

EXECUTIVE ORDER NO. 153

*To Authorize the Filing of Petitions by the Republic of Palau
Before the International Court of Justice
Against the Federal Republic of Germany, Japan, and the United States of America*

WHEREAS, pursuant to Angaur State Public Law No. 7-04, the Angaur state Phosphate Mining Damage Claims Commission, after due deliberations, filed claims with the Governments of the Federal Republic of Germany, Japan and the United States of America in 1995, the first year of independence of the Republic of Palau; and

WHEREAS, the claims filed were made on behalf of the Eighteen (18) Clans of Angaur who own all lands in Angaur; and

WHEREAS, Angaur is made up of four villages, namely Ngerbelau, Rois, Ngebeyanged, and Ngermasch, that each village has a paramount Chief, Ucherbelau of Ngerbau, Ucherkemul of Rois, Renguul of Ngebeyanged, and Ucherremasch of Ngermasch; and

WHEREAS, Angaur as well as the rest of Palau came under the domination of Germany when Spain sold its rights to the Caroline islands, which Palau Islands were parts of, to Germany in 1898 during the Spanish American War; and

WHEREAS, by imperial decree Issued by Wilhelm, Emperor and King of Prussia, laws of general application to consular Jurisdictions relating to regulations of civil law, were not to be applicable so far as they concern rights to land ownership, mining, and rights to which the regulations on real estate apply, and instead, the Imperial Chancellor (Foreign Office, Colonial Division), and with his consent, the Governor of German New Guinea, was authorized to determine necessary regulations regarding land ownership rights and property rights in general for the District of the Carolines, Palau and Marianas; and

WHEREAS, German government officials conducted minerals survey and, in 1903, discovered phosphate ore deposits on Angaur and commenced mining in earnest in February 1909; that when the people of Angaur objected to this unauthorized destruction of their lands, the German local authorities forced the natives to sign the so-called German Deed dated November 20, 1909, nine months after the mining operations had actually started, so that by the end of 1909 a total of 9,000 tons of phosphate had been mined; and

WHEREAS, the 1909 deed was procured under duress and by force pursuant to unfair regulations specifically made by the Imperial Governor to favor the German authorities and against the natives and their inalienable rights to their homeland; that the deed of transfer was signed by nine chiefs five of whom actually represented five clans out of the total 18 clans of Angaur at the time; that under customary law then and now, the consent of both male and female heads of a clan is required in order to convey clan land; that all the lands covered in the alleged transfer of 1909 were owned by different clans and that none of said land was owned by any individual person; that it is an admitted fact that no consent was given by any female head of any

of the five clans involved; that the attempt transfer by the five chiefs were ineffective because of the lack of consent by the female heads of the respective clans, that in addition, the purported transfer of the island could not have been legally accomplished at that time under all civilized laws including our customary law in effect at that time because the five chiefs were attempting to sell something they did not own or hold title to or the rights of agents to sell and, therefore, the entire document is void ab initio; that no right or title passed to the buyer, the Lands Treasury (Landesfiskus) of the Protectorate German New Guinea; and

WHEREAS, the Land Treasury (Landesfiskus) of the Protectorate German New Guinea, represented by the German Imperial Governor who in turn, was represented by the Imperial District Administrator Fritz, sold, as owner, the rights acquired in the 1909 transfer to the German Southseas Phosphate Company (Deutsche Sudsee Phosphat-Aktien-Gesellschaft of Bremen, represented by Director Wilhelm Schonian); and

WHEREAS, between the years 1909 to 1914, a total of 284,964 tons of phosphate ore were mined and shipped out of Angaur; and

WHEREAS, in 1914, the Japanese Imperial Navy took over the mining operations from Germany and continued the mining operations continuously until 1944 during which period a total of 2,152,206 tons of phosphate were mined and shipped to Japan; and

WHEREAS, Japan has admitted that no payment for lands were made to the people of Angaur in order to conduct mining operations; that Japan claims that it bought the mining rights from Germany; that Japan expanded the mining areas to include the 150 ha land in the southeast of the island reserved for the natives, claiming that the entire island was sold to Germany in the 1909 transfer; and

WHEREAS, Germany had no title to the land because of the defective transfer in 1909 and, therefore, similarly, Japan received no title from Germany and the entire mining operations by Japan was not authorized and the phosphate ore mined and taken were not paid for; and

WHEREAS, the United States of America, in carrying out its responsibilities to the defeated nation of Japan after World War II, commenced mining operations in 1946 for the sole purpose of providing badly needed phosphate for fertilizer uses in Japan; that during the American administration of Palau, it authorized mining of phosphate from 1946 to 1955 during which a total of 1,200,000 tons of phosphate ore were mined and shipped to Japan; and

WHEREAS, Germany, under applicable international laws and Palauan laws, did not have the rights to mine the lands on Angaur; that Japan did not pay for the lands or for mining rights from the land owners and in so doing violated both international laws regulating property rights and its duties and obligations voluntarily assumed under the League of Nations; that the United States of America, similarly, had no right to mine the lands and also violated its duties and obligations voluntarily assumed under the U.N. Charter and as the Administering Authority under the U.N. Trusteeship Council; and

WHEREAS, the people of Angaur, during the late 1960's and in 1970's, petitioned the United Nations Trusteeship Council through the annual visits of the UN Trusteeship Council Mission to the Trust Territory of the Pacific Islands to address their claims for the damages caused by mining operations under all three governments and for payments of the phosphate ore mined; and were told each time to direct their claims to each of the governments involved; and

WHEREAS, the Republic of Palau became an Independent nation on October 1, 1994, and later in the same year became a member of the United Nations; that only member states can avail themselves of U.N. agencies and other U.N. forums including the International Court of Justice; and

WHEREAS, the claims of the people of Angaur were filed with each of the three governments during the first year of independence and that the national government of the Republic has endorsed those claims as in the best interest of the Republic; and

WHEREAS, the final settlements of those claims can only be made by the International Court of Justice:

NOW, THEREFORE, by virtue of the authority vested in me as President of the Republic of Palau, I hereby authorize and direct as follows:

1. The Republic of Palau shall take all necessary steps to seek and press for just settlements of the claims as filed with the Federal Republic of Germany, Japan and the United States of America, including filing of required applications and petitions in the name and on behalf of the Republic, to the International Court of Justice for redress and settlements of these claims.

2. The Republic of Palau shall be represented by its Special Envoy Carlos H. Salii in consultation with the Office of the Attorney General, and to be assisted by such orders as may be appointed later, to file such applications in the form as required by the Rules and Statute of the International Court of Justice at The Hague and to prosecute the same to the fullest extent allowed by the United Nations Charter and other applicable international laws and acceptable international conduct between states.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on this 28th day of April 1997 in the State of Koror, Republic of Palau.

Kuniwo Nakamura
President of the Republic of Palau