

THE COUNSELOR
DEPARTMENT OF STATE
WASHINGTON

INTERAGENCY GROUP ON MICRONESIA

January 16, 1981

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MEMORANDUM FOR: Dr. Zbigniew Brzezinski
The White House

FROM: Rozanne L. Ridgway, Chairman *RR*

SUBJECT: Micronesian Nuclear Claims

In response to the President's request, this paper incorporates the views of the agencies concerned with regard to claims arising from the United States nuclear weapons testing program in the Northern Marshall Islands. The agencies concerned agree that negotiations on this issue should not proceed until the new Administration has an opportunity to review this issue. This paper presents the concerned agencies' consensus of the steps that would be required to negotiate this issue with the Marshall Islands.

In Section 177 of the Compact of Free Association, initialed by Ambassador Peter R. Rosenblatt and Marshall Islands Foreign Secretary Anton deBrum on October 31, 1980 in Washington, D.C., the United States Government (USG) accepts the responsibility for compensation for loss or damage to property and person owing to citizens of the Marshall Islands, the Federated States of Micronesia (FSM), or Palau as a result of the USG nuclear testing program in the Northern Marshall Islands between 1946 and 1958. In addition, the USG and the Marshall Islands agree to negotiate a separate (subsidiary) agreement, subordinate to the Compact, settling claims arising from the nuclear testing program. See Appendix A.

The agencies concerned agree that all known and knowable claims should be extinguished in this separate agreement. This agreement should be negotiated on a government-to-government basis with the Marshall Islands Government (MIG) acting for its affected citizens. The MIG shall undertake to permit representatives of the affected persons to participate in the negotiations. This is particularly important because Congress in the past has shown special sympathy for the nuclear claimants through the passage of

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legislation beneficial to them. If the claimants are dissatisfied with the extent of their representation in these negotiations, it can be assumed that their representatives will again receive favorable consideration by the Congress.

The subordinate agreement should establish a method for ongoing consultations between the United States and the Marshall Islands and procedures, to the extent these are not then already mandated by law, pursuant to which future claims of Marshall Islands citizens arising from presently unknown effects of exposure to radiation will be presented to the USG. A nuclear claims delegation (NCD) chaired by the Office of Micronesian Status Negotiations (OMSN) and composed of one additional member each from the Departments of State, Defense, Interior, Energy and Justice would be established to negotiate this agreement with the Marshall Islands. The NCD will be disestablished after the formal ratification of this agreement.

The agreement should supplement then existing laws to provide compensation for: 1) radiation damage to land; 2) personal injury compensation and direct medical surveillance and treatment for persons who have contracted or shall in the future contract radiation-related illnesses resulting from the nuclear weapons testing program and direct radiological monitoring of people and land for an agreed time, as set forth in PL 95-134 and PL 96-205; and 3) appropriate settlement of displaced Marshallese. Additionally, the agreement should provide for 4) controls over access to affected areas.

1. Land Claims. The United States should be prepared to pay a value up to the outright purchase price for radiation-damaged land. Ten million dollars would appear to be a reasonable negotiating ceiling for land claims settlement based on a total of 2,500 acres subject to damage claim at approximately \$4,000 per acre (current estimated fee value of land per acre in the subject area). Due to the fact that no claims have yet been advanced, the above figures are subject to modification, especially in light of the political context of the settlement. For example, the Marshallese have shown in prior base rights negotiations with the Department of Defense that they do not favor traditional commercially recognized methods of land valuation. It should be noted that none of the payments previously made to Marshallese affected by the nuclear testing program are considered by the agencies to have constituted compensation for land damage claims. See Appendix B. Funding for settlement of land claims would be provided through the Department of Defense.

2. Compensation for Personal Injury, Costs of Medical Surveillance and Treatment, and Radiological Monitoring.

A. Personal Injury Compensation

The United States and the Marshall Islands should negotiate procedures for continuing the provisions of P.L. 95-134 of October 15, 1977, which provides for compassionate and medical compensation for some of the people affected by the March 1, 1954 nuclear test on Bikini Atoll, into the period after Trusteeship termination. See Appendix C. It may be expected that the Marshall Islands will submit additional claims for personal injury compensation for persons on atolls not presently covered by this law. It is not recommended that the USG negotiating team be authorized to extend the scope or dollar limits of personal injury compensation beyond the continuation of P.L. 95-134.

