



American Model United Nations International

THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice

Nauru v. Australia

International Court of Justice
18 November 2001

JUDGMENT OF 18 NOVEMBER 2001

JUDGMENT:

Present: President Dombkowski of Slovakia, Justice Travis of Saudi Arabia, Justice Higman of Japan, Justice Mourning of Columbia, Justice McIntosh of Rwanda, Justice Beyer of United States of America, Justice Lusk of Belgium, Justice Suknidze of Argentina, Justice Adly of Mauritius, Justice Jin of China, Justice DeLay of Venezuela, Justice Tague of Germany.

In accordance with Article 36, paragraph 1 of the Statue of the ICJ, the Court convened in the city of Chicago to settle the dispute brought before it by Nauru against Australia.

At the end of World War I, in 1919, under the Treaty of Versailles, the Allied powers, specifically Great Britain, and Australia and New Zealand as associates of the British Empire, received many lands from the German Empire that was dissolved after the War. The land that was received placed the Republic of Nauru (hereafter referred to as Nauru) under mandate of the Great Britain, which later became a triple mandate, of which Australia became the administrator. From this time until 1968, when Nauru gained independence from the mandate, approximately 1/3 of the land of Nauru was mined for phosphate. These phosphate lands were destroyed, leaving the land unable to be inhabited, cultivated, or used for any other purpose. Nauru contends here that Australia was indeed responsible for the damages from the phosphate mining.

The issues brought forth to this International Court of Justice by the Republic of Nauru are:

- 1) Whether Australia denied the people of Nauru the right to decide how to use its natural resources.
- 2) Whether Australia violated the 1919 Trusteeship Agreement, specifically, Article VII, stating “any right, title, or interest which the Pacific Phosphate Company or any person may have in the said deposits, land, buildings, plant, and equipment shall be converted into a claim for compensation at a fair valuation.
- 3) Whether Australia violated Article 5 of the 1947 Trusteeship Agreement.
- 4) Whether Australia failed to abide by the laws of trusteeship under Article 76 of the UN Charter.
- 5) Whether Nauru should have right in the overseas assets of the British Phosphate Commissioners (BPC).
- 6) Finally, whether Australia has the legal responsibility to compensate Nauru for damage suffered by the mining prior to 1968.

After having examined the memorials, heard oral arguments, and declaration upon the case, the Court finds,

By unanimous decision,

I. The Court declares that it has jurisdiction over this matter

Australia argued that it cannot be said that the administration of the island [of Nauru] was exercised by the Australian Government to the exclusion of the other two, and that the claims are inadmissible and the Court lacks jurisdiction as any judgement on the breach of the Trusteeship Agreement would involve the responsibility of third States that have not consented to the Court's jurisdiction in the present case.

According to Article 59 of the Statute of the Court: "the decision of the court has no binding force except between the parties and in respect of that particular case".

According to Trusteeship Agreement of 1947, as well as Agreements of 1919, 1923 and 1965 and by practice, Australia on behalf of the Administering Authority exercised full powers of legislation, administration and jurisdiction in and over the territory of Nauru.

Although it is possible that the UK and New Zealand may have to assume responsibility for the alleged damages done to Nauru and its people, this argument is not sufficient for this Court to decide that it should not accept the case presented against Australia alone. The Court does not consider that any reason has been shown why a claim brought against one of the three States should be declared inadmissible only because the territory was administered together with two other States.

Consequently, the Court rejects the objection of Australia discussed above.

The Government of Australia further argued that the claims are inadmissible and the Court lacks jurisdiction as a result of the termination of the Trusteeship by the United Nations in 1967.

Nauru has had claims regarding the obligation of the Administering Authority with respect to rehabilitation of the phosphate lands worked out pre-1967 - before the General Assembly terminated the Trusteeship. Therefore, this Court came to the conclusion that the right of Nauru to request rehabilitation has not been affected by the termination of the Trusteeship Agreement.

Consequently, the Court rejects the objection of Australia discussed above.

The Government of Australia argued also, that the Court lacks jurisdiction given the terms of the Australian declaration made in accordance with Article 36(2) of the Statute of the Court, since the Parties have agreed to have recourse to other methods of settlement of their dispute.

