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YEAR 1991

Public sitting

held on Friday 15 November 1991, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

in the case concerning Certain Phosphate Lands in Nauru

(Nauru v. Australia)

VERBATIM RECORD

ANNEE l991

Audience publique

tenue le vendredi 15 novembre 1991, à 10 heures, au Palais de la Paix,

sous la présidence de Sir Robert Jennings, Président,

en l'affaire de Certaines terres à phosphates à Nauru

(Nauru c. Australie)

COMPTE RENDU

Present:

President Sir Robert Jennings
Vice-President Oda
Judges Lachs
Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Ranjeva

Registrar Valencia-Ospina

Présents:

Sir Robert Jennings, Président
M. Oda, Vice-Président
MM. Lachs
Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Ranjeva, Juges

M. Valencia-Ospina, Greffier

The Government of the Republic of Nauru is represented by:

Mr. V. S. Mani, Professor of International Law, Jawaharlal Nehru University, New Delhi; former Chief Secretary and Secretary to Cabinet, Republic of Nauru; and an expert in the affairs of Nauru,

Mr. Leo D. Keke, Presidential Counsel of the Republic of Nauru; former Minister for Justice of the Republic of Nauru; and an expert in Nauruan affairs; and Member of the Bar of the Republic of Nauru and of the Australian Bar,

as Co-Agents, Counsel and Advocates;

H. E. Hammer DeRoburt, G.C.M.G., O.B.E., M.P., Head Chief and Chairman of the Nauru Local Government Council; former President and Chairman of Cabinet and former Minister for External and Internal Affairs and the Phosphate Industry, Republic of Nauru; the Senior most Nauruan Statesman; an outstanding expert in Nauruan affairs.

Mr. Ian Brownlie, Member of the English Bar; Chichele Professor of Public International Law, Oxford; Fellow of All Souls College, Oxford,

Mr. Barry Connell, Associate Professor of Law, Monash University, Melbourne; Member of the Australian Bar; former Chief Secretary and Secretary to Cabinet, Republic of Nauru and an expert in affairs of Nauru,

Mr. James Crawford, Challis Professor of International Law and Dean of the Faculty of Law, University of Sydney; Member of the Australian Bar,

as Counsel and Advocates.

The Government of Australia is represented by:

Dr. Gavan Griffith, Q.C., Solicitor-General of Australia,

as Agent and Counsel;

H.E. Mr. Warwick Weemaes , Ambassador of Australia,

as Co-Agent;

Mr. Henry Burmester, Principal Adviser in International Law, Australian Attorney-General's Department,

as Co-Agent and Counsel;

Professor Eduardo Jiménez de Aréchaga, Professor of International Law at Montevideo,

Professor Derek W. Bowett, Q.C., formerly Whewell Professor of International Law at the University of Cambridge,

La Gouvernement de la République de Nauru est représenté par :

M. V. S. Mani, professeur de droit international à l'Université Jawaharlal Nehru de New Delhi; ancien secrétaire en chef et secrétaire du conseil des ministres de la République de Nauru; membre du barreau de New Delhi,

M. Leo D. Keke, conseiller du Président de la République de Nauru; ancien ministre de la justice de la République de Nauru; expert des questions relatives à Nauru; membre du barreau de la République de Nauru et du barreau d'Australie,

comme coagents, conseils et avocats;

S. Exc. M. Hammer DeRoburt, G.C.M.G., O.B.E., M.P., chef principal et président du conseil de gouvernement local de Nauru; ancien Président et responsable de la présidence du conseil des ministres, ancien ministre des affaires extérieures et intérieures et de l'industrie des phosphates de la République de Nauru; doyen des hommes d'Etat nauruans; expert éminent des questions relatives à Nauru,

M. Ian Brownlie, membre du barreau d'Angleterre; professeur de droit international public à l'Université d'Oxford, titulaire de la chaire Chichele; *Fellow* de l'All Souls College, Oxford,

M. Barry Connell, professeur associé de droit à l'Université Monash de Melbourne; membre du barreau d'Australie; ancien secrétaire en chef et secrétaire du conseil des ministres de la République de Nauru, expert des questions relatives à Nauru,

M. James Crawford, professeur de droit international, titulaire de la chaire Challis et doyen de la faculté de droit de l'Université de Sydney; membre du barreau d'Australie,

comme conseils et avocats.

Le Gouvernement australien est représenté par :

M. Gavan Griffith, Q.C., Solicitor-General d'Australie,

comme agent et conseil;

S.Exc. M. Warwick Weemaes, ambassadeur d'Australie,

comme coagent;

M. Henry Burmester, conseiller principal en droit international au service de l'Attorney-General d'Australie,

comme coagent et conseil;

M. Eduardo Jiménez de Aréchaga, professeur de droit international à Montevideo,

M. Derek W. Bowett, Q.C., professeur et ancien titulaire de la chaire Whewell de droit international à l'Université de Cambridge,

Professor Alain Pellet, Professor of Law at the University of Paris X-Nanterre and at the Institute of Political Studies, Paris,

Dr. Susan Kenny, of the Australian Bar,

as Counsel;

Mr. Peter Shannon, Deputy Legal Adviser, Australian Department of Foreign Affairs and Trade,

Mr. Paul Porteous, First Secretary, Australian Embassy, The Hague,

as Advisers.

M. Alain Pellet, professeur de droit à l'Université de Paris X-Nanterre et à l'Institut d'études politiques de Paris,

Mme Susan Kenny, du barreau d'Australie,

comme conseils;

M. Peter Shannon, conseiller juridique adjoint au département des affaires étrangères et du commerce extérieur d'Australie,

M. Paul Porteous, premier secrétaire à l'ambassade d'Australie aux Pays-Bas,

comme conseillers.

The PRESIDENT: Please be seated. This morning we begin the oral presentation by Nauru, and first I will call upon the Agent, Professor Mani please.

Mr. MANI: Mr. President and Honourable Members of the Court, I seek permission to present the members of the delegation representing the Republic of Nauru in this case, who will be participating in the oral presentations.

I appear before this Court as a Co-Agent, Counsel and Advocate. I am a former Chief Secretary and Secretary to the Cabinet of the Republic of Nauru, and an expert in the affairs of Nauru. I am Professor of International Law in Jawaharlal Nehru University, New Delhi, India.

Mr. Leo D. Keke is the other Co-Agent, Counsel and Advocate. He is Presidential Counsel of the Republic of Nauru. He was the Minister for Justice of the Republic. He is an expert in Nauruan affairs. He is a Member of the Bar of the Republic of Nauru and of the Australian Bar.

His Excellency Hammer DeRoburt is the Head Chief and Chairman of the Nauru Local Government Council; the seniormost Nauruan Statesman, and an outstanding expert in Nauruan affairs; former President and Chairman of Cabinet and former Minister for External and Internal Affairs and the Phosphate Industry of the Republic.

Professor Ian Brownlie appears as Counsel and Advocate. He is a Member of the English Bar and Chichele Professor of Public International Law, Oxford, and also Fellow of All Souls College, Oxford.

Professor H. B. Connell appears as Counsel and Advocate. He is a former Chief Secretary and Secretary to the Cabinet of the Republic of Nauru and an expert in the affairs of Nauru. Professor Connell is Associate Professor of Law, Monash University, Melbourne, and a Member of the Australian Bar.

Finally, Mr. President, Professor James Crawford also appears as Counsel and Advocate. He is Challis Professor of International Law and Dean of the Faculty of Law, University of Sydney. He is a Member of the Australian Bar.

Mr. President, I seek leave of the Court to broadly indicate the order of presentation on behalf of the Republic of Nauru.

- His Excellency Hammer DeRoburt, Head Chief of Nauru, will open the Oral argument on behalf of the Republic. He will speak on certain key episodes in the development of Nauru's claims.
- Following him, Mr. Leo D. Keke will speak on the importance of rehabilitation to the Nauruan Community. He would like to present the present and long-term perspective.
- I would then deliver my Agent's speech.
- Professor Connell will then address the Court on the history of the issue of rehabilitation and the issue of good faith.
- Following this, Professor Ian Brownlie's first presentation will be on the history of the dispute, with particular reference to Australian arguments about delay and other issues.
- Professor James Crawford would then speak on the significance of the termination of the Trusteeship.
- Professor Brownlie would then complete his presentation by addressing the question of overseas assets of the British Phosphate Commissioners.
- Finally, Mr. President, Professor Crawford will conclude the presentation by speaking on the indispensable parties argument.

Thank you, Mr. President.

The PRESIDENT: Thank you, Mr. Mani. We now proceed to hear your Counsel, beginning with Mr. Hammer DeRoburt.

H.E. Mr. DEROBURT: 1. Mr. President and Honourable Members of the Court, I consider it a great honour and privilege to be called upon to address the highest international tribunal on behalf

of the people of Nauru on a matter of crucial importance to the progress and prosperity of our country, Nauru.

2. Mr. President, as you are aware, the Republic of Nauru is perhaps the smallest democratic republic in the world, with an area of 21 square kilometres, and an indigenous population of a little over 5,000. True to the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, and much against the initial reservations in certain quarters, the United Nations strongly endorsed the claim of this small Pacific island community to self-determination and granted us unconditional independence on 31 January 1968. The people of Nauru are grateful to the United Nations for the role it played in guaranteeing the political and economic independence of our nation.

