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tution. On August 4, 1987, a constitutional amendment to replace the three-fourths vote needed to override the antinuclear materials provisions with the requirement of a simple majority was passed by 73 percent of the Palauan voters. On August 21, 1987, Palau conducted its seventh compact referendum, in which 73 percent of the voters approved the compact. However, the Supreme Court of Palau upheld a lower court ruling that the August 21 referendum was insufficient to approve the compact since the legislature had not complied with the Constitution in holding the special referendum to amend the Constitution.<sup>2</sup> In November 1992, voters approved holding a referendum that would allow amendment of the nuclear-free provisions by a simple majority instead of 75 percent.

### III. SOURCES OF LAW

Although Palau is still a United Nations Trust Territory, it exercises substantial powers of internal and external self-government. There are five sources of law for the country's legal system.

#### A. Constitution

Article II of the Constitution makes the Constitution "the supreme law of the land." No law, act of the government, or agreement to which the government is a party may conflict with the Constitution. Under Article XIV, an amendment to the Constitution may be proposed by a constitutional convention, a popular initiative signed by 25 percent of the voters, or a resolution adopted by at least three-fourths of the members of the Olbiil Era Kelulau (the Palauan legislature). An amendment so proposed will be adopted if it obtains a majority of the votes cast in a general election.

#### B. Republic of Palau National Code

The Palau National Code, adopted in 1985 and referred to in this chapter as the Code or PNC, codifies all national laws applicable to the Republic. The Code is a compilation of the following:

1. the laws of the Palau District Code, which is a compilation of those laws of the Palau legislature in effect in the Palau district in March 1971;
2. the Trust Territory Code, which is a compilation and codification of the laws of the Congress of Micronesia in effect throughout the Trust Territory;
3. the laws of the Fifth, Sixth, and Seventh Palau legislatures; and
4. the Republic of Palau public laws of the Olbiil Era Kelulau.

Section 301 of the National Code also gives the effect of law in Palau to the following:

1. the United Nations Trusteeship Agreement;
2. laws of the United States that are applicable to Palau, including Executive Orders of the President of the United States and orders of the Secretary of the Interior;
3. laws of the Trust Territory and amendments to them, to the extent they have not been repealed by the Olbiil Era Kelulau;
4. district orders and emergency district orders promulgated by the district administrator of the Palau district and in accordance with the Trust Territory Code;
5. the acts of the Olbiil Era Kelulau; and
6. state laws.

The Code repeals all laws, regulations, and ordinances enacted by the Spanish, Germans, and Japanese except those concerning the ownership, use, inheritance, and transfer of land that were in effect on December 1, 1941, and that have not been changed by express written agreement.

Since its publication in 1985, two supplements have been issued to the Code. Supplement One contains all laws enacted from the initial publication of the Code up to March 1, 1986. Supplement Two contains all laws enacted between March 1, 1986, and April 1, 1987. The Code is divided into titles according to subject matter, so most titles incorporate several acts of the legislature.

### *C. Initiative*

Article XIII of the Constitution permits citizens to enact or repeal national laws by initiative. An initiative petition must be submitted to voters at the next general election if signed by 10 percent of the voters.

### *D. Custom*

The Constitution and Code take different approaches to the weight to be given to customary law in Palau's legal system. Article V of the Constitution makes "statutes and traditional law . . . equally authoritative." When statutes and traditional law conflict, a statute prevails only to the extent that it does not conflict with "the underlying principles of the traditional law." These principles are not defined by the Constitution. The Code (Title 1, Section 302), however, resolves conflicts in favor of written law:

The customs of the people of Palau not in conflict with the legal authority set out in section 301 [of the Code] shall be preserved. The recognized customary law of the Republic shall have the full force and effect of law so far as such customary law is not in conflict with such legal authority.

Unfortunately, the difference between the Constitution and the Code has never been resolved by the courts.

In order for custom to be legally binding, it must have "existed long enough to have become generally known and have been peacefully and fairly uniformly acquiesced in by those whose rights would naturally be affected."<sup>3</sup> Normally, an expert witness assists the court by tracing the historical application of the custom to the facts. A court will frequently appoint an assessor to resolve any conflict in the expert testimony.<sup>4</sup> Although custom has been rejected as a defense in criminal cases,<sup>5</sup> and in cases of intentional tort,<sup>6</sup> custom has been applied to questions of land ownership, disputes over the ownership of traditional money,<sup>7</sup> claims to the title to chief,<sup>8</sup> and the contribution of money for clan purposes.<sup>9</sup>

### *E. Common Law*

In the absence of written law or customary law, the rules of common law, as expressed in the *Restatements* prepared by the American Law Institute or as applied in the United States, are the rules of decisions in the courts of Palau (PNC, Title 1).

other recreational areas in the country. The Historical and Cultural Preservation Act (PNC, Title 19) seeks to preserve and foster the country's historical and cultural heritage.

