



Certain Phosphate Lands in Nauru (Nauru v. Australia)

ARGUED: 24 November 2024

DECIDED: 25 November 2024

1 The Majority Opinion was agreed to and signed by President Lercher of the Republic of Austria,
2 Vice President Escobedo of Co-operative Republic of Guyana, Justice Wasinger of Republic of Poland,
3 Justice Barness of the Federative Republic of Brazil, Justice Deinek of the Republic of Mozambique, Jus-
4 tice Lambert of the Islamic Republic of Pakistan, Justice Thom of the Republic of Trinidad and Tobago,
5 Justice Hartman of the Republic of Malta, Justice West of the Republic of Ecuador, and Justice Houston
6 of the Republic of Malta.

7 *History*

8 The Court was asked to examine the validity of the Republic of Nauru's, herein referred to as
9 Nauru, claims against the Commonwealth of Australia, herein referred to as Australia, in regard to the
10 violations of the Trusteeship of Nauru administered by Australia. The Court was also presented with a
11 claim of reparations requested by Nauru due to the alleged violations of the Trusteeship agreement,
12 those being perceived human, economic, and environmental rights violations imposed on the Trustee-
13 ship of Nauru. In making those determinations, the Court was required to interpret certain clauses
14 within the 1967 Agreement Relating to the Nauru Phosphate Industry.

15

16 *Summary of Facts*

17 In 1947, Nauru entered a trusteeship under the administering authorities of Australia, New Zealand,
18 and the United Kingdom of Great Britain and Northern Ireland. Under these aforementioned authorities,
19 phosphate mining along the coast of Nauru occurred in accordance with the Trusteeship Agreement.
20 In 1962, the Trusteeship Council reported and recommended in "Report of the Trusteeship Council, 20
21 July 1962- 26 June 1963" GAOR 18th Sess Supp No. 4 (A/5504) that the drawing up of a detailed plan for
22 resettlement was unavoidable and the responsibility rests with the governments which benefited from
23 the low price of phosphate to provide assistance to the cost of a scheme approved for the future home
24 of the Nauru people. According to the GA Res 2111 (XX) on "the Question of the Trust Treaty of Nauru of 26
25 December 1965," the General Assembly requested the Administering Authority (Australia) take steps in
26 order to restore the Island of Nauru to ensure the future habitation of Nauru and the Nauruan people
27 as a sovereign nation. And noting the failure of the Administering Authority to satisfy the conditions
28 to resettle as an independent people and have territorial sovereignty in their new place of residence
29 as decided by the 32nd session of the Trusteeship Council. GA Res (XXI) of 20 December 1966 called
30 upon the Administering Authority to take "immediate action irrespective of cost toward restoring the
31 island for habitation." Res of 27 September 1967; Trusteeship Council 13th Special Sess 22-23 Novem-
32 ber 19 1967, T/SR 1323-4 p.4 urges the Administering Authority to take action to rehabilitate Nauru to the
33 express wish of the people. GA Res 2347 (XXII) of 19 December 1967 unanimously chose to reiterate its
34 previous stance in regard to rehabilitation of the land, keeping in mind the status of the Independence
35 of Nauru. The Court was also asked to examine the 1967 Agreement Relating to the Nauru Phosphate
36 Industry, the Court did not find the 1967 agreement to apply to Nauru's request to the International
37 Court of Justice and well deemed the 1967 agreement do not supersede the General Assembly and
38 Trusteeship Council resolutions in regard to this issue passed after the the agreement was signed. In

39 addition the Court found the General Assembly and Trusteeship Council resolution prior to the agree-
40 ment provided for the answer to the issue of whether the Trusteeship was violated by the Administering
41 Authority (Australia).

42 *Summary of Arguments*

43 The Republic of Nauru has come before the Court today and asked for reparations from the
44 Commonwealth of Australia for rehabilitation for the land of Nauru which was affected by phosphate
45 mining. Nauru has claimed that while in trusteeship under Australia, the Australian government de-
46 pleted Nauru's supply of phosphate. Nauru claims that the depletion of their phosphate led to an eco-
47 nomic and environmental crisis. As phosphate is Nauru's only valuable natural resource, Nauru claims
48 the Australian government left them with nothing after they were given independence in 1967. More-
49 over, Nauru has claimed that the act of Australia's exploitative mining of phosphate and the severe
50 environmental degradation of Nauru affected not only the physical way of life, but also the spiritual
51 well being of the Indigenous Nauruans. Additionally, Article V of the trusteeship agreement of 1947 be-
52 tween Nauru and Australia stated Australia had the liability to respect and safeguard the interests of
53 the present and future of the Nauruan people. Nauru has claimed that since Australia did not uphold
54 this agreement, they are able to ask for reparations from Australia for the economic and environmental
55 degradation that Australia caused.

