

**AN OVERVIEW OF THE COMPACT OF FREE
ASSOCIATION BETWEEN THE UNITED STATES AND
THE REPUBLIC OF THE MARSHALL ISLANDS:
ARE CHANGES NEEDED?**

HEARING AND BRIEFING
BEFORE THE
SUBCOMMITTEE ON ASIA, THE PACIFIC, AND
THE GLOBAL ENVIRONMENT
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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**AN OVERVIEW OF THE COMPACT OF FREE
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SHALL ISLANDS: ARE CHANGES NEEDED?**

WEDNESDAY, JULY 25, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ASIA, THE PACIFIC,
AND THE GLOBAL ENVIRONMENT,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 o'clock p.m. in room 2172, Rayburn House Office Building, Hon. Eni F.H. Faleomavaega (chairman of the subcommittee) presiding.

Mr. FALEOMAVAEGA. The hearing will come to order. This is the hearing of the Subcommittee on Asia, the Pacific, and the Global Environment, and I want to welcome all of our witnesses and members of the public for being here this afternoon in this hearing. I realize there is no other member here, at least the members of the subcommittee, but don't be misled by the fact that there is no one here, okay. The chairman is here and that is all that matters. I will begin with my opening statement and then we will proceed on.

For many years despite the best intentions of Congress, I believe the United States has failed in its obligations to better provide for the needs of the people of the Republic of the Marshall Islands, who to this day continue to suffer the consequences of our United States nuclear testing programs in the South Pacific. From 1946 to 1958, the United States detonated over 67, or to be exact 67, nuclear weapons in the Marshall Islands, representing nearly 80 percent of all atmospheric tests ever conducted by the United States Government. If one were to calculate the net yield of these tests it would be equivalent to the detonation of 1.7 Iwo Jima atomic bombs every day for 12 years. These tests exposed the people of the Marshall Islands to severe health problems and genetic anomalies for generations. The effects of the United States nuclear testing program in the Marshall Islands continue to devastate the people of the Marshall Islands. The funds provided by the United States out of the Compact of Free Association in my humble opinion are grossly inadequate to provide for the health care, environmental monitoring, personal injury claims or even the land and property damages.

The compacts did not constitute a final settlement of all claims. As evidenced by the inclusion of Article 9 authorizing the Government of the Marshall Islands to petition the United States Con-

gress in the event, and as I quote, changed circumstances that render the provisions of the agreement, meaning the Compact of Free Association agreement, between the United States and the Marshall Islands manifestly inadequate. While the Government of the Republic of the Marshall Islands did submit a report to Congress based on changed circumstances, it is my understanding the administration, as represented by the State Department, rejected these arguments. However, I do believe there is a need for us to broadly consider whether or not some of these changes need to be made in the compact. And I am pleased that a representative of the USAID, for example, has come to make its case regarding the need to amend the compact to allow for a FEMA–USAID transfer of authority for disaster relief and to do so during this session of the 110th Congress.

USAID will not be able to testify regarding anything outside the scope of this provision, and the subcommittee fully understands that. The subcommittee also recognizes that our Interior Department and the GAO witnesses will also only be able to provide an overview of the compact and its implementation, but will not be able to testify about whether or not changes need to be made on the amended compacts.

However, following the testimonies of our government panel we will hear from the leaders of the Republic of the Marshall Islands, including my good friend the distinguished Foreign Minister, Mr. Gerald Zackios, Senator Tony de Brum, a member of Nitijela, Senator Abacca Anjain-Maddison, Senator Hiroshi Yamamura and Senator Jack Ading. We will also hear from Mr. James Plasman, chairman of the Marshall Islands Nuclear Claims Tribunal, and Mr. Jonathan Weisgall, Legal Counsel for the people of the Bikini Atoll.

Regardless of whether or not Republicans and Democrats can agree on whether or not changes need to be made to the compact, we cannot deny the fact that we have a duty and a moral responsibility, if anything, to hear what the representatives of the Marshall Islands have to say.

More than 50 years ago the United States began nuclear testing in the South Pacific. Today we must not sidestep our responsibilities. Instead we need to ask ourselves if we have done everything we can possibly do to make things right for the people of the Marshall Islands who have sacrificed their lives, their health and their lands for the benefit of the United States. I submit that we have real work to do, which includes taking a hard look at the problems surrounding the Kwajalein Missile Range. And Kwajalein landowners have challenged the legality and adequacy of the compact provisions arguing that the United States and the Marshall Islands governments do not or did not obtain their consent for the lease of the land and that basic services and economic conditions in atolls are substandard, especially the deplorable and terrible situation on Ebeye Island.

The people of Bikini and Enewetak atolls have also filed lawsuits against the United States Government seeking compensation and/or damages related to U.S. nuclear testing. They have done so because the U.S. Congress failed to act on their changed circumstances petition. And our own State Department released a re-

port concluding that there was no legal basis for considering additional compensation payments. I took issue with the State Department's position then, and I take issue now with this situation. I have reviewed the petition, I have researched this issue extensively, and I believe enough evidence exists to justify a thorough review of the changed circumstances cited in the petition. And although the changed circumstances petition is not the topic of today's hearing, I look forward to hearing from the representatives of the Marshall Islands who are with us today regarding nuclear claims.

We might also note that maybe of interest to my colleagues and to members of the public that I and my colleagues have recently introduced three pieces of legislation; namely, H.R. 2705, that was introduced last month to amend the certain provisions of the amended compacts of 2003; H.R. 2838 that was introduced last month to authorize insular areas and freely associated states to participate in the Department of Energy's Innovative Technology Loan Guarantee Program, special loans that will facilitate the use of ocean thermal technology; and also H.R. 3105 that was introduced this month provides for tax incentives or tax credits for operators who apply ocean thermal energy technology that may produce water and electricity for our communities in the insular areas, as well as among the free associated states.

My friend is not here yet, but that is all right. We will proceed. I am sure he will have an opening statement when he is able to come. For now I want to welcome the three members of our first panel this afternoon. And I want to welcome David Cohen, who currently serves as Deputy Assistant Secretary of the Office of Insular Affairs to the Department of Interior. In his capacity Mr. Cohen oversees the Office of Insular Affairs which in part administers economic assistance programs to all the three nations in the freely associated states in free association with the United States. And also we have with us the Acting Deputy Assistant Secretary of State for the Pacific Islands, including Australia and New Zealand, Mr. Steven McGann. And also Mr. Francis Donovan, who is the Director of the Office of East Asia Affairs in the Bureau of Asia and the Near East, the United States Agency for International Development, or USAID.

I would like to now give this opportunity to members of our panel for their testimony. Mr. Cohen, please proceed.

