



1 **NAURU**

2 **APPLICANT**

3 **V.**

4 **AUSTRALIA**

5 **RESPONDENT**

6 **Comes now the Memorial of Nauru:**

7 1. INTRODUCTION

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

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

18 2. HISTORICAL RELATIONS WITH EXTERNAL POWERS AND BACKGROUND

19 I. The Republic of Nauru is a small island country in Micronesia. Nauru is located in the Pacific
20 Ocean, about 42 kilometers south of the equator. The land area of Nauru is located on its single atoll
21 with an area of roughly 21 square kilometers.

22 II. Prior to European imperialism, a small but significant population of indigenous peoples lived
23 on the island of Nauru. For much of its history Nauru was known as "Pleasant Island," a name given by
24 European explorers.

25 III. Phosphate was discovered in Nauru in 1900 which sparked much more colonial interest. Min-
26 ing operations began in Nauru soon after the discovery of phosphate and control of the island was
27 much more valuable. Nauru became the major supplier of phosphate to Australia and New Zealand.

28 IV. The Anglo-German Declaration of 1886 officially granted Nauru as German territory. A line
29 was drawn from the Solomon Islands to a point in the Pacific Ocean northwest of the Marshall Islands.
30 Any land west of this line was officially under the German sphere of influence, Nauru was one of the
31 islands west of this line making it German territory.

32 V. The German government placed Nauru under the Protectorate of the Marshall Islands. Under
33 the protectorate Nauru was briefly a part of the German controlled Marshall Islands.

34 VI. Official German occupation of Nauru began on October 1, 1888 with the arrival of German
35 trading company, Jaluit Gesellschaft. The occupation of Nauru was largely funded by Jaluit who rec-
36 ognized the economic potential of the island.

37 VII. In 1906 the Marshall Islands Protectorate was reorganized, placing Nauru under the jurisdic-
38 tion of German New Guinea.

39 VIII. Jaluit Gesellschaft was granted special rights to ownerless land in Nauru as a concession
40 for their major financial contributions to the German occupation effort. The indigenous population of
41 Nauru were granted ownership of land that was already settled prior to German influence. Jaluit was

42 given the right to claim land that was unoccupied on the island as well as access to pearl fishing and
43 guano deposits.

44 IX. In 1900 phosphate was discovered in Nauru by the Pacific Islands Company, a British mining
45 corporation. In 1902 the Pacific Islands Company would change their name to the Pacific Phosphate
46 Company. Jaluit owned the rights to the land that contained phosphate, so the PIC had to make an
47 offer for mining rights.

48 X. Jaluit Gesellschaft agreed to a concession that would give the Pacific Phosphate Company
49 the right to mine phosphate in Nauru. Jaluit Gesellschaft was given major shareholdings in the Pacific
50 Phosphate Company, a seat on the company's board and an undisclosed payment. Jaluit Gesellschaft
51 received one shilling per one ton of phosphate exported by the Pacific Phosphate Company.

52 XI. When WWI broke out Nauru was occupied by Australian forces and placed under British ju-
53 risdiction. Australian troops seized control of Nauru from the Germans. This officially ended German
54 control of Nauru. Mining operations continued throughout the war under British administration. Jaluit
55 Gesellschaft's assets and stock options were auctioned off by the British government.

56 XII. German territory was redistributed after WWI following the signing of the Treaty of Versailles.
57 Australia and New Zealand especially pushed for the annexation of Nauru. This was almost exclusively
58 due to the economic interest of the hegemonic powers of the Pacific. Australia and New Zealand under-
59 stood that Nauru was very valuable in terms of phosphate mining and strategic occupation in Microne-
60 sia. Australian Prime Minister Billy Hughes strongly advocated for the annexation of Nauru throughout
61 the Paris Peace Conference.

62 XIII. The annexation of Nauru was not specifically stated in the Treaty of Versailles, however it
63 did mandate that previously German territory would be redistributed. On December 17, 1920 control of
64 Nauru was officially granted to the United Kingdom, officially stated as being granted to "His Britannic
65 Majesty".

66 XIV. Prime Minister Hughes of Australia challenged the annexation of Nauru to Britain. Although
67 Australia was still a part of the British commonwealth, Hughes wanted Nauru to be under Australian
68 jurisdiction. Hughes and his cabinet sent a letter to the British government explaining his grievances
69 and position as to why Nauru should be controlled by Australia. The justification presented in the let-
70 ter was purely economic. It was first stated that Australia would benefit economically from exporting
71 Nauruan phosphate. The second argument being that without cheap access to phosphate it would be
72 impossible for Australian crops to flourish, this would then encourage Australians to settle in the interior
73 of the continent. At this point, and still today the majority of Australians lived along the coast.

