

# IN THE INTERNATIONAL COURT OF JUSTICE

NAURU  
APPLICANT  
V.  
AUSTRALIA  
RESPONDENT

MEMORIAL OF NAURU:  
**Certain Phosphate Lands: Lands in Nauru**

## 1. INTRODUCTION

The Republic of Nauru submits this Memorial in the case brought before the International Court of Justice against the Commonwealth of Australia. This case arises from Australia's administration of Nauru under the League of Nations Mandate and later in the United Nations Trusteeship system. During this period, Australia, along with the United Kingdom and New Zealand, extracted large quantities of phosphate from Nauru's lands, resulting in severe environmental degradation.

Nauru contends that Australia breached its international obligations by failing to administer the Trust Territory of Nauru in the interests of its inhabitants and by allowing environmental damage without providing adequate remediation. As a result, Nauru now seeks compensation for the harm caused during the administration, which has had long-lasting negative effects on its economy, environment, and overall well-being.

## 2. HISTORICAL RELATIONS WITH EXTERNAL POWERS AND BACKGROUND

- I. The Republic of Nauru is a small island country in Micronesia. Nauru is located in the Pacific Ocean, about 42 kilometers south of the equator. The land area of Nauru is located on its single atoll with an area of roughly 21 square kilometers.
- II. Prior to European imperialism, a small but significant population of indigenous peoples lived on the island of Nauru. For much of its history Nauru was known as "Pleasant Island," a name given by European explorers.
- III. Phosphate was discovered in Nauru in 1900 which sparked much more colonial interest. Mining operations began in Nauru soon after the discovery of phosphate and control of the island was much more valuable. Nauru became the major supplier of phosphate to Australia and New Zealand.
- IV. The Anglo-German Declaration of 1886 officially granted Nauru as German territory. A line was drawn from the Solomon Islands to a point in the Pacific Ocean northwest of the Marshall Islands. Any land west of this line was officially under the German sphere of influence, Nauru was one of the islands west of this line making it German territory.

- V.** The German government placed Nauru under the Protectorate of the Marshall Islands. Under the protectorate Nauru was briefly a part of the German controlled Marshall Islands.
- VI.** Official German occupation of Nauru began on October 1, 1888 with the arrival of German trading company, Jaluit Gesellschaft. The occupation of Nauru was largely funded by Jaluit who recognized the economic potential of the island.
- VII.** In 1906 the Marshall Islands Protectorate was reorganized, placing Nauru under the jurisdiction of German New Guinea.
- VIII.** Jaluit Gesellschaft was granted special rights to ownerless land in Nauru as a concession for their major financial contributions to the German occupation effort. The indigenous population of Nauru were granted ownership of land that was already settled prior to German influence. Jaluit was given the right to claim land that was unoccupied on the island as well as access to pearl fishing and guano deposits.
- IX.** In 1900 phosphate was discovered in Nauru by the Pacific Islands Company, a British mining corporation. In 1902 the Pacific Islands Company would change their name to the Pacific Phosphate Company. Jaluit owned the rights to the land that contained phosphate, so the PIC had to make an offer for mining rights.
- X.** Jaluit Gesellschaft agreed to a concession that would give the Pacific Phosphate Company the right to mine phosphate in Nauru. Jaluit Gesellschaft was given major shareholdings in the Pacific Phosphate Company, a seat on the company's board and an undisclosed payment. Jaluit Gesellschaft received one shilling per one ton of phosphate exported by the Pacific Phosphate Company.
- XI.** When WWI broke out Nauru was occupied by Australian forces and placed under British jurisdiction. Australian troops seized control of Nauru from the Germans. This officially ended German control of Nauru. Mining operations continued throughout the war under British administration. Jaluit Gesellschaft's assets and stock options were auctioned off by the British government.
- XII.** German territory was redistributed after WWI following the signing of the Treaty of Versailles. Australia and New Zealand especially pushed for the annexation of Nauru. This was almost exclusively due to the economic interest of the hegemonic powers of the Pacific. Australia and New Zealand understood that Nauru was very valuable in terms of phosphate mining and strategic occupation in Micronesia. Australian Prime Minister Billy Hughes strongly advocated for the annexation of Nauru throughout the Paris Peace Conference.

- XIII.** The annexation of Nauru was not specifically stated in the Treaty of Versailles, however it did mandate that previously German territory would be redistributed. On December 17, 1920 control of Nauru was officially granted to the United Kingdom, officially stated as being granted to “His Britannic Majesty”.
- XIV.** Prime Minister Hughes of Australia challenged the annexation of Nauru to Britain. Although Australia was still a part of the British commonwealth, Hughes wanted Nauru to be under Australian jurisdiction. Hughes and his cabinet sent a letter to the British government explaining his grievances and position as to why Nauru should be controlled by Australia. The justification presented in the letter was purely economic. It was first stated that Australia would benefit economically from exporting Nauruan phosphate. The second argument being that without cheap access to phosphate it would be impossible for Australian crops to flourish, this would then encourage Australians to settle in the interior of the continent. At this point, and still today the majority of Australians lived along the coast.
- XV.** Eventually Australia received administrative power in Nauru under a British-New Zealand mandate.
- XVI.** During WWII Nauru was occupied by Imperial Japan. Nauru’s strategic placement in the Pacific made it an extremely valuable territory. Residents were subjected to forced labor.
- XVII.** Following WWII Nauru was placed under an Australian trusteeship.
- XVIII.** By the 1960s Nauru’s phosphate reserves had been largely depleted and Nauru was no longer valuable to Australia. In 1968, Nauru was given sovereignty.