B. Medical Surveillance and Treatment and Radiological Monitoring.

Sec. 102 of P.L. 96-205 of March 12, 1980 directs the Secretary of Interior, after consultations with the affected peoples, the MIG, and appropriate USG agencies, to submit to Congress before January 1, 1981 a plan that will provide the affected people with:

- 1) an integrated, comprehensive health care program including primary, secondary, and tertiary care with special emphasis upon the biological effects of ionizing radiation;
- 2) a schedule for the periodic comprehensive survey and analysis of the radiological status of the atolls to and at appropriate intervals, but not less frequently than once every five years, the development of an updated radiation dose assessment, together with an estimate of the risks associated with the predicted human exposure for each such atoll; and
- 3) an education and information program to enable the people of such atolls to more fully understand nuclear radiation and its effects. See Appendix D.

The periodic radiological survey program should be conducted until such time as the USG decides, after consultation with the MIG and the affected peoples, that it is no longer necessary.

The Department of the Interior is preparing the Congressional report required by P.L. 96-205, with assistance

from other interested Federal agencies. It is expected that this will be a preliminary report, and that it will signal the possibility that the new Administration may seek legislation clarifying the coverage of the statute. A major issue not yet officially resolved is the question of the scope of coverage of the statute.

This report to the Congress, together with proposed legislation that will require OMB approval (and through that process, the views of all interested Federal agencies will be taken into account), should become the U.S. negotiating position for the provision of health care, radiological survey, and radiation programs to the affected people. Preliminary estimates by the Department of Energy and the contractor place the cost of these programs at from \$12 to 27 million annually over the first five years, compared to the current \$3 to 4 million annual cost of the existing medical surveillance and monitoring programs.

3. Settlement of Displaced Marshallese

A. Bikini Settlement and Subsistence Program

The USG should be prepared to pay for the establishment of a suitable new home community or communities for displaced Bikinians until such time as Bikini Island may be ready for rehabilitation, estimated to be at least 60 years from now. The USG should also be prepared to continue to fund a subsistence program for an agreed estimated period of years until the Bikinians attain self-sufficiency. The estimated cost of this program is \$500,000 per year (in FY80 dollars). The Department of the Interior has estimated the full cost of community resettlement, including development of infrastructure, at roughly \$18 million. P.L. 95-348 of 1978 authorized a total of \$15 million for Bikini resettlement and rehabilitation. However, only \$6 million of this total has been appropriated to date, and was used for contributions to the Bikini Trust Fund and temporary improvements on Kili Island, where the majority of Bikinians currently reside.

B. Enewetak Subsistence and Maintenance Program

An expanded subsistence and maintenance program costing \$700,000 per year (in FY82 dollars) will be required for the people of Enewetak, all of whom now have returned to the three southern islands of Enewetak Atoll, for an agreed estimated period of time until the Enewetakese attain self-sufficiency.

C. Enewetak Settlement

The Engebi people, who inhabited the northern section of Enewetak Atoll before their removal in 1947, have consistently expressed a firm desire to return to Engebi Island. Thus, they view their current residence on Ujelang Atoll and the southern islands of Enewetak Atoll as only temporary. The Secretary of the Interior had decided recently to permit resettlement of Engebi Island only in a number of years after radiation levels have fallen to a safer level, and to establish a trust fund of from \$6 to 10 million to pay for community resettlement. OMB has concluded that the Engebi trust fund shall not be established.

4. Access to Affected Areas. The MIG should assume responsibility for enforcement of limitations, which will be developed in cooperation with the USG, over access and utilization of affected areas. The USG and MIG will mutually determine the technical assistance to be provided by the USG in the exercise of such responsibility. The MIG should assume exclusive responsibility for any claims or damages resulting from the presence of persons in affected areas without USG concurrence.

