Nauru: An Environment Destroyed and International Law

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Introduction

> Management – or rather, mismanagement – helps explain the downward spiral of Nauru, once one of the world's wealthiest countries but now a basket case in a region of struggling Pacific island states.[1]

> Nauru's past wealth has been a mixed blessing for its people, who developed a taste for junk food and now suffer some of the world's highest rates of obesity, diabetes and heart disease. With few job opportunities, most Nauruans spend their days watching television, drinking beer, eating greasy take-away food or driving along the island's one road.[2]

Characterisations of Nauru such as this by Western media have been scant and erroneous over recent decades. Apart from rare references to Nauruan obesity, bankruptcy, or phosphate, the tiny Pacific island of Nauru is unfamiliar to most. However, a historically sensitive inspection of the island reveals that Nauru's story possesses great meaning. Nauru clearly represents the myriad and interrelated environmental issues facing the Earth today and in particular those facing post-colonial states.[3] The experience of Nauru provides a parable within which we can see the demise of the symbiotic relationship once held between humans and their natural surroundings. An analysis is warranted that unravels the threads that make Nauru a microcosm of the conflict between environmental sustainability and the expanding commercial economy. Thus along these lines, this essay will begin with a historical sketch of Nauruan history followed by an examination of the islanders' legal case at the International Court of Justice. A speculative analysis will then be presented on which post-Stockholm principles of international environmental law may have been relevant if the court had adjudicated the case. Lastly, it will be contended that the Nauruan experience reinforces the significance of certain environmental principles that emerged out of Rio, such as sustainable development. It will become increasingly clear that the Nauruan experience serves to underlie the importance of international environmental law as an evolving framework of normative principles particularly considering both the current degeneration of the Earth and the all-consuming nature of today's market economy. As former Judge Christopher Weeramantry once said,

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[1] Kathy Marks, "Clouds Over Paradise as Island of Nauru Sinks into Bankruptcy," *The Independent*, 19 April 2004.
[2] Nick Squires, "Australia Acts to Refloat Island's Sinking Fortunes," *The Daily Telegraph*, 12 May 2004.
[3] The term "post-colonial" is problematic for the author since it overlooks the realities of present day neo-colonialism. Plus, it implies that colonialism in the traditional sense has ceased to exist, whereas Israel today, for example, could be convincingly characterised as a colonising power.

> The world cannot be insensitive to Nauru's problems. Moreover, the issues lying behind these problems are global issues with which no member of the world community can remain unconcerned.[4]

Paradise Island Transformed

Nauru was once an idyllic palm-encrusted isle overflowing with lush greenery, coconuts, tropical fruits, flowers, birds, all enveloped by coral reefs teeming with underwater life. As the smallest nation in the world, Nauru's landmass is shaped like an inverted saucer with a circumference of under twenty kilometres. Located just south of the equator and halfway between Hawaii and Australia, Nauru is particularly remote.[5] The absence of nearby islands coupled with the strong westerly flowing equatorial current prevented the Nauruans from exploratory travel and limited them to their island. Fortunately, they could satiate themselves with fish as well as mangos, breadfruit, and pineapples, which grew on the Buada Lagoon southwest of the island. The coastal belt flourished with coconuts, pandanus, and wild almond trees while hibiscus coloured the island's central plateau. Isolated from the outside world, the Nauruans conversed in their own language and developed a self-contained, durable society. In the words of biologist, Carl N. McDaniel, "Year in and year out they lived intimately connected to the other inhabitants, real and imagined, that shared their world of palm trees, noddy birds, sand, sea, and sky."[6] Indeed, Nauru's breathtaking beauty led an English whaler to name it "Pleasant Island" in 1898. Unlike other Pacific Islands however, Nauru was remote, small and lacked the treasures of the time, such as pearls or tortoiseshell and was thus largely ignored by Western explorers. For time immemorial, Nauruans were left alone to fill their days with singing, dancing, storytelling, string figures, and other traditional activities.[7]

The Nauruan lifestyle began to transform as colonial powers assumed power over vast areas of the world. The need for raw materials and new markets fuelled an expansionist agenda and was to forever change the lives of most all indigenous peoples, such as the Nauruans. In 1886, England and Germany reached an agreement establishing each country's dominion in the Western Pacific. The Germans had already established their presence on the island through the trading consortium "Jaluit-

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[4] Christopher Weeramantry, *Nauru: Environmental Damage Under International Trusteeship,* Australia: Oxford University Press 1992, pg. 13. (Hereinafter, Weeramantry).
[5] Nauru is in the Central Pacific, 3000 metres to the north-east of Australia. Its nearest neighbour is Banaba/Ocean Island, which is 250 kilometres east.
[6] John M. Gowdy and Carl N. McDaniel. *Paradise for Sale. A Parable of Nature*. California: University of California Press, 2000, pg. 14. (Hereinafter, Paradise)
[7] For a description of historic Nauruan culture see Paradise, Ch.1.

Gesselschaft,"[8] which considered Nauru to be a fertile island with copra trade value.[9] Nauru was brought under the German Protectorate in April 1888, at which point the Pacific Islands Company became increasingly keen on exploiting the island. The company had accidentally discovered Nauru's phosphate potential when their cargo officer found an odd rock he thought to be a petrified tree. He initially considered making children's marbles out of the rock, but then used it as a doorstop in the company's Sydney office. In 1899, Albert Ellis, an officer in the company's phosphate section realised the doorstop resembled the phosphate coming from Baker Island and after testing, the rock was found to be phosphate ore of the highest quality. It was discovered that Nauru was endowed with vast deposits of some of the richest phosphates in the world. Ellis then visited Nauru to investigate and found:

> The sight of a lifetime. Material in scores of millions of tons which would make the desert bloom as a rose, would enable hard-working farmers to make a living, and would facilitate the production of wheat, butter and meat for hungry millions for the next hundred years to come.[10]

The irony of this comment in hindsight is bittersweet—while Nauruan phosphate served to enrich the farmlands of Australia and New Zealand, it eventually led to the tragic demise of a people and the island they considered home. By 1906, the Pacific Islands Company reached an agreement which granted them mining rights in Nauru at which point the company was renamed the Pacific Phosphate Company.[11] It is interesting to note that at this time the Nauruans could already foresee the demise of their island. A traditional song created in 1910 illustrates this point;

> By chance they discovered the heart of my home
> And gave it the name phosphate
> If they were to ship all phosphate from my home
> There will be no place for me to go
> Should this be the plan of the British Commission
> I shall never see my home on the hill[12]

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[8] Jaluit-Gesselschaft was long established in the Marshall Islands and conducted trading activities throughout the Carolinas, as well as the Gilbert and Ellice group of islands.

