IN THE INTERNATIONAL COURT OF JUSTICE

THE REPUBLIC OF NAURU
APPLICANT
V.
THE COMMONWEALTH OF AUSTRALIA
RESPONDENT

MEMORIAL OF THE COMMONWEALTH OF AUSTRALIA

COMES NOW the Commonwealth of Australia and for their Memorial to the Court states the following:

JURISDICTIONAL STATEMENT:

The Commonwealth of Australia believes that the Court does not have jurisdiction for this case due to the dismissal of the original treaty giving them sovereignty over Nauru's phosphates after Nauru gained independence. Under Article 36 Paragraph 2 of the Statute of the International Court of Justice, the Court would only have jurisdiction over the "the nature or extent of the reparation to be made for the breach of an international obligation," would not apply due to no legal obligation have been breached by Australia in the supposedly destroyed phosphate lands.

STATEMENT OF FACT:

It was in May of 1989 that the Republic of Nauru filed proceedings against the Commonwealth concerning the rehabilitation of lands which were mined for phosphate under Australian jurisdiction before the Republic of Nauru gained its independence. Phosphate was discovered in Nauru in 1900, when under control of Germany. Following World War I (1919) the island was placed under Australian administration. Further, with A/RES/140 (II) passed on November 1, 1947, Nauru became a UN Trust Territory, administered by Australia, New Zealand and the United Kingdom. The UN Trust Territories ended on December 19, 1967 with A/RES/2347 (XXII). By 1961, there were less than 5,000 residents on the island of Nauru, more than half under sixteen years of age, and Nauruans were considered Australian protected persons. Nearly 28 million tons of phosphate, which Nauru's economy relied on, had been extracted by June 1961.The vast majority of those participating in Public Service were Nauruans. In 1962, a Visiting Mission was conducted to Nauru and New Guinea, and it was determined that "public services generally are well organized and well run ("United Nations Visiting Mission to the Trust Territories of Nauru and New Guinea, 1962: report on Nauru")," although it was determined that

there were concerns about Nauruan participation in senior administration, fuller participation in the legislature, and operations of the Phosphate Company as it was clear that extraction of phosphate would no longer be feasible with the exhaustion of the island's deposits. Then-Prime Minister Robert Menzies offered to resettle all Nauruans, with Curtis Island later seen as a viable location, but this was rejected by the Nauruans. 1968 was the year of Nauru independence, and it became the world's smallest island nation following a two-year constitutional convention. Nauru was led by Hammer DeRoburt from Nauru's independence until just a couple of years prior to this case being brought forward against Australia. In June 1970, the phosphate mines were traded to the Nauru Phosphate Corporation from the British Phosphate Commissioners. The wealth of Nauruans would quickly rise and then completely crash over the following decades.

STATE OF LAW:

Acknowledging the Trusteeship Agreement of 1947 that placed Nauru under the trusteeship of the United Kingdom, New Zealand, and Australia, which was void after the trusteeship ended once Nauru gained independence. The Nauru Island Phosphate Agreement of 1967 also waived Nauru's prospects of rehabilitation under the Trusteeship Agreement, making it extremely relevant to this case.

ARGUMENTS:

1. The 1947 Trustee treaty's obligations were dismissed after Nauru gained independence for multiple reasons. These include: under Article 78 of the UN charter, trusteeship does not apply to territories after they become members of the United Nations, so once the trusteeship had ended Nauru forfeited these protections; further the agreement had dissolved once Nauru had left the agreement, meaning that any discussion about these phosphate fields lies between the agreement between Nauru and Australia that occurred after the dissolution of the Trusteeship (as stated under Statute of the Court, it does not have jurisdiction when there has already been other methods to this issue).
2. The 1967 agreement clearly outlines the limits of the amount of phosphates that were allowed to be mined by any entity (whether it be a State or the Corporation), thus any problems that may have occurred as a result of the mining of phosphates are solely the responsibility of Nauru mining operations, and this has no jurisdiction before the Court.

SUMMARY:

After the treaties between Nauru and Australia over the phosphate deposits and mining in Nauru, Australia maintains that this case does not fall under the jurisdiction of the International Court of Justice. Through the Trusteeship of Nauru by the United Kingdom, New Zealand, and Australia that was established after the formation of the United Nations after the dissolution of

the League of Nations, Australia nor any of our co-trustee members had violated this trusteeship, and if there was a violation of the Trusteeship, the grievances of Nauru have no positions before the Court, and instead should be brought before Australia in accordance with the agreement made after the Trustee agreement had ended.