Summary

The agencies concerned agree that the resolution of the nuclear claims issue with the Marshall Islands within the context of the Compact of Free Association would require the establishment of a nuclear claims delegation and authorization of the following specific maximum negotiating authorities:

1. Approval of a \$10 million ceiling for the settlement of land claims;
2. Continuation of the personal injury compensation program cited in P.L. 95-134, at an unspecified cost;
3. Implementation of the health care, radiological monitoring, and education programs to be developed by the Department of the Interior pursuant to Section 102 of P.L. 96-205, when approved by the USG;
4. Approval of necessary action to effect resettlement of displaced Bikinians at an estimated cost of \$18 million and continued funding of the Bikinian subsistence program at an estimated cost of \$500,000 per year; and

5. Approval of continued funding of the Enewetakese subsistence program at an estimated cost of \$700,000 per year.

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Attachments:

- Appendix A: Section 177 of the Compact of Free Association
- Appendix B: Statutory Compensation to the People of Micronesia Relating to Damages Incurred from Nuclear Testing
- Appendix C: Section 104 of Public Law 95-134
- Appendix D: Sections 102 and 106 of Public Law 96-205

Statutory Compensation to the People of Micronesia Relating to Damages Incurred from Nuclear Testing

1. Act of August 22, 1964, P.L. 88-854 (78 Stat. 598) provided \$950,000 as compassionate payment to the people of Rongelap for radiation exposures sustained by them as a result of the 1954 Bravo shot. This payment was for general suffering since in 1964 the late effects of thyroid abnormalities had not yet appeared.
2. In 1969 a \$1,020,000 ex gratia payment was made to the people of Enewetak to compensate them for hardship and suffering due to their removal from Enewetak Atoll in 1947. It should be noted that this was not a statutory act but was provided by transfer of funds from the Air Force to the Department of the Interior.^{1/}
3. Act of June 13, 1975, P.L. 94-34, provided for an ex gratia payment of \$3 million to the people of Bikini. The Act provided that this payment was to be placed in a Bikini Trust Fund.
4. P.L. 94-367, Department of Defense Military Construction Appropriation Act, 1977, appropriated \$20 million for cleanup of Enewetak Atoll.
5. P.L. 95-134, Territories of the United States Appropriations Authorization (91 Stat. 1159) authorized \$12,400,000 for rehabilitation and resettlement of Enewetak Atoll. This Act also authorized certain funds to be used by the islands communities of Rongelap, Utirik and Bikini Atolls as well as establishing a table of ex gratia payments for medical injuries to the people of Rongelap and Utirik. The Act also provides for medical care to the fallout victims of Rongelap and Utirik.
6. P.L. 95-348, United States Insular Areas Appropriation Authorization of 1978, under the Bikini Resettlement section authorized an additional \$3,000,000 to be held in trust pursuant to the trust agreement established by P.L. 94-34. This additional \$3,000,000 was appropriated in P.L. 95-467 and placed in the Bikini Trust Fund in 1978. P.L. 95-467 also appropriated \$3,000,000 for Bikini resettlement purposes and these funds have been used for the temporary rehabilitation of Kili following the return of some 145 Bikinians to Kili and Ejit in August 1978 from Bikini Island and for costs incurred in exploration of possible temporary resettlement areas.

^{1/} In 1956, \$175,000 was paid to the people of Enewetak in a "Use Agreement". Of this amount, \$150,000 was placed in a trust fund. At the same time, \$325,000 was given to the people of Bikini in a "Use Agreement" of which \$300,000 was placed in a trust fund. Funds for these "Use Agreements" did not come from specific statutory acts but from monies transferred to the High Commissioner of the Trust Territory by the Department of the Navy.

PUBLIC LAW 95-134

October 15, 1977

Sec. 104. (a) In addition to appropriations authorized to compensate inhabitants of Rongelap Atoll and Utirik Atoll in the Trust Territory of the Pacific Islands for radiation exposure sustained by them as a result of a thermonuclear detonation at Bikini Atoll in the Marshall Islands on March 1, 1954, pursuant to the Act of August 22, 1964 (78 Stat. 598), effective October 1, 1977, there are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this section and the Secretary of the Interior (hereafter in this section referred to as the "Secretary") is authorized and directed to make the payments as hereafter provided in this paragraph to individuals, or to their heirs or legatees, as the case may be, who were on March 1, 1954, residents on Rongelap Atoll or Utirik Atoll in the Marshall Islands:

(1) the Secretary shall pay \$25,000 to each such individual from whom the thyroid gland or a neurofibroma in the neck was surgically removed, or who has developed hypothyroidism, or who develops a radiation-related malignancy, such as leukemia.

