

cc: *Adm. Forster*
File F 33
April 6, 1956

Morse Salisbury, Director
Division of Information Services

John A. Hall, Director
Division of International Affairs

BACKGROUND MATERIAL ON AEC AUTHORITY TO USE ENIWETOK PROVING GROUND

SYMBOL: IA:JKR

In accordance with the discussion held in your office on April 3 requesting that the Division of International Affairs supply background material on AEC authority to use the Eniwetok Proving Ground, the following information is supplied:

1. With respect to the nonpayment of the Bikini natives, Mr. Mulcahy, of the Department of State Office of Dependant Area Affairs, indicates that we are very vulnerable to criticism in this matter. A memorandum giving full details on the matter has been received and a copy is attached. It will be noted that the memorandum is classified and cannot be used directly.

The situation is about as follows: Since the area in question is part of the Pacific Proving Ground which was deeded over to the Department of the Navy by the Department of the Interior, claims are being handled by the Navy. There has been considerable discussion over the rate at which the individuals were to be reimbursed for their lands. The figure offered by the Navy is considered to be far too small by the Department of the Interior, and this matter has been discussed over the years. Moreover, the claims for the Bikini and Eniwetok natives were included in other claims, and this further complicated the settlement in question. The Navy at the present time has been granted funds in the amount of almost \$800,000 to cover these lump claims. However, because of the Navy budget system which requires a pre-audited account, payment has not as yet been made to the Department of the Interior for application to the Trust Territory. It is suggested that, if further details regarding this problem are needed, Mr. Friedlander, Department of the Navy Bureau of Yards and Docks, Code 131, Ext. 56455, be contacted. It will be noted that this is a matter in which the AEC is not directly involved since this is a matter between the Department of the Navy and the Department of the Interior, and perhaps could best be handled by the Navy.

2. In connection with our authority to conduct tests in the Marshallese, attached hereto is a copy of a letter prepared by

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Box 5632
Folder Weapons-AEC-DOD Tests of Weapons I

Weapons AEC Test Facts

CLASSIFICATION CANCELLED
BY AUTHORITY OF DOE/OC

REVIEWER BY *J. Ding* 12/11/90
AK Schmidt 12/11/90

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This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

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Mr. Marcel Flaine of the Office of the General Counsel, to Professor Myron McDougal of Yale University, dated January 5, 1955. This letter indicates that the Marshallese are a Class C category mandate and that the U. S. intends to treat the Trust Territories as an integral part of the United States, so that the laws of eminent domain apply.

A much more elaborate and legalistic discussion of this subject is given in the Yale Law Journal, Vol. 64, No. 5, April 1955. This matter was discussed with Mr. Parks of the Office of the General Counsel. A copy of this Journal is forwarded for your information. Also attached is a copy of the Trusteeship Agreement of April 2, 1947 which transferred the Japanese mandated islands to U. S. control. This paper clearly indicates the U. S. authority over this territory. When these two documents have served their purpose, it is requested that they be returned to DIA.

3. With respect to the authority for establishing the danger area, the following comments are pertinent: On January 23, 1956, Gerard Smith of the Department of State sent a memorandum to Mr. Hall in which he listed six questions. Of these questions, No. 5 stated "what authority does the United States have for closing large areas of the ocean for these tests". The memorandum stated that this question was being considered by the Department of State's legal adviser. Mr. Spiegel, of the Department of State, now indicates that no formal written opinion was made, but that lawyers were available to discuss this during the recent Trusteeship Meeting. Since the subject was not brought up, the Department of State has not prepared this statement. Their basis for a rebuttal on this subject, however, is predicated on the article by Mr. McDougal and Mr. Schlei in the Yale Law Journal referred to above.

A memorandum from Col. Armstrong, of the Division of Military Application, to Clark Vogel, dated February 1, 1956, points out that we do not close large areas of the ocean for these tests. The only closed areas to which all vessels and aircraft are prohibited from entrance without specific clearance are: the area of Eniwetok atoll, including the land areas of the atoll and the water areas of the lagoon within the three miles to the seaward side of the periphery of the land areas; and the area of Bikini atoll, including the land areas of the atoll, the water areas of the lagoon, and the adjacent ocean waters within three miles to the seaward side of the periphery of the land areas. The large area is a danger area in which all mariners and airmen are cautioned to remain clear because of the grave hazards which will exist in the area. A copy of this memorandum is attached for your information.

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4. The matter of the extent of danger areas interfering with the freedom of the seas is discussed in the article by Mr. McDougal

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and Mr. Schlei referred to above. Since basically this is a legal matter, detailed opinions could best be obtained from the Office of the General Counsel.

Also attached for your information is a copy of the statement presented by Mr. Gerig at the Trusteeship Council meeting in reply to the latest Marshallese petition regarding testing in the Trust Territories.

- Attachments: (1) cy memo Cramer to Files, 3/26/56
(2) Yale Law Journal, April 1955
(3) cy Trusteeship Agreement, 4/2/47
(4) cy memo Armstrong to Vogel, 2/1/56
(5) cy ltr Flaive to McDougal, 1/5/55
(6) cy statement of Gerig at TC mtg

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