[9] Copra is dried coconut and a rich source of oil. Other islands such as those in Chagos Archipelago in the Indian Ocean manufactured substantial amounts of copra during colonial times.

[10] Paradise, pg. 41.

[11] The Jaluit-Gesselschaft mining rights were transferred to the Pacific Phosphate Company for a cash payment of £2000, £12,500 worth of shares in the Pacific Phosphate Company and a royalty payment for every ton exported. While the Nauruans were not part of any formal agreement, the Germans paid the native landowners a very modest amount per ton of rock removed from their land.

[12] This song was mentioned in the Independent Commission of Inquiry Report for Nauru. Weeramantry explains how the reference to "my home on the hill" represents the deep sense of affinity Nauruans had with the "Topside" of the island, pg. 30.

Life in Nauru was further rearranged at the onset of World War I when Australia occupied and administered the island. Once the war ended, Germany was defeated and Nauru became part of a new political agenda designed at the 1919 Versailles Conference. While Australia, New Zealand, and other imperial powers desired to remain colonial masters, Former United States President Woodrow Wilson ostensibly stood steadfast against the continuation of the colonial system by the Allied powers. Official control over Nauru was thus guided by Article 22 of the League of Nations and the Nauru Mandate Agreement detailed further fiduciary duties. Former Australian Prime Minister Billy Hughes nevertheless remained driven to annex Nauru, and was therefore compelled to approach Former British Prime Minister Lloyd George. A compromise solution was finally reached which stipulated that territories such as Nauru and New Guinea would remain under the supervision of the League, but that they would also be administered "under the law of the mandatory as integral portions thereof."[13] Keen to appease Australia, Lloyd George argued that while certain rights of the natives had to be protected under the mandate scheme, a compromise formula that allowed Australia something comparable to ownership of the island could be reached.[14] In order to ensure that Britain, Australia and New Zealand were all granted access to Nauru's precious resource, the Nauru Island Agreement (NIA) was quickly drawn up between the three powers. Through the NIA, the assets and rights of the Pacific Phosphate Company were acquired by the three imperial powers and the production process was subsequently administered by the British Phosphate Commission.

Nauru remained under this umbrella of power until the outbreak of World War II when the island was captured by the Japanese. To save their assets the Allies bombed the island and deported two-thirds of the Nauruan population to Truk Island where one-third of the population died. McDaniel explains that the Nauruan "traditional culture, already affected by Western patterns of thought and habit, was devastated by Japanese occupation and deportation."[15] The weary Nauruans returned home following the Japanese surrender to Australia in 1945 and with the collapse of the League of Nations came the termination of the Mandate system in 1946. The newly born Charter of the United Nations enforced a trusteeship system purportedly designed to promote the political, economic, social, and educational development of the inhabitants of the trust in

[13] This qualification was applied to all mandates in category "C". Please refer to League of Nations Covenant, Article 22.
[14] Weeramantry, pg. 47.
[15] Paradise, pg. 44.

order to ensure their progress towards self-government.[16] While the Trusteeship Agreement for Nauru explicitly described the fiduciary duties of the trusteeship powers, little or no change could be observed in Australia's behaviour as it continued to administer the island. Phosphate continued to be extracted from Nauruan lands at exponential rates and the pockets of the Commissioners continued to overflow. A negligible fraction of the phosphate revenues were given to the Nauruans until 1966 when domestic and international pressure forced the Commissioners to give up larger percentages of revenue.[17]

Throughout the mandate and trusteeship period, over 34 million tons[18] of phosphate were mined out transforming "Pleasant Island" into a bleak moonscape. After millennia of self-sufficiency, colonialism had dramatically transformed Nauruan life on their island. The changes imposed from above had gradually weakened their belief and value system, and would ultimately destroy their land and undermine their culture.[19] Amidst this backdrop of dependency and uncertainty, the Nauruan struggle for independence nonetheless became increasingly vocal alongside global calls for "justice" and self-determination. While intense mining had emptied Nauru of its natural wealth and crucial questions remained unanswered, the Nauruans nevertheless demanded control over their island.[20] After a bitter struggle, Nauru was finally granted independence on 31 January 1968. However, as with many post-colonial states, Nauru did not enter the world system on equal footing. Sixty years of mining had emptied Nauru of its natural wealth raising crucial questions regarding restoration, rehabilitation, and even resettlement. While these issues never faded in the minds of Nauruans,[21] they were only formally addressed at a much later stage in 1993 at the International Court of Justice. Before tackling the features of the case itself, a brief look at the environmental costs of phosphate mining is warranted.

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[16] U.N. Charter art. 76 (b), full text available online: www.un.org/aboutun/charter/

[17] In 1948, revenues were $745,000 (Australian). Out of this amount, 2% went either directly to the Nauruans or into their "trust funds." Additionally, 1% was charged for administration. About two decades later in 1966, the Nauruans, the United Nations Permanent Mandates Commission and the Trusteeship Council forced the British Phosphate Commissioners to give the Nauruans approximately 22% of revenues of over $1 million, with 14% set aside for administration.

[18] This was worth over $300 million (Australian) at world market prices.

[19] Paradise, pg. 36.

[20] Australia was reluctant to consider Nauruan independence for fear of the damage it may do to the Australian meat industry which had come to depend on the island's fertiliser to maintain the "quality of its pasture." See John Ezard, "A Drop in the Ocean," *The Guardian*, 19 June 1993.

[21] Several acts by the Nauruan government indicate that these issues were always of paramount importance. For example, the Nauruan Constitution clearly distinguishes between post-independence mining, which the government took responsibility for, as opposed to pre-independence mining which was seen as being the responsibility of past administering states.

Phosphate and Environmental Damage

Nauru's insides were literally ripped out by extensive mining due to the fact that phosphate mining is notably destructive. Mined land is transformed into coral-limestone pinnacles and Nauru today is mostly dusty arid barren wasteland. This terrain is clearly uninhabitable and the resulting pillar and pit landscape combined with the loss of vegetation has created a very hot interior. This rising hot air has prevented rain clouds from settling over the island contributing to frequent droughts. Plus, the natural forest microclimates have been transformed into new microclimates increasing sunlight and lowering humidity. As Weeramantry points out, scientists have always been attracted to the uniqueness of the Pacific Islands and they have observed "the disastrous effects and almost total disruption of island ecosystems that resulted from inappropriate development projects and land use," such as widespread phosphate mining.[22] All of these changes have served to greatly alter patterns of vegetation and endanger a number of indigenous plant species. The Nauruan diet was immediately affected by such drastic changes in vegetation. Under the impact of the phosphate industry, fish and coconut that were once staples of the Nauruan diet were largely replaced by salty and fatty canned foods. It is undeniably clear that alongside the forceful erosion of the land, the Nauruan way of life and intricate relationship with their surroundings was also eroded. An integral element in the Nauruan lifestyle was its complete dependence on the tiny island. The islanders used the island for both their livelihood and their enjoyment. Indeed, the Nauruan circle of life was profoundly affected by phosphate mining as illustrated by the words of a Nauruan song; "All our lands on the hill..No longer can be used..Will become home of craters and rocks (*sic*)."[23]