3. Nauru is a single island in the mid-Pacific whose principal source of income is its depleting phosphate deposits. By the time the Phosphate Agreement was concluded between the Nauruan Community and the Administering Authority in 1967, nearly one-third of the island had been devastated by mining under the Australian Administration. With the prospect of total exhaustion of phosphate reserves looming large on the horizon, and with the Australian rejection of Nauruan terms for resettlement on an Australian island, the Nauruan people were all the more determined to obtain acceptance by the Administering Authority of the simple principle that it bear responsibility for rehabilitation of phosphate lands to be mined-out during its Administration. This responsibility, the Nauruan Community believed, was moral as well as legal. For the same reason, we readily accepted the responsibility for rehabilitation of phosphate lands mined-out after we assumed control over the phosphate industry. This case, Mr. President, in simple terms asks the Court to recognize and declare the principle of the responsibility of Australia as the principal Administering Power to rehabilitate the phosphate lands mined-out during its Administration.4. The Preliminary Objections of Australia seeks to show, among other things, either that the Nauruan Community had waived or renounced its rehabilitation claim or that the 1967 Phosphate Industry Agreement had effectively and conclusively settled this issue, along with other issues. As the Nauruan leader in the key period, I consider it to be my duty to reject, most categorically, the Australian interpretation of events on this

score and clarify the Nauruan position as I saw it and perceived it.

5. The question of independence of Nauru was definitively raised in 1959, as the objective which the Nauruan Community had proposed to achieve in a phased manner, over a 10-year period. Australia then came up with the idea of resettlement of Nauruans in one of its islands. We had always been told that rehabilitation was impracticable, given the state of technology then available (we do not know if there was any other reason, left unstated by Australia, for persuading us to consider the option of resettlement). In the light of this we decided to consider the option of resettlement seriously and negotiated for minimum terms which would have ensured and preserved the national identity of the Nauruan Community. But this was not to be. The negotiations broke down on this score and the Nauruan Community finally had no option but to abandon resettlement. It was not a capricious decision but one based on the fundamental need to preserve what was so dear to our hearts - the Nauruan Community. We had, after all, just been through a war in which we, as a people, had all but been obliterated. We therefore would not expect those under whose wardship we were would insist on a course of conduct which would have the result of assimilating us out of existence. Australians who thought about this understood the point well.

6. In fact, the independence negotiations dealt with three major issues: (1) political independence; (2) the control and future operation of the phosphate industry; and (3) rehabilitation of mined-out phosphate lands. Initially, the Administering Authority sought to delay the achievement of political independence by making negotiations for transfer of ownership of the phosphate industry difficult. Eventually, the Phosphate Industry Agreement was concluded in 1967.

7. The issue on rehabilitation figured throughout these negotiations, as evidenced by the records of negotiations and I draw the Court's attention particularly to Annexes 4 and 5 in Volume 3 of the Memorial of the Republic of Nauru.

8. The Nauru delegation, of which I was the leader throughout the talks, made a statement on the Report of the Australia-appointed committee to investigate the possibilities of rehabilitation of the mined phosphate lands on Nauru (this was commonly known as the Davey Committee Report).. The Statement is attached to the record of the Phosphate Industry Discussion, Fifth Session,

29 June 1966, which is part of the Annex 4, I referred to. Under the heading "The Responsibility for Rehabilitating Nauru", paragraph 1 of Section B of the Statement most succinctly stated the Nauruan claim thus:

> "The Nauruan people have consistently claimed that it is the fundamental responsibility of the Administering Authority to restore the mined phosphate lands to their original condition. This responsibility stems in part from the obligation that the Administering Authority has, under the United Nations Trusteeship System, to safeguard the future of the Nauruan people. It also stems from the very large profits from past mining activity that the Administering Authority has chosen to distribute to phosphate consumers in Australia, New Zealand and the United Kingdom (that is by not charging world prices), instead of returning them to the Nauruan people as their due entitlement."

9. The Administering Authority was not prepared to accept this position. Thus, at the 10th Session of the talks on 29 June 1966 (Ann. 4), it was agreed "that inability to reach agreement on those matters would not necessarily hold up the rest of the arrangements".

10. The Nauruan delegation made several statements during the Nauru talks in 1967 (Ann. 5). The last paragraph of the Nauruan delegation's Statement 67/2 of 19 April 1967, was as follows:

> "The two matters of future rehabilitation and past rehabilitation are quite separate and distinct and we cannot see why Trust Powers should try to force us to abandon our sincerely held views regarding Government responsibility for rehabilitation as a precondition to any long term agreement." (Nauru Delegation Doc. 67/2, Nauru Memorial, Vol. 3, Ann. 5, p. 555, at p. 558, i.e., internal pagination p. 140, at p. 143.)

At the afternoon session of 17 May 1967, the Nauruan delegation was specifically asked to agree to "an understanding on rehabilitation which would mean that the Nauruans would not continue to press this subject and link it with rights of immigration into Australia and New Zealand". In response the Nauruan Delegation Paper 67/8, of 18 May 1967 stated as follows:

> "The Nauruan delegation is disapointed that they should be asked to renounce their sincerely held beliefs on this (formally or informally) as one of the collective preconditions necessary to obtain agreement." (Nauru Delegation, Doc. 67/8, Nauru Memorial, Vol. 3, Volume p. 523, at pp. 525-526, i.e., internal pagination p. 108, at pp. 110-111, para. 9.)

Again:

> "Apparently the Governments want to make even more money at our expense, as well as imposing a condition that we renounce all claims regarding the responsibility to rehabilitate

> the land already mined" (Nauru Delegation, Doc. 67/8, Nauru Memorial, Vol. 3, Ann. 5, Volume p. 526, internal pagination p. 11, para. 12),

and again:

> "We are not prepared publicly or privately to accept the Partner Governments' view that the proposed financial arrangements are adequate to cover our future needs, including rehabilitation or resettlement." (Nauru Delegation, Doc. 67/8, Nauru Memorial, Vol. 3, Ann. 5, Volume p. 527, internal pagination p. 112, para. 12.)

The record of the talks on the evening session of 16 May 1967, clearly stated that:

> " . . . it emerged (this is the record of the talks) that the Nauruans would still maintain their claim on the Partner Governments in respect of rehabilitation of areas mined in the past, even if the Partner Governments did not press for the withdrawal of the claim in a formal manner, such as in an agreement." (Nauru Delegation, Doc. 67/8, Nauru Memorial, Vol. 3, Ann. 5, Volume p. 466, internal pagination p. 51, para. 27.)

11. Thus, the talks that further led to the adoption of the Heads of Agreement for the Nauru Phosphate Agreement on 15 June 1967, did not deal with the issue of rehabilitation. The final Agreement relating to the Nauru Island phosphate industry of 14 November 1967, was based on those Heads of Agreement. The Phosphate Industry Agreement dealt with matters directly relating to the transfer of ownership of the phosphate industry, arrangements for the management of the industry on Nauru, financial arrangements and supply undertakings. It left the issue of rehabilitation to be pursued separately.

12. Soon after signing the Phosphate Industry Agreement on behalf of the Nauruan Community on 14 November 1967, I had the occasion to address the United Nations Trusteeship Council on 22 November 1967. Reporting to the Council on the progress achieved on the issues on which agreement was forthcoming with the Administering Authority, I specifically went on record as follows:

> "There was one subject, however, on which there was still a difference of opinion - responsibility for the rehabilitation of phosphate lands. The Nauruan people fully accepted responsibility in respect of land minded subsequently to 1 July 1967, since under the new Agreement, they were receiving the net proceeds of the sale of phosphate. Prior to that date, however, they had not received the net proceeds and it was therefore their contention that the three Governments should bear responsibility for the rehabilitation of land mined prior to 1 July 1967. That was not an issue relevant to the termination of the Trusteeship Agreement, nor did the Nauruans want to make it a matter for United Nations discussion. He merely wished to place on record that the Nauruan Government would continue to seek what was, in the opinion of the Nauruan people, a just settlement of their claims." *(Australian Preliminary*

Objections, Vol. II, Annexes, Ann. 29, p. 247, at p. 249, para. 20.)

My speech in the Trusteeship Council, made with the concurrence and support of the Nauru Local Government Council, represented fairly where the Nauruan Community stood. We did not want independence held up by the ongoing dispute relating to rehabilitation. But we made it clear that the matter of the claim would persist after independence until resolved.

13. Paragraph 20 of the Records of the Fourth Committee of the United Nations General Assembly of 6 December 1967, which contains a statement made by me on behalf of Nauru, has been wrongly interpreted by Australia to amount to a waiver or renunciation of our claim. The point was canvassed here before the Court by Australia earlier this week.

14. Australia has rather tendentiously suggested that I might have missed my opportunity to raise the rehabilitation issue before the world because the nature of the claim was not revealed in the Fourth Committee. Nauru, as represented by the Nauru Local Government Council and myself, then regarded the 1967 sessions involving us in the Trusteeship Council and the Fourth Committee as very special and extraordinary. It was the eve of independence in January 1968. We did not regard the Fourth Committee session as the appropriate moment or venue to restate Nauru's position in regard to rehabilitation. Only a few days before, I had stated categorically and clearly to the Trusteeship Council, as I have earlier expressed, that the rehabilitation issue still stood but that termination of Trusteeship should not be held up because of that issue and was, therefore, not a matter of United Nations discussion. Furthermore, the Report of the Trusteeship Council meeting was already before the Fourth Committee and what I had said for Nauru in the Council was in that Record.