### **3. STATEMENT OF LAW**

- 1.** The Trusteeship Agreement for the Territory of Nauru approved by the General Assembly on 1st November 1947 (Annexes, vol. 4, Annex 29), together with Article 76 of the United Nations Charter, provides the necessary background to the present case. The important obligations set forth in these instruments from the primary causes of action on which the Republic of Nauru relies.

The key provision of the Trusteeship Agreement, Article 3, provides as follows:

“The Administering Authority undertakes to administer the Territory in accordance with provisions of the Charter and in such a manner as to achieve in

the Territory the basic objectives of the International Trusteeship System, which are set forth in Article 76 of the Charter.”

Article 76 of the United Nations Charter, which is independently applicable, provides:

"The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- (a) to further international peace and security;
- (b) to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship agreement;
- (c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- (d) to ensure equal treatment in social, economic and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80."

#### **4. STATEMENT OF FACT FOR WHICH AUSTRALIA IS RESPONSIBLE-**

It is apparent that Australia is guilty of violating the United Nations Trusteeship Agreement. Under Australian control Nauru's valuable resources have been completely depleted. The economy continues to struggle and Nauru remains underdeveloped. *Article 76 of the UN Trusteeship Agreement* was and continues to be violated by Australia. Australia has continually avoided any responsibility for the underdevelopment of Nauru. It is clear that Australia has made no attempts at complying to article 76.

The article clearly states that, "states who control trusteeships", in this case Australia, "must commit to the social, political and economic development of the people living under the trusteeship."

- I.** Article 76 stated below:
  - a. to further international peace and security;
  - b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the

particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world;
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

The Trusteeship Agreement for the Territory of Nauru which was passed by the United Nations General Assembly legally binds Australia to the previously mentioned stipulations. Article three of the trusteeship agreements states-

1. It will co-operate with the Trusteeship Council in the discharge of the Council's functions under Articles 87 and 88 of the Charter; 2.

It will, in accordance with its established policy:

(a) take into consideration the customs and usages of the inhabitants of Nauru and respect the rights and safeguard the interests, both present and future, of the indigenous inhabitants of the Territory; and in particular ensure that no rights over native land in favour of any person not an indigenous inhabitant of Nauru may be created or transferred except with the consent of the competent public authority;

(b) promote, as may be appropriate to the circumstances of the Territory, the economic, social, educational and cultural advancement of the inhabitants:

(c) assure to the inhabitants of the Territory, as may be appropriate to the particular circumstances of the Territory and its peoples, a progressively increasing share in the administrative and other services of the Territory and take all appropriate measures with a view to the political advancement of the inhabitants in accordance with Article 76b of the Charter;

(d) Guarantee to the inhabitants of the Territory, subject only to the requirements of public order, freedom of speech, of the press, of assembly and of petition, freedom of conscience and worship and freedom of religious teaching.

#### **4. STATEMENT OF JURISDICTION**

- I. In the matter before the International Court of Justice (hereinafter referred to as the "Court"), the Republic of Nauru, as Applicant, has instituted proceedings against the Commonwealth of Australia, as Respondent, in accordance with Article 36, paragraph 1 of the Statute of the International Court of Justice (hereinafter referred to as the "Statute"). The present case

concerns the legal dispute arising from the administration and exploitation of phosphate lands on the territory of Nauru during the period in which Australia, in concert with New Zealand and the United Kingdom, acted as the Administering Authority under the League of Nations Mandate and subsequently as the joint trustees under the United Nations Trusteeship system.