The implications of environmental degradation for Nauru as well as for the rest of the world are multi-faceted and often not obvious in the short-term. Harmful environmental conduct exposes several broader dimensions such as the nation's ability to use its resources as determined by domestic political processes. The depletion of phosphate has undoubtedly limited the political and economic choices available to the Nauruans since they bear the direct brunt of dealing with seemingly irreparable environmental damage. The adverse effects of environmental damage on the health and future well-being of the Nauruans has likewise become tragically clear. For instance, the problem of land shortage due to mining is one of the many pressing social problems in Nauru today. Several of these problems can be traced back to colonial practices on the

[22] Weeramantry pg. 31.
[23] Ibid, pg. 29.

island and were thus highlighted in the case presented to the International Court of Justice.

The Case: *Certain Phosphate Lands in Nauru*

Nauru filed an application in the International Court of Justice (ICJ) instituting proceedings against Australia on 19 May 1989.[24] The case was based on the conclusions of the "Independent Commission of Inquiry into International Responsibility for Phosphate Mining on Nauru" appointed by the Government of Nauru on 3 December 1986.[25] The Commission found that the interests of the British Phosphate Commissioners, as agents of the partner governments, had been of paramount importance and had taken precedence over the financial and political interests of the Nauruans. Drawing on this conclusion, Nauru argued that during the period of joint trusteeship, Australia had violated several of its international legal obligations, including the Mandate and Trusteeship Agreement for Nauru and the principle of self-determination pursuant to Article 76 of the UN Charter.[26] Nauru also contended that Australia had violated general principles of environmental law and principles of equity and fairness. Specifically mentioned was Australia's violation of the Nauruan right of permanent sovereignty over their natural wealth and resources. Along these lines Nauru claimed compensation based on two interrelated facts: firstly, Australia had mined out the most valuable economic resource of Nauru, phosphate, and secondly, Australia had failed to compensate the Nauruans both in the initial sale price and by failing to rehabilitate the depleted territory. Nauru accordingly sought a declaration from the Court that Australia was bound to make restitution or reparation for the damage and prejudice it suffered as a direct consequence of Australian administration.[27]

The ICJ ruled that it had jurisdiction to hear the case known as *Certain Phosphate Lands in Nauru,* on 26 June 1992. This acceptance in itself remains of acute significance given that the Court had never considered a case involving trusteeship

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[24] The case was raised against Australia since it had been the Administering Authority for a relatively lengthy period prior to independence despite the fact that Great Britain and New Zealand were joint members of the international Mandate and Trusteeship. Additionally, the submissions of New Zealand and Great Britain to the compulsory jurisdictions of the Court contained reservations that could have prevented the Court from exercising its jurisdiction. In his dissenting opinion, however, Judge Ago maintained that Nauru should have taken action against all three parties.

[25] See Weeramantry pg. 14/15 for full list of findings.

[26] U.N. Charter Chapter XI of the Charter. Articles 75-91 establish the trusteeship system. See: www.un.org/aboutun/charter/

[27] *Case Concerning Certain Phosphate Lands in Nauru (Nauru v Australia): Preliminary Objections* [1992] ICJ Reports 240 at para 14 (Hereinafter *Nauru v Australia).* Case details available on ICJ website: www.icj-cij.org/icjwww/icases/inaus/inausframe.htm

obligations in the merits phase.[28] Nauru had previously attempted to reach a satisfactory settlement with Australia through extensive bilateral negotiations. However, Australia remained intransigent rejecting any responsibility and preventing an agreement from ever being reached. Thus, with the help of the Commission's findings, Nauru was able to compile a convincing legal case.[29] Australia was subsequently compelled to lodge a counter-memorial arguing that the UN Trusteeship Council and General Assembly had exclusive jurisdiction, and not the ICJ.[30] Australia also claimed the following; Nauru had already agreed to another method of dispute resolution, Nauru had waived its claims to rehabilitation in 1967, Nauru had delayed formally raising the matter of rehabilitation and had thus exceeded any reasonable limitation period by pressing its claim so late after independence, and that the UN General Assembly had terminated the trusteeship without any reservations.[31] Finally, Australia argued that "Nauru had failed to act consistently or in good faith in relation to its rehabilitation"[32] and that Great Britain and New Zealand needed to be parties to the dispute.[33]

Lurking in the shadows of Australian objections however was the fact that the extent of environmental damage had been acknowledged by Australia as early as 1939. Indeed, the strongest factor weighing in the islanders' favour was the physical layout of Nauru itself which had been transformed into a forest of limestone pinnacles between five and fifteen metres in height. The disfiguration of the island could not be denied and the land was recognised as being useless for habitation, agriculture, or any other purpose unless and until rehabilitation was carried out.[34] In fact, in 1948 Australia submitted a revealing report to the Trusteeship Council explaining the implications of the vast environmental damage:

> The phosphate deposits will be exhausted in an estimated period of seventy years, at the end of which time all but the coastal strip of Nauru will be worthless.

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[28] Anghie notes for example that while trusteeship obligations were raised in the Northern Cameroon Case, the Court declined to exercise jurisdiction stating that the judgment would be devoid of purpose. *Northern Cameroon (Cameroon v. U.K.)* [1963]ICJ 15 (Dec.2) (Preliminary Objections, Judgment).
Several cases have been raised regarding a trustee's failure to fulfil its duties to move a non self-governing territory to *full independence*, but none concerning a fiduciary's duty to administer the territory in the best interests of the indigenous population. See for example, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa).*

[29] The Chairman of the Commission was Weeramantry who was said to be very influential prior to and during the legal proceedings. He was then a Sir Hayden Starke Professor of Law, Monash University, Melbourne, Australia (1972-1991): Judge of the ICJ, Vice-President: Member of the ICJ since 6 February 1991, Vice-President of the ICJ since 6 February 1997. For more details on Weeramantry, refer to: http://www.icj-cij.org/icjwww/ipresscom/1997/ipr9702.htm or www.wicper.org/Judge's%20CV.htm

[30] *Nauru v Australia* n 11 at para 9.

[31] *Ibid* at para 10.

[32] *Ibid* at para 37.

[33] *Ibid* at para 39.