15. I was quite happy and satisfied with what I said then and still am. We had said, and continue to say, that Australia was and should be responsible for rehabilitation of pre-independence mined lands for the reasons we had given. Australia, on the other hand, did not agree with us and continues so to disagree. That was the "difference of opinion" I had mentioned in my statement to the Council. Perhaps it could have been said differently, as I sensed Australian representatives here seem to be suggesting. However, that was my way of describing briefly the two different positions.

I had not said it then having in mind any proceedings in this distinguished Court, but hoping that we could negotiate a proper and just settlement, short of litigation. That is the hope of everybody but best intentions unfortunately do not always work out.

16. It had then been our constant experience that views we expressed in the Council on Nauru's problems would be duly conveyed in appropriate records to the Fourth Committee, thence to the General Assembly ultimately. We had never addressed the Fourth Committee directly on Nauru's problems thus in the ensuing Fourth Committee meeting at which I was honoured and privileged to attend on behalf of my people, the Nauruan Community, I had taken pains to say the things I wanted to say and expected by Nauru to say honestly and truthfully. It was, after all, a time of parting between Nauru and the world body without whose many assistances Nauru would not have been where it is today. Our thinking, which has not changed, was that it was not a moment for any acrimony. The Fourth Committee was not the venue for Nauru at that moment to pursue anything against Australia or anybody. Nauru wanted me in the Fourth Committee to do and say what is right by the question of our independence which was at hand. We must convince the United Nations, which has very great responsibilities in its task of granting independence to Trust Territories that, despite our very small size and lack of natural resources, we could still become an independent viable nation. That was the Nauruan way of thinking and it still is. What I have just recounted did not run counter to anything previously said in the Trusteeship Council by me about another problem - rehabilitation.

17. The statement I had made in the Fourth Committee was meant to be also on behalf of the Nauruan leadership on Nauru so that we would be accountable by it also to our Nauruan Community who would wish to know whether there would be adequate means - money - to sustain their livelihood and well-being in the future. We believe there should be assurance to them on that point. We believe it was important that such assurance and commitment by us - the leadership - was announced in the presence of and, more importantly, to no less a body than the United Nations itself. The reality was then and still is that two-thirds of phospate lands completely mined would have to be rehabilitated by the Nauru Government. If this rehabilitation were not to be done, they - the

Nauruan Community - will not be able to, and they will know that they will not be able to, live on Nauru with four-fifths of it physically unavailable for their use.

18. It was with these in mind that I had made the references to adequacy of funds. The problem was that revenue from phosphate mining will no longer be available in the foreseeable future. This was the problem in my mind. The statement was not meant to be an assurance to the United Nations and the Nauruan people that we will also meet the costs of rehabilitating the part of mined-out lands for which we hold Australia responsible.

19. Quite evidently, this statement in the Fourth Committee cannot, with any justification, be construed to be a waiver or renunciation, nor did other delegates at the United Nations perceive it to be so. Furthermore, Australia, from the beginning has never mentioned in writing or verbally to us that we had waived, from any point in time, our right to pursue with them the question of responsibility for rehabilitation. Their response has consistently been a reference to the "generous" provisions of the Canberra Agreement which they, more or less, maintained had absolved them from any responsibility for rehabilitation. It is only now, about 23 years later, beginning in the pages of their Memorial and Preliminary Objections to our case to this Court that a waiver of rights by Nauru is being introduced by Australia.

20. It is proper here, Mr. President, to state and I emphasize that at this time rehabilitation has been one issue on which there has been a consistent national consensus on Nauru. At the time of independence in January 1968, the Constitutional Convention of Nauru fully reaffirmed the stand taken by the Nauruan delegation at the talks leading to independence by inserting in the Constitution a provision, Article 83, Clause 2, denying the responsibility of the Government of Nauru for rehabilitation of mined phosphate land prior to 1 July 1967. Soon after independence, in Nauru's first Parliament in 1971, the Nauruan Parliament unanimously adopted a resolution calling upon prosecution of Nauru's rehabilitation claim. This national consensus remains as strong today as it was during the independence talks. The Nauruan Government has on its part continually kept Parliament informed of every major step taken in respect of the claim, including the appointment of the Commission of Inquiry, tabling of its report in Parliament, the dispatch of a copy of the report to

Australia and finally the institution of proceedings in this Court.

21. After independence Nauru raised the rehabilitation claim time and again with Australia through letters and diplomatic notes and at bilateral meetings. In 1968 I raised the matter with the then Minister for External Affairs of Australia by a letter. On a State visit to Canberra in 1973, I raised it with the then Prime Minister for Australia. I raised it again, with the then Acting Minister for External Affairs of Australia when he visited Nauru in 1974. I wrote a further letter to the Prime Minister of Australia in 1983. Subsequently, Nauru sent diplomatic notes to Australia on the subject, all to no avail.

The recurrent bilateral contacts after independence indicated a clear divergency of views between Nauru and Australia, Nauru holding that the former Administering Authority had the clear responsibility to rehabilitate the phosphate lands mined out before 1 July 1967, and Australia denying such responsibility, contending that the question of rehabilitation was finally settled by the independence negotiations with provisions for adequate funds for rehabilitation and transfer to Nauru of all rights over the phosphate industry. In fact the Australian Prime Minister's letter of 1984 for the first time contained an additional assertion

> "The former Partner Governments agreed at that time that it was a requirement of termination of the Trusteeship Agreement that they were entirely cleared of any onus or financial responsibility for the rehabilitation of Nauru." (Nauru Memorial, Vol. 4, Ann. 79, p. 529.)

22. After pursuing the matter for nearly two decades, the Government of Nauru thought it necessary and urgent to take a decision on what the further course of action should be. This was necessary because the issue had to be resolved; it was urgent because exhaustion of phosphate resources was drawing closer and closer, and considerable planning and organization had soon to be put in place before actual rehabilitation work started, given the immensity of the problem. Also, in view of the assertions contained in the Prime Minister's 1984 letter, it was felt necessary to study without much loss of time all relevant aspects of the issue of rehabilitation. Keeping all this in mind, the Nauru Cabinet appointed a three member independent Commission of Inquiry in 1986. The Commission was asked to inquire into the nature and extent of the responsibility for rehabilitation of

worked-out phosphate lands prior to independence; and the cost of it.

23. The Commission of Inquiry comprised an eminent Australia Civil Engineer, Mr. R. H. Challen, and a senior Nauruan, Mr. Gideon Degidoa, with Professor C. G. Weeramantry a well-known international lawyer who was then Professor of Law in Monash University, Australia, as its Chairman. Mr. President, I think I have omitted to mention that one of the members of this Commission of Inquiry was Professor Connell of the Faculty of Law at Monash University. The former Partner Governments were cordially invited to assist in the Commission's work and even participate in its hearings. This they declined to do. After much study, investigation and public hearings, the Commission submitted its ten-volume Report on 29 November 1988. I believe copies of the Report have been made available to the Court.

24. Immediately following the receipt of the Commission's Report, copies of it were dispatched to the former Partner Governments, who had in fact been already kept informed of the Commission, and its proceedings. Indeed, even requests had been made on behalf of the Commission for access to certain documents which were within the power or control of Australia and these requests proved unsuccessful.

25. The response of the three former Partner Governments to the Report of the Commission of Inquiry was essentially one of non-recognition and restatement of a denial of any responsibility in respect of rehabilitation.

26. Soon after the Nauru Commission of Inquiry was announced in 1986 there was also another development. Australian newspapers reported that the three former Partner Governments were on the verge of concluding an agreement to wind up the British Phosphate Commissioners (BPC). Nauru requested the three Governments to confirm this development and, if true, to refrain from distributing the BPC assets until after conclusion of the work of the Commission of Inquiry. I both spoke and wrote to the then Australian Minister for External Affairs in 1987. These approaches were brushed aside and the three former Partner Governments forthwith made arrangements to disperse the assets.

27. Very clearly, Nauru was of the view that all diplomatic endeavours at resolution of the

rehabilitation issue since the days of the Trusteeship had reached a dead end, that it was now necessary to pursue other legal methods of dispute settlement. Judicial settlement is obviously one such method. The Cabinet of Nauru, on the basis of a formal submission, finally took the decision to institute proceedings before this Court against Australia in May 1989, after very careful consideration of the matter. Indeed, ever since independence the rehabilitation and issues of Australian responsibility had been a particular concern of the Nauru Cabinet, of which I was Chairman for the greater proportion of the time. It was hardly a matter of surprise then, that the Cabinet, with the strong support of Parliament and the Nauruan people, took the decision to have the matter settled with Australia in a proper and peaceful manner in a court of law.

I thank you, Mr. President, and the other Members of the Court, for the courtesy of listening to what I had to say on behalf of the people of Nauru.

The PRESIDENT: Thank you, Mr. DeRoburt. Before the break I think we still have time to hear Mr. Keke.

Mr. KEKE: Mr. President and Honourable Members of the Court: it is a great honour for me to address this highest judicial forum as a younger representative of the Nauruan Community, following the opening statement by His Excellency the Head Chief of the Republic of Nauru. I shall focus on the importance to the Nauruan people of the restoration of lands mined-out during Australian administration of Nauru, and indeed, the rehabilitation of all lands.

Ever since its discovery in 1906, phosphate has played a crucial role in the shaping of the economy and social system of Nauru, perhaps the smallest democratic republic in the world. It provides the only vital sourse of revenue for the small Nauruan economy, supplemented now by income from investments from the phosphate industry since 1968. This is the reason why Article 83 (1) of the Constitution of Nauru expressly stipulates that "the right to mine phosphate is vested in the Republic of Nauru". This provision was deliberately included in the Fundamental Law

of Nauru because the Fathers of the Nauruan Constitution realized only too well the need to protect and to ensure the inalienable rights of the Nauruan people to the sovereignty over the only natural resource.