STATEMENT OF THE HONORABLE DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY, OFFICE OF INSULAR AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. COHEN. Mr. Chairman, I am pleased to be here today to discuss the implementation of the amended Compact of Free Association with the Republic of the Marshall Islands. We believe that the amended compact is a promising work in progress. Although many challenges remain for the RMI Government to grow its economy and to get better performance from government services, the RMI has been a solid partner with the U.S. in making the compact work.

Since implementation of the amended compact began in 2004, the RMI has focused its compact resources on its three highest pri-

orities: Infrastructure, education and health care. Over \$52.2 million, approximately 39 percent of all sector grant funding, has been dedicated to improve infrastructure. The result is best seen in education where 82 new classrooms serving over 1,700 students are in use. And additional classrooms that will house a total of 4,000 students will be in use at the end of this year. Fully one-third of RMI students will be in new classrooms at the end of the 2008 school year. The RMI has since 2004 dedicated 34 percent of compact sector grant funds to education and 21 percent to its health care system. In addition, since 2004 the RMI has received \$18 million in supplemental education grant funds to support various education activities.

The RMI has chosen to use only limited amounts of compact funding for the environment, public sector capacity building and private sector development. The allocation reflects the priorities of the RMI Government with which the JEMFAC has concurred. The allocations may change in the future, although allocations to the infrastructure sector must be at least 32 percent of annual compact assistance. The allocation of compact funding has been appropriate in the short term. However, growing RMI Government capacity issues suggest that it might be prudent to shift some compact resources to public sector capacity building.

The GAO has concluded the capacity limitations have affected the RMI's ability to ensure the effective use of grant funds, and we agree. The RMI has made strong efforts to institutionalize performance management, but currently lacks the capacity to adequately measure progress because education and health sector baseline data are not adequate and performance reporting is incomplete. Capacity constraints also affect the government's ability to collect and analyze economic data and plan for the future of declining compact revenues.

A most pressing issue is an unsustainable increase in government employment. There has been a 23 percent increase in national government employment in the past 3 years. Payroll costs jumped from \$26.4 million in 2004 to \$30.1 million in 2006. This has taken place at the same time the RMI has shown annual operating deficits in its general fund. The increase in employment, according to the RMI Government, has not been accompanied by an increase in the effectiveness of government services. The ability to make this internal assessment speaks well of the RMI Government, but we hope that the RMI leadership will focus on the need to manage the public payroll in a manner that accounts for the coming decrements in compact funding.

The compact's overall success will be greatly enhanced or diminished by the circumstances of the RMI economy. The RMI has well-known obstacles to economic development. Its location, inadequate infrastructure, lack of a skilled workforce and weak business climate. The theory of the compact is that improvements in health and education will create a better workforce at home and more remittances from abroad and that these factors, together with improved infrastructure, will provide a foundation for private sector economic development.

In order for these benefits to accrue over the long-term, we believe that there is a need for the RMI to take action to improve the

business climate, including tax, land and foreign investment reforms. Although the United States through its JEMFAC membership may inquire about and promote change, the decisions to make these important changes lay with the Marshall Islands Government.

Few factors have had as much impact on the economy of the RMI as the increased costs of fuel and the costs of providing electricity. Fuel costs have made all imports more expensive, increased the cost of local and exported fish and cut into household and government budgets. Utilities are strapped for cash to purchase fuel, maintain equipment and set aside capital to invest in more efficient plants and new technology. This is a regional issue that has not spared the Marshall Islands.

In summary, the Marshall Islands faces very serious challenges, but we are pleased with the manner in which we are working together to try to address those challenges through the implementation of the compact. Representatives of my office were in Majuro last week consulting on the sector grant proposals that will be presented to the annual meeting of JEMFAC. They report that their discussions with the RMI were friendly and useful and that the RMI Government representatives were prepared and thoughtful as they presented their 2008 plans.

The compact is working. Not without bumps and major challenges, but with mutual respect and mutual hard work of both countries.

This completes my prepared statement. I will be happy to answer any questions. Thank you.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF THE HONORABLE DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY, OFFICE OF INSULAR AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

REGARDING THE IMPLEMENTATION OF THE COMPACT OF FREE ASSOCIATION WITH THE REPUBLIC OF THE MARSHALL ISLANDS

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the implementation of the amended Compact of Free Association with the Republic of the Marshall Islands (RMI).

In 2003, the U.S. Government approved the amended Compact with the Republic of the Marshall Islands, providing a total of \$1.5 billion in assistance from 2004 through 2023. The amended Compact's 20 years of grant assistance is intended to assist the RMI government promote the economic advancement and budgetary self-reliance of its people. Under the amended Compact, U.S. grant funding decreases annually, paired with increasing contributions to a trust fund established for the RMI; earnings from the trust funds are intended to provide a source of revenue when the grants expire in 2023. In addition, the annual grant funding is partially adjusted for inflation. The amended Compact requires the RMI to target funding to six development sectors—education, health, the environment, public sector capacity building, private sector development, and infrastructure, with priority given to education and health. The amended Compact also provides for a Supplemental Education Grant, which takes the place of certain domestic grants once offered through the Department of Education, the Department of Health and Human Services and the Department of Labor.

The Office of Insular Affairs is responsible for administering and monitoring the grants. The amended Compact's subsidiary fiscal procedures agreement requires the RMI government to monitor the day-to-day operations of sector grants and activities, submit periodic performance reports and financial statements, and ensure annual financial and compliance audits. In addition, the Compact and fiscal procedures agreement require the U.S.–RMI Joint Economic Management and Financial Accountability Committee (JEMFAC) to (1) meet at least once annually to evaluate the progress of the RMI in achieving the objectives specified in the RMI's develop-

ment plans; (2) approve grant allocations; (3) review required annual reports; (4) identify problems encountered; and (5) recommend ways to increase the effectiveness of Compact grant assistance. The RMI is also required to conduct annual audits within the meaning of the Single Audit Act for an independent review of its financial position.

We believe that the amended Compact of Free Association in the Republic of the Marshall Islands is a promising work in progress. Although many challenges remain for the RMI government to grow its economy and to get better performance from the government services supported by the Compact, the RMI has been a solid partner with the United States in making the Compact work. The RMI leadership has made a determined effort to adhere both to the letter and the spirit of the agreement, and is committed to the success of the agreement it negotiated.

Since implementation of the amended Compact in FY 2004, the RMI has focused its Compact resources on the three highest priorities: infrastructure, education and health care. Over \$52.2 million, approximately 39% of all sector grant funding, has been dedicated to improved infrastructure. The result is best seen in education, where 82 new classrooms serving over 1700 students are in use, and additional classrooms that will house a total of 4000 will be in use at the end of this year. Fully one third of RMI students will be in new classrooms at the end of the 2008 school year. In upcoming years, \$5 million will be invested annually in physical improvements at the College of the Marshall Islands.