[34] *Ibid* at para 12.

> The Australian Government is alive to the possibilities that the island may not then provide a satisfactory home for the indigenous population, and that it may be necessary to give the Natives and opportunity to transfer to some other island.[35]

It is clear that even several decades ago Australia was unwilling to bear the expenses of rehabilitation and rather preferred the option of Nauruan resettlement on Curtis Island or elsewhere. Many resettlement options were presented to the Nauruans after World War II, all of which were subsequently turned down. In 1962, the UN Trusteeship Council said the trustees, which had benefited from the low-price, high-quality phosphate, were strongly obligated to "provide the most generous assistance towards the cost of whatever settlement scheme is approved for the future home of the people of Nauru." At this point, Australia tacitly admitted responsibility for the environmental damage as illustrated by the following Trusteeship Council statement:

> It takes note with satisfaction of the declaration of the Administering Authority (Australia) that ample provision of means for developing a future home is and will not be a stumbling block towards a solution and that the Administering Authority will be mindful of its obligations to provide such assistance.[36]

Australia's indictment of its own stewardship did not work in its favour when it came to the ICJ case. With the overall conditions set against it, Australia quickly agreed to pursue external negotiations with Nauru. The involvement of the ICJ ostensibly served to redress the power imbalance in the dispute and forced Australia to take action to appease the Nauruans. On 10 August 1993, a settlement termed the "Compact of Settlement" was reached and Australia agreed to award $107 million[37] to Nauru over twenty years as compensation for environmental damage.[38] In addition, Nauru waived the right to make any further claim to issues arising from either the past administration of the island or phosphate mining itself. In effect, the settlement satisfied Nauru's main claim for compensation of the costs associated with rehabilitating the lands mined out prior to independence.[39] On 9 September 1993, Nauru and Australia filed a letter to the registry of the ICJ discontinuing proceedings.

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[35] U.N. GAOR Supp. (No. 4) at 74, U.N. Doc. A/933 (1948)
[36] Report of the Trusteeship Council, July 20, 1961-July 20, 1962. See Case of Nauru, Application (Nauru v. Australia) ICJ, at 14.
[37] Although this may seem like a substantial sum, in 1967 the accumulated revenue loss to the Nauruans during the trusteeship amounted to more than $300 million Australian dollars. Three hundred million dollars compounding at 5% for 26 years between 1967 and 1993 would have exceeded a billion dollars.
[38] Great Britain and New Zealand agreed with Australia to contribute to this amount.
[39] Antony Anghie, "The Heart of My Home: Colonialism, Environmental Damage, and the Nauru Case," *34 Harv. Int'l L. J. 445* (1993), pg. 26. (Hereinafter, Anghie)

While *Certain Phosphate Lands in Nauru* was mainly framed by the fiduciary obligations of colonial powers, it raises additional interrelated issues including: custodianship and exploitation of natural resources belonging to dependent peoples, principles of permanent sovereignty over natural resources (PSNR), just compensation for the extraction of mineral wealth, and other environmental considerations.[40] The following section will therefore look at the relevance of international environmental law in the Nauruan case, by firstly overviewing the doctrine of PSNR which was specifically highlighted in the islanders appeal. Secondly, the author will speculate on other environmental principles that may have been relevant in adjudicating the case in view of the fact that it was raised after the Stockholm conference.

Permanent Sovereignty over Natural Resources

Colonialism granted imperial powers the rights to arrogate and exploit the territory of a subject people as well as to appropriate unlimited property rights. Therefore, during so-called "decolonisation," post-colonial states acted quickly to regain control over their natural resources both through expropriation of foreign property interests and through the legal arena. They asserted that colonialism did not in any way nullify their rights over their natural resources and that those resources unequivocally belonged to the people of the territory. Against this backdrop, several General Assembly resolutions were adopted, perhaps the most significant being Resolution 1803, which explicitly states, "The right for peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and the well-being of the people concerned."[41] This principle was elaborated further in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Developed states aiming to protect their own interests countered the PSNR principle on several grounds including the doctrine of "acquired rights." They contended that "newly independent countries were legally bound to honour the concessionary rights to their natural resources that private enterprises had acquired prior to independence."[42] Furthermore, they maintained that nationalisation could only take place if developing states *compensated them* according to internationally determined standards. This line of

[40] Weeramantry, pg. 1.
[41] G.A. Resolution 1803, UN. See UN site for resolution text: //domino.un.org/UNISPAL.NSF/0/9d85892ac6d7287e8525636800596092?OpenDocument
[42] Anghie, pg. 13.

argument was outrightly rejected by developing states. The counter argument maintained that developing states were not bound by rules rejected upon independence and moreover, even if the doctrine of acquired rights was accepted as binding law, it applied only to rights that were "properly vested, bona fide acquired and duly evidenced."[43] Attention was also drawn to the immense profits made by the colonial powers prior to independence. All in all, it was clear that regardless of objections raised by imperial powers, the concept of PSNR was built into the mandatory framework and should have thus been upheld by all fiduciary powers, including Australia.

PSNR in the Nauruan Case

The natural resources of Nauru were the inviolable heritage of the Nauruan people and the doctrine of PSNR was particularly relevant to the Nauruan predicament in an array of ways.[44] In view of this, PSNR was highlighted in the Nauruan submission to the ICJ, the main question being "under what authority did the three partner governments act in appropriating the island's wealth?"[45] Australia had always justified its position by claiming that the British Phosphate Company had purchased its rights from the Jaluit-Gesselschaft. The argument followed that these rights were "acquired rights" supposedly protected by Article 80 of the United Nations Charter. This in turn served to protect the Nauru Island Agreement as a settlement reached outside the parameters of the mandate and trusteeship systems. In spite of this, the argument remains problematic since it was only the *right to mine* that the Jaluit-Gesselschaft possessed and thus the only right that could have been transferred to its successors. Consequently, the title to the phosphates, as opposed to the right to extract them, must have always resided with the Nauruans[46] and the royalties paid to the islanders should have at least been commensurate with the value of the phosphates.[47] Weeramantry furthers the argument by explaining that if the mining rights were derived from the German concession, so too were the corresponding obligations under German law that require that either the lands damaged by mining be rehabilitated or that appropriate compensation is awarded.[48]

While PSNR is clearly a significant legal principle in the context of the responsibility for rehabilitation,[49] the Nauruan claim under PSNR derives similar support

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[43] Ibid.
[44] For a full list of how the PSNR impinges on the problems facing Nauru, see Weeramantry, pg. 336.
[45] Anghie, pg. 14.
[46] Weeramantry, pg. 194.
[47] Anghie, pg 14.
[48] Weeramantry, pg. 189.
[49] Ibid, pg. 320.