The Court reviewed the reservation made by Australia on declaring compulsory jurisdiction of the International Court of Justice on March 17, 1975. Since the reservation specifically states that the declaration would not apply to any dispute in regard to which the "Parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement" the reservation holds only when all members involved in negotiations agree on the same recourse. Nauru does not or has not agreed to a common recourse in agreement with Australia.

Consequently, the Court rejects the objection discussed above.

The Government of Australia further argued that the claims of Nauru are inadmissible for reasons of judicial propriety and should not be entertained for reason of delay.

Due to the fact that on a number of occasions authorities of Nauru have raised the question of rehabilitation of the phosphate lands worked out before 1967 with the competent authorities of Australia, the Court concludes that the application of Nauru has not become inadmissible because of passage of time.

Consequently, the Court rejects the objection of Australia discussed above.

II. To begin discussion of the merits of the case before the Court, the Court finds against Australia for the following reasons.

In regard to the first issue brought before the Court, whether Australia denied the people of Nauru the right to decide how to use its natural resources, it is the opinion of the Court that Australia did in fact deny the people of Nauru their right to decide use of their natural resources. According to Article 1(2) of the UN Charter, the member States shall respect the principle of equal rights and self-determination of peoples. The principle of sovereignty over the natural resources is the corollary to the right of self-determination. According to Articles 1 of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, all people may for their own ends freely dispose of their natural wealth and resources. The Court views this principle to be codification of the rule of existing customary international law.

In regard to the second issue before the Court, whether Australia violated Article VII of the 1919 Trusteeship Agreement, it is the opinion of the Court that despite the Agreement of 1919 falling outside the good faith of the League of Nations' Covenant, Australia did not in fact violate the 1919 Agreement.

In regard to the third issue before the Court, whether Australia violated Articles 3 and 5 of the 1947 Trusteeship Agreement, it is the opinion of the Court that Australia did so by not acting in the best interests of the inhabitants of Nauru. Article 3 of the Trusteeship Agreement of 1947 for the Territory of Nauru reaffirms the basic objectives of the international trusteeship system set forth in the Article 76 of the UN Charter, violation of which will be further addressed. According to Article 5 (2) (a) and (b) of the Trusteeship Agreement the Administering Authority has to take into consideration the customs and usages of the inhabitants of the Nauru and respect the rights and safeguard the interests both present and future, of the indigenous inhabitants as well as promote the economic social educational and cultural advancement of the inhabitants. The arguments set forth by Australia have not been sufficient for the Court to conclude that Australia has fulfilled aforementioned obligations. As a result of mining of the land of Nauru – irreparable damage has been done to the territory what has made the land unfit for habitation. Therefore Australia has not taken into consideration the interests of the indigenous population of Nauru.

In regard to the fourth issue before the Court, whether Australia failed to abide by the laws of trusteeship under Article 76 of the UN Charter, the Court finds that Australia did break Article 76. According to this Article, the basic objectives of the Trusteeship system are among others to promote political, economic, social and educational advancement of the inhabitants of the Trust territories. While the Court recognizes Australia's contributions to political and educational advancement, Australia has failed to promote social and economic development of Nauru as mentioned above.

In regard to the fifth issue before the Court, whether Nauru should have a right in the overseas assets of the British Phosphate Commissioners (BPC), the Court finds that this issue falls outside the scope of this Court because the BPC is not a sovereign nation as defined by the United Nations Charter.

In regard to the final issue before the Court, whether Australia has the legal responsibility to compensate Nauru for damages suffered by mining prior to 1968, the Court finds that Nauru is entitled to funds for rehabilitation of the land and compensation for resources mined prior to 1968.

III. For the purpose of determination of the amount of compensation the Court orders establishment of a commission comprised of experts in the fields relevant, which will present its findings to the Court no later than November 18, 2002.

President Dombkowski of Slovakia

Justice Travis of Saudi Arabia

Justice Higman of Japan

Justice Mourning of Columbia

Justice McIntosh of Rwanda

Justice Beyer of United States of America

Justice Lusk of Belgium

Justice Suknidze of Argentina

Justice Adly of Mauritius

Justice Jin of China

Justice DeLay of Venezuela

Justice Tague of Germany.

Justice Brown of Luxembourg