The income from the sale of phosphate forms the principal item of revenue for the annual budget of the country. Requirements of public expenditure are met mostly from this revenue head. The annual budget is extensively discussed by the Nauruan Parliament before its passage. Itmakes allocations for items of expenditure on community health and medical services, education, public works, Nauruan housing, community services such as provision of water, electricity and youth services, civil aviation, telecommunications and so on. Each of these items is crucial to the welfare of the Nauruans, taking into account their special problems and Nauru's isolated geographical location.

Of a population of 5,000 indigenous Nauruans, about 2,000 are engaged in public employment in government, in the Nauru Local Government Council, or in the phosphate industry. Due to the nature of the intestacy laws, based on custom, nearly half of the population have rights of ownership of phosphate-bearing lands and are the recipients of interest from the landowners fund. That represents about two-thirds of the present Nauruan population. This is in sharp contrast to what Mr. R. Marsh, a senior official at the Australian Department of Territories, reported to his Minister on 4 October 1955. According to Mr. Marsh:

> "Ownership of land is determined by native custom and a position had been reached where all the phosphate land is owned by relatively few persons." (See Australian Preliminary Objections, Vol. I, para. 50, at p. 26; Vol. II, Ann. 3, p. 9, at p. 11, para. 18.)

Given the smallness of the population and the limited area of land, there does not exist much infrastructure for development of other large-scale industries, whether in the public or in the private sector.

Taking the dependence of the Nauruan people on the phosphate industry, and realizing that the income from phosphate must be rationally utilized so that with the eventual exhaustion of that resource, national revenue should not dry up, the leaders of the Nauruan Community have insisted that adequate funds be set aside to meet the various exigencies of the national economy. The result

was the establishment of a system of four public funds a few days before independence, under the Nauru Phosphate Royalties (Payment and Investment) Act 1968-1989 - recently amended in 1989 - and the Nauru Phosphate Royalties Trust Act 1968-1990, subsequently confirmed by the Constitution.

These four funds are: (1) The Long-Term Investment Fund, established under Article 62 of the Constitution; (2) The Nauruan Land-Owners' Royalties Trust Fund, for the benefit of the owners of the phosphate lands; (3) The Nauru Rehabilitation Fund, for the purpose of restoring or improving parts of the Island of Nauru that had been affected by mining of phosphate since 1 July 1967; and (4) The Nauruan Housing Fund for erecting, repairing and maintaining housing in Nauru. These funds have a constitutional status. The Nauru Phospate Royalties Trust is also established by law and is responsible to Cabinet and accountable to the Nauruan Parliament for its management of these funds, which it is required to conduct in accordance with conditions laid down by the law.

All this clearly shows how vital a role income from phosphate plays in the current and future requirements of the Nauruan economy.

Depletion of phosphate deposits, expected in the near future, will adversely affect the economy. Unless equally reliable alternative sources of revenue are found, the exhaustion of this resource will undoubtedly cause severe strain, if not disruption, to the ongoing social welfare programmes of the State. Additionally, the Trust Funds will have to be suitably used on the basis of a well thought-out public policy, to assist the economy in its transition to a post-phosphate era. This itself is a formidable task. Despite this, the Nauruan Community has undertaken to rehabilitate the phosphate lands mined out by them since 1 July 1967, the date on which they gained control of the phosphate rights, by specifically setting aside the Rehabilitation Fund for the purpose, which will not be available for other economic tasks facing the country during the difficult period of transition into a post-phosphate economy.

Having enjoyed the abundant benefits of cheap Nauruan phosphate throughout its administration of the Territory, it would be neither fair nor equitable for Australia now to abdicate

its responsibility to rehabilitate the phosphate lands mined out during its administration, and to claim that this burden should belong to Nauruans even as they prepare themselves for the daunting task faced by their small nation upon depletion of their natural resources.

Nauruans are very much attached to their lands. Their customary law determines the nature and extent of land rights and their transmission upon the death of a landowner. Even the extent of validity and scope of application of a will are determined in accordance with Nauruan custom which is fully recognized in the courts. Ownership to land and ownership to phosphate are indivisible and indistinguishable. To an ordinary Nauruan, income from phosphate is part and parcel of the land, as it arises from the land. In the same sense, the funds held by the Nauru Phosphate Royalties Trust are closely intertwined with this concept of ownership to phosphate land.

Nauruans' attachment to their lands, the role of phosphate revenue in their social and economic life, and the importance of rehabilitation of mined out lands have all been part of the Nauruan lore. Names of places like the "Half-Penny Hill" on Nauru amply demonstrate the feelings and expectations of the Nauruans about the use of their lands by a foreign administration. The name is a reference to the rate of royalty paid by the Germans. Nauruans have never recognized any vested rights or title over their lands claimed by any foreign entity.

Rehabilitation of mined-out phosphate lands has always been a matter of central concern to the Nauruan Community. There are Nauruan folk songs dwelling on this theme. Nauruans were agreeable, albeit hesitatingly, to the proposal for resettlement on another island, only when advised by the Australian Administration that rehabilitation of the mined-out phosphate lands on Nauru was not feasible. However, when negotiations broke down on resettlement owing to the unwillingness of Australia to agree to an arrangement which would ensure preservation of their national identity, Nauruans had to accept the only option open for them, namely settlement on their own homeland. Also, the practicability of rehabilitation was confirmed by an expert committee appointed by the Australian Administration in 1966, strengthening the resolve of the Nauruan Community to pursue the goal of rehabilitation which alone would assist them in restoring the mined-out lands to a condition conducive to long-term human habitation. Nauruans find it difficult to understand why

those who mined out their lands could not restore them and why Australia, which made the offer of resettling them on another island at its own expense, should now refuse to accept the responsibility to restore those lands in whose devastation it had taken such an active part.

Finally, Mr. President and Honourable Members of the Court, I wish to assure you that the Republic of Nauru has come before you seeking justice in right earnest. The Nauruan Community is, and has always been, serious about pursuing its rehabilitation claim against Australia. There exists a strong national consensus in support of this stand. It would appear that this seriousness and this social and national commitment of the Nauruan Community to the rehabilitation issue was not properly appreciated by Australia. The Preliminary Objections of Australia seeks to belittle the Nauruan claim, suggesting that we are not serious about rehabilitation. On behalf of the Republic of Nauru and the Nauruan people, I most categorically dismiss any such allegations. The very fact that these allegations are made in a Preliminary Objection shows that Australia is unwilling to face the rehabilitation issue on merits. By contrast, it is a priority task of the Nauruan Government and people, and it is the essential reason why I am addressing you today.

Thank you, Mr. President and Honourable Members of the Court.

The PRESIDENT: Thank you, Mr. Keke.

We will take our break now, Professor Mani, and return in ten to 15 minutes to hear your address as Agent. Thank you.

The Court adjourned from 11.20 to 11.40 a.m.

The PRESIDENT: Please be seated. Professor Mani.

Mr. MANI: Thank you Mr. President.

Mr. President and Honourable Members of the Court: it is a great honour for me to stand here and address the Court, representing the Republic of Nauru.

At the outset, Sir, please permit me to welcome the statement made by the distinguished Agent of the Commonweath of Australia, Dr. Gavan Griffith, expressing on behalf of Australia a feeling of warm friendship and respect for the people of Nauru. Nauru reciprocates these sentiments most sincerely.

Mr. President, this is a case where Nauru, a small island State, perhaps one of the smallest republics in the world, long used to the peace and tranquillity of the Pacific, seeks justice before this highest international judicial forum against a great regional power under whose administration its people lived for nearly 50 years, first under a League of Nations Mandate, then under a United Nations Trusteeship. Being a small democratic State, Nauru has firm faith in the rule of law in the affairs of nations. It has firm faith in this Court as the dispenser of international justice. This is particularly demonstrated by Nauru's Optional Clause Declaration accepting the Court's jurisdiction with virtually no reservations.

THE FACTS IN PERSPECTIVE

Mr. President, in this case the Court should declare that each of the objections raised by the Respondent State does not possess an exclusively preliminary character, in terms of Article 79, paragraph 7, of its Rules. This is precisely because the pleadings and oral presentations of both the Parties have revealed sharp disagreements in material respects over the facts of the case, and particularly because each of the Preliminary Objections is as deeply rooted in the merits as are the claims of the Applicant State. A correct understanding of the facts of the case is material to the determination of each of the objections made by Australia. Although Australia has contended that each of its objections must be determined here and now, it has raised a good number of arguments on

facts, often going deep into the merits - arguments which are denied or countered by Nauru.

Nauru has, in its Written Pleadings, already made an elaborate presentation of facts on which its claims are founded. Therefore, my attempt here will merely be to summarize these facts and to place them in their overall perspective.

Mr. President, Nauru's claims relate to the exploitation of its only natural resource, the phosphate, during the Mandate and Trust administration. Foreign powers and entities have successively claimed control over the resource and over the territory of Nauru and its people, in every case without their consent. The indigenous people of Nauru had no say in the selection of the Mandatory or the Administering Authority. Their phosphate-bearing lands, the lands whose ownership had always belonged to them by virtue of their own long-established custom, changed hands between foreign governments and entities, solely for the benefit of those powers and entities. Nauruans would never know why they were colonized; why foreigners claimed rights over their ancestral lands and the only natural resource they had; why at the end of the First World War, just before the Mandate was put in place, there was a hurried negotiation resulting in the tripartite Nauru Island Agreement on 2 July 1919, as soon as it became known that the Territory of Nauru would become a Mandated Territory; why this Agreement was followed by the purchase from a German company of the alleged phosphate rights on 25 June 1920, barely six months before the Madate; why under the Australian administration their phosphate was mined and sold to Australian farmers at cost price.