from other sources. As framed in the ICCPR, the principle of PSNR is of particular significance to the Nauruans since it states, "in no case may a people be deprived of its own means of *subsistence*."[50] Ironically, in drafting this clause the British delegate was unable to conceive of a case where people were deprived of their means of subsistence, at which point the delegate from El Salvador reminded him of Nauru.[51] General Assembly resolution 2226 further expounds the Nauruan case by "recognizing that the phosphate deposits on the island of Nauru belong to the Nauruan people."[52] It is clear that the title to the phosphate deposits had always rested with the Nauruans who were excluded from control of the phosphate industry in breach of their right of permanent sovereignty over their natural resources. Perhaps an ICJ ruling on the Nauru case could have further elucidated the doctrine PSNR as a principle of deep significance to many post-colonial states especially those that have depended directly on their natural resources to satisfy their very basic needs. Indeed, a Court ruling on the Nauru case may have further substantiated several principles of importance to post-colonial peoples and to environmental law in general. While it may be impossible to infer precisely which other principles of international law would have been considered by the Court, general "environmental damage" is likely to have been relevant. A mere glance at a recent photo of Nauru leaves one with no doubt that environmental damage and several interconnected issues such as inter-generational equity would have been of foremost concern. This is especially true since *Certain Phosphate Lands in Nauru* was raised after the Stockholm Declaration of 1972 and thus is likely to have been examined against the framework of evolving environmental law.

The Significance of Stockholm

The Stockholm Declaration on the Human Environment passed in early June 1972 is significant as the first global conference on the environment and as the first forum to recognise a link between human rights and the environment in international law. The principles delineated in the Declaration can focus the lense through which we examine the Nauruan experience. Much of the Declaration is significant for Nauruan case and one of the most pertinent principles is Principle 1, which states:

> Man has the fundamental right to freedom, equality and adequate conditions of life, an environment of quality that permits a life of dignity and well-being, and he

[50] ICCPR, Art. 1 (2), (Writer's italics)
[51] As mentioned in Anghie, footnote 195.
[52] G.A. Res. 2226 (XXI)

> bears a solemn responsibility to protect and improve the environment for present and future generations.[53]

This principle is laden with progressive ideals relating to humans and their environment, the first one being that "man" has the right to "an environment of quality." Clearly, the damage suffered as a consequence of extensive phosphate mining has compromised the Nauruan environment in its entirety. Quality of life has been severely curtailed since irreparable damage has been done to the vast majority of the island and only a tiny portion of land remains somewhat inhabitable. Certainly any use of land which leaves it devastated and unfit for use is a violation of this basic environmental principle.[54]

Another concept that is clearly underlined in Principle 1 is "inter-generational equity." This essentially implies that each generation is a trustee of the environment for unborn generations, and it is stressed further in Principles 2 to 5. For example, Principle 2 states that "the natural resources of the earth including, air, water, land, flora and fauna" must be safeguarded "for the benefit of present and future generations."[55] The colonial powers safeguarded practically nothing of substance for all Nauruans whether of past, present or future generations. As for "flora and fauna," the Commission's report and other accounts clearly draw attention to the complete devastation of the islands natural ecosystems. A poignant side note to the Nauruan case is that in the *Nuclear Tests* case, Australia asserted the rights of unborn Australians to be born into an undamaged environment. On this point, Weeramantry asserts, "The rights of unborn Nauruans cannot be any different."[56]

Inter-generational equity is fundamentally based on "trust" as natural resources are treasures held in trust for present and unborn generations. Since the Nauruans framed their entire legal case on the doctrine of trust, the principle of inter-generational equity could have been drawn upon as an extension. Breaches of trust would have presented a convincing legal case, not only because it was a principle expounded upon in international law of the time, but also because it is deeply rooted in several sources of domestic law. For example, the celebrated case of *Cherokee Nation v. Georgia* heard in the United States Supreme Court stated that the Indians "are in a state of pupilage; their relation to the United States resembles that of a ward to his guardian." [57] Whether

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[53] The Stockholm Declaration on the Human Environment, 1972. (Hereinafter, Stockholm). Available online: http://www.unep.org/Documents/?DocumentID=97&ArticleID=1503
[54] Weeramantry, pg. 338.
[55] Stockholm, Principle 2.
[56] Weeramantry, pg. 339.
[57] Cherokee Nation v. Georgia 30 U.S. (5 Pet.) 1 (1831) at 17. See case text online: //supct.law.cornell.edu/supct/html/historics/USSC_CR_0030_0001_ZS.html

advantageous for the Native Americans or not, the concept of trust continues to play a central role in regulating the relationship between the tribes and the United States and Canadian governments. Indeed "trust" whether viewed in terms of basic fiduciary duties or in narrower terms of inter-generational equity, would most likely to have been a reigning doctrine in *Certain Phosphate Lands in Nauru.*

Of related significance is Principle 21 of the Stockholm Declaration which is concerned with environmental damage caused by one state to another. Similar to notions of "trust," questions of environmental damage inflicted by one state onto another relate back to the UN Charter and general principles of international law.[58] As the principle refers to two states, it may seem irrelevant in the case of Nauru. However, even though Nauru may not have been a state at the time, it was legally intended to be guided towards statehood. Hence the Nauruans should have been entitled to a future sovereign state free from environmental damage. International law and the UN Charter are both aligned against a state inflicting environmental damage on another state, and as Weeramantry clarifies, this principle "would thus apply *a fortiori* to a State under the tutelage of another."[59] While "environmental damage" in general raises many complex questions connected to causation, harm, and status of lawful activities, these issues pose no difficulty in the Nauru case and it is likely that such a principle would have been considered by the ICJ given its prominence in international law.

This line of reasoning leads to Principle 22 of the Declaration that calls for the development of international law "regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within their jurisdiction."[60] This principle may have been designed primarily as a guide, but it is significant in light of Nauru's claim for compensation. Australia could have argued that the environmental damage inflicted on Nauru was not illegal because the mining activities that caused the damage were not illegal at the time. The question then arises as to whether Australia is liable for failing to remedy the damage. Grounding their findings on traditional legal notions of liability for wrongful damage and of state responsibility, the Commission concluded that "liability rests upon the partner governments to make good the environmental damage they caused to Nauru."[61] The Nauruan claim for compensation is

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[58] Text of Stockholm Principle 21: "States have in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction."
[59] Weeramantry, pg. 339.
[60] Stockholm, Principle 22.
[61] Weeramantry, pg. 340.

further substantiated by the ruling of the *Trail Smelter* arbitration. This case between the United States and Canada relied on the principle that a state is bound to prevent such use of its territory which is "unduly injurious" to the inhabitants of a neighbouring state. In view of the damage caused to the state of Washington by the activities of a corporation in Trail, British Columbia, the tribunal ruled that a state "owes at all times a duty to protect other States against injurious acts by individuals within their jurisdiction"[62] and thus awarded damages to the United States. While Canada was ordered to take preventative measures to prevent future injuries, *Trail Smelter* could be viewed as taking a rather narrow view of compensation. Principle 21 on the other hand, requires more from states than reparation for environmental damage since it recognises the duty of states to take preventative measures to protect the environment**.** All in all, the Nauruan claim for compensation is evidently supported by various sources of law and moreover it is likely that Australia took the matter out of court having predicted that damages would be awarded to Nauru.