74 XV. Eventually Australia received administrative power in Nauru under a British-New Zealand
75 mandate.

76 XVI. During WWII Nauru was occupied by Imperial Japan. Nauru's strategic placement in the
77 Pacific made it an extremely valuable territory. Residents were subjected to forced labor.

78 XVII. Following WWII Nauru was placed under an Australian trusteeship.

79 XVIII. By the 1960s Nauru's phosphate reserves had been largely depleted and Nauru was no
80 longer valuable to Australia. In 1968, Nauru was given sovereignty.

81 3. STATEMENT OF LAW

82 I. The Trusteeship Agreement for the Territory of Nauru approved by the General Assembly on
83 1st November 1947 (Annexes, vol. 4, Annex 29), together with Article 76 of the United Nations Charter,
84 provides the necessary background to the present case. The important obligations set forth in these
85 instruments from the primary causes of action on which the Republic of Nauru relies.

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

87 "The Administering Authority undertakes to administer the Territory in accordance with provi-
88 sions of the Charter and in such a manner as to achieve in the Territory the basic objectives of the
89 International Trusteeship System, which are set forth in Article 76 of the Charter."

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

92 (a) to further international peace and security;

93 (b) to promote the political, economic, social, and educational advancement of the inhabitants
94 of the trust territories, and their progressive development towards self-government or independence
95 as may be appropriate to the particular circumstances of each territory and its peoples and the freely
96 expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship
97 agreement;

98 (c) to encourage respect for human rights and for fundamental freedoms for all without dis-
99 tinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of
100 the peoples of the world; and

101 (d) to ensure equal treatment in social, economic and commercial matters for all Members of
102 the United Nations and their nationals, and also equal treatment for the latter in the administration of
103 justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of
104 Article 80."

105 4. STATEMENT OF FACT

106 FOR WHICH AUSTRALIA IS RESPONSIBLE

107 It is apparent that Australia is guilty of violating the United Nations Trusteeship Agreement. Un-
108 der Australian control Nauru's valuable resources have been completely depleted. The economy con-
109 tinues to struggle and Nauru remains underdeveloped. *Article 76 of the UN Trusteeship Agreement*
110 was and continues to be violated by Australia. Australia has continually avoided any responsibility for
111 the underdevelopment of Nauru. It is clear that Australia has made no attempts at complying to article
112 76.

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

115 I. Article 76 stated below:

116 a. to further international peace and security;

117 b. to promote the political, economic, social, and educational advancement of the inhabitants
118 of the trust territories, and their progressive development towards self-government or independence
119 as may be appropriate to the particular circumstances of each territory and its peoples and the freely
120 expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship
121 agreement;

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

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129 treatment in social, economic, and commercial matters for all Members of the United Nations and their
130 nationals, and also equal treatment for the latter in the administration of justice, without prejudice to
131 the attainment of the foregoing objectives and subject to the provisions of Article 80.

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

134 It will, in accordance with its established policy:

135 (a) take into consideration the customs and usages of the inhabitants of Nauru and respect the
136 rights and safeguard the interests, both present and future, of the indigenous inhabitants of the Terri-
137 tory; and in particular ensure that no rights over native land in favour of any person not an indigenous

138 inhabitant of Nauru may be created or transferred except with the consent of the competent public
139 authority;

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

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

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

149 4. STATEMENT OF JURISDICTION

150 I. In the matter before the International Court of Justice (hereinafter referred to as the "Court"),
151 the Republic of Nauru, as Applicant, has instituted proceedings against the Commonwealth of Aus-
152 tralia, as Respondent, in accordance with Article 36, paragraph 1 of the Statute of the International
153 Court of Justice (hereinafter referred to as the "Statute"). The present case concerns the legal dispute
154 arising from the administration and exploitation of phosphate lands on the territory of Nauru during the
155 period in which Australia, in concert with New Zealand and the United Kingdom, acted as the Admin-
156 istering Authority under the League of Nations Mandate and subsequently as the joint trustees under
157 the United Nations Trusteeship system.

