

**CASE CONCERNING PHOSPHATE LANDS IN NAURU
(Nauru v Australia)**

JOINT DECLARATION OF PRINCIPLES

**Guiding Relations Between
Australia And The Republic Of Nauru**

AUSTRALIA AND NAURU have a unique and historic relationship which both countries recognise and are determined to maintain and strengthen.

AUSTRALIA AND NAURU have close and historic ties between their peoples which both countries seek to continue and broaden.

AUSTRALIA AND NAURU have many common interests underlying their historic links and bonds of friendship which both Governments seek to advance with full regard for one another's distinct national characteristics.

Both Governments respect and seek to build on existing bilateral, regional and other mutually beneficial arrangements in accordance with their shared commitment to constructive cooperation.

Both Governments are strongly committed to regional cooperation in the South Pacific and to cooperation with other neighbours.

Both Governments are committed to promoting a stable regional environment in which the aspirations of the peoples of the region for security, peace, equity and development can best be realised.

The following principles are agreed:

- Basic Principles**
- (1) The Governments and peoples of Australia and Nauru reaffirm their commitment to the maintenance and strengthening of close and friendly relations between their two countries.
 - (2) Relations between Nauru and Australia will be conducted in accordance with the principles of mutual respect for one another's independence, sovereignty and equality.

- (3) Both Governments are committed to peaceful settlement of international disputes and to non-interference in the internal affairs of other countries.
 - (4) Citizens of either country will be accorded fair and just treatment in the other in accordance with law.
 - (6) Cooperation and exchanges between the two countries will be mutually beneficial and based on full participation by both countries, with due regard to the capacity, resources and development needs of both countries, and on mutual respect.
- Promotion of Understanding**
- (7) Both Governments will seek to promote knowledge and understanding of the other country, and of the unique and historic relationship between their two countries.
- Diplomatic Cooperation and Consular Representation**
- (8) The two Governments will seek to co-operate in pursuing shared national, regional and global interests through diplomacy and will assist one another in consular representation as far as practicable.
- Trade, Investment and Private Sector Cooperation**
- (9) Both Governments desire to strengthen trade, investment and private sector cooperation between the two countries.
 - (10) Trade between the two countries will be on at least most-favoured nation terms and as free of both tariff and other restrictive regulations of commerce as may be consistent with both countries' domestic requirements and international commitments, recognising that Australia already offers free and unrestricted access into the Australian market for all Nauru products (except sugar) on a non-reciprocal basis under SPARTECA.
 - (11) Both Governments will seek to co-operate in ensuring Nauru receives the maximum economic benefits from the production and international marketing of its phosphate resources.
 - (12) The two Governments will accord to Nauruan and Australian companies and individuals resident in either country investment treatment no less favourable than that accorded to those of any third country.

- (13) The two countries will encourage cooperation between the private sectors of their two countries in trade, investment and related areas.

**Financial Services
Cooperation**

- (14) Both Governments recognise the benefit of, and confirm, the unique arrangements which allow the Australian currency to be used by Nauru as its transactions currency.

- (15) Australia particularly recognises the special needs of Nauru for investment in Australia and elsewhere through the Nauru Phosphate Royalties Trust which investment is designed to assist the post-phosphate economy and requirements of the Nauruan community.

**Aviation
Cooperation**

- (16) Having regard to the long-standing and friendly aviation relationship between Australia and Nauru, both Governments are committed to developing arrangements which would meet the requirements of the public for air travel between the two countries and to facilitate and promote their respective aviation interests. Both Governments will continue to encourage the development of air links on the Australia-Nauru route in accordance with the Air Services Agreement between the two Governments with an understanding of the role of Nauru in providing regular air links in and to the Central Pacific region.

**Other Transport
and Services
Cooperation**

- (17) The two Governments will, in accordance with the laws and policies of both countries and having regard to Nauru's development needs, co-operate to encourage the efficient supply of transport and other services between the two countries.

**Fisheries
Surveillance
Assistance**

- (18) Recognising the importance of fisheries resources to both countries assistance will be provided through airborne fisheries surveillance patrols of Nauru's exclusive economic zone by Australian Defence Force aircraft as resources permit and as part of the regional cooperative framework already established under the Niue Treaty.