(2) The Secretary shall pay \$1,000 to each individual who, on such date, was a resident on Utirik Atoll.

(3) Where circumstances warrant, as he shall determine, the Secretary shall pay an amount not in excess of \$25,000 as he determines to be an appropriate compassionate compensation to each individual who has suffered any physical injury or harm from a radiation-related cause, [even if such an individual has been compensated under paragraph (1) of this section.]*

(4) In addition to the payments provided in paragraphs (1), (2), and (3) of this subsection, the Secretary shall provide by appropriate means adequate medical care and treatment for any person who has a continuing need for the care and treatment of any radiation injury or illness directly related to the thermonuclear detonation referred to in paragraph (a) of this section. The costs of such medical care and treatment shall be assumed by the Administrator of the Energy Research and Development Administration.

*Amended by Section 103, P.L. 96-205 of March 12, 1980.

(5) Not later than December 31, 1980, the Secretary shall report to the appropriate committees of the United States Congress for their consideration what, if any, additional compassionate compensation may be justified for those individuals continuing to suffer from injuries or illnesses directly related to radiation resulting from the thermonuclear detonation referred to in paragraph (a) of this section.

In the case of the demise of any individual entitled to receive payment under this section who expires before receiving such payment, the Secretary shall pay the amount which that individual would have been entitled to receive under this section to the heirs or legatees of such individual, in accordance with an appropriate method of distribution per stirpes, and not per capita. Where the demise of any individual eligible for payment under paragraph (1) or (3) supra is directly related to the thermonuclear detonation referred to in paragraph (a) of this section, the Secretary may make an additional compassionate payment not to exceed \$100,000 to the heirs or legatees of such individual. In determining the amount of such payment the Secretary shall consider, but is not limited to, the following: any payments which the deceased has received or would have been eligible to receive under this section, and loss of support, services, or contributions to the heirs or legatees.

Sec. 104. (c) A payment made under the provisions of this section shall be in full settlement and discharge of all claims against the United States arising out of the thermonuclear detonation on March 1, 1954. -

Sec. 104. (d) The decisions of the Secretary in allowing or denying any claim for payment under this section shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States, or by any court by mandamus or otherwise.

Sec. 104. (e) The Secretary is authorized to make such rules and regulations as he determines necessary to carry out the provisions of this section.

PUBLIC LAW 96-205

March 12, 1980

Sec. 102. The Act entitled "An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes" (91 Stat. 1159; Public Law 95-134) is amended by inserting after Section 105, the following new section:

Sec. 106. (a) In addition to any other payments or benefits provided by law to compensate inhabitants of the atolls of Bikini, Enewetak, Rongelap, and Utirik, in the Marshall Islands, for radiation exposure or other losses sustained by them as a result of the United States nuclear weapons testing program at or near their atolls during the period 1946 to 1958, the Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') shall provide for the people of the atolls of Bikini, Enewetak, Rongelap, and Utirik and for the people of such other atolls as may be found to be or to have been exposed to radiation from the nuclear weapons testing program, a program of medical care and treatment and environmental research and monitoring for any injury, illness, or condition which may be the result directly or indirectly of such nuclear weapons testing program. The program shall be implemented according to a plan developed by the Secretary in consultation with the Secretaries of Defense, Energy, and Health, Education and Welfare and with the direct involvement of representatives from the people of each of the affected atolls and from the government of the Marshall Islands. The plan shall set forth, as appropriate to the situation, condition, and needs of the individual atoll peoples:

(1) an integrated, comprehensive health care program including primary, secondary, and tertiary care with special emphasis upon the biological effects of ionizing radiation;

(2) a schedule for the periodic comprehensive survey and analysis of the radiological status of the atolls to and at appropriate intervals, but not less frequently than once every five years, the development of an updated radiation dose assessment, together with an estimate of the risks associated with the predicted human exposure for each such atoll; and

(3) an education and information program to enable the people of such atolls to more fully understand nuclear radiation and its effects.