



Treaty Series No. 47 (1994)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Australia

regarding the Agreement between Australia
and the Republic of Nauru for the Settlement
of the Case in the International Court of Justice
concerning Certain Phosphate Lands in Nauru
signed at Nauru on 18 August 1993
(the Settlement Agreement)

Canberra, 24 March 1994

[The Agreement entered into force on 24 March 1994]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
September 1994*

LONDON : HMSO

£1.10 net

**EXCHANGE OF NOTES
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF AUSTRALIA REGARDING THE
AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF NAURU
FOR THE SETTLEMENT OF THE CASE IN THE INTERNATIONAL
COURT OF JUSTICE CONCERNING CERTAIN PHOSPHATE LANDS
IN NAURU SIGNED AT NAURU ON 18 AUGUST 1993
(THE SETTLEMENT AGREEMENT)**

No. 1

*The United Kingdom High Commissioner at Canberra
to the Minister for Foreign Affairs of the Commonwealth of Australia*

*British High Commission
Canberra
24 March 1994*

Your Excellency,

I have the honour to refer to the discussions between the Government of the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") and the Government of Australia regarding the Agreement between Australia and the Republic of Nauru for the Settlement of the Case in the International Court of Justice Concerning Certain Phosphate Lands in Nauru signed at Nauru on 10 August 1993 ("the Settlement Agreement") and in particular Article 3 of that Agreement, which enures in favour of the United Kingdom and which constitutes a release for the United Kingdom from all claims which Nauru might make against it in relation to the administration of Nauru and the other matters referred to in that Article. I further have the honour to make the following proposals:

1. The Government of the United Kingdom shall in reliance on Article 3 of the Settlement Agreement and on an *ex gratia* basis pay to the Government of Australia the sum of £5,740,000 (five million, seven hundred and forty thousand pounds sterling) in full and final settlement of any claims whatsoever that the Government of Australia may have, now or in the future, against the Government of the United Kingdom, its servants or agents:

- (a) arising out of or concerning the administration of Nauru during the period of the League of Nations Mandate or the United Nations Trusteeship, or the termination of that administration;
- (b) arising out of or concerning the phosphate mining at Nauru, including any matter concerning the British Phosphate Commissioners, their assets or liabilities, or concerning the winding up of the affairs of Commissioners and the distribution of their assets and liabilities; or
- (c) arising out of or concerning the Settlement Agreement.

2. The Government of Australia shall make no claim whatsoever under Article 3.3 or 3.4 of the Agreement between the Government of the United Kingdom, the Government of Australia and the Government of New Zealand to Terminate the Nauru Island Agreement 1919 signed at Canberra on 9 February 1987¹ against the Government of the United Kingdom arising out of or concerning the matters referred to in paragraph 1, subparagraphs (a), (b) and (c) of this letter.

¹ Treaty Series No. 4 (1988) Cm 285.

3. The payment referred to in paragraph 1 is made without prejudice to the position of the Government of the United Kingdom that it has at no time had any liability, either to the Government of Nauru or to the Government of Australia, in respect of the matters referred to in paragraph 1, subparagraphs (a), (b) and (c) of this letter and that it is under no obligation to contribute to the sums paid or payable by the Government of Australia under the Settlement Agreement.

4. The Government of Australia shall indemnify the Government of the United Kingdom against any loss, costs, damages or expenses which the Government of the United Kingdom may incur or be called upon to pay as a result of any claim by the Government of Nauru against the Government of the United Kingdom in respect of the matters referred to in paragraph 1, subparagraphs (a), (b) and (c) of this letter, provided that no obligation shall arise under this paragraph in excess of the sum referred to in paragraph 1 of this letter.

If the above proposals are acceptable to the Government of Australia, I have the honour to suggest that this letter and your reply to that effect shall constitute an Agreement between the two Governments which shall enter into force on the date of your reply

I have the honour to convey to Your Excellency the assurance of my highest consideration.

BRIAN BARDER

No. 2

*The Minister for Foreign Affairs of the Commonwealth of Australia
to the United Kingdom High Commissioner at Canberra*

*Canberra
24 March 1994*

Dear Sir Brian

I have the honour to refer to your letter of 24 March 1994, which reads as follows:

[As in No. 1]

On behalf of the Government of Australia, I confirm that the foregoing is acceptable to the Government of Australia and that your letter and this reply shall together constitute an Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland, which shall enter into force on today's date.

GARETH EVANS