially support in numerous international conventions as cited by the Commission in footnote 1255 of its report as well as in the case law of the International Court of Justice and other international tribunals. Thus, it is Micronesia's view that when a State is required to discharge its obligation to protect the atmosphere, it should not be allowed to reduce this obligation by claiming a lower standard of protective measures to address global atmospheric degradation. Indeed, any activity under the jurisdiction or control of the State that has the potential to cause transboundary atmospheric pollution also has the potential to cause or to even accelerate global atmospheric degradation; therefore, every reasonable measure available to address the former should also be available to address the latter.

Mr. Chairman,

Micronesia notes that the international community has taken a number of significant measures in the last year to ensure the protection of the atmosphere. The adoption of the Paris Agreement last December and its speedy entry into force are testaments to the global recognition that, in the words of the Paris Agreement, "climate change is a common concern of humankind" and that all States must work toward ensuring the "integrity of all ecosystems" by taking concrete domestic and international measures to address climate change. Also, earlier this month, the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer adopted the Kigali Amendment to the Montreal Protocol. The Kigali Amendment is a legally binding international agreement to phase down the consumption and production of hydrofluorocarbons (HFCs), a greenhouse gas that is several orders of magnitude more potent than carbon dioxide and whose elimination will potentially result in the avoidance of half a degree Celsius of average global warming. Micronesia participated actively in the negotiations for the Paris Agreement as a small island developing State and is proud to be one of the countries to have expeditiously ratified the Paris Agreement at this stage. Micronesia also spearheaded international negotiations for the Kigali Amendment, being one of the first Parties to propose an amendment to the Montreal Protocol to deal with HFCs as well as being the proponent of the Micronesia Declaration, which calls on all Parties to take early action on HFCs. And, domestically, Micronesia has committed to taking steps to revamp its energy sector to rely less on fossil fuel consumption, even though Micronesia's greenhouse gas emissions are minimal compared to those of developed countries and certain developing countries. Micronesia is taking all the aforesaid measures and initiatives because Micronesia appreciates that the atmosphere belongs to all humankind, and so each member of the international community must do its part to protect that atmosphere, whether individually or in cooperation with other members.

Mr. Chairman,

With regard to the upcoming work of Mr. Murase and the Commission on this topic, Micronesia strongly supports Mr. Murase's suggestion that the Commission deal with the interrelationship of the law of the atmosphere with other fields of international law, particularly the law of the sea and international human rights law. It is Micronesia's view that the degradation of the atmosphere has clear links to the degradation of the Ocean—including its living and non-living resources—as well as to the degradation of core human rights to which members of the international community are entitled. The greenhouse gases and other harmful substances that humankind pumps into the atmosphere eventually lead to the warming and acidification of the Ocean, resulting in coral reef bleaching, unpredictable migrations of valuable fish stocks, and deep disruptions of the maritime food chain, among other major impacts. The degradation of the atmosphere—especially as manifest in climate change—also undermines human rights, particularly, but not limited to, the right to life, to adequate food, to water, to health, to an adequate standard of living, to the productive use and enjoyment of property, to cultural practice and traditions, and to self-determination. Just as the atmosphere is global and far-reaching, so too are the harmful impacts of its degradation. As a small island developing State with a sizable maritime entitlement and long-standing historical and cultural connections with the natural environment, Micronesia looks forward to participating in that future discussion.

Thank you, Mr. Chairman.