158 II. The jurisdiction of the Court in this case is grounded on the acceptance by both parties of the
159 Court's compulsory jurisdiction, as provided for under Article 36, paragraph 2, of the Statute. Australia
160 has made a declaration recognizing the compulsory jurisdiction of the Court, which was in force at the
161 time of the institution of proceedings by Nauru. Likewise, Nauru has accepted the compulsory jurisdic-
162 tion of the Court in a manner consistent with the Statute. Both declarations are duly registered with
163 the Secretary-General of the United Nations, and their content is in full conformity with the provisions
164 of the Statute.

165 III. The Applicant invokes the Court's jurisdiction on the basis of an alleged breach of Australia's
166 obligations as an Administering Authority under the Mandate and Trusteeship systems. Specifically,
167 Nauru alleges that Australia failed to discharge its duties under the Mandate and Trusteeship Agree-
168 ments, including the duty to promote the material welfare of the Nauruan people, and that it engaged
169 in inequitable and unlawful exploitation of phosphate resources, thereby causing significant harm to
170 the population of Nauru. The Applicant submits that such acts constitute violations of Australia's obli-
171 gations under international law, as codified in the League of Nations Mandate for Nauru, the United Na-
172 tions Trusteeship Agreement for Nauru, the United Nations Charter, customary international law, and
173 general principles of international law.

174 IV. In support of the Court's jurisdiction, the Applicant further invokes Article 27 of the Trusteeship
175 Agreement for Nauru, which stipulates that disputes concerning the interpretation or application of
176 the Agreement shall be referred to the International Court of Justice. The Applicant contends that
177 the present dispute concerns Australia's interpretation and application of the Trusteeship Agreement,
178 thereby engaging the jurisdiction of the Court in accordance with the said provision.

179 V. Additionally, the Applicant contends that the doctrine of continuing wrongs applies to the
180 case, given that the adverse effects of the phosphate exploitation on the Nauruan people and their
181 environment are ongoing. Therefore, the Applicant submits that the Court's jurisdiction is not precluded
182 by the principle of non-retroactivity of treaties or by any lapse of time, as the alleged violations of
183 international law continue to produce effects to the detriment of the Nauruan people.

184 VI. The Respondent, Australia, has contested the jurisdiction of the Court in its preliminary ob-
185 jections, arguing that Nauru's claims are barred by the principle of estoppel, waiver, and acquiescence,
186 and further asserting that the dispute falls within the competence of a domestic or alternative inter-
187 national forum. However, the Applicant contends that these objections are matters of admissibility
188 and substance rather than jurisdiction, and that the Court has prima facie jurisdiction to adjudicate

189 the dispute pursuant to the parties' declarations under Article 36, paragraph 2, of the Statute and the
190 specific provisions of the Trusteeship Agreement.

191 VII. In light of the foregoing, the Republic of Nauru respectfully submits that the International
192 Court of Justice is vested with jurisdiction to adjudicate the present dispute pursuant to Article 36,
193 paragraph 2, of the Statute, as well as Article 27 of the Trusteeship Agreement for Nauru, and other rel-
194 evant principles and provisions of international law. Accordingly, Nauru requests that the Court affirm
195 its jurisdiction and proceed to the merits of the case.

196 5. ARGUMENTS

197 A. Responsibility of Australia under International Law

198 1. Legal Standards of Trusteeship

199 The UN Trusteeship system, as established by Article 73 of the UN Charter, imposed clear obli-
200 gations on Australia as the administering authority. These included the duty to promote the economic,
201 social, and environmental welfare of the people of Nauru, and to protect their resources from exploita-
202 tion solely for the benefit of foreign powers.

203 2. Failure to Uphold Obligations

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

208 B. Breach of Obligations in Administering the Trust Territory of Nauru

209 1. Environmental Degradation

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

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

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

221 3. Quantification of Damage

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

227 6. RELIEF AND REMEDIES SOUGHT

228 Nauru respectfully requests that the Court:

229 a. Declare that Australia violated its obligations under international law by failing to ensure the
230 sustainable development of Nauru and causing extensive environmental damage during the admin-
231 istration of the island.

232 b. Order Australia to pay full compensation to Nauru for the environmental and economic dam-
233 age resulting from its actions, in an amount to be determined by expert assessment.

234 c. Require Australia to provide funds for the rehabilitation of Nauru's environment and infras-
235 tructure to restore the island to a habitable and productive state.

236

7. SUMMARY

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