

STATEMENT OF JONATHAN M. WEISGALL
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Before the United Nations Trusteeship Council

May 20, 1981

Mr. President and Distinguished Members of the Trusteeship Council:

The people of Bikini appreciate your granting their petition to address you today. As legal counsel for the people of Bikini, I have been asked to speak as their representative. With me are Tomaki Juda, Magistrate of the Bikini Council, Nathan Note, the Council's scribe, Johnny Johnson, treasurer of the Council, Senator Henchi Balos, the elected representative of the people of Bikini to the Marshall Islands legislature, the Nitijela, my colleague, James Hamilton, and Dr. Henry I. Kohn, Professor Emeritus at Harvard Medical School.

I. Background to 1980 Dose Assessment Meeting

When I addressed you last year, the people of Bikini knew that resettlement of Bikini Island would not be possible for many years, but they still hoped to return to Eneu Island, located at Bikini Atoll five miles south of Bikini. At that time, the Bikinians had asked the U.S. Department of Energy to provide them with updated dose assessments of health risks regarding the radiological safety of Bikini Atoll. This information was presented to the Bikinians at a two-day dose assessment meeting held on Kili Island on October 8 and 9, 1980. Kili,

as you know, is the island to which the Bikinians were "temporarily" moved in 1948, and it is today the home for the majority of the 1,000 people of Bikini.

The October 1980 dose assessment meeting must be placed in its proper historical context. In May 1979, nine months after Bikini had been evacuated for the second time, the U.S. Department of Energy (DOE) wrote to the U.S. Interior Department concerning the possibility of resettling Eneu Island. In this letter, DOE stated that the uncertainties involved in estimating long-term radiation doses on Eneu were similar to those regarding Enewetak Atoll. As a result of these uncertainties, an environmental impact statement prepared for the resettlement of Enewetak had recommended a tightening of applicable U.S. radiation guidelines from 500 millirem per year to 250 millirem. Applying the 250 millirem standard to Eneu, DOE concluded that "even with imported food the radiation doses to the people on Eneu could not be expected to be in compliance with the [250 millirem] criteria for about 20-25 years."

Based upon this information, the U.S. Interior Department promptly informed the Bikinians that Eneu could no longer be considered as a resettlement site. By letters dated June 1, 1979, the Interior Department wrote to the Bikini leaders stating:

Despite the consistency of this data and the official U.S. position, certain U.S. officials have inaccurately held out the hope that parts of Bikini Atoll can be resettled soon. For example, during the dose assessment meeting last October, the United States failed orally or in writing to inform the Bikinians that their homeland could not be resettled for many years. To the contrary, one member of the DOE team at the dose assessment meeting stated unequivocally to the Bikinians that he would not hesitate to live on Eneu with his family. Moreover, the bilingual booklet prepared by DOE discussed only the application of the discarded 500 millirem standard. No mention was made of the 250 millirem standard adopted by the United States for evaluating living conditions on Bikini or Eneu, and no U.S. official pointed out to the Bikinians that all of the booklet's predicted levels of exposure for Bikini and Eneu exceeded the 250 millirem standard.

The true facts must be recognized and dealt with. The Bikinians want, more than anything else, to return to Eneu Island -- if the radiological risks of returning are acceptable and if the conditions of resettlement are realistic. However, the official U.S. position regarding resettlement of Bikini and Eneu has not changed since June 1, 1979. Bikini is off-limits for at least 30 to 60 years, and Eneu is off-limits for at least 20-25 years. Should the United States reconsider

its position and declare that parts of Bikini Atoll can be safely resettled under reasonable conditions, the Bikinians would welcome this news. Until this occurs, they view the June 1, 1979 letters to them as the official and definitive U.S. position.

The present circumstances have caused the Bikinians to initiate two actions we wish to bring to the attention of the Trusteeship Council. The first was to seek an independent scientific assessment of the recent U.S. radiological survey of Bikini Atoll. The second was to file a lawsuit two months ago seeking just compensation from the United States for the taking and destruction of Bikini Atoll and damages for breaches of fiduciary obligations owed to the Bikinians by the United States.