The aforementioned principles from the Stockholm Declaration are just a few of the concepts that could have been drawn upon in ruling *Certain Phosphate Lands in Nauru.* However, a comprehensive ruling would definitely have taken into account other related principles of international law such as "unjust enrichment" or "abuse of rights." Additionally, certain bodies of customary law such as those pertaining to human rights would have been relevant since the environmental damage sustained by Nauru clearly affected the health and well-being of its citizens thus infringing upon their right to health or even their right to life. The Nauruan landscape in its present condition cannot be used either to sustain life or support life with dignity. Plus, the environmental damage significantly reduced the development options available to the Nauruans, in terms of land usage for example. On a wider scale, Nauru was largely compelled to embark on programmes whose choice was dictated by the predicament which had been thrust upon it by the act of outside interference.[63] This point is of great importance as it raises the question as to what extent Nauru's destiny was shaped by the environmental damage sustained by the island. Indeed, any analysis of Nauru would be incomplete without examining the Nauruan experience post-independence in terms both environmental and developmental terms. The following section will thus argue that an independent Nauru illustrates the very real tension between environmental sustainability and the market economy, while it also provides observers with several lessons that serve to substantiate

[62] *The Trail Smelter Case* (U.S. v. Can), 3 R.I.A.A.1911 (1941)
[63] Weeramantry, pg. 342.

certain principles raised at the United Nations Conference on Environment and Development in Rio.

Nauru Post-Independence

Nauru today is a dry skeletal landmass with a population suffering from some of the highest rates of obesity, heart disease, and diabetes in the world.[64] As compared with other Pacific islands, Nauru's ecosystems are devastated and several indigenous species are now extinct. Yet despite the extreme loss of biodiversity, phosphate mining has continued under the watchful eyes of the Nauruan government and some have said that it has even been embraced by the people.[65] Based on this observation, it could be argued that colonial powers permanently severed the relationship Nauruans had with their island. While perhaps correct, this assertion is discomforting considering the intimate bond that had historically existed between Nauruans and their land, a bond "which contrasted with the Western view of land as a commodity to be bought and sold like an article of commerce."[66] Ignorance is clearly not a factor since the destructive nature of phosphate mining had been known as early as 1939 when the life of Nauru's phosphate deposit was estimated accurately for the first time. It was put at sixty to seventy years, instead of 300 years as previously thought. In other words, it is predicted that the island's phosphate will be entirely depleted in a few years. It is also well known that it would take over 1,000 years for the "Topside" of the island to restore itself through natural processes.

As Nauru's development strategies illustrate, it was wealth and not the island's ecosystem that the newly independent Nauruan government espoused as its first priority. If short-term accumulation of wealth was the goal, Nauru succeeded and grew prosperous through continued phosphate mining. Luxury cars soon began to crowd the island and now Nauru has the highest accident rate in the Pacific, although there is just one 12-mile road around the islands perimeter. Indeed, in the 1970s, with a population of 10,500, Nauru boasted the world's second-highest per capita income, after the oil-rich United Arab Emirates. However, as Western media will be quick to point out, the money

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[64] This is largely due to Nauruan dependence on imported canned food and drink, as opposed to the fresh fish and fruit that was available in the past. Western media coverage of Nauru tends to focus obsessively on the islands obesity epidemic. For example, a recent article on obesity states, "Just for record, the fattest people in the world aren't the Americans but our Commonwealth cousins in the Pacific – *the hearty trenchermen of Nauru lolling atop their island of guano deposits."* (Author's italics)
See, Mark Steyn, "A Broadside in the War on Blubber," *The Daily Telegraph,* 1 June 2004.
[65] Paradise, pg. 7.
[66] Weeramantry, pg. 29.

was quickly wasted on extravagant projects and failed investments, leaving the island today in financial dire straits.[67] Desperate for revenue, Nauru has been forced to sell its satellite rights, passports, banking licenses, as well as its fishing rights to countries such as China, South Korea, and Taiwan. A widely publicised agreement was also settled which has allowed Australia to dump its asylum seekers on Nauru as needed.[68] The controversial asylum deal brought the island £10 million in aid and it is now speculated that Nauruans could be given Australian citizenship as a reward. Alternatively, as the refugee camps expand, there are proposals to move the islands entire population to another unoccupied Pacific island.[69] To make matters worse, the island is plagued by political instability and there is little hope in the new government elected late last year, particularly since the country has shuffled through five presidents since early 2003. All in all, the political and socio-economic future of Nauru with a current population of 12,809 inhabitants does not look bright.

While the dismal economic statistics speak for themselves, most Western media coverage of Nauru has been historically insensitive by ignoring the lingering influence of decades of exploitative colonialist practices. While unique from certain angles, the Nauruan experience resembles that of many post-colonial states in the sense that the newly-independent Nauru continued to embrace colonial strategies directed primarily towards the extraction of resources. Not only did colonialism shatter the symbiotic relationship between the Nauruans and their island, but it also weakened their inherent sense of trusteeship which had previously aided in preserving the islands resources for future generations. Nauruan development policies, or lack thereof, are a relic of their colonial past. They are exclusively utilitarian in nature and have promulgated the conversion of the remaining parts of the island into commodities.

While many would argue that Nauruans brought upon themselves the destruction of their island and culture, in retrospect it is clear that the Nauruans had little power to resist as the world market economy devoured their island. Following his recent trip to the

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[67] Investments included: urban land in Australia, a huge hotel in Guam, a commercial/residential block in Hawaii, fertiliser plants in India and the Philippines, an airline, and a West End London play about Leonardo Da Vinci's love life which closed down after 4 weeks. In the 1990s, Nauru also became a major money-laundering centre for Russian criminal organisations and at one point had 400 offshore banks, all registered to one government mailbox. For more on Nauru's involvement in money-laundering. See, Jack Hitt, "The Billion Dollar Shack" The New York Times Magazine. 10 December 2000.