#### *D. Agriculture, Forests, and Fisheries*

Few Palauans are still engaged in full-time agriculture. However, the Code at Title 9 creates an Agricultural Commission to assist persons in the villages in establishing farmers' cooperatives and developing commercial agriculture and to manage the Palau Central Produce Market.

Because of the importance of fishing to Palauans, Title 27 of the Code regulates foreign fishing in its territorial waters. It creates exclusive and extended fishery zones around islands and atolls contiguous to the territorial sea. Within these zones, the national government has sovereign rights to the living resources. The Code establishes the Palau Maritime Authority to manage and regulate the fishery zones and to negotiate fishing agreements with foreign governments which must be approved by the Olbiil Era Kelulau. Any foreign party fishing in the Palauan territorial sea or internal waters without the requisite permit is subject to criminal and civil penalties; its ship may be forfeited to the national government. However, a lack of patrol boats has made it extremely difficult for Palau to protect its waters from illegal fishing by foreign ships.

Title 27 gives the state governments the power to promote, develop, and support domestic commercial fishing and cooperative associations. It also establishes a national Palau Fishing Authority for the same purposes.

#### *E. Natural Resources*

Article VI of the Constitution imposes a duty on the national government to take "positive action to attain . . . a beautiful, healthful and resourceful national environment." The government has attempted to carry out this constitutional responsibility by enacting the Environmental Quality Protection Act, Trust Territory Environmental Quality Protection Act, Endangered Species Act, and other laws protecting sea and land life, all of which are collected at Title 19 of the Code.

An essential part of protecting the environment and natural resources is the regulation of land use. The Land Planning Act (PNC, Title 31) establishes planning commissions, comprehensive planning programs, and zoning. Pursuant to this act, land use planning commissions have been established in each of the states, and regulations have been adopted that divide Koror state into detailed use zones and control land subdivision in that state. Under Title 35 of the Code, all land in Palau must be registered with the Palau Land Commission, whose function is also to hear cases concerning interests and disputes in land.

### XIII. PERSONS AND ENTITIES

The definition of a *person* in the Code (Title 11) includes individuals, corporations, firms, partnerships and any other associations permitted by the laws of Palau.

The age of majority for all persons residing in Palau is age eighteen. This age determines the legal age for marriage and for entering into a contract (PNC, Title 21; *Restatement (Second) of Contracts*, Section 14).

married to the father or mother of a child, or a husband and wife jointly—may adopt a child not theirs by birth. An adoption requires the written consent or notice to the known living legal parents who have not been adjudged insane or incompetent or who have not abandoned the child. The adoption of a child over the age of twelve requires the consent of the child. An adoption can be granted only if it is in the best interests of the child.

An adoption decree is subject to appeal and does not become absolute until the time for appeal has expired. Once absolute, an adoption decree relieves the natural parents of all duties and responsibilities toward the child. Those duties pass to the adopting parents. A child adopted according to the provisions of Title 21 of the Code has the same inheritance rights as a person adopted according to the custom of the place where the land is located (in the case of real property) or the place where the decedent was a resident at the time of death (in the case of personal property). If there is no recognized custom as to the inheritance rights of adopted children, a child adopted according to the Code inherits from the adopting parents as if the natural child of the adopting parents and may also inherit from the natural parents as if no adoption had taken place.

## XV. PERSONAL PROPERTY

Palau has no legislation dealing with personal property. The law concerning title to personal property, gifts of chattels, bailments, liens, and fixtures is governed by custom or by the common law as applied by the courts in the United States. In particular, disputes over ownership of traditional Palauan money have been resolved according to custom.<sup>13</sup>

## XVI. WILLS AND SUCCESSION

Any person who is of sound mind and at least eighteen years of age may make a will under Title 25 of the Code. The will may dispose of property that, at the time of the death, the person has a right to dispose of without the consent of any other person. A will may also be made in accordance with customary law.

A will made according to the Code must be signed by the person making it and witnessed by two persons. If the will gives a witness a personal or beneficial interest in property, the interested witness forfeits the provisions made in the will for him or her that exceed in value at the time of the person's death what the witness would have taken had the person died intestate, unless the will is also witnessed by two disinterested persons.

A holographic (handwritten) will does not require a witness. However, the signature and provisions of such a will must be in the handwriting of the testator and proved by two witnesses.

A nuncupative (oral) will is valid only if a person is in imminent peril of death and dies as a result of the peril. It may not revoke or change an existing written will. A nuncupative will may dispose only of personal property that has an aggregate value of less than US\$1,000.

A will made outside Palau that is valid according to the laws of Palau, the place of its execution, or the law of the testator's domicile at the time of execution is valid in Palau.

Land held in fee simple may also be devised by will. If there is no will, land held in fee simple is inherited by the owner's oldest legitimate living male child of sound mind, whether natural or adopted. If there is no male heir, land is inherited by the oldest legitimate living female child of sound mind, natural or adopted. If the owner of fee simple land dies without issue or a will, the land is disposed of according to the desires of the immediate maternal or paternal lineage to