- II.** The jurisdiction of the Court in this case is grounded on the acceptance by both parties of the Court's compulsory jurisdiction, as provided for under Article 36, paragraph 2, of the Statute. Australia has made a declaration recognizing the compulsory jurisdiction of the Court, which was in force at the time of the institution of proceedings by Nauru. Likewise, Nauru has accepted the compulsory jurisdiction of the Court in a manner consistent with the Statute. Both declarations are duly registered with the Secretary-General of the United Nations, and their content is in full conformity with the provisions of the Statute.
- III.** The Applicant invokes the Court's jurisdiction on the basis of an alleged breach of Australia's obligations as an Administering Authority under the Mandate and Trusteeship systems. Specifically, Nauru alleges that Australia failed to discharge its duties under the Mandate and Trusteeship Agreements, including the duty to promote the material welfare of the Nauruan people, and that it engaged in inequitable and unlawful exploitation of phosphate resources, thereby causing significant harm to the population of Nauru. The Applicant submits that such acts constitute violations of Australia's obligations under international law, as codified in the League of Nations Mandate for Nauru, the United Nations Trusteeship Agreement for Nauru, the United Nations Charter, customary international law, and general principles of international law.
- IV.** In support of the Court's jurisdiction, the Applicant further invokes Article 27 of the Trusteeship Agreement for Nauru, which stipulates that disputes concerning the interpretation or application of the Agreement shall be referred to the International Court of Justice. The Applicant contends that the present dispute concerns Australia's interpretation and application of the Trusteeship Agreement, thereby engaging the jurisdiction of the Court in accordance with the said provision.
- V.** Additionally, the Applicant contends that the doctrine of continuing wrongs applies to the case, given that the adverse effects of the phosphate exploitation on the Nauruan people and their environment are ongoing. Therefore, the Applicant submits that the Court's jurisdiction is not precluded by the principle of non-retroactivity of treaties or by any lapse of time, as the alleged violations of international law continue to produce effects to the detriment of the Nauruan people.

- VI.** The Respondent, Australia, has contested the jurisdiction of the Court in its preliminary objections, arguing that Nauru's claims are barred by the principle of estoppel, waiver, and acquiescence, and further asserting that the dispute falls within the competence of a domestic or alternative international forum. However, the Applicant contends that these objections are matters of admissibility and substance rather than jurisdiction, and that the Court has prima facie jurisdiction to adjudicate the dispute pursuant to the parties' declarations under Article 36, paragraph 2, of the Statute and the specific provisions of the Trusteeship Agreement.
- VII.** In light of the foregoing, the Republic of Nauru respectfully submits that the International Court of Justice is vested with jurisdiction to adjudicate the present dispute pursuant to Article 36, paragraph 2, of the Statute, as well as Article 27 of the Trusteeship Agreement for Nauru, and other relevant principles and provisions of international law. Accordingly, Nauru requests that the Court affirm its jurisdiction and proceed to the merits of the case.

## **5. ARGUMENTS**

### **A. Responsibility of Australia under International Law**

#### **1. Legal Standards of Trusteeship**

The UN Trusteeship system, as established by Article 73 of the UN Charter, imposed clear obligations on Australia as the administering authority. These included the duty to promote the economic, social, and environmental welfare of the people of Nauru, and to protect their resources from exploitation solely for the benefit of foreign powers.

#### **2. Failure to Uphold Obligations**

Australia failed to fulfill its duties by prioritizing its own economic interests over those of Nauru's population. Phosphate extraction was conducted at unsustainable levels, leading to irreversible environmental damage. The Trusteeship system intended to prepare territories for independence and safeguard their resources; however, Australia's actions contravened these principles.

### **B. Breach of Obligations in Administering the Trust Territory of Nauru**

#### **1. Environmental Degradation**

Nauru's phosphate reserves were mined to the point where approximately 80% of the island's land was left uninhabitable. Despite the foreseeable consequences of unsustainable mining practices, Australia took no meaningful steps to mitigate the environmental damage or rehabilitate the land. International environmental law principles, such as those enshrined in the 1972 Stockholm Declaration, affirm Australia's responsibility to prevent and remedy environmental harm.

#### **2. Violation of Nauru's Right to Self-Determination**

Australia's failure to leave Nauru with a viable economic base upon independence violated Nauru's right to self-determination. The UN Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) establishes that colonial powers must ensure that territories under their control can achieve genuine self-governance. Australia's actions undermined Nauru's ability to achieve meaningful independence.

#### **C. Compensation for Environmental Damage**

##### **1. Quantification of Damage**

Expert assessments commissioned by Nauru have shown that the cost of rehabilitating the island's environment is substantial, with large areas of land requiring extensive restoration to support agriculture or habitation. Nauru submits that the environmental damage caused by Australia's exploitation of its phosphate resources should be compensated in accordance with international law principles of restitution and reparations.

#### **6. RELIEF AND REMEDIES SOUGHT**

Nauru respectfully requests that the Court:

- a.** Declare that Australia violated its obligations under international law by failing to ensure the sustainable development of Nauru and causing extensive environmental damage during the administration of the island.
- b.** Order Australia to pay full compensation to Nauru for the environmental and economic damage resulting from its actions, in an amount to be determined by expert assessment.
- c.** Require Australia to provide funds for the rehabilitation of Nauru's environment and infrastructure to restore the island to a habitable and productive state.

#### **7. SUMMARY**

**(I.)** Australia's actions during its administration of Nauru constitute a breach of its obligations under international law, specifically the Trusteeship Agreement and principles of environmental protection. Nauru has suffered extensive and long-term damage as a result of Australia's exploitation of its phosphate resources. The Republic of Nauru therefore seeks appropriate relief and compensation from this Court in accordance with international legal principles.