56 The Commonwealth of Australia approached the International Court of Justice stating that in
57 the case of *Nauru v. Australia* the ICJ does not have jurisdiction to hear the case. They alleged that
58 the 1947 Trustee treaty's obligations became moot when Nauru gained independence. Additionally,
59 they argue they never breached the Trusteeship of Nauru. Furthermore, the Commonwealth of Aus-
60 tralia denied sole responsibility for the degradation of the phosphate lands with Nauru citing limited
61 they placed on the amount of phosphates to be mined. Instead of a decision proposed by the ICJ, Aus-
62 tralia seeks an agreement between Nauru and themselves on the matter of rehabilitation of phosphate
63 lands. Furthermore, Australia claimed the limit of phosphate that is allowed to be mined by any entity
64 was clearly outlined in the 1947 Trusteeship Agreement for Nauru, hence the issues that occurred as a
65 result of further mining of phosphate on Nauru land was the responsibility of the Nauruan government.
66 Australia argues that due to this responsibility falling on Nauru since the trusteeship ended, the Court
67 does not have jurisdiction to hear this case as Australia was not in control of the phosphate mining
68 and the resulting damage to the lands. Australia also claims previous compensation or aid provided
69 to Nauru as part of the decolonization process suggest that these efforts addressed the issue.

70 *Summary of Jurisdiction*

71 The Court determines that it has jurisdiction over the case and establishes its authority to hear
72 the matter on the following legal bases: Under Article 36 of the Statute of the International Court of Jus-
73 tice, the Court establishes jurisdiction under Article 36(1), which provides for ICJ jurisdiction in all legal
74 disputes referred to it by parties. Nauru's application to the ICJ is grounded in the legal dispute over
75 Australia's obligations as a former administering power under the United Nations Trusteeship Agree-
76 ment for Nauru (1947).

77 Additionally, under Article 36(2)(b), alleged breaches of an international obligation. In this case,
78 he Nauru claims that Australia failed to fulfill its obligations as a former administering power under
79 the United Nations Trusteeship Agreement for Nauru (1947) by mismanaging resources and failing to
80 rehabilitate the lands affected by phosphate mining and also Article 36(2)(d), the nature or extent
81 of the reparations to be made for such breaches. Nauru seeks reparations for the harm caused by
82 Australia's alleged failure to act in the best interests of the Nauruan people.

83 Article 76 of the United Nations Charter requires administering powers to promote the well-
84 being of trust territories and develop them for self-governance. It creates a binding legal framework
85 within the court to adjudicate disputes. The Court draws upon the principles and sources of interna-
86 tional law outlined in Article 38 of the Charter, including treaties, international custom, and general prin-
87 ciples of law recognized by civilized nations. These sources affirm the Court's competence to decide
88 matters concerning Australia's international obligations. The obligation to manage natural resources
89 sustainably and equitably, and to administer territories in the best interests of their populations, is firmly
90 embedded in customary international law. The Court's jurisdiction extends to claims based on such
91 customary principles, which Nauru asserts were breached by Australia. The Court also recognizes the

92 importance of historical agreements, such as the League of Nations Mandate System, which governed
93 Nauru before the Trusteeship Agreement. These agreements create a continuum of legal obligations
94 that are justifiable before the court.

95 *Legal Analysis*

96 As a judicial mechanism of the United Nations, this Court is tasked with upholding the ideals of
97 equity laid out in the UN charter.

98 Per Article 1 of the UN Charter, The Purposes of the United Nations are:

99 “ (a) To maintain international peace and security, and to that end: to take effective collective
100 measures for the prevention and removal of threats to the peace, and for the suppression of
101 acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in con-
102 formity with the principles of justice and international law, adjustment or settlement of international
103 disputes or situations which might lead to a breach of the peace; (b) To develop friendly relations
104 among nations based on respect for the principle of equal rights and self-determination of peoples,
105 and to take other appropriate measures to strengthen universal peace; (c) To achieve international
106 co-operation in solving international problems of an economic, social, cultural, or humanitarian char-
107 acter, and in promoting and encouraging respect for human rights and for fundamental freedoms for
108 all without distinction as to race, sex, language, or religion; and (d) To be a centre for harmonizing the
109 actions of nations in the attainment of these common ends.”

110 Specifically, when referring to the UN Charter, Chapter XII, Article 76 , it states that the Trusteeship
111 system has several basic objectives:

112 “(a) to further international peace and security; (b) to promote the political, economic, social,
113 and educational advancement of the inhabitants of the trust territories, and their progressive devel-
114 opment towards self-government or independence as may be appropriate to the particular circum-
115 stances of each territory and its peoples and the freely expressed wishes of the peoples concerned...;
116 (c) to encourage respect for human rights and for fundamental freedoms for all without distinction...(d)
117 to ensure equal treatment in social, economic, and commercial matters for Members of the United Na-
118 tions and their nationals, and also equal treatment for the latter in the administration of justice....”