[68] Over 300 people are currently incarcerated in Nauru's two detention camps and all unauthorised visits are banned. All information that leaks out of the prisons tells of very poor conditions and rampant mental health conditions. Recent reports indicate that Australia has promised Nauru an extra $22.5 million (Australian) in aid in exchange for maintaining the camps until June 2005.

[69] The irony of this proposal is that, as mentioned earlier, Nauruans historically refused to leave their island for fear of losing a separate social identity. This fear was clearly stated in the Report of the Trusteeship Council.

island McDaniel concluded, “Nauru is an indicator of the long-term results of current trends, and its story is an environmental parable of Earth’s future.”[70] In other words, Nauru represents the abyss of environmental destruction that awaits our world as a result of our fundamentally flawed and unsustainable approach to resources. Indeed, today’s market-governed approach has set a zero price on preserving biodiversity leading us towards the Earth’s sixth mass extinction in the past 600 years.[71]

This is not to say that it was solely the discovery of phosphate that transformed Nauru and its inhabitants. A certain degree of Westernisation would surely have overtaken Nauru even if there had been no phosphate industry. Yet as Weeramantry notes, “the scale of the phosphate industry was overwhelming when compared to the traditional subsistence economy of Nauru.”[72] Together these factors deeply influenced every part of Nauruan life leading to a pattern of dependence on the phosphate economy and the lifestyle associated with it. Self-reliance became a relic of a distant past and at the point when the Nauruans achieved independence they were already entirely dependent on the market. They thus faced the difficult choice of either mining the rest of the phosphate or creating an enduring pattern of habitation. Predictably, Nauru continued on the path of self-destruction. While the tiny destroyed island could be relegated to a footnote in the history of resource exploitation, the Nauruan experience, pre and post-independence is of great significance for the world today. Australia’s behaviour as a trusteeship power represents the attitude still embraced by dominant powers today; Australia behaved as though the indigenous Nauruan culture was expendable for the sake of progress[73] and it acted on the belief that the natural environment existed for the sole purpose of money-making. Nauru’s choices upon becoming independent did not fare any better. By continuing to mine, Nauru arguably illustrates that humans today naturally discount the future and this encourages current generations to destroy irreplaceable biological resources. A decade ago, former

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[70] Paradise, pg. 149

[71] Alex Kirby, “Planet Under Pressure,” *BBC News Online*, 17 February 2005. Available online: //news.bbc.co.uk/1/hi/in_depth/sci_tech/2004/planet/default.stm

[72] Weeramantry, pg. 29.

[73] Some progress has been made on the issue of indigenous peoples in international law. For example, the 1987 Brundtland Report stated, “Indigenous peoples’ very survival has depended upon their ecological awareness and adaptation..These communities are the repositories of vast accumulation of traditional knowledge and experience that link humanity with its ancient origins. Their disappearance is a loss for the larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems. It is a terrible irony that as formal development reaches more deeply into rain forests, deserts, and other isolated environments, it tends to destroy the only cultures that have proved able to thrive in these environments.” The World Commission on Environment and Development, *Our Common Future*, Cambridge: Oxford University Press, 1987, pg. 114-115.
Report can also be downloaded as a scanned UN General Assembly Document, see: www.are.admin.ch/are/en/nachhaltig/international_uno/unterseite02330

Nauruan finance minister said, "Nauru was once a tropical paradise, a rainforest hung with fruits and flower, vines and orchids. Now, thanks to human avarice and short-sightedness, our island is mostly a wasteland."[74] The overall issue at hand is that market concerns today dominate environmental concerns and it is impossible to assign a price to an environmental good. Rather, the market has set a negligible price on preserving most biodiversity and this is one of the main reasons civilisation today is in jeopardy. The inability of the current global economy to provide for humanity's well-being reinforces the importance of international environmental law and the concept of sustainable development in particular. The United Nations Conference on Environment and Development (UNCED) that met in Rio in 1992 was a milestone in the development of environmental law. The Rio Declaration and Agenda 21, which both came out of the conference, underline several principles which if applied today could help prevent the type of environmental catastrophe witnessed in Nauru.

Rio and Sustainable Development

The Nauruan experience clearly demonstrates the importance of pursuing developmental strategies that are sustainable. Such strategies secured near universal endorsement at UNCED and have therefore shaped much of the Rio Declaration[75] as well as the Conventions on Biological Diversity and Climate Change. Agenda 21, the non-binding programme of action adopted by the Rio Conference, also highlights in its preamble the need for a "global partnership for sustainable development."[76] Indeed, not only is the concept promoted in much of Agenda 21, but the degree to which states implement methods of sustainable development is monitored by the Commission on Sustainable Development. As such, the umbrella concept of sustainable development has ostensibly influenced the policy of several international institutions and has also been adopted as policy by numerous governments at the national and regional level.

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[74] Marks, *The Independent*, 19 April 2004.

[75] There are many different principles within the framework of sustainable development including; inter-generational rights, the trusteeship principle, the principle of collective duties, the emphasis on duties rather than rights, the precautionary principle, the concept of the interrelationship of rights and obligations, rights and duties *erga omnes*, etcetera.
In the Rio Declaration, Principle 3 and 4 clearly substantiate the principle of sustainable development: Principle 3 states, "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." Principle 4 states, "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." (Hereinafter, Rio). See full text of *Rio Declaration* online: www.unep.org/Documents/?DocumentID=78&ArticleID=1163

[76] Principle 1.6. See full text of *Agenda 21* online: www.unep.org/Documents/?DocumentID=52

Sustainable development has also impacted the evolution of existing international law as illustrated in the *Case Concerning the Gabcikovo-Nagymaros Dam.* In this case adjudicated in 1997, the ICJ referred for the first time to the "need to reconcile economic development with protection of the environment which is aptly expressed in the concept of sustainable development."[77] All in all, considering that "planet earth stands on the cusp of disaster"[78] it is promising that development strategies and international law are being impacted, albeit in a limited way,[79] by such an environmental paradigm.

Several other principles highlighted in the Rio Declaration relate to sustainable development and could likewise be helpful in avoiding the vast degradation experienced in Nauru. For example, the "precautionary approach," as expressed in Principle 15, delineates that states shall protect the environment and if a threat of "serious or irreversible damage" exists "lack of full scientific certainty" cannot justify the postponement of "cost-effective measures to prevent environmental degradation."[80] This principle or "approach" is an integral element of sustainable utilisation because it tackles the vital question of uncertainty in the prediction of environmental effects. Principle 17 attempts to offer practical means that states can use to measure the environmental effects of proposed activities, through "environmental impact assessment." What essentially occurred in the Nauruan legal case was the fulfilment of the "polluter pays principle," which is declared in Principle 16.[81] In fact it was not until UNCED that such a principle secured international support as an environmental policy and its inclusion in the Rio Declaration suggests that it should now be placed under the umbrella of sustainable development. As with other elements of environmental law, uncertainties exist surrounding the legal character of the "polluter pays principle" as it is expressed in aspirational and not obligatory terms. While the principle remains significant in the sense that it promotes the "internalization of environmental costs," it cannot be treated as a rigid rule of universal application, nor are the means used to implement it going to be the

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[77] *Case Concerning the Gabcikovo-Nagymaros Dam, ICJ [1997].* 7 at para 140. See text of case: www.icj-cij.org/icjwww/idocket/ihs/ihsjudgement/ihs_ijudgment_970925_frame.htm

[78] Steve Connor, "The State of the World? It is on the Brink of Disaster," *The Independent,* 30 March 2005.