III. Independent Scientific Assessment of U.S. Radiological Survey of Bikini Atoll

Six years ago, the people of Bikini brought a lawsuit in U.S. Federal court seeking to stop the resettlement of Bikini until the United States conducted a thorough radiological survey of the atoll. Pursuant to a court-approved agreement settling that lawsuit, the United States agreed to conduct the radiological survey -- and to permit the Bikinians to select an independent, non-U.S. government scientist to verify, review and assess the survey results. Paragraph 10 of the settlement agreement provides as follows:

In recognition of the desire of the Bikini people to have available to them an independent scientific judgment and analysis of the radiation survey data to assist them in making a decision with respect to resettlement, the Bikini people shall be entitled to select a qualified scientist having generally accepted scientific training and experience to participate in the process of analysis of survey results and preparation of the final survey report.

Paragraph 11 of the agreement provides that the U.S. Department of Energy will pay for the cost of this independent analysis.

The Bikinians have selected Epidemiology Resources, Inc. (ERI) of Boston, Massachusetts, to conduct this review. The project team will be led by Dr. Henry I. Kohn, Professor Emeritus at Harvard Medical School, who is here with me today. DOE has acknowledged the outstanding credentials of the ERI team, but there does appear to be some dispute concerning the scope of the work ERI will perform. For example, ERI has stated that, in order to perform its job in a reasonable manner and to gain the confidence of the Bikinians, it must gather soil and food samples from Bikini Atoll and independently measure the radioactivity of these samples in order to substantiate DOE's data. *Some DOE officials* The United States, on the other hand, has asserted that ERI's work should be limited to independent measurements of samples from Bikini that are stored at U.S. laboratories.

The U.S. Department of Energy must recognize that, because of past unfortunate experiences, the people of Bikini have little confidence in U.S. Government scientists. In 1968, the Atomic Energy Commission, DOE's predecessor, stated that Bikini could be safely resettled. This conclusion was based on a diet survey showing that a Bikinian's entire daily intake of coconut, one of the predominant foods in his diet, would be nine grams -- two or three teaspoonsful. This figure was grossly erroneous. In fact, it was probably a typographical error, since the correct figure is between 600 and 900 grams. Nevertheless, this nine-gram figure was plugged into the computations and resulted in an extraordinarily low internal dose assessment. The scientists who estimated the health risks in 1968 failed to assess the plausibility of all the data upon which their calculations were based. As a result, people were resettled on Bikini from 1969 until 1978, at which point the people living on the island were again evacuated following disclosure that their body burdens of radioactive cesium-137 greatly exceeded U.S. standards. In light of this history, it is no wonder that the Bikinians demand a survey that is truly independent and thorough -- one that includes an independent gathering of new samples from Bikini.

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Significantly, in a similar context -- the nuclear cleanup of Enewetak Atoll - another U.S. Government agency has strongly argued in favor of a truly independent assessment. In a May 8, 1979 report to the U.S. Congress prepared by the U.S. General Accounting Office, the Comptroller General of the United States stated (p. 18):

Significant radiological aspects of the cleanup portion of the Enewetak Atoll project have not been independently assessed by organizations with no connection or interest in the nuclear testing program. This situation could conceivably raise questions on the objectivity of the project. Independent assessments are, in our opinion, unequivocally dictated by the importance of the project to the peoples of Enewetak and the United States. Supporting this is the recent Bikini incident [and] the uncertain, long-term effects of exposure to low level radiation
(Emphasis added.)

ERI, led by internationally respected nuclear scientists, has submitted a modest budget and scope of work to DOE setting forth the minimum tasks it must perform in order to "assist [the Bikinians] in making a decision with respect to resettlement," which is required by the court-approved agreement. These tasks, as noted above, must include an independent collection and radiological measurement of samples from Bikini Atoll. ERI must also take into account documents reviewing the dosage of radioactivity people received from living on Bikini Island in the 1970's as well as the comparative medical status of the Bikinians. The goal of this

project, I repeat, is "to assist [the Bikinians] in making a decision with respect to resettlement." Unless ERI enjoys the full confidence of the Bikinians and can assure them it has made an independent assessment of DOE's work, the project will fail.