The RMI has, since FY 2004, dedicated 34% of Compact sector grant funds to education and 21% to its health care system. In addition, since 2004, the RMI has received \$18 million in Supplemental Education Grant funds to support various education activities. The RMI has chosen to use only limited amounts of Compact funding for the environment, public-sector capacity building and private-sector development sectors. The allocation reflects the priorities of the RMI government, with which the JEMFAC has concurred. The allocations may change in any future year, although allocations to the Infrastructure Sector must be at least 30% of annual Compact Assistance.

The allocation of Compact funding has been appropriate in the short term. However, growing gaps in the capacity of the RMI government suggest that it might be prudent to shift some Compact resources to public-sector capacity building. The GAO has concluded that capacity limitations have affected the RMI's ability to ensure the effective use of grant funds. We agree with this conclusion. The RMI has made strong efforts to institutionalize performance management in its government, but the RMI currently lacks the capacity to adequately measure progress because education and health sector baseline data are not adequate and performance reporting is incomplete. Capacity constraints also affect the government's ability to collect and analyze economic data and plan for the future of declining Compact revenues.

The fiscal and economic futures of the RMI are issues of concern to the United States members of the JEMFAC. A most pressing issue is an unsustainable increase in government employment and its accompanying wage bill. The RMI has reported that there has been a 23 % increase in national government employment in the past three years. Payroll costs jumped from \$26.4 million in FY 2004 to \$30.1 million in FY 2006. This has taken place at the same time the RMI has shown annual operating deficits in its general fund. The increase in employment, again according to the RMI government, has not been accompanied by an increase in the effectiveness of government services. The ability to make this internal assessment speaks well of the RMI government, but we hope that the RMI leadership will focus on the need to manage the public payroll in a manner that accounts for the coming decrements in Compact funding.

The Compact does not operate in a vacuum, and its overall success will be greatly enhanced or diminished by the circumstances of the RMI economy. RMI has well known obstacles to economic development: its geographic location, inadequate infrastructure, lack of a skilled workforce and an out-dated business climate. The theory of the Compact is that improvements in health and education will create a better workforce at home and more remittances from abroad, and that these factors, together with improved infrastructure, will provide a foundation for private-sector economic development. Those will be long-term improvements. In the short term, we believe that there is a need for the RMI to take action to improve the business climate, including tax, land and foreign investment reforms. Although the United States, through its JEMFAC membership, may inquire about and promote change, the decisions to make these important changes lay with the Marshall Islands government.

Few factors have had as much impact on the economy of the RMI—and other Pacific states and U.S. territories—as the increased costs of fuel and the average cost per kilowatt hour of providing electricity. Fuel costs have made all imports more ex-

pensive, increased the cost of local and exported fish, and cut into household and government budgets. Utilities are strapped for cash to purchase fuel, maintain equipment, and set aside capital to invest in more efficient plants or new technology. This is a regional issue that has not spared the Marshall Islands. Although its utility, the Marshalls Energy Corporation, has a history of reliable performance, it has been unable to earn back its generating costs from electric revenues and instead subsidizes power from the sale of fuel.

An important element of the United States financial assistance under the Compact is the trust fund established to provide government revenues after annual sector grants cease after 2023.

As of March 31, 2007, the market value of total assets of the Trust Fund for the People of the Republic of the Marshall Islands was \$78.2 million. Of that amount, \$64.3 million represented contributions of governments, including \$31.8 million from the United States, \$30 million from the RMI, and \$2.5 million from Taiwan. The return on assets during the fiscal year ending September 30, 2006 was 11.8 percent.

Since Goldman Sachs began managing the Trust Fund assets as investment manager on November 14, 2005, the Fund's investments have gained \$9.6 million through March 31, 2007 and \$13.2 million through May 31, 2007. The assets have been invested in a mix of U.S. public equity and realty funds, international equity funds, and fixed income funds.

The Trust Fund Committee is also investigating securitization of the future U.S. contributions to the Trust Fund as a means of increase the return, and has approved the drafting of an RFP for a study of its potential benefits and risks. Securitization would permit the Trust Fund to invest with a longer time horizon by bringing forward the U.S. contributions scheduled for later years. A change in the Compact law may be necessary in order to implement a securitization program. At this point the Administration has not taken a position on the merits or advisability of securitizing future contributions to the Trust Fund.

The next formal meeting of the JEMFAC takes place in late August. In addition to allocating the resources of the six sector grants, the committee will discuss the RMI's progress in implementing tax and fiscal reform, work with the RMI to establish plans to minimize the impact of declining assistance, and work with the RMI to better measure progress toward Compact and sector grant goals.

In summary, the Republic of the Marshalls Islands faces very serious challenges, but we are pleased with the manner in which we are working together to try to address those challenges through the implementation of the Compact. Representatives of my office were in Majuro last week consulting on the sector grant proposals that will be presented to the annual meeting of JEMFAC. They report that their discussions with the RMI were friendly and useful, and that the RMI government representatives were prepared and thoughtful as they presented their FY 2008 plans. My staff believes that it will be able to recommend that JEMFAC adopt the proposals as submitted by the RMI government. The Compact is working, not without bumps and major challenges, but with mutual respect and the mutual hard work of both countries.

Mr. Chairman and Members of the subcommittee, this completes my prepared statement. I will be happy to respond to any questions you may have at this time.

Mr. FALEOMAVEGA. Thank you. I appreciate your statement. At this time, before I turn the time over to Mr. McGann, like I said, I am very honored and happy to have my very distinguished ranking member of our subcommittee, the gentleman from Illinois, Mr. Manzullo, for his opening statement.

Mr. MANZULLO. I am just going to have leave to make it part of the record. I am sorry I wasn't here in the beginning, but the farm bill is coming up, and your fish or my cattle.

Mr. FALEOMAVEGA. I can appreciate the gentleman's concerns about his cattle. My concern is fish. So that should really make the two quite a combination. And I wish we could be included in that farm bill as well with all the nice stuff that is included in it every year. But we need more farmers I suppose in the Pacific in that regard. Again, without objection, your statement will be made part of the record.

Secretary McGann, please proceed.

STATEMENT OF MR. STEVEN MCGANN, ACTING DEPUTY ASSISTANT SECRETARY, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. MCGANN. Chairman Faleomavaega, Ranking Member Manzullo, thank you very much for inviting me to appear today to testify on United States policy toward the Republic of the Marshall Islands. I welcome the opportunity to testify on the RMI, and I will focus my remarks on the effects of compact implementation on the state of our diplomatic relations with the Marshall Islands.

Mr. Chairman, the United States and the Marshall Islands have had a close and important relationship since shortly after the end of the Second World War when the RMI became part of the U.N. Trust Territory of the Pacific under the administration of the United States. In 1986 the Marshall Islands entered into a Compact of Free Association with the United States. This compact was amended in 2004. The original compact assisted the Marshall Islands in its transition from trust territory to democratic self-government and membership in the world family of nations. The amended compact, through its extensive defense cooperation provisions, continues to ensure the security of the Republic of the Marshall Islands and contribute to the security of the United States.