[79] Fundamental uncertainties remain concerning the precise nature of sustainable development, which relate directly to the question of whether sustainable development can be considered a fully-fledged legal principle. For example it is unclear whether it is a principle to be achieved primarily at the national level (which limits the need for international oversight) or at the international level whereby states should be held internationally accountable for achieving "sustainability." If sustainability is to be achieved at the international level, then clarification is needed on the parameters of sustainability and the criteria for measuring it.

[80] Principle 15, Rio Declaration.

[81] Principle 16 states, "National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment."

same in all cases."[82] Rather, a great deal of flexibility that takes into account the differences in the nature of risks will be required. The principle nonetheless remains an important one that demands further development.

With Nauru in mind it is important to look at how Rio construed the use of natural resources. It quickly becomes apparent that the Declaration steered clear of anything concrete on the issue of resources including only Principle 8 which speaks cautiously of the need to "reduce and eliminate unsustainable patterns of production and consumption."[83] However, the idea that sustainable development involves limits on the utilisation of land, water, and other natural resources, can be observed in the Biological Diversity, Climate Change, and Desertification Conventions. Plus, terms such as "sustainable utilisation" or "sustainable use" are recurrently mentioned in several of the agreements coming out of Rio or post-Rio. Whereas previous agreements refer to "conservation" of natural resources, "maximum" or "optimum; sustainable yield," or "optimum sustainable productivity." Indeed, underlying all newer agreements is a "concern for the more rational use and conservation of natural resources and a desire to strengthen existing conservation law."[84] Nevertheless, it is likely that the issue of natural resources was not expounded further in Rio since developing countries were positioned against any clause that would limit the use of their own resources. This argument can be traced back to the doctrine of permanent sovereignty over natural resources discussed earlier.

Indeed, by no means should the sustainability paradigm overshadow the needs of developing countries. This is acknowledged in Principle 3 of the Declaration which raises "the right to development" and reflects concerns of developing countries that environmental protection should not outweigh their need for economic development.[85] For instance, it could be argued that Nauruans had to continue mining for economic reasons regardless of the environmental impact. However, neither sustainability nor development should be regarded as zero-sum. The recent Millennium Assessment report which stated that unprecedented human pressure on the Earth's ecosystems threatens our future as a species also said:

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[82] Patricia Birnie and Alan Boyle (eds), *Basic Documents in International Environmental Law*, Oxford: Oxford University Press, 2002, pg. 95.
[83] Principle 8, Rio Declaration.
[84] Birnie and Boyle, pg. 88.
[85] This clearly raises the point that poverty needs to be tackled head on since it leaves many people with no choice but to exploit the environment

> It lies within the power of human societies to ease the strains we are putting on the nature services of the planet, *while continuing to use them to bring better living standards to all*.[86]

This is somewhat recognised in Principle 3 as it qualifies this "right to development" by stating that "development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."[87] If the Nauruans had considered this principle of inter-generational equity perhaps a different post-independence path would have been chosen.

Reflections

Integrated approaches need to be created that focus on the developmental needs of people such as the Nauruans, but that do not lose sight of environmental sustainability. Perhaps the Nauruans could have prospered in harmony with their island since they were given some compensation unlike most other developing states that also faced decades of resource exploitation but failed to receive any sort of compensation. This raises the question of why other post-colonial states have not addressed their grievances in the legal arena against their previous colonial powers. While several impediments may exist, such behaviour or lack thereof can be attributed to entrenched power structures that currently guide worldwide dynamics. In other words, while post-colonial states may possess the outward trappings of international sovereignty, in reality their sovereignty is subordinate to that of the powers that granted them "independence." The economic systems and thus political policies of most all developing states are still directed from the outside, or from the core. In addition, it is unclear whether international environmental law and international law in general provides adequate tools for developing states. One must consider whether international law in its current form, as a system founded by Western "civilised states" and crafted to justify colonial exploitation, can ever meet the needs of the periphery.

Nauru may have satisfied its claims for compensation, but since the island's domestic choices remain controlled from the outside it cannot be considered an exception to the rule of subordinate sovereignty. This is firstly due to the fact that environmental damage cannot be accurately quantified in monetary terms. Compensation can never substitute for or replace prevention. Plus the damage sustained has limited Nauruan self-determination in social, economic, and political as well as environmental terms. The fact of the matter is that young Nauruans are being

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[86] Connor, *The Independent*, 30 March 2005 (writer's italics).
[87] Principle 3, Rio Declaration**.**

born on a desiccated island that can offer them nothing and in a shocking display of history repeating itself, Australia is said to be trying to close a deal that will give them rights to dump their nuclear waste on the already decrepit island.[88]

While it is necessary to question the extent to which international law can be utilised effectively to achieve the aspirations of developing nations, the Nauruan experience demands that the importance and current relevance of international environmental law is recognised. It may not be a self-contained codified system of law, but it is in a state of dynamic development as briefly illustrated by Stockholm and Rio.

The planet had been dramatically "re-engineered" in the past fifty years due to pressure placed on the Earth's natural resources. This reality emphasises the need for a framework of international environmental law that can guide humans in establishing sustainable relations with their natural surroundings. Nothing is inevitable or predetermined. If human beings cease to think of themselves as the only entities possessing rights on this planet and understand that the law of the future must be a law of active cooperation, perhaps we can edge away from environmental collapse. In the meantime, several other nations are sure to face the Nauruan tragedy. Nauru could provide an invaluable lesson. In the words of former Nauruan president,

> What was once a tropical paradise, was changed to a jagged, uninhabitable desert of coral tombstones. Our sad history serves as a poignant example for the rest of the world of what can happen when humans disregard the good earth that sustains us.[89]

[88] "Australia Plans to Build Nauru Nuclear Dump," *Pacific News*, 25 January 2005.
[89] As quoted in, P.A. Van Atta, "Paradise Squandered," *Reader's Digest*, May 1997, pg. 88.

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