Despite the fact that the Mandate for Nauru was granted on 17 December 1920, the Indenture whereby the British Empire, comprising the United Kingdom, Australia and New Zealand, allegedly derived "rights" over Nauruan phospate, was signed only on 31 December 1920, so that the phosphate workings could be operated by them in terms of the Nauru Island Agreement of 1919. Was all this compatible with the principle of disinterestedness, which was the foundation of "this sacred trust of civilization"? When this question was raised in the Permanent Mandates Commission as early as 1922, it was evaded by Australia. Subsequently, Australian representative, Sir Joseph Cook, stated in the Permanent Mandates Commission that:

"The governments themselves (i.e., the governments of Australia, the United Kingdom

> and New Zealand) held and exploited the Concession ... There was no phosphate company apart from the governments." (See Nancy Viviani, *Nauru's Phosphate and Political Progress*, Australia National University Press, Canberra, 1970, p. 48.)

Yet we heard Australia arguing the other day that the Nauruan claim over the British Phosphate Commissioners' (BPC) overseas assets had nothing to do with Australia, that it was a matter between Nauru and BPC, and that it should have been raised in 1967 with BPC!

The proprietary rights of the BPC were constantly questioned by the indigenous Nauruan people. However, Australia, by virtue of its legislative power over the Territory, ruthlessly gave effect to the régime of exploitation that had been envisaged in the 1919 and 1923 Tripartite Agreements. It is amazing that such a régime continued on Nauru until 1967 without material change, despite the transformation of the Territory from Mandate to Trusteeship.

The history of the Mandate and the Trusteeship administration is a history of steadfast struggle of the Nauruan people to assert their rights - the rights to land, the right to ensure the benefits of the nation's only resource, the right to regain control of their natural resource, the right to restoration of mined-out lands as far as possible to the original land uses, the right to self-government, and the unqualified right to independence. The United Nations Visiting Missions Reports, and the frequent talks between the representatives of the Nauruan people and the Administering Authority, reflect the constant travails of these people in seeking to attain these rights.

As early as 1959, the Nauruan Community had proposed a ten-year plan for achievement of independence. As if to forestall Nauruan independence, Australia persuaded the Nauruan community to believe that rehabilitation of the worked-out lands - an essential prerequisite for the long-term continuance of the people on Nauru - was impracticable, and used its Government Agencies, such as the Commonwealth Scientific and Industrial Research Organisation (CSIRO), to say so. Australia also offered them the possibility of resettlement in an Australian island. Given the experience of the people of the nearby Ocean Island (that is, Banaba), who resettled on a Fijian island under an arrangement which largely ensured protection of their national and social identity, the Nauruans thought that they would also receive similar treatment. They agreed to look at resettlement as a better option, as they were told that rehabilitation was impracticable. They agreed

to consider resettlement in Curtis Island. The negotiations broke down, not because the Nauruan Community "unreasonably" rejected the "generous" resettlement offer - Australia now seeks to recreate a history of its own by such reinterpretations - but because Australia rejected the reasonable demand of the Nauruans that their national and social identity be protected and preserved. Were not the Nauruans entitled to make such a demand under the decolonization principles of the United Nations Charter and under the principle of self-determination?

Having reached a dead end in regard to the false proposals for resettlement, the Nauruan community fell back upon the only option they were left with - to remain in their homeland. They thought Australia, having enjoyed the benefits of Nauruan phosphate at cost price since 1920, would accept the corresponding obligations to rehabilitate the lands devastated, disfigured and rendered useless by their mining operations. But this was not to be.

The Australian counsel now argue that Nauruans had frequent changes of mind, often interspersed by periods of "eloquent silence". The "eloquent silence" allegation in respect of the rehabilitation claim clearly stands rejected in the face of the unequivocal records of the Nauru Talks, held in Canberra, and the proceedings of the Trusteeship Council and the General Assembly of the United Nations, and the subsequent exchanges. These will be recounted in further detail by counsel, Professor Connell.

In fact, one is not clear about what exactly Australia is now saying. Were the Canberra Talks or the General Assembly the proper forum to raise the rehabilitation claim? Was raising the claim before the Trusteeship Council inadequate, if it was not raised again before the General Assembly during its discussion of the Council's Report? Was the rehabilitation claim any different from an allegation of a breach of a Trusteeship obligation? When exactly does a breach arise of a trusteeship obligation? Are the obligations of States, under general international law, irrelevant, simply because they may have an alternative leg to stand on the trusteeship system? There is no doubt that these and similar questions, by their very nature, must impel this honourable Court to examine the merits of the Nauruan claims.

What Nauru does submit before this honourable Court, Mr. President, is that it has been

wronged under the Trusteeship system and general international law, and that Nauru and the United Nations organs, in good faith, thought that Australia would stand by its obligations to rehabilitate the lands mined-out during Australian administration.

This, then, Mr. President, is the broad perspective within which Nauru has placed its claims before this Court for its adjudication.

ARTICLE 79 OF THE RULES OF THE COURT DOES NOT REQUIRE THE COURT TO CONSIDER AND DETERMINE AUSTRALIAN PRELIMINARY OBJECTIONS AT THIS STAGE

The distinguished Agent for Australia has submitted that Article 79 of the Rules of Court requires the Court to consider and determine all the Preliminary Objections of Australia at this stage.

Nauru does not see any such mandatory direction to the Court in Article 79 of its Rules. Nor is the Court prevented from joining with the merits phase of the case objections which do not possess, in the circumstances of the case, an exclusively preliminary character. This is particularly clear from Article 79, paragraph 7. The case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America*), Merits, provided the Court with the first opportunity to rule on joinder of a preliminary objection with the merits under Article 79 of the 1978 Rules (see *I.C.J. Reports 1986*, p. 29, para. 38). Speaking of Article 79, the Court said in that case, as follows:

> "It thus presents one clear advantage: that it qualifies certain objections as preliminary, making it quite clear that, when they are exclusively of that character, they will have to be decided upon immediately but, if they are not, specially when the character of the objections is not exclusively preliminary because they contain both preliminary aspects and other aspects relating to the merits, they will have to be dealt with at the stage of the merits. This approach also tends to discourage the unnecessary prolongation of proceedings at the jurisdictional stage." (*I.C.J. Reports 1986*, p. 31, para. 41.)

It is thus clear that a declaration under Article 79, paragraph 7, that an objection does not possess, in the circumstances of the case, an exclusively preliminary character, does not bring to an end the consideration of the objection by the Court. The Court's discretion to deal with it along with the merits of the case remains unimpaired.

The Court's discretion to join preliminary objections to the merits in appropriate cases is also underscored by Article 8, paragraph (ii) (b) of the Resolution Concerning the Internal Judicial Practice of the Court dated 12 April 1976, which provides that the Court while dealing with the merits phase of a case, shall address itself "on the global question of whether, finally, the Court is competent or the claim is admissible".

It would be inequitable to deny the Court - and the Court never meant to deny itself - such a discretionary power, having regard to the very complex nature of international litigation. After a study of the experience of the World Court illustrating several types of situations which will justify joinder, Dr. Rosenne, an eminent authority on the subject, states:

> "These situations have included those in which the issues raised in objections, whether issues of fact or issues of law, and those raised in the merits are too intimately connected to permit adjudication on the one without prejudging the latter; where the Court has not felt itself to be in possession of sufficient evidence, in the preliminary objection phase, to permit it to adjudicate on the objection in the confidence that it had full knowledge of the facts or was in a position to elucidate or evaluate them fully; where the Court found itself unable to determine in the preliminary objection proceedings whether the plea was strictly a preliminary objection or a defence to the merits; where an understanding regarding joinder had been reached between the parties; where the applicant submits a plea for joinder as an alternative submission; and more generally where the joinder is in the interests of the good administration of justice, having regard to all the circumstances of the case." (Shabtai Rosenne, *The Law and Practice of the International Court*, 2nd Revised Ed., Martinus Nijhoff, Dordrecht, 1985, pp. 464-465.)

The distinguished Agent for Australia referred to the 1970, 1971 and 1976 Reports of the Sixth Committee of the United Nations General Assembly to support a statement that "the Sixth Committee repeatedly disapproved of the practice of joining preliminary objections to ther merits". All that these references show, Mr. President, is that there were views expressed in the Sixth Committee, but these were not the recorded view of the Sixth Committee as a whole. The Sixth Committee ordinarily makes its views known through the resolutions which it recommends for adoption by the General Assembly. Also, it is important to point out that the Court is the master of its own procedure, it is the principal judicial organ, *not a subsidiary organ*, of the United Nations.

There have always been differing views on whether or not the Court should join an objection with the merits if it does not possess an exclusively preliminary character. It is, however, for the

Court to regulate its own procedure.

All that Article 79, paragraph 7, requires the Court to do is that, after hearing the parties, it shall give its decision in the form of a judgment, by which it shall either uphold the objection, reject it, or declare that objection does not possess, in the circumstances of the case, an exclusively preliminary character. Incidentally, it is interesting to note that the distinguished Agent for Australia did not use the term "exclusively" in his oral presentation although it appeared in the Verbatim Record subsequently.