The relationships between our citizens are also strong. The Marshalls are a host of some 1,800 Americans who work along with 1,300 Marshallese at the Ronald Reagan Ballistic Missile Test Site on Kwajalein Atoll. Also Marshallese and United States citizens can live, work and study in each of those countries without needing a visa, and Marshallese serve honorably in our military, including in Iraq and Afghanistan. Most importantly, the RMI is a tremendous ally of the United States in international fora such as the U.N., where the RMI and the U.S. vote together over 90 percent of the time, including on some very contentious General Assembly issues. The RMI participates in major U.S. maritime security treaties, and we greatly appreciate its efforts to make the world's fifth largest ship registry secure, which is a huge aspect of our own port security plans.

In short, the RMI and the U.S. are true friends. This has helped us work through challenges of the amended compact framework and allowed the relationship to persevere as the RMI made a transition from the old compact to the current one.

Our vision for U.S.-RMI relations is to continue to strengthen this collaboration using the amended compact as a tool for the RMI to build a future predicated upon its own priorities with the ultimate goal of self-sufficiency. I am also the State Department's representative to the U.S.-RMI Joint Economic Management and Financial Accountability Committee and the Trust Fund for the People of the Republic of the Marshall Islands. The RMI has made commendable progress toward self-sufficiency in the past year. The United States can't discount the great difficulties that the Marshall Islands Government overcame in the past years in moving toward performance-based budgeting and developing a medium and long-term budget framework. These were critical first steps, and the RMI Government should be praised for taking them, but much more needs to be done.

And what is that? Well, Mr. Chairman, the RMI needs to make a further commitment to structural reform and vigilant fiscal prudence. I believe the key next step for the RMI this year will be to set reasonable reform priorities and develop implementation plans to carry through these reforms. Our role in the U.S. is to provide technical assistance to the RMI to support these activities.

I believe the amended compact at this time provides an appropriate framework for the RMI to select priority sectors for funding and provide sufficient flexibility to develop capacity. However, sector grants for the private sector and for public sector capacity development remain, in my view, underutilized by the RMI to date. But, Mr. Chairman, I would also like at this time to compliment my colleagues at the Department of the Interior for the excellent job they have done in management of the compact and the role they play in actually helping to guide the RMI toward these reforms. It has been an outstanding job.

Mr. Chairman, another critical element to the U.S.-RMI relationship is the U.S. Army's Kwajalein Atoll base. It is the largest private employer of the RMI and a vital element of U.S. national security. At this time there are internal disputes in the RMI over how the base will fit into the future of the atoll. The U.S. and RMI governments have concluded a Military Usage and Operating Rights Agreement which allows the U.S. use of the atoll until 2066. At this time, however, the local landowners and the Government of the RMI have yet to come to terms on a new land use agreement.

Mr. Chairman, this is an internal matter, one that the Government of the RMI and the landowners must settle between themselves. We are confident that this internal issue can be resolved and our use of the atoll will continue to the benefit of both nations.

I understand that the RMI would like to pursue additional claims for citizens affected by U.S. nuclear testing. On the issue of nuclear claims, the United States Government reached agreement with the RMI on most of the suits. Outstanding lawsuits are currently being reviewed in the U.S. Federal Claims Court.

Mr. Chairman, before I conclude, I would also like to commend our Ambassador and his staff for their tireless work to advance this solid relationship. Ambassador Clyde Bishop, the Embassy staff and our JEMFAC colleagues at the Departments of Interior and Health and Human Services are the cornerstones of the robust relationship we have with the Marshall Islands.

Despite some challenges, the ties between our nations have expanded and matured, as is evident in the wide range of issues in which the United States and Marshall Islands cooperate. In the past years these cooperative arrangements have included whaling, telecommunications, maritime security and the environment, just to name a few.

Further, we were very grateful for RMI President Note's leadership in making the Pacific Island Conference of Leaders, which was held in Washington earlier in May, a success.

Mr. Chairman, the RMI has been a solid partner and a valued friend of the United States. The RMI leadership has made a determined effort to adhere both to the letter and the spirit of the amended compact. The theme we see repeated throughout our

interactions with the RMI is one of dialogue, which is the foundation of good relations. It is my great privilege to be able to help foster this relationship, one of our closest, as it continues to mature in the future. I look forward to my continued work with the RMI as we continue to advance implementation of the compact and support the RMI's progress to self-sufficiency.

Thank you.

[The prepared statement of Mr. McGann follows:]

PREPARED STATEMENT OF MR. STEVEN MCGANN, ACTING DEPUTY ASSISTANT SECRETARY, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE

Chairman Faleomavaega, Ranking Member Manzullo, and distinguished Members of the Subcommittee, thank you for inviting me to appear today to testify on U.S. policy towards the Republic of the Marshall Islands (RMI). I welcome the opportunity to testify on the RMI. As we have already heard from my colleagues at the Department of Interior, I will focus my remarks on effects of Compact implementation on the state of our diplomatic relations with the Marshall Islands.

Mr. Chairman, the United States and the Marshall Islands have had a close and important relationship since shortly after the end of the Second World War, when the RMI became part of the U.N. Trust Territory of the Pacific Islands under the administration of the United States. In 1986, the Marshall Islands entered into a Compact of Free Association with the United States. This Compact was Amended in 2004. The original Compact assisted the Marshall Islands in its transition from Trust Territory to democratic self-government and membership in the world family of nations. The Amended Compact, through its extensive defensive provisions, continues to ensure the security of the Republic of the Marshall Islands and contribute to the security of the United States.

The relationships between our citizens are also strong. The Marshalls are host to some 1,800 Americans who work along with 1,200 Marshallese at the Ronald Reagan Ballistic Missile Defense Test Site on Kwajalein Atoll. Also, Marshallese and U.S. citizens can live, work and study in each other's countries without needing a visa, and Marshallese serve in our military, including in Iraq and Afghanistan. Importantly, the RMI is a tremendous ally of the United States in international fora such as the UN, where the RMI and the U.S. vote together over 90 percent of the time, including some on very contentious issues. The RMI participates in major U.S. maritime security treaties, and we greatly appreciate its efforts to make the world's fifth largest ship registry secure, a huge aspect of U.S. port security. In short, the RMI and the U.S. are true friends.

This has helped us work through challenges of the Amended Compact framework and allowed the relationship to persevere as the RMI made the transition from the old Compact to the current one.