119 In the spirit of the UN Charter Article 1 and Article 76 aforementioned, this court holds that it has
120 jurisdiction on the claim that Australia depleted the economic sources and harmed the environment of
121 Nauru. In neglecting to do so, this body would not be in line with the United Nations mission “to achieve
122 international co-operation in solving international problems of an economic character.”

123 Furthermore, the Court would like to recognize the vast impacts of colonialism on small nations,
124 such as Nauru. We hold that it is in the spirit of the United Nations to mitigate the effects of colonial-
125 ism and promote the right to self-determination for our member states. To reject Nauru’s claims that
126 Australia economically exploited Nauruan lands would be to reject the spirit of the Charter. For these
127 reasons, we hold that it is within Nauru’s right to seek reparations from Australia and we affirm their
128 rights to self-determination for their populations, present and future.

129 Moreover, the Trusteeship Agreement for the Territory of Nauru of 1947 affirms the aforemen-
130 tioned in its Article 3; and in Article 5 mandates that Australia,

131 “(a) Take into consideration the customs and usages of the inhabitants of Nauru and respect
132 the rights and safeguard the interests, both present and future, of the indigenous inhabitants of the Ter-
133 ritory; and in particular ensure that no rights over native land in favour of any person not an indigenous
134 inhabitant of Nauru may be created or transferred except with the consent of the competent public
135 authority; (b) Promote, as may be appropriate to the circumstances of the Territory, the economic,
136 social, educational and cultural advancement of the inhabitants;”

137 When looking at the facts of this case, it is the position of the Court that Australia has violated
138 their social, economic, and political obligations to Nauru as outlined in the UN Charter on Trusteeship
139 and the Trusteeship Agreement itself, particularly Article 76(a)(b)(c) of the Charter and Article 3, and
140 5(a)(b) of the Trusteeship Agreement

141 Additionally, the Trusteeship Council at its Thirty-First session, the Administering Authority, and
142 representatives of the Nauran people in June 1965 had discussed the question of a "future home for
143 the Nauran people which would preserve their national identity," at the Canberra Conference.

144 When referring to the Trusteeship Council Debates in the Thirty-First Session in 1964, the dis-
145 course reflected an understanding that Nauru had brought concerns before the Council. Demonstra-
146 bly, Mr. Chipping H.C. Kiang of China highlighted that,

147 "It was impractical to rehabilitate the worked-out phosphate lands, there would be no pos-
148 sibility that the surviving coral pinnacles could be used on a sufficiently wide scale to maintain the
149 fast-growing Nauran population. The Council could best assist the Naurans by helping to allay their
150 uncertainty about their future."

151 This Court recognizes the sustained historical efforts of Nauru to communicate their grievances
152 to the Trusteeship Council, and recognizes the failure to reach a satisfactory redress for the aforesaid
153 violations. Therefore, it is well within this body's purview to address this case.

154 Furthermore, the Court recognizes and honors the findings of the Trusteeship Council to rectify
155 this issue as reiterated by the UN General Assembly at the Twentieth Session, stating, "*Noting further* the
156 conclusions of the Trusteeship Council at its thirty-second session to the effect that as the Administer-
157 ing Authority was unable to satisfy fully the Nauruans' conditions that they should be able to resettle
158 as an independent people and have territorial sovereignty in their new place of residence, and as the
159 offer of Australian citizenship was unacceptable to them."

160 Cognizant of the Charter and the 1947 Trustee Agreement itself in tandem with the expressed
161 understanding of the harm from the Trusteeship Council and the UN General Assembly; it is the holding
162 of this Court that the alleged violations are substantiated.

163 In their arguments and memorial, Nauru made it clear that during their Trusteeship agreement
164 with Australia, Australia had violated Article 73 of the Trusteeship system of the UN charter. In their ar-
165 guments, they outlined Australia's responsibility to promote the economic, social, and environmental
166 welfare of the people and resources of Nauru. Australia failed to meet these obligations of the Trustee-
167 ship Agreement and mined Nauru's phosphate resources unsustainably which led to irreversible envi-
168 ronmental damage that left 80% of the island's land uninhabitable. Prime Minister of Australia Robert
169 Menzie made statements in 1962 acknowledging Australia's government had an obligation to provide
170 Nauru with a satisfactory future and that at the time this could only be achieved by either finding a
171 new island for Naurians or receiving them into Australia. Australia, along these lines in the 1960s, pro-
172 posed the Curtis Island proposal, which the Australian government proposed to move the Naurians to
173 the Island of Curtis in relation to the environmental degradation. All of this occurred while the Trustee
174 Agreement was intact. The statements made by Prime Minister Robert Menzie as well as the gov-
175 ernment's proposal indicate that Australia knew that they were mining in an unsustainable manner,
176 displaying the violations of Article 73 of the Trusteeship System of the CCharter. The Australian gov-
177 ernment abused their power in this trusteeship and destroyed the land of Nauru, and in an attempt to
178 make reparations they proposed to move the Naurians off the island as they knew the island was no
179 longer inhabitable.