- Health and Medical Cooperation** (19) Both Governments recognise the benefits Nauruans obtain from Australia's health and medical services and will work together to ensure maximum possible access to such services continues subject to both Government's health, medical and welfare policies.
- Rehabilitation and Environmental Cooperation** (20) Both Governments recognise both the challenge presented by rehabilitating the worked-out phosphate lands on Nauru, and the fragility of Nauru's ecosystems, and will work together to facilitate the progressive rehabilitation of Nauru and the protection of Nauru's environment.
- Development Cooperation** (21) Development assistance will be provided as part of an agreed program of cooperation which contributes to development and self-reliance in Nauru, allows for forward planning and implementation in accordance with policies and priorities set by Nauru, and takes due account of both Government's policies on development cooperation but with emphasis upon development assistance in accordance with a Nauruan rehabilitation program.
- Communication and Travel** (22) The two Governments will seek to promote and facilitate communications and travel between the two countries, with due regard for one another's national interests and policies.
- Legal Cooperation** (23) The two Governments will co-operate, in accordance with their international legal obligations and respective laws, in the area of law enforcement and seek to increase cooperation in other areas of the law.
- Crime, Terrorism and Smuggling** (24) The two Governments will co-operate, in accordance with their respective laws and international obligations, to prevent, detect and prosecute crime, terrorism and smuggling.
- Exchanges** (25) The two Governments will promote educational, scientific, cultural, sporting and other exchanges between individuals, groups and public office-holders with common interests.
- (26) The two Governments will facilitate exchanges which contribute to the development of human resources, research capacity and technology in the public and private sectors.

- Consultation** (27) The two Governments will endeavour to consult promptly and at an appropriate level of representation at the request of either.
- (28) The two Governments will hold such other consultations as may be agreed.
- Other Arrangements** (29) Commitments made under existing arrangements between the two countries will be respected, and developed in accordance with this Joint Declaration.
- (30) The two Governments will endeavour to interpret and implement agreements and arrangements between them in the spirit of the principles and commitments contained in this Joint Declaration, without prejudice to commitments entered into under existing agreements between Nauru and Australia.
- (31) The two Governments may give effect to this Joint Declaration in such further agreements and arrangements as may be agreed.
- Review** (32) The two Governments will review the operation of this Joint Declaration at intervals of not more than five years.

SIGNED in two originals at Nauru this 10th day of August 1993.

For Australia:

For The Republic Of Nauru:

(Signed) **PAUL KEATING**
PRIME MINISTER

(Signed) **BERNARD DOWIYOGO**
PRESIDENT

**MEMORANDUM OF UNDERSTANDING
(Nauru v Australia)**

This Memorandum, signed by the parties to the Agreement between Australia and the Republic of Nauru for the Settlement of the Case in the International Court of Justice Concerning Certain Phosphate Lands in Nauru, records the understandings of the parties in relation to the following matters contained in the agreement:

1. Concerning Article 1(1)(d):

The amount of \$A50 million to be paid at an annual amount rate of \$A2.5 million dollars for twenty years commencing in the financial year 1993-94 and maintained in real terms by reference to the Australian Bureau of Statistics' non-farm GDP deflator, will be paid in accordance with a Rehabilitation and Development Cooperation Agreement to be concluded between the two parties, the Republic of Nauru and Australia. It is understood that any dispute occurring between the parties in relation to this paragraph of the Agreement will be settled in the terms of a dispute settlement clause contained within the Rehabilitation and Development Cooperation Agreement.

2. Concerning Article 2:

Both parties agree that upon the entry into force of the Agreement pursuant to Article 4, the parties will jointly deliver a letter of discontinuance to the Registrar of the International Court of Justice in the following form:

Certain Phosphate Lands in Nauru (Nauru v Australia)

Your Excellency

This is to notify the Court that in consequence of having reached a settlement, the Republic of Nauru and the Commonwealth of Australia pursuant to Article 88 of the Rules of Court have agreed to discontinue the proceedings in the case Certain Phosphate Lands in Nauru (Nauru v Australia).

Please accept, Sir, the assurances of our highest consideration.

Yours sincerely

VS Mani
Leo Keke

Co-Agents
REPUBLIC OF NAURU

Gavan Griffith

Agent
COMMONWEALTH OF AUSTRALIA

This letter will be held in escrow until the Agreement comes into force.

SIGNED in two originals at Nauru on 10th August 1993.