Our vision for U.S.-RMI relations is to continue to strengthen this collaboration, using the Amended Compact as a tool for the RMI to build a future predicated upon its own priorities with the ultimate goal of self-sufficiency. I am the State Department's representative to the U.S.-RMI Joint Economic Management and Financial Accountability Committee (JEMFAC) and the Trust Fund for the People of the Republic of the Marshall Islands. The RMI has made commendable progress towards self-sufficiency in the past year that I've been a committee member. The U.S. can't discount the great difficulties that the Marshall Islands government overcame in the past years in moving towards performance-based budgeting and developing a medium and long-term budget framework. These were critical first steps, and the RMI government should be praised for taking them, but much more needs to be done.

The RMI needs to make a further commitment to structural reform and vigilant fiscal prudence. I believe the key next step for the RMI this year will be to set reasonable reform priorities and develop implementation plans to carry through those reforms. Our role in the U.S. is to provide technical assistance to the RMI to support these activities. I believe the Amended Compact, at this time, provides an appropriate framework for the RMI to select priority sectors for funding and provides sufficient flexibility to develop capacity. However, sector grants for the private sector and for public sector capacity development remain, in my view, underutilized by the RMI to date.

Another critical element to the U.S.-RMI relationship is the U.S. Army's Kwajalein Atoll base. It is the largest private employer in the RMI and a vital element of U.S. national security. At this time there are internal disputes in the RMI over

how the base will fit into the future of Kwajalein atoll. The U.S. and RMI government have concluded a Military Usage and Operating Rights Agreement which allows the U.S. use of the Kwajalein atoll until 2066. At this time, however, the local landowners and the government of the RMI have yet to come to terms on a new Land Use Agreement. This is an internal matter, one that the government of the RMI and the Kwajalein landowners must settle between themselves. We are confident that this internal issue can be resolved and our use of Kwajalein will continue, to the benefit of both nations. I understand that the RMI would like to pursue additional claims for its citizens affected by U.S. nuclear testing. On the issue of nuclear claims, the United States government reached agreement with the RMI on most of the suits. Outstanding lawsuits are currently being reviewed in the U.S. federal claims court.

On a final note, I commend our Ambassador and his staff for their tireless work to advance this solid relationship. Ambassador Clyde Bishop, the Embassy staff and our JEMFAC colleagues at the Departments of Interior and Health and Human Services are the cornerstones of the robust relationship we have with the Marshall Islands. Despite some challenges, the ties between our nations have expanded and matured, as is evident in the wide range of issues on which the U.S. and the Marshall Islands cooperate. In the past year these have included whaling, telecommunications, maritime security, and the environment, just to name a few. Further, we were very grateful for RMI President Note's leadership in making the Pacific Island Conference of Leaders, held in Washington earlier this May a success.

Mr. Chairman, the RMI has been a solid partner to and valued friend of the United States. The RMI leadership has made a determined effort to adhere both to the letter and the spirit of the Amended Compact. The theme we see repeated through our interactions with the RMI is one of dialogue—the foundation of good relations. It is my great privilege to be able to help foster this relationship, one of our closest, as it continues to mature in the future. I look forward to my continued work with the RMI as we continue to advance implementation of the Compact and support the RMI's progress to self-sufficiency.

Mr. FALEOMAVEGA. Thank you, Secretary McGann. Mr. Donovan.

STATEMENT OF MR. FRANCIS A. DONOVAN, DIRECTOR, OFFICE OF EAST ASIA AFFAIRS, BUREAU OF ASIA AND THE NEAR EAST, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. DONOVAN. Chairman Faleomavaega, Ranking Member Manzullo, distinguished members of the committee and guests, good afternoon. I appreciate your invitation to appear before the committee on important issues related to the Compact of Free Association between the United States and the Republic of the Marshall Islands.

I am representing the U.S. Agency for International Development, or USAID, to express our interest in H.R. 2705, a bill that would enact the Compact of Free Association Amendments Act of 2007. I have submitted a written statement, and I would appreciate if it could be included in the record.

Mr. FALEOMAVEGA. Without objection, all your statements for each of you gentlemen will be included and made a part of the record.

Mr. DONOVAN. Thank you, Mr. Chairman. And I will briefly summarize the main points.

USAID is interested in this bill, in short because through the compact of 2003 and agreements of 2004 USAID will assume primary responsibility for disaster assistance in the RMI and the Federated States of Micronesia. We want to make sure that we carry out this important responsibility as effectively and efficiently as possible to continue to meet the needs of the people of both nations; passage of this bill will make this possible.

We appreciate that your committee has brought forward this conforming legislation, because in addition to making effective the shift of authority for disaster assistance from the Federal Emergency Management Agency, or FEMA, to USAID, it also addresses four key technical concerns of USAID and FEMA that will allow us to move ahead on the new arrangement.

These four technical provisions critical to a smooth transition are: First, a provision for a shared FEMA–USAID funding authority, which will allow access to an efficient transfer of funds between the agencies; second, a provision for explicit application of USAID’s notwithstanding authority to the provision of disaster assistance to the RMI and FSM; third, a provision for clarification that USAID is referenced throughout the legislation rather than individual offices within the agency; and, fourth, a provision that designates January 31, 2008, as the effective date of USAID’s assumption of this new responsibility. This will allow for adequate preparation for the transition.

Mr. Chairman, USAID and FEMA have been collaborating closely to develop a mechanism to provide an orderly, seamless transfer of authority according to provisions cited in the compact and outlined in the subsequent agreements. In discussions with FEMA and USAID, I understand the Senate Energy and Natural Resources Committee have also indicated their agreement with the four technical elements.

In this new structure, USAID and FEMA will work jointly on planning and disaster assessment and the declaration process while USAID will assume primary responsibility for carrying out the disaster assistance.

We are confident that this arrangement will work well, and we are eager and ready to move forward in cooperation with all parties to make this transition successful.

It is important to note that while H.R. 2705 addresses our immediate concerns for effective implementation of disaster assistance, as we learn more about the needs associated with developing the new arrangement by which FEMA and USAID will work together and in consultation with other stakeholders, the countries themselves, the interagency process, the U.S. Embassies in place, et cetera, we may need to return to Congress if we see a need for additional congressional action.

In short, enacting H.R. 2705 during this first session of the 110th Congress will pull together all the good decisions made previously by those concerned with the well-being of the citizens of RMI and FSM.

I thank you for allowing me to share USAID’s view on the importance of this legislative matter, and I am happy to take any questions you may have. Thank you.

[The prepared statement of Mr. Donovan follows:]

PREPARED STATEMENT OF MR. FRANCIS A. DONOVAN, DIRECTOR, OFFICE OF EAST ASIA AFFAIRS, BUREAU OF ASIA AND THE NEAR EAST, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Chairman Faleomavaega and Ranking Member Manzullo. Good afternoon and thank you for this opportunity to appear before you today to comment on important pending legislation that affects key disaster relief provisions for the Republic of the

Marshall Islands (RMI)—and the Federated States of Micronesia (FMS)—in the Compact of Free Association Amendments Act of 2003.

