

Permanent Mission of the Federated States of Micronesia to the UN
300 East 42 Street, Suite 1600 Sixth Committee

Agenda item 77: Report of the International Law Commission on the work of its seventy-third session, Cluster III

Statement by the delegation of the Federated States of Micronesia

New York, 2 November 2022

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legal systems should be capable of bringing forth general principles from within itself. Indeed, in his first two reports, the Special Rapporteur presented practice recognizing the existence of such principles, citing as examples among others the precautionary principle and the polluter pays principle, the principle of respect for human dignity, and the principle of *uti possidetis juris*. However, Micronesia remains concerned about the difficulty of distinguishing general principles of international law formed within the international legal system from customary rules of international law. The amendments made to draft conclusion 7 do not fully address these concerns. In particular, Micronesia finds it necessary to ensure a clear understanding of what is meant by the requirement of recognition of a principle as “intrinsic” to the international legal system, which is not sufficiently explained in the commentary to draft conclusion 7.

Third, Micronesia welcomes 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 (“ICJ”). It is Micronesia’s position that any hierarchy among the sources of international law listed in Article 38 of the Statute of the ICJ can only result from the qualification of certain norms as peremptory. The qualification as *jus cogens*, however, is unrelated to any particular source of an international legal norm, be it treaty, custom or general principle. We agree that apart from the case of *jus cogens* norms, any conflict between a general principle of law and a rule in a treaty or customary international law can be adequately addressed by relying on the generally accepted techniques of interpretation and conflict resolution in international law.

Fourth, Micronesia supports the suggestion made by some members of the Commission to include in the draft conclusions a non-exhaustive list of general principles of law, similar to draft conclusion 23 of the Commission’s topic “Identification and legal consequences of peremptory norms of general international law (*jus cogens*)”. We believe such a non-exhaustive list can help clarify the concept of general principles of law. In this context, consideration should be given to such principles as the polluter pays principle, the precautionary principle, the transboundary harm principle, the duty of the international community to cooperate to address major environmental harms and natural disasters, and the right to self-determination of Indigenous Peoples.

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Micronesia once more encourages the examination of whether general principles of law of a regional character or some other type of grouping can exist, and whether such principles would be applicable to a specific or special topic beyond such a region or grouping. In doing so, Micronesia suggests studying the practice of States and Indigenous Peoples in the Pacific region.