The declaration that a preliminary objection does not possess an exclusively preliminary character merely represents a determination on the "preliminary" character of the objection, and nothing else. It is not a definitive determination of the objection as such, which cannot be made without a deeper study of the merits of the case. Article 79, paragraph 7, does not therefore, require this Court to determine here and now all objections characterized by Australia to be preliminary objections.

The Australian Preliminary Objections and the oral presentations made before this Court on behalf of Australia have themselves amply demonstrated the close nexus that exists between the Australian objections and the facts on which the substance of their claims is founded, although, with due respect, Australia seems to have got most of its facts wrong.

The Republic of Nauru, therefore, submits that none of the Australian objections to the jurisdiction of the Court or to the admissibility of Nauru's claims or else to their receivability on other grounds possess an exclusively preliminary character, that each of them is closely bound up with the facts and merits of Nauru's claims, and that the Court, in the interests of justice, fairness and equity, must declare that none of them possesses an exclusively preliminary character.

THE AUSTRALIAN ALLEGATION OF WAIVER

The Australian pleadings and oral statements before the Court are replete with allegations of lack of good faith on the part of Nauru. The facts of the case indicate lack of good faith on the part of Australia in fact.

In 1966 to 1967 the talks between the two Parties specifically addressed the question of Australia's responsibility in respect of rehabilitation, which was specifically raised by the Nauruan representatives, whatever view the Australian counsel may take on the records of these talks. The Nauruans were specifically asked whether they could forego their rehabilitation claim, in view of the financial arrangements being settled through the negotiations. The Nauruans said no. It was then decided in view of the disagreement on this question to keep it aside from the agenda of the negotiations.

A perusal of the Records of the Nauru Talks at Canberra reveals a series of exchanges of views to prove this point. Here I refer to one or two such exchanges and I do apologize for the repetition of some of the quotations in this context. In the morning session of the talks dated 16 May 1967, the Secretary of the Australian Department of Territories, Mr. G. Warwick Smith, O.B.E., advised the Nauruan delegation that:

> "On the question of rehabilitation the Partner Governments maintained that it was not for them to decide what should be done for rehabilitation; this was a decision for the Nauruans, financial arrangements could be such as to permit the Nauruans to do what they wished, within reasonable limits, in the way of rehabilitation. As part of the total arrangement the Joint Delegation would like to see the Nauruans withdraw their claims in respect of rehabilitation." (ND 67/SR 13 (Final), 10.30 a.m.-12.45 a.m., 16 May 1967, Nauru Memorial, Vol. 3, Ann. 5, p. 471, i.e., internal pagination (given at the top of each page), p. 56.)

The discussion that took place in the afternoon session - as recounted by Mr. DeRoburt just before me - the same day on this point has been recorded as follows:

> "26. *The Secretary* asked would the Nauruans press their argument despite any financial arrangements made, that the Partner Governments had a responsibility for rehabilitation.
>
> 27. *During the following discussion* it emerged that the Nauruans would still maintain their claim on the Partner Governments in respect of rehabilitation of areas mined in the past, even if the Partner Governments did not press for the withdrawal of the claim in a formal manner such as in an agreement" (ND67/SR14 (Final), 4.30 p.m. to 6.20 p.m. 16/5/1967, Nauru Memorial, Vol. 3, Ann. 5, p. 466, i.e., internal pagination p. 51).

At the next session on 17 May, Mr. Smith pointed out that the Joint Delegation's proposed phosphate agreement consisted of a package of several elements, including:

> "an understanding on rehabilitation which would mean that the Nauruans would not continue

to press this subject and linked with rights of immigration into Australia and New Zealand" (ND67/SR15 (Final), 2.30 p.m. - 3.30 p.m., 17/5/1967, Nauru Memorial, Vol. 3, Ann. 5, p. 460, i.e., internal pagination p. 45).

The Nauruan response to this was a lengthy paper entitled "Phosphate Proposals by Nauruan Delegation" which, on the specific point of a package deal seeking to extinguish the Nauruan claim for rehabilitation, said as follows:

"Rehabilitation

9. The Partner Governments have restated their position that the proposed financial arrangements on phosphate over the future needs of the Nauruan community including rehabilitation or resettlement. The Nauruan Delegation is disappointed that they should be asked to renounce their sincerely held beliefs on this matter (formally or informally) as one of the collective pre-conditions necessary to obtain agreement.

10. The facts are that the Partner Governments have already rendered nearly one third of the island uninhabitable without having made any financial provision to restore the land that they have mined without our consent. The Nauruan people are prepared to take the financial responsibility of restoring land that is mined in the future when they are receiving the full economic benefits from phosphate. However, the need for

rehabilitation stems directly from the mining operations and the Partner Governments carry their share of the obligation to restore the mined areas whether they have provided for this in the past or not.

11. The Nauruans preferred re-settlement as being a cheaper solution for the Partner Governments and ourselves. [That is, for Nauruans.] However, the failure of re-settlement proposals to provide a secure future and preserve our national identity has forced us into an expensive rehabilitation project because we are at least satisfied that we can obtain on Nauru a prospect of national survival that would be denied us under any alternative proposal that the Partner Governments have yet put to us.

12. However, the cost of any reasonable rehabilitation of Nauru is so large that we cannot understand why the Partner Governments are not content with the considerable benefits they have already obtained from the phosphate (about $150 million from 1949 to 1965 in the form of phosphate obtained at less than world prices). Apparently, the Governments want to make even more money at our expense as well as imposing a condition that we renounce all claims regarding the responsibility to rehabilitate the land already mined. Of course we know that little Nauru cannot force three important countries to make any such payments, but you also ask us to deny our beliefs. Whichever way we look at it the Nauruans are the main losers from the need to rehabilitate the island. We value the freedom that we can attain on Nauru sufficiently to face the cost of rehabilitating lands that we mine in the future, but we are well aware that our basic opportunities to survive as an independent people are being severely curtailed by such large expenditures on rehabilitation and we need every penny that we can get. We are not prepared publicly or privately to accept the Partner Governments' view that the proposed financial arrangements are adequate to cover our future needs including rehabilitation or resettlement" (ND67/8, dated 18 May 1967, Nauru Memorial, Vol. 3, Ann. 5, p. 523, at pp. 525-527, i.e., internal pagination p. 108 at pp. 110-112).

It may be noted that this statement was formally read by the Nauruan delegation during talks

on 18 May 1967 (see para. 9 of the Record of Discussion, ND67/SR16 (Final), 2.40 p.m. - 4.40 p.m., 18 May 1967, Nauru Memorial, Vol. 3, Ann. 5, p. 455, i.e., internal pagination p. 40).

These exchanges took place in 1967, despite the agreement between the Parties arrived at during the tenth session of the Talks on 29 June 1966:

> "The discussion on rehabilitation and resettlement suggested that inability to reach agreement on those matters would not necessarily hold up the rest of the arrangements." (Nauru Talks, Record of Proceedings, 10th session, 29 June 1966, 10.30 a.m., Nauru Memorial, Vol. 3, Ann. 4, p. 391, i.e., internal pagination p. 111, at p. 112.)

Subsequently, however, the Talks did not, for obvious reasons, deal with the rehabilitation claim as it was agreed that the mutual disagreement on it should not hamper progress on other items on the agenda.

It was not, therefore, a matter of surprise that the Canberra Agreement of 1967 did not deal with this. Yet, Australia has seen it fit to interpret this as evidence of waiver, in the face of such explicit records of exchanges in the 1966 and 1967 Talks.

THE DISMISSIVE ATTITUDE OF AUSTRALIA TO THE DISPUTE

Mr. President, I will now briefly deal with the general attitude of Australia to the dispute, which we would call the "dismissive attitude". The entire history of the Nauru claim of rehabilitation and the related claim over the overseas assets of the British Phosphate Commissioners (BPC), as also the Australian pleadings and oral statements reveal a pronounced attitude of dismissiveness and self-righteousness on the part of Australia.

Australia is "surprised" to face a "new and unexpected claim". The Canberra Agreement is presented, selectively, as the final act in a colonial drama beyond which no colonial claims could raise their heads. Counsel for Australia said that the assertion of the rehabilitation claim before the United Nations Trusteeship Council was "too late and addressed to the wrong audience". "Any attempt to preservation of claims had to be made before the Canberra Agreement was signed, not after. And it had to be made directly to the Partner Governments", said the Australian counsel. Yet,

the counsel elsewhere complained that the issue was not raised before the General Assembly. How many repetitions are good enough to ward off an allegation of implied waiver?

In fact, the dismissive attitude of Australia runs through the whole development of the case even after the independence of Nauru. It is reflected in the exchange of official correspondence between the Parties. The attitude has many manifestations - that the claims were all settled in 1967, by a generous financial agreement, that Nauru was not serious about its claims, or about rehabilitation as such, that Nauru by raising these claims now shows lack of good faith, and so on.

THE "GENEROSITY" ARGUMENT

Mr. President, Australia has also repeatedly argued that the financial arrangements under the Phosphate Industry Agreement of 1967 were "generous" on the part of the Administering Authority. Were they really generous in regard to the sale of the British Phosphate Commissioners' operations in Nauru? In regard to Nauru's rehabilitation claim? In regard to the "transfer" of phosphate rights to Nauruans? Generosity implies entitlement, and entitlement implies merits. The argument from generosity is thus a clear indication that the issue is not an exclusively preliminary one.

