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MEMORANDUM FOR THE CHAIRMAN OF THE INTERAGENCY GROUP
ON MICRONESIAN STATUS NEGOTIATIONS

SUBJECT: Negotiating Position on Nuclear Claims

The purpose of this memorandum is to report on the work of the Task Force on Claims. With respect to nuclear claims, the Task Force makes the following recommendations:

(1) In General. The United States should make it clear that it regards itself as having a continuing responsibility, for the indefinite future, regarding nuclear damage in the Marshalls. At the same time, however, the United States should seek to negotiate settlement of presently knowable and definable nuclear claims, and in addition should seek to negotiate arrangements for the satisfactory handling of nuclear damage matters in the post-trusteeship Marshalls. Within this context, three categories of nuclear claims should be the subject of negotiation between the United States and the Marshallese at this time: (a) medical treatment claims; (b) personal injury claims arising from injuries ascertained or reasonably ascertainable prior to termination; and (c) property damage claims arising from damage ascertained or reasonably ascertainable prior to termination. With the knowable and definable claims settled, it would follow that after 1981 the only persons entitled

to consideration for compensation under heading (b), personal injury, would be persons whose radiation-related injuries were unknown at the time of trusteeship termination or whose radiation-related injuries were aggravated in an unforeseen manner thereafter. The only claims entitled to consideration for post-trusteeship compensation under heading (c), property damage, would be for damage unknown at the time of trusteeship termination. It continues to be to our advantage that the subject of nuclear claims enter the negotiating arena as a Marshallese rather than a United States initiative.

(2) Form of eventual agreement. The Compact of Free Association should contain a brief provision releasing the USG of claims in the (b) and (c) categories above--and perhaps non-nuclear claims as well--subject to negotiation of a separate and subsidiary agreement with respect to claims issues. Such a separate agreement should be negotiated as soon as possible. However, it could be executed, if necessary, after the Compact has been initialled so long as such execution takes place before or simultaneous with the execution of the Compact.

(3) Medical treatment. The programs of treatment and inspection established in P.L. 95-134 for Rongelap and Utirik should be extended to all radiation-affected

Marshallese. Such treatment and inspection, including transportation as required to U.S. medical facilities, should remain available to all affected persons, cost-free, without time limitation. Similar benefits would apply to persons whose need therefor can be traced to U.S. nuclear activities but whose needs were not known prior to termination of the trusteeship.

(4) Restricting Marshallese access to contaminated areas and providing for continuing United States measurement of land contamination. The agreement should include the following features:

(a) In keeping with its full responsibility for internal affairs, the future Marshallese Government would assume full responsibility for enforcing land-use restrictions which emerged from the United States surveys. The United States would provide necessary technical assistance and cooperation, but would be held harmless from claims for damages resulting from violations.

(b) Provision should be made for periodic right of access to Marshallese land and persons by USG for the purpose of conducting studies to determine levels of radiation or states of health.

(c) Provision should be made for periodic United States-Marshallese consultations. These would look toward eventual termination of direct United States responsibility in this area, with the termination procedure likely to be started at such time as the U.S. and the Marshallese agreed that valid survey data demonstrated that normal use of an area would not result in the people receiving "unacceptable radiation doses."

(5) Personal injury and property damage claims. The subsidiary agreement should contain provisions which are in accordance with these guidelines:

(a) In the first instance we would contemplate negotiating claims settlements with the duly authorized representatives of the affected people. We anticipate a need also to negotiate an endorsement of such settlements by the emerging government (MIPSC), as well as support or related arrangements.

(b) Levels of compensation for personal injury established in P.L. 95-134 for Rongelap and Utirik should be extended to any other Marshallese who may prove similarly affected by radiation, understanding that at present there are no such cases. The United States would acknowledge a continuing obligation to

provide appropriate compensation for such new forms of personal injury from radiation as might develop.

(c) With regard to property damage claims, we would think in terms of the United States providing an agreed sum of money for distribution in return for a full release from the affected individuals and from the emerging government.

(d) The amount of the sum of money to be offered in accordance with subparagraph (c) should be discussed by the Interagency Group, which should consider whether to recommend to the NSC that Ambassador Rosenblatt's instructions be amended to authorize his offering such an amount. The Task Force recommends that the Interagency Group consider a figure of $10 million, for reasons set forth in the attachment to this memorandum.

(e) Computation of compensation amounts for specific property damage claims would be according to agreed criteria including the extent of damage and of restitution or compensation already provided by the U.S. For example, compensation might vary from the total quarantine of Runit down through damage resulting in only partial deprivation of utility for finite periods of time; such damage valuation

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might in whole or part be offset by U.S. efforts at restoration, such as the Eniwetok rehabilitation.

(f) We would negotiate with regard to damage done to specific islands or areas only as hard data became available on such islands or areas. To take two examples, we would at present be in a position to negotiate with regard to demolished islands; but, on the other hand, until the current radiological survey is completed in approximately spring 1979 we would not expect to be in a position to negotiate concerning any settlement which may be indicated regarding the atolls other than Bikini, Eniwetok, Rongelap and Utirik. Any settlement for damage less than permanent and total would precisely define the extent of damage and the period of time which were being compensated for.

(g) Should it become a problem in property damage settlement, we would seek means of avoiding the undue enrichment of a few iroijes or other Marshallese individuals. We would seek means of paying agreed shares of property damage settlements directly to individuals rather than through an iroij-dominated group of landholder representatives or through the Marshallese Government. A solution

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similar to that proposed for Kwajalein land leases (a relatively small amount for the leases themselves, a relatively large amount for a fund to benefit the affected people as a group) might also be considered with regard to property damage settlement.

(6) We recommend that the Interagency Group send Dr. Brzezinski a response along the lines set forth in the attached draft. (To be drafted once we know whether it will be a consensus or an options statement.)

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