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74th UNGA

Sixth Committee

Agenda item 75: Responsibility of States for internationally wrongful acts

Statement by the Micronesian delegation

New York, 14 October 2019

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Mr. Chair,

As this is the first time that my delegation is taking the floor in this Committee this session, I extend to you and the rest of the Bureau our congratulations on your selection and assure you of my delegation's full support for the discharge of your work.

Mr. Chair,

Micronesia welcomes the reports of the Secretary-General compiling comments and information received from Governments as well as decisions of international courts, tribunals and other bodies with regard to the articles on the responsibility of States for internationally wrongful acts. In line with the information contained in the reports, my delegation underscores that the articles are an authoritative codification of international law as well as insightful progressive development of certain concepts and approaches in international law pertaining to State responsibility. Indeed, Micronesia has favorably referenced the articles as a whole as well as specific articles therein in a number of formal and public statements, submissions, and settings pertaining to international law, including in international dispute settlement, in the consideration of a number of topics examined by the International Law Commission, and in intergovernmental negotiations for legally binding instruments. Micronesia joins the international community in its steady embrace of the articles.

At the same time, however, Micronesia recalls that it was the recommendation of the International Law Commission in 2001 that the General Assembly consider the possibility of convening an intergovernmental conference to examine the articles with a view to concluding a convention on the topic. The failure of the General Assembly to take any meaningful steps in that direction since 2001 is worrisome, as it signals, among other things, that the General Assembly does not accord the articles sufficient respect as a whole, even as various members of the General Assembly continue citing specific articles in various settings. For Micronesia, it is

important for the international community to give the articles surer footing in international law and reflect their maturation in the nearly two decades since they were finalized by the International Law Commission, rather than leave their status vague and subject to the selective and sometimes contradictory utilization of States, courts, tribunals, and other entities and bodies.

In that connection, Micronesia is open to the General Assembly requesting the Secretary-General to present options for carrying the discussion on this matter forward, including possibly toward the convening of an intergovernmental conference to adopt a convention on the basis of the articles. However, it is critical that any such exercise must recognize that the articles are carefully crafted to achieve a balance between codification on the one hand and progressive development on the other hand, and that the four-part structure of the articles is central to the overall legitimacy and utility of the articles.

Additionally, we should avoid engaging in a wide-ranging negotiation of the substantive provisions of the articles unless warranted by significant developments in State practice since the finalization of the articles in 2001. Indeed, on that point, it bears mentioning that one of the shortcomings of the articles, in the view of Micronesia, is their silence on the special circumstances of small island developing States (“SIDS”) like Micronesia that have limited capacity to monitor the unlawful conduct of foreign or private persons or entities exercising apparent governmental powers of regulation without authorization by those States, including those pertaining to the marine environment. Attribution of responsibility to such States must consider their capacity to prevent such unlawful behavior. There has been significant State practice regarding the special circumstances of SIDS since 2001, and this should be taken into account in any future intergovernmental examination of the articles, including in an intergovernmental conference.

Mr. Chair,

It is time for the articles to find a home in international law, one that is stable, reliable, and universally accepted. Micronesia stands ready to work with other delegations on a constructive way forward on this matter. Thank you.