Under the 1967 arrangements, Nauruans were compelled to pay for the "purchase" of phosphate rights which had been rightfully theirs under customary law. Their reaction to the question of "transfer" of phosphate rights during the Nauru talks in Canberra in 1967, was quite predictable, as the following statement demonstrates:

> "*Phosphate Rights*
>
> 8. The Nauruan people have never acknowledged that the Partner Governments possessed any rights to Nauruan phosphate, and maintain that it was originally mined against our will and without our consent. Hence the Nauru Local Government Council could not sign their names to an agreement in which one of the Heads of Agreement was the extinction of the rights claimed by the Partner Governments. The Partner Governments may choose to make a unilateral declaration to this effect if they wish but the Nauruan people would not consider this in any sense a legal or moral claim for any form of compensation, since any prior claims of this kind would presumably be inoperative when the Partner Governments have met their obligations as United Nations Trustees and have helped Nauru to obtain its independence." (Doc. Nauruan Delegation 67/8, Memorial of Nauru, Vol. 3, Ann. 5, p. 525, i.e., internal pagination p. 110.)

If this view, which gained the support of the United Nations General Assembly in 1966 was

correct, where was the "generosity" of the former Partner Governments in allowing the Nauruans to "purchase" the BPC phosphate operations on the Island at a price of $21 million, under an agreement which obliged Nauru to sell phosphate "exclusively to PartnerGovernments", "at the rate of two million tons per annum or as near thereto as possible"? (See Article 5 of Nauru Island Phosphate Industry Agreement, 1967, Memorial of Nauru, Volume 3, Annex 6.)

Was the Australian generosity reflected in the various public funds created? The public funds established during the Australian administration were established at the insistence of the Nauruan Community. The corpus of these funds came from the phosphate royalties to which Nauruan landowners were entitled. They accumulated from further royalties and income from the funds themselves. This is a case of a claim of generosity by a guardian for acts he was persuaded to perform by his ward, and that too at the latter's expense!

Mr. President, Australia has presented yet another case of generosity by contending that the 1967 Agreement represented a premature termination of the concessionary rights of the Partner Governments, as their "rights" would otherwise have lasted until the year 2000.

The so-called concessionary rights were of dubious legal character, in view of the Mandate and Trusteeship obligations, and cognate obligations under general international law. Yet these "rights" had to be "purchased" by Nauru. The sale took place after years of enjoyment by Australia of the benefits of a cheap supply of high grade phosphate rock, virtually at cost price, which correspondingly deprived the Nauruan landowners of their right to a fair price for their phosphate, and also to the post-exploitation use of their lands.

A final aspect of "generosity" surfaces in the context of the rehabilitation claim. Having enjoyed since 1920 the cheap and uninterrupted supply of high grade phosphate from Nauru, Australia has consistently argued that the 1967 Agreement and the arrangement of the Trust Funds ended all its responsibility in respect of rehabilitation.Australia says: "we have given you enough funds. They will accumulate at the rate of $10 million a year. Don't be greedy."

In fact, Australia has given Nauru nothing. The Nauruan Community had to purchase what in fact were their own phosphate rights, and the BPC assets which at the first instance arose out of

phosphate earnings, that is, earnings from Nauruan phosphate of which Nauruan Community had been deprived (see Articles 8, 11 and 12 of the Nauru Island Agreement, 2 July 1919).

The Trust Funds, such as the Long-Term Investment Fund and the Rehabilitation Fund, belonged to the Nauruan Community. These funds were formed out of phosphate royalties, they grew from them and from income earned on them. Australia did not contribute a cent to these funds. Australia claims to have been generous, still.

On a matter of detail about the "generosity" argument, if I may digress a little, Mr. President. The distinguished Agent for Australia was good enough to point out one error in a calculation made by Mr. Ken Walker in his statement annexed to Nauru's Written Statement. We are grateful to him for drawing our attention to it. We apologize for the error in the conversion of A$2130 into US dollars, and we stand corrected. However, the substance of Mr. Walker's statement remains unaffected. What Mr. Walker says in his statement is that: "In terms of standard of living the relevant income per capita figure in 1966-67 was A$776 not A$2130." (See Nauru Written Statement, page 163, paragraph A6.)

Standards of living refer to the income that is available to purchase goods and services, and in most countries it is appropriate that savings be included since the income derived can be used to purchase goods and services, or savings itself can be drawn on to purchase goods and services. The position in Nauru is quite different. As the Written Statement points out, the Nauruan Community did not and does not have ready access to the monies transferred to the Trust Funds (and the income earned by those Trust Funds) themselves. Most of the Trust Funds themselves cannot still be accessed by the Nauruan Community, and certainly were of no relevance to standards of living in 1966-67, even if technically (by the standards of other economies) part of per capita national income.

In other words, Australian calculation of Nauruan living standards at independence - indicating Australian "generosity" - represents a gross exaggeration in real terms, having regard to the need of Nauru to find substantial resources against the depletion of the phosphate.

LACK OF GOOD FAITH: AUSTRALIAN ALLEGATION OF FINANCIAL MISMANAGEMENT BY NAURU

Australia has further questioned the bona fides of Nauru and Nauru's conduct in bringing these claims before this Court. It has alleged Nauru's failure "to act consistently and in good faith" in relation to rehabilitation. It attributes this lack of good faith to Nauru's failure to take any steps to restore at least part of the phosphate lands mined-out after 1 July 1967. It is alleged that Nauru has raised the current claims against Australia simply seeking to raise additional monetary resources, as it had failed to "manage properly the potential wealth it inherited at the time of independence" (Preliminary Objections of Australia, Part V, Chap. 2, pp. 162-163, particularly para. 404).

Allegations of lack of good faith on the part of a State making an international claim should not be raised before this Court without a valid factual basis. Nauru's claims are founded on international law; they arose from the past conduct of the Respondent State and its refusal to accept its responsibility with regard to them. On the contrary, the Australian allegations of lack of good faith are irrelevant to the adjudication of legal aspects of Nauru's claims. They are also unfounded in fact.

It is not open to the Respondent to sit in judgment over the manner in which the Applicant has managed its economy. There may be differences of views on the manner in which a State should manage its economy, but every State has a sovereign right to determine how best its economy should be managed. Questioning such a right amounts to intervention in the internal affairs of a State. The effect of Australian allegations is precisely that. It is a pity that such allegations have been made before the world's highest judicial forum. The Court will have noted, in contrast, that Nauru, in its Written Statement, responded to Australian arguments within the bounds of law. I should add here that Professor Connell will, in due course, provide details of the various long-term funds established and maintained by Nauru.

The Australian argument appears to be that, at the independence of Nauru, Australia ensured that Nauru was generously provided with sources of funds which would have been more than adequate for the rehabilitation of Nauru but, that the Government of Nauru, having mismanaged its economy, now finds that it requires more funds and, hence, has brought the current proceedings

against Australia. Nauru's case is that the rehabilitation of lands mined-out before 1 July 1967 is the responsibility of the former Administering Authority, that the 1967 arrangements specifically omitted to extinguish this responsibility, that there exists a legal dispute between the two Parties and that the current financial position of Nauru has no bearing whatsoever to Australia's responsibility as to rehabilitation.

Mr. President, an accusation as serious as that of bad faith virtually invites the Court to turn to the merits, since such an accusation is essentially one of fact and one that permeates the entire claim, going to its very basis. Even on the Australian Agent's rather narrow definition, it is a matter which goes to the merits. It certainly does not possess an exclusively preliminary character.

LACK OF GOOD FAITH AND NAURU'S CONDUCT IN REGARD TO REHABILITATION OF PHOSPHATE LANDS WORKED OUT AFTER 1 JULY 1967

The Constitution of the Republic of Nauru contains the following provision in Article 83:

> "83. (1) Except as otherwise provided by law, the right to mine phosphate is vested in the Republic of Nauru.
>
> (2) Nothing in this Constitution makes the Government of Nauru responsible for the rehabilitation of land from which phosphate was mined before the first day of July. One thousand nine hundred and sixty-seven."

This provision was inserted in the Constitution by the Nauruan Constitutional Convention of 1968 quite deliberately. It clearly reflects the sincerely held views of the Nauruan community which were consistently put before the Administering Authority, and before the United Nations. It is not suggested that it is relevant in establishing the Nauruan claim, since a State cannot do that by relying on a provision of its internal law. But it is certainly relevant as showing consistency and good faith in relation to the issue which underlies this case.

When phosphate is mined out, the land is wasted. On Nauru, the effect of mining on land is quite different from other countries. The mining devastates the land leaving nude limestone pillars called coral pinnacles. As the United Nations Visiting Mission said in it 1962 Report:

> " . . . and then, as we looked closer we saw for the first time the strange sight of the

> worked-out phosphate lands. We had heard descriptions of this derelict area before, but it is impossible to imagine in advance the extraordinary picture which it presents - acres of barren, sharp, coral pinnacles like huge, jagged, crowded gravestones, a forbidding reminder that about a third of the phosphate of the island has already been extracted." (See The United Nations Visiting Mission to the Trust Territories of Nauru and New Guinea, 1962, Report on Nauru, Trusteeship Council Official Records, 29th Session, 31 May-20 July 1962, Supplement No. 2, paragraph 20, reprinted as Ann. 11 in Nauru Memorial, Vol. 4, p. 102, at p. 108.)

In this context, I invite the Court's attention to Photograph 2, in Volume 2 of the Nauru Memorial, containing an aerial view of the mined-out phosphate lands. Nauru is aware that rehabilitation is a complex task, given the peculiarities of the problem on the island. The appropriate technology has to be harnessed but, more importantly there should be a general well-integrated town planing, maximising considerations of economy and overall development of the nation. One has to look at the totality of the land mined out, both before and after 1 July 1967. Also, in view of the Constitutional dictate, the question of responsibility for rehabilitation of lands mined out before 1 July 1967 must be resolved.