180 This environmental degradation not only rendered the land uninhabitable but had lasting ef-
181 fects on Nauru's ability to form an independent self determined state. Under the Charter Article 76 b it
182 states that one of the fundamental objectives of the trusteeship system was to help with the progres-
183 sive development towards self-government or independence.

184 According to a United Nations Mission report on the 31 of July, 1956 about New Guinea and Nauru,
185 there were serious concerns about future Nauruans at the time. They listed how phosphate mining has
186 boosted their economy, but realized that the mining would deplete all the phosphate. The report states
187 that they estimated the phosphate deposits to be depleted in forty to fifty years. The report states that
188 the Nauruans had lived on coconuts, pandanus, fruits and fish, but this way of life would be difficult if
189 not impossible to return to after the phosphate was depleted. In 1956, Naurans were already relying
190 on many imported foods to survive as agriculture was not feasible. Furthermore, the report details
191 that the Trusteeship Council since 1949 has been concerned with what the future of Nauru will look
192 like after the phosphate deposits were exhausted. The report cites that the Naurans were similarly
193 very concerned about their future. While they had been kept updated about the investigations into

194 their future after the phosphate was gone, no solution was found. From this report in 1956, it is clear
195 the Trusteeship Council knew the risk the people of Nauru were in by continuing mining at such rates;
196 Australia knew the estimates that Nauru would not be able to grow the food they subsisted on before
197 there was phosphate mining. Because of these facts, the Court finds that the Trusteeship Council and
198 thereby Australia had knowledge of the environmental degradation and changes to land that were
199 ongoing and would continue.

200 Not only did the report outline that Australia had knowledge of the repercussions of their ac-
201 tions, it also shows that they violated Article 76 b of the Charter. The United Mission report also helps
202 to illustrate how the depletion of Nauru's phosphate would eventually cause irreversible damage to
203 Nauru's economy and their ability to survive as an independent sovereign nation. The UN Mission Re-
204 port makes it clear that after the phosphate mines are depleted, the Naurans way of life would be
205 irreversibly changed and that it would be near impossible to return to it. Even before the depletion of
206 the phosphate mines, Nauru primarily had to rely on the outside world to import food.. The degradation
207 of the environment led to Naurans to no longer be able to produce agriculture they once were able to
208 grow. The unsustainable mining of Nauru's phosphate mines led to Nauru to not be able to sustain an
209 independent economy and produce a stable sovereign state.

210 *Conclusion*

211 In conclusion, the Majority Opinion of the International Court of Justice holds that Australia has
212 breached their obligations provided in the United Nations Charter Chapter XII Article 76 and the Trustee-
213 ship Agreement for the Territory of Nauru.

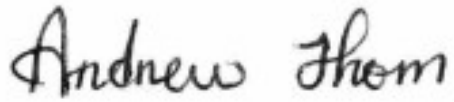
214 Therefore, this Court is recommending the following in accordance with Article 36(2)(d) of the
215 UN Charter:

216 Australia and Nauru work together to reach an agreement on an amount for reparations, to be
217 paid to Nauru, that would mitigate the effects of the phosphate mining that took place in Nauru under
218 the trusteeship of Australia.

219 The Court recommends such reparations be invested into sustainable economic, social, and
220 cultural practices, including, but not limited to renewable food systems for the people of Nauru.

221 The Court recommends the Security Council oversee the agreements made between Australia
222 and Nauru on the amount of reparations as well ensuring that the reparations are used for the reha-
223 bilitation efforts within the borders of Nauru.

Signed By



Justice Andrew Thom



Justice Annie Wasinger



Justice Ayleen Escobedo



Justice Katey West



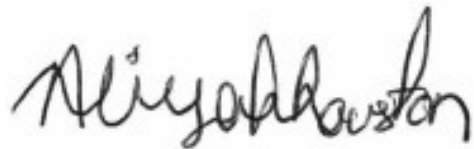
Justice Levi (Rhiannon) Hartman



Justice Jacqueline Deinek



Justice Emma Lercher



Justice Aliyah Houston



Justice Leandro Lambert



Justice Emma Barnes