Mr. Chairman, I am here this afternoon to draw the Subcommittee's attention to H.R. 2705, a bill that would enact the Compact of Free Association Amendments Act of 2007 and, in so doing, would make effective the shift of primary responsibility for provision of disaster assistance for the RMI and the FSM from the Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA) to the U.S. Agency for International Development (USAID).

Both USAID and FEMA agree that this legislation—H.R. 2705—is critical to the orderly, timely and seamless transfer of authority for disaster relief and reconstruction assistance from FEMA to USAID. It is our hope that the bill will be enacted during this session of the 110th Congress.

In highlighting the need for this legislation, I would also stress that the two agencies involved—FEMA and USAID—support the provisions it contains and we have been collaborating closely on developing a mechanism to ensure continued provision of comprehensive emergency disaster relief and reconstruction assistance to the RMI and FSM. Both agencies met recently to finalize the particulars of this mechanism, and I am pleased to report that once H.R. 2705 is enacted, we are positioned to implement the transfer, beginning on January 31, 2008, the effective date of the bill.

The Compact of Free Association Amendments Act of 2003 provided for a transition of disaster assistance from FEMA to USAID. Furthermore, it called for the countries and the United States to reach agreement about how best effectuate this transition. Agreements were reached between the RMI and FSM and the United States in June 2004 as amendments to Article X of the Federal Programs and Services Agreement were signed by each nation and the United States in June 2004. These agreements provide that FEMA and USAID will consult jointly on disaster assessments and declarations in the RMI and FSM. FEMA will provide funding to support reconstruction and response requirements and USAID will be responsible for administering disaster assistance and coordinating the U.S. response to declared disasters. U.S. legislation is needed to enact these agreements.

USAID and FEMA support enactment of legislation that will adopt these agreements. Nevertheless, both Agencies recognize that four technical matters need to be addressed legislatively in order to ensure a smooth handover of the responsibilities outlined in the Agreements. We are gratified that H.R. 2705 includes these four technical considerations: 1) designation of January 31, 2008 as the effective date of USAID's assumption of responsibility to allow for adequate preparation for transition (versus immediately upon enactment); 2) provision for shared FEMA–USAID funding authority to allow access to and efficient transfer of funds between the agencies; 3) explicit application of USAID's notwithstanding authority to the provision of disaster assistance to the RMI and FSM to ensure that critical funding of disaster assistance will not be delayed or impeded by contrary regulations; and, 4) reference to USAID throughout the documents rather than specific offices within the Agency.

These technical considerations ensure that operational and immediate financial requirements are spelled out so that the new implementation arrangements will be in place and, should a disaster occur, the needs of the citizens of the RMI and FSM will be met. We understand that the initiating legislation to amend the Compacts, S.283, is pending on the Senate calendar; however, since that bill does not contain the technical considerations requested by FEMA and USAID, it is our hope that H.R. 2705, as the companion bill, will prevail. In discussions with USAID and FEMA, the Senate Energy and Natural Resources Committee has also indicated their agreement with the four technical elements.

I would also note that while this legislation addresses the necessary requirements and resources for transfer of authority in the short term, as we move forward with the implementation, we will certainly learn more about specific needs associated with this activity, and we may need to return to the Congress if additional Congressional action is necessary are required. Since this joint responsibility is new territory for our two agencies, we can anticipate that some adjustments may need to be made as we proceed.

Mr. Chairman, we have faced many challenges in planning for the transfer of authority for disaster assistance from FEMA to USAID, but we have also made a great deal of progress. We are ready to move forward. Enacting H.R. 2705 will allow us to take all necessary steps in under six months, a time frame that will be in the best interests of the residents of both nations.

Thank you for allowing me to share with you our concerns about the need for this legislation. We at USAID appreciate your committee's interest in this important topic and that of the Natural Resources Committee's as well. I look forward to your questions.

Mr. FALEOMAVAEGA. Thank you, Mr. Donovan. And I would like to state for the record we have also joining us in our subcommittee hearing my good friend, the distinguished gentleman from Arizona, Mr. Flake, who is also a member of this subcommittee. Do you have an opening statement that you would like to make?

Mr. FLAKE. No.

Mr. FALEOMAVAEGA. All right. Before I give the time over to our ranking member for his line of questions, I just want to make one observation to alert you three gentlemen for the record. Years ago our focus as a government stressed the fact that the Marshallese people who were severely exposed to nuclear contamination and nuclear radiation as a result of our nuclear testing program was focused primarily on the atolls of Rongelap and two other atolls. So for all those years our whole emphasis was to suggest that these are the people that were subjected to nuclear radiation. In recent years there were declassified documents that stated that the amount of intake of the radiation exposure wasn't just to these four atolls. It was the entire Marshallese archipelago. I want to state that for the record, and I will get that documentation in terms of the exposed—all of the Marshallese people in all the different islands were exposed as a result of our nuclear testing. It wasn't just to those three or four atolls.

I will continue pursuing this line of questioning, but I would like to turn the time now to my good friend, Mr. Flake.

Mr. FLAKE. Thank you. I apologize for not being here for the entire witness statements, but I do have an interest. I have been able to be in the Marshall Islands twice now. It has been a great experience, and I have enjoyed my time there.

For Deputy Assistant Secretary Cohen, with regard to you had mentioned the need for the RMI to take action with regard to business climate, tax structure and other conditions for long-term growth, how is that going in your view? Are the steps being taken? What is a most urgent need at this point?

Mr. COHEN. Thank you for the question, Congressman Flake. They have made some starts, but in our opinion I think the compact would stand a greater chance of succeeding if these efforts could be accelerated. There has been some start at trying to get land registration moving, but that has been slow to catch hold. Of course there is some cultural resistance to that. But of course the absence of registration prevents the Marshall Islands from being able to realize the economic value of land.

Regarding tax, currently the tax system, according to the Asian Development Bank, which did a very detailed study on the business climate in the Marshall Islands, the tax system is inefficient in terms of promoting economic growth and job creation. And also on the other hand, it doesn't yield sufficient revenue to be able to cover the government's basic expenses so that in effect the compact grant funds become a substitute for locally generated tax revenue, which makes it harder to use the compact for investment purposes that will have a return in the future as opposed to just to keep the government going.

So those are some of the main areas where we will work with our colleagues in the Marshall Islands to try to accelerate reform.

Mr. FLAKE. Mr. McGann and Secretary Cohen, with regard to the settlement claims on Kwajalein for the landowners there, I understand there have been some efforts or maybe efforts to come to negotiate with the United States or the State Department directly. Is that helpful or does it all need to be through the RMI Government?

Mr. MCGANN. Thank you, Congressman Flake. Congressman Flake, in my testimony I pointed out that the cornerstone of the relationship between the United States and the RMI is prodding the RMI toward continued self-sufficiency. It is for the RMI to make its own determinations on its needs and priorities. And we have long said that the dispute between the landowners on Kwajalein Atoll and the RMI is an internal dispute. It is not a role for us to play in terms of interceding in trying to make a determination as into what is the best interest of the Marshall Islands without first having the Marshall Islands themselves make a determination on those needs and priorities.