The Australian administration itself did not take any action in regard to rehabilitation. It in fact consistently sought to avoid the issue of responsibility by diverting attention to resettlement on unacceptable conditions; or by seeking to establish that rehabilitation was impracticable because it was too expensive. On the other hand, Nauru has had a step-by-step approach to the whole issue. These steps have been referred to in Part I, Section 4, of the Nauru Written Statement (pp. 14-22).

The Nauru Phosphate Corporation and the Nauru Government Department of Island Development and Industry have been taking steps in respect of planning for rehabilitation.

In view of the eloquently negative attitude of Australia, the Nauru Government set up in 1986 a Commission of Inquiry mandated to reach findings not only on the question of responsibility for rehabilitation of lands mined-out before 1 July 1967, but also on the economic and technical feasibility of rehabilitation of the whole phosphate lands. The Commission submitted its findings in a ten-volume report in 1988. Its findings included elaborate recommendations on town planning and on the economic and technical feasibility of rehabilitation. Nauru is convinced that rehabilitation is not only technologically feasible, but economically practicable.

The Government of Nauru has already put in place a trial project to assess the technical

problems involved in rehabilitation. The Australian aside on this count notwithstanding, the project has to follow its own pace, given the peculiar features of the task on Nauru. Rehabilitation on Nauru is just not levelling mine pits with sand or soil. It is much more than that.

Nauru strongly denies any suggestion by Australia that Nauru itself has shown lack of good faith in respect of rehabilitation of lands mined-out after 1 July 1967. Australia's perception of the issue has been rather simplistic. The Court would need to go into the merits of the question more deeply than it can possibly do in the Preliminary Objection phase, in order to determine the issue. In fact the Australian suggestion reflects its general attitude of dismissiveness towards Nauru's claims - and that attitude itself calls for the closest attention of the Court.

LACK OF GOOD FAITH AND DELAY

Mr. President, yet another point I wish to deal with would relate to questions relating to delay and good faith. Australia argues that Nauru has shown a lack of good faith (and perhaps abused the process of the Court as well) by bringing in its claims "after 24 years" or "more than 20 years". I do not know which figure is acceptable to Australia.

Nauru categorically rejects this allegation. Nauru's rehabilitation claim is rooted into its colonial past. The people and the Territory of Nauru were a "sacred trust of civilization". Exclusive enjoyment of the benefits derived from the continuous exploitation of their only natural resource casts on the Administering Power an obligation to assist in restoring the mined-out lands as far as practicable. Australia was constantly reminded of this by the Nauruan people, but effectively avoided performance of this obligation. At the time of independence, the Nauruans thought that there would be scope for further negotiations. But Australia refused to negotiate.

Counsel for Australia says that for the first time after 24 years Nauru has now raised the issue as a legal claim. This wholly ignores the various official exchanges and ministerial talks that took place between the two countries. Perhaps they were not "legal" enough, as if diplomatic correspondence has to be conducted on legal letterhead over the phrase "without prejudice". But while the Australian counsel refers to and selectively interprets letters of the President of Nauru,

there is not a word about the type of responses these letters evoked from Australia - responses which clearly demonstrated a very live awareness of Nauru claims.

On the selective use of documents by Australian counsel, I need only to point to such a selective use of Mr. DeRoburt's statement before the Fourth Committee of the General Assembly, on 6 December 1967. I would ask the Court to please note the extracts of this statement found at page 78 of the verbatim record of the public sittings of the Court of 11 November 1991, and page 24 of the verbatim record of 12 November 1991. Both the extracts omit the following significant sentence found in the General Assembly official records: "that phosphate was a wasting asset was, in itself, a problem: in about 25 years' time the supply would be exhausted" (see General Assembly official records, 22nd session, Fourth Committee, 6 December 1967, 11.20 a.m., p. 395, para. 20, lines 13-16). The prospect of drying up of phosphate revenue was, then, the problem - the problem - which the Head Chief of Nauru was referring to, in the context of the financial resources Nauru had received in the past and would receive in future, which would assist Nauru to solve "the problem". Not the problem of rehabilitation, as the Australian counsel wanted the Court to understand.

Similarly, the allegation of delay is based on Australia's own misinterpretation of the facts. Nauru submits that Australia's arguments 0ased on delay must be dismissed for want of legal and factual basis. There was no delay, indeed if anything there were repetitive attempts made by Nauru to raise its claims.

Another difficulty with the delay argument is that it implies survival of the obligation to rehabilitate well beyond the termination of the Trusteeship. Australia should not be permitted to have it both ways: it should either be that the termination of the Trusteeship extinguished this obligation or that no such extinction took place. Nauru argues that the latter is the case, that is no such extinction took place. Indeed, the claim in respect of the overseas assets of the British Phosphate Commissioners became actionable only upon determination of the BPC in 1987, and not before. Any argument of delay in respect of this claim is absurd.

Mr. President, I was advised by someone from the Registry that the Court may like to have my statement completed by a quarter to one. Is that still the case?

The PRESIDENT: No, there are a few minutes left, Mr. Mani. Have you far to go?

Mr. MANI: Not much, Sir, maybe 5 minutes?

The PRESIDENT: Yes. Please carry on.

Mr. MANI: Thank you, Sir.

AUSTRALIA'S CONTENTION THAT NAURU HAS COMMITTED ABUSE OF THE PROCESS OF THIS COURT MUST BE DISMISSED AS AN INNUENDO HAVING NO BASIS IN LAW OR FACT

Yet another point raised by Australia related to the question of the abuse of the processes of this Court. The Australian attitude of dismissiveness towards the Nauruan claim has also taken the shape of the contention that Nauru, by bringing in its claims before this Court, has abused the process of the Court.

Nauru categorically denies any such suggestion. Nauru's appeal to this high tribunal was made in all sincerity and earnestness. Nauru invites the Court to examine carefully its claims and the facts on which they are based before passing a judgment on such Australian allegations.

The Australian Co-Agent argues that the Court has inherent powers to strike off a case from its list on the ground of *mala fides* or abuse of process of the court. He refers to the concept of inherent powers of a court under the common law system.

Mr. President, while I have great respect for the common law system, where, in fact, I have my roots, I must say that international law is not the same as the common law. This Court is bound to apply international law, in terms of Article 38, paragraph 1, of its Statute. The procedural concepts of particular national legal systems cannot simply be transported into international law, lock, stock and barrel. A municipal court has certain inherent powers of this kind because of the special features of the municipal law. By contrast, in international law, the scope for the Court to claim implied powers is rather limited. The Statute does not permit the Court to assume such inherent powers as the concept of abuse of the process of court contemplates.

Most of the arguments made by Australia, attributing to Nauru alleged lack of good faith or

abuse of the Court's process, in fact, arise from a lack of clear understanding of the facts of the case and the history of the Nauruan claims, as also from a tendency to attribute motives to a small regional neighbour which has managed to follow an independent foreign policy ever since its independence, a people who are proud of their nationhood, however small their nation may be.

For these reasons, and because of the general approach taken to the case by Australia, Nauru humbly submits that none of the Preliminary Objections of Australia possesses an exclusively preliminary character.

THE CLAIMS HAVE NOT CAUSED ANY PREJUDICE TO AUSTRALIA

Australia has argued, perhaps as an extension of the delay argument, that Nauru, by instituting these current proceedings, has caused prejudice to Australia. The alleged prejudice is two-fold. First, since the case goes far back, even to the Mandate period, Australia is prejudiced because it does not have the records relating to that period. But it is far from clear, even in principle, what such records would reveal which is not already under quite extensive public record. In this respect, may I refer the Court to the various detailed studies on the development of Nauru and of the phosphate industry on Nauru.

Secondly, there are more substantive points of prejudice, says the Australian counsel. This arises from the facts (1) that Australia has been sued alone and not with the other two members of the Administering Authority, (2) that Nauru seeks to apply current standards of environmental protection, and (3) that the matter was not raised before the United Nations bodies at the relevant time.

Nauru fails to appreciate these arguments as points of prejudice At any rate, each of these points will be dealt with by other counsel appearing on behalf of the Republic of Nauru. Just on the point of application of current standards of environmental protection, it is submitted that there has always been an obligation on the part of the miner to rehabilitate mined-out land. In the case of Nauru, the relevant German law provided this. The so-called takeover of the rights of the Pacific Phosphate Company by the three Partner Governments in 1920 did not extinguish the original

Concessionnaire's obligations under the German law, under which the original concession was granted. These obligations particularly included the obligation of rehabilitation. It was the repeal by Australia in 1922 of the relevant German law that put an end to that obligation. And nothing was done by Australia in the exercise of its full powers over the Island to create any alternative obligation.

Mr. President, it does not need any elevated environmental standard to appreciate the problem presented by a landscape such as that shown in the photographs in Volume 2 of the Nauru Memorial. The environmental degradation is patent.

In other words, Australia has not proved any prejudice and certainly it has not done so at this preliminary stage.

Mr. President, Honourable Members of the Court, that concludes my statement on behalf of the Republic of Nauru at the moment. I would now wish to leave the continuation of the Nauru oral argument by Professor Connell, on Monday, in the hands of the Court. Thank you.

The PRESIDENT: Yes, Monday will be convenient. 10 o'clock on Monday. Thank you very much Professor Mani.

The Court rose at 12.50 p.m.