DOE has not yet presented its final position as to the scope of the independent survey. We hope to resolve this dispute without further resort to the courts, but the Bikinians are prepared to reopen this six-year old case in order to force DOE to live up to its commitment to carry this project through in a reasonable manner. Such action, in our view, would be successful, but the time and expense involved will delay even more a final resolution of the question of Bikini's radiological safety. In the interim, we urge the Trusteeship Council immediately to take whatever action it can to urge the United States to meet its recognized legal obligation to fund a thorough independent assessment of DOE's radiological survey, which will serve the best interests not only of the Bikinians, but also of the U.S. Government.

IV. U.S. Court of Claims Litigation

Two months ago, the Bikini leaders, on behalf of all the people of Bikini, filed a multimillion dollar lawsuit against the United States in the U.S. Court of Claims. The

complaint, called a petition, is available to you, in both English and French, as U.N. document T/COM.10/L.301. We bring this lawsuit to your attention because it involves in part the failure of the United States to meet its obligations to the Bikinians under the Trusteeship Agreement. Let me describe it briefly.

The Fifth Amendment to the U.S. Constitution provides that the Government cannot take private property without paying its owners "just compensation". The first two counts of the Bikinians' lawsuit against the United States allege violation of this Constitutional provision. In essence, they claim that the United States has taken, and continues to take, Bikini Atoll without providing just compensation to the people. The first count also seeks compensation for the complete destruction of three islands at Bikini Atoll by the 1954 "Bravo" shot, the second of the U.S. hydrogen bomb tests, which was 750 times more powerful than the Hiroshima bomb and was the largest single explosion ever detonated by the United States.

Since the allegations in these counts relate to violations of U.S. law, they involve matters with which this Council is only indirectly concerned. We mention these claims here only for background purposes.

However, the third count of the petition does involve a matter of great importance to this body. That count contends that the United States has breached fiduciary obligations owed

by it to the Bikinians, including fiduciary duties found in the Trusteeship Agreement.

Article 6 of the Trusteeship Agreement obligates the United States:

(1) to "protect [the Bikinians] against the loss of their land and resources";

(2) to "promote the economic advancement and self-sufficiency" of the Bikinians;

(3) to "improve [the Bikinians'] means of transportation and communication"; and

(4) to "protect the health" of the Bikinians.

The suit contends that the United States has violated these fiduciary or trust obligations. The Bikinians have not been protected against loss of their lands and resources. Rather, Bikini Atoll was taken from them in 1946 and they will be denied use and occupation of their homeland for many years to come. Moreover, in returning people to Bikini in the 1970's when the atoll was not safe, the United States failed to protect the physical and emotional health of the Bikinians.

The United States has also failed to promote the economic advancement, self-sufficiency and means of transportation and communication of the Bikinians. The majority of Bikinians live on Kili, a single, isolated island in the southern Marshalls. From late October until late spring,

access to the island by sea is extremely hazardous and high surf conditions restrict fishing efforts. Kili's isolation has stagnated the local economy. The people are not self-sufficient, but are dependent on imported food. Moreover, housing conditions on Kili remain temporary and the island lacks suitable medical facilities or personnel. Yet the majority of the Bikinians continue to reside there because they have nowhere else to go. Hopefully, a planned 3,000-foot coral airstrip on Kili will make the island more accessible and alleviate at least some of the adverse conditions that exist today.

The lawsuit the Bikinians have filed is born both of frustration and sadness. The Bikinians are frustrated because they cannot return to their homeland and are compelled to live in conditions they find unacceptable, even hostile. The people are saddened because they are forced to sue a country with which they have a special relationship. They came under U.S. care in 1946 when they were forced to leave their homeland and their relationship with the United States is thus long-standing. Yet they feel that this nation has not met the obligations it assumed in the 1940's that are memorialized in the Trusteeship Agreement.

The question before this Council is what action it and the United Nations should take regarding the claims made

by the Bikinians in their suit. Our answer is that this body and its parent should strongly urge the United States to fulfill its obligations under the Trusteeship Agreement. They should ask the United States to compensate the Bikinians for past breaches of fiduciary obligations and to do what is necessary to ensure that such breaches do not continue.

The Council and the United Nations have their own obligations to ensure that the Trusteeship Agreement is followed. The basic facts, most of which are not in dispute, demonstrate conclusively that the United States has failed to adhere to its duties under that agreement with respect to the Bikinians. This Council and the United Nations thus are obligated to do what they can to rectify past injustices and alleviate those that remain today.

Thank you.

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