So I would not necessarily characterize their approaching the Department of State or other agencies as being unhelpful, but I think our focus has to be first on attaining the self-sufficiency and self-determination of the Marshall Islands that we all seek and that we should wait until the outcome of these internal deliberations comes to pass before commenting on it.

Mr. FLAKE. Are those internal deliberations ongoing? Do you see them coming to fruition soon? Or is this going to be an issue for a while?

Mr. MCGANN. I believe they are ongoing. I don't have a sense of when they would actually come to a conclusion, and I believe that the representatives from the Government of the Republic of the Marshall Islands could best answer that.

Mr. FLAKE. Secretary Cohen, do you have any thoughts there?

Mr. COHEN. Well, I would concur with what Acting Deputy Assistant Secretary McGann has said. And of course we defer to the State Department on matters relating to our diplomatic relationship. We very much respect the sovereignty of the Republic of the Marshall Islands. I mean, that was part of the whole effort of transitioning from a trust territory relationship to a partnership between nations. So out of respect for that sovereignty I certainly agree with Mr. McGann that we have to respect their process within the context of the dialogue they are having within the Marshall Islands.

Mr. FLAKE. Thank you. I will save for a second round.

Mr. FALEOMAVAEGA. Thank you, Mr. Flake. We are also joined this afternoon by another distinguished member of this subcommittee, my dear friend who served formerly as Ambassador to the Federated States of Micronesia, now as a Member of Congress, a distinguished lady, Diane Watson from the State of California.

Ms. WATSON. I want to thank the chairman for holding this hearing on, I guess it is the Marshalls rather than the FAS. But we were together, I think that was 2002. And we had the pleasure of sitting in on the compensation hearings. The issue that I would like to raise is that I was appalled by the continuing damage that had been done, not only to the soil but to the people. And it is generational it appears. We left before there was any agreement. But I would like to get an update from you gentlemen as to how

the compensation cycle is going, were they compensated after that hearing and to what extent. Because the injuries that we were able to see, or at least third generational injuries, and we were told that the top soil on Enewetak and some of the other smaller islands was damaged forever, that 18 inches. And I know on some of the islands people were just thrown over there with a house and a television set. And if you remember, the young girls were pregnant by age 14. And so this cycle continues. And I would like to know what we are doing at State to try to get a handle and to try to bring the people back to some type of continued prosperity.

So can you report on what happened after the 2002 meetings on compensation? Mr. McGann. Whoever.

Mr. COHEN. I can answer in terms of some of the activities that we have been providing from the financial support aspect of it. And these are not new programs that would have occurred since the 2004 hearing. But there are ongoing efforts that we have been engaging in with our colleagues from the Marshall Islands. Part of the settlement for the nuclear claims under the original compact, under Section 177 and the 177 agreement, included of course, I guess, \$150 million for various purposes. In addition to that, the United States has funded resettlement trust funds for three of the four atolls; for Bikini, Enewetak and Rongelap. In Rongelap a great deal of progress has been made to resettle the population back to Rongelap. In fact I had the honor of visiting Rongelap and attending the dedication ceremony for some of the initial infrastructure; a community house, a port, I believe a power facility and other structures. Since then more infrastructure has been built. I think we have spent perhaps over \$20 million out of a \$45 million resettlement trust fund in order to help the people of Rongelap return from where they are living in Majeto under very bad conditions and throughout the Marshall Islands so that they can go back home.

We continue to work with the Bikini community with their trust fund. There are no active resettlement efforts at this time that I am aware of. But the funds that we work with the people of Bikini to provide, and my office has a role in approving the annual expenditures, go to support ongoing life of the Bikini community wherever they may live. So we are talking about employment in the service of the Bikini community, we are talking about scholarships for students and other types of assistance to improve the lives of the community.

Ms. WATSON. May I just interrupt you for a moment? We will probably have to go back, but while we are there we saw a hospital that had been newly built. It was already molding and coming apart at the seams.

Mr. FALEOMAVAEGA. Will the gentlelady yield?

Ms. WATSON. Yes, I yield.

Mr. FALEOMAVAEGA. I do hope very much that we will go and hold field hearings, not only in the Marshalls, but also in FSM in the coming months.

Ms. WATSON. I think it is really necessary because we saw people resettle, but there was nothing for them. There was no economy. There was no really training. You know, scholarships where? Now, most of them came to the States, but they went back to the same

conditions they left. And I thought that there was far more assistance. You know, I go by the old adage if you break it you own it. And so we have to invest not only our dollars but our know-how. And we have to help the people find industries that they can get involved in because so much of the topsoil has just vanished, ruined.

So there are some deep problems. And we just got to snip it. We weren't there that long. But I tell you, they were so severe and serious I thought it would be decades before they could come back and be prosperous on their own. So we probably should go back, Mr. Chairman, some time soon just to evaluate to see if our help is sufficient enough to help the people prosper, because they certainly weren't from what we saw at that time.

Now, I just have to let you know that was several years ago. So to be fair, we need to go back and take another look. And with that, I will just let the others respond and then you can go on to someone else, Mr. Chairman.

Thank you.

Mr. MCGANN. Thank you. Mr. Chairman, I did not want to look like I was avoiding Ms. Watson's question. But there is always an opportunity to point out the close collaboration that occurs between Interior and State. Because as you well know, of the approximately \$188 million a year that is provided to the Pacific, \$150 million of that is actually assistance that comes through Interior for the compact states. And so it is very important for us to understand that many of the programs that you like to see addressed are actually not programs that are operated or funded directly by the Department of State.

So I just wanted to point that out. Thank you.

Ms. WATSON. Interior? I mean is it the Department of Interior? It was out in the Federated States of Micronesia.

Mr. COHEN. We administer, Congresswoman Watson, as you recall from your days as Ambassador, the financial assistance to the freely associated states under the compact. In addition to the \$180 million that Mr. McGann referred to, there is several—well, a couple hundred million more that we provide to the U.S. Territories out of Interior as well. But we administer the financial assistance mostly in the form of grants. And I might also mention that I just took my own boss, Secretary of the Interior Dirk Kempthorne, out to the Marshall Islands and he observed many of the conditions that you observed and expressed many of the same concerns that you have expressed. And we very much appreciate your desire to go back to the Marshall Islands to have another look. It is rare that Members of Congress get to see firsthand the challenges that are faced by our affiliated island communities; you know, the freely associated states or the territories.