For Australia:

For the Republic of Nauru:

(Signed) **PAUL KEATING**
PRIME MINISTER

(Signed) **BERNARD DOWIYOGO**
PRESIDENT

**AGREEMENT BETWEEN AUSTRALIA
AND THE REPUBLIC OF NAURU
FOR THE SETTLEMENT OF THE CASE**

THE REPUBLIC OF NAURU AND AUSTRALIA,

Wishing to strengthen the existing friendly relations between the two countries, and

Wishing to settle amicably the application brought by the Republic of Nauru against Australia in the International Court of Justice,

Have agreed as follows:

Article 1

- (1) Australia agrees that, in an effort to assist the Republic of Nauru in its preparation for its post-phosphate future, it shall pay the Republic of Nauru a cash settlement of one hundred and seven million dollars (\$A107 million) as follows:
 - (a) The sum of ten million dollars (\$A10 million) on or before 31 August 1993.
 - (b) The sum of thirty million dollars (\$A30 million) as soon as it may lawfully be paid and not later than 31 December 1993.
 - (c) The sum of seventeen million dollars (\$A17 million) on 31 August 1994.
 - (d) An amount of fifty million dollars (\$A50 million) to be paid at an annual rate of \$A2.5 million dollars, maintained in real terms by reference to the Australian Bureau of Statistics' non-farm GDP deflator, for twenty years commencing in the financial year 1993-94.

The above payments are made without prejudice to Australia's long-standing position that it bears no responsibility for the rehabilitation of the phosphate lands worked out before 1 July 1967.

- (2) At the end of the 20 year period referred to in paragraph (1)(d) the Republic of Nauru shall continue to receive development cooperation assistance from Australia at a mutually agreed level.

Article 2

In consequence of the undertakings by Australia in Article 1, the parties agree that they shall take the action necessary to discontinue the present proceedings brought by the Republic of Nauru against Australia in the International Court of Justice.

Article 3

The Republic of Nauru agrees that it shall make no claim whatsoever, whether in the International Court of Justice or otherwise, against all or any of Australia, the United Kingdom of Great Britain and Northern Ireland and New Zealand, their servants or agents arising out of or concerning the administration of Nauru during the period of the Mandate or Trusteeship or the termination of that administration, as well as any matter pertaining to phosphate mining, including matters pertaining to the British Phosphate Commissioners, their assets or the winding up thereof.

Article 4

This Agreement shall enter into force on the date on which the parties have notified each other that the constitutional requirements of each party for the entry into force of this Agreement have been complied with.

DONE in two originals at Nauru this 10th day of August 1993.

For Australia:

For The Republic Of Nauru:

(Signed) **PAUL KEATING**
PRIME MINISTER

(Signed) **BERNARD DOWIYOGO**
PRESIDENT

DISCONTINUANCE
(Nauru v Australia)

By a joint letter, filed in the Registry of the Court on 9 September 1993, the Agents of Nauru and Australia notified the Court that, having reached a settlement, the two Parties had agreed to discontinue the proceedings.

In consequence, the Court, on 13 September 1993, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list.

ORDER
(Nauru v Australia)

Present: **President** JENNINGS; **Vice-President** ODA; **Judges** SCHWEBEL, BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, MAWDSLEY, RANJEVA, AJIBOLA, HERCZEGH; **Registrar** VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

Having regard to Article 48 of the Statute of the Court, and to Article 88 of the Rules of Court;

Having regard to the Application filed in the Registry on 19 May 1989 by the Republic of Nauru instituting proceedings against the Commonwealth of Australia in respect of a "dispute"...over the rehabilitation of certain phosphate lands [in Nauru] worked out before the Nauruan independence;

Having regard to the Judgement given by the Court on 26 June 1992 on certain preliminary objections submitted by the Commonwealth of Australia;

Whereas by a joint notification filed in the Registry on 9 September 1993 the Republic of Nauru and the Commonwealth of Australia informed the Court that they had, in consequence of having reached a settlement, agreed to discontinue the proceedings initiated by the Application filed on 19 May 1989,

Places on record the discontinuance, by agreement of the Parties, of the proceedings initiated on 19 May 1989 by the Republic of Nauru against the Commonwealth of Australia; and

Directs that the case be removed from the list.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of September, one thousand nine hundred and ninety-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nauru and the Government of the Commonwealth of Australia, respectively.

(Signed) RY JENNINGS
President

(Signed) Eduardo VALENCIA-OSPINA
Registrar