Ms. WATSON. Can I be completely honest? Well, I am going to be completely honest. Being out there for 2 years, what I sensed is that we really neglected this area of the world. And whereas we have a compact and it was renewed in the federated states, there wasn't enough attention, there wasn't enough assistance. Oh, yes, young people can come here, they can go anywhere under our flag. But when they come back home nothing changes. And I really am concerned about that. We can talk about the number of dollars. But

unless along with those dollars comes the help and the oversight and the attention, it is kind of meaningless. And I felt when I left there that there was so much to be done and so little attention to what needed to be done.

The whole entrepreneurship aspect was missing. And I thought I was bringing a lot of opportunities, but they didn't take hold because the culture is so different. So until we understand the culture and the customs and how people tend to think, we are throwing good money after bad. So we have got to really pay more attention to how people make progress within their culture and in their belief system, and I think that is what gets neglected.

I am going to a different level now. We can, as I said, throw dollars. But I am really concerned that the dollars aren't enough. Okay. You don't have to respond. I am just kind of unloading.

Thank you, Mr. Chairman. I yield back.

Mr. FALÉOMAVAEGA. I thank the gentlelady. I have a couple of questions. Secretary Cohen, as a graduate of one of the most distinguished business schools in the country, I think it was Wharton School of Business in the University of Pennsylvania, and also as a tremendous advocate of private sector development, could you honestly share with the members of the committee the capacity and how is it humanly possible for the Government of the Marshall Islands to achieve greater private sector development with all the limited resources that they have to deal with?

Mr. COHEN. Thank you, Mr. Chairman. That is a very good question because there are a lot of immutable challenges that the Marshall Islands faces. It can't control its location, its susceptibility to weather, climate change and a lot of other things. But there are a lot of things that it can control. And I believe that it is particularly important for small island communities that have a lot of challenges right off the bat that they can't really do anything about—to do their best to control what they can control. And that is where I think the work that has been done by the Asian Development Bank in particular and other multilateral institutions on things that are within the control of local policymakers is so important. Because I can't imagine that there is going to be significant economic development in the Marshall Islands without the business climate improvements that have been discussed. And these are being actively debated in the Marshall Islands themselves.

When we were there in Majuro last month, we also heard from the Chamber of Commerce quite vociferously that some of the changes that have occurred since Compact II have been hurting, especially since reduced postal service. And we have been working very closely—when I say we, all the U.S. Government; State Department, Interior and other colleagues—with our friends at the U.S. Postal Service to see if there is anything that can be done to restore the Marshall Islands to domestic postal status. The Interior subsidizes this service to the tune of \$2 million a year, and the Postal Service also subsidizes it. And the business community there says this is a big barrier to their ability to conduct business, but we are working with them to try to improve that.

So number one, I think it is important that we work together, but especially the policymakers in the Marshall Islands to control what they can control.

Mr. FALEOMAVAEGA. I don't mean to disrupt what you are saying here, but how can you possibly do private sector development if our annual grant program to the Marshall Islands is only about \$35 million per year, and then the trust, of course it goes into a trust fund which is used separately. But for this development grant of \$35 million a year, how can it possibly be sufficient to get into some of the—like, for example, how far is Majeto from Kwajalein? The distance is not like driving a car from here to Richmond or Norfolk, Virginia. I mean the transportation alone is just nearly impossible for surface transportation, shipping and all of this. Very, very difficult.

But I just wanted to get your input about the idea, which I don't think we all could ever object to the idea of private sector development. But is this realistic? Can the Marshall Islands develop into a thriving private sector business with the distances, the different atolls? How can they possibly survive in that respect?

Mr. COHEN. Mr. Chairman, I very much appreciate the point that you are making, and I very much agree with you that there will always be very difficult challenges that Marshall Islands faces. I would make the point that the ability to develop the private sector economy would not primarily be a function of how much grant assistance it gets. However, if it uses that grant assistance wisely to build good infrastructure that could attract private sector economic development, that would be a very positive thing.

A lot of private sector economic development is also a function of the policies that are adopted, both locally and of course here in the United States we have a lot of influence in the policies that we adopt toward the Marshall Islands. They will always have challenges, but we believe that they will have opportunities. We continue to work with the Marshall Islands to try to attract private sector investment there.

You are absolutely right that it is a major challenge, but if the right choices are made, both here and in Majuro, we believe that significant progress can be made.

Mr. FALEOMAVAEGA. I just want to note that we are also joined by another distinguished member of our subcommittee, the gentleman from New York, Mr. Meeks. Do you have an opening statement, sir?

Mr. MEEKS. Mr. Chairman, I was listening to some of the testimony, and clearly what I just want to say is there is great concern over what is taking place here. And I heard both you and Ms. Watson talk about the historical nature of our relationship and how basically right now we have left these islands as a result of them being friends with us in a state of disaster really, where their land is not being able to be utilized, yet we don't want to continue with aid or increase it. There is not much hope. And I wanted to listen with reference to alternative means of economic development so that we can do something.

My statement is basically: How do we think that the world is going to look at us if we continually use places and then abandon them? That is why people are starting to look at us as the evil empire, if anything else. Because we go someplace, they open their arms to us and then when we are done with whatever we need for

our benefits we just walk away like there is no return. There is something wrong about that.

Today we are supposed to be the world's only superpower. Well, there has got to be more than just talking about military. We have got to have some moral strength. And mortality will dictate. I mean these are human beings that live on these islands. We have a responsibility. And there has got to be a way that we can make the kind of investments in the island, we can make the kind of improvements. Even in my district, you can only want for our friends and allies, but you want out. There is technology now. And if not, we have got to figure out some so that we can make the soil to be utilized again so that people will then have the enticement to invest there. We can't just sit back and say, "You don't need any money, you don't need anything else," like everything is all right. Because do you know what? Everything is not all right.

And so, Mr. Chairman, as I yield back my time, it is time for us to stand up and we have got to make sure we are doing the right thing. We have got to change the course here. Because sometimes when you look at it, we will be the ones that are isolated because we are treating anybody like this. And I believe that how you treat the least of these, just because they happen to be small islands in the Pacific, we should not neglect them. We have got to treat them with dignity and respect, understanding they did a good thing for us, and we have got to make sure that we do that in return.

Thank you, Mr. Chairman.

Mr. FALCOMA. I thank the gentleman for his most eloquent remarks, and I want to say a note. Before our distinguished three members join our subcommittee, I want to share with them a bit of information that I have learned over the years in dealing expressly with the Republic of the Marshall Islands. We conducted our nuclear testing program in the Marshall Islands; 67 nuclear bombs were detonated in this archipelago. In fact, the first hydrogen bomb ever tested in the world was done in the Marshall Islands. It was called the BRAVO shot in 1954, and it was 1,000 times more powerful—the hydrogen bomb was 1,000 times more powerful than the bomb we dropped on Hiroshima and Nagasaki. Just to give you an idea of what harm we have done not only to the land and the islands, even directly affecting the health of the Marshallese people.

I also want to note for the record and for the benefit of my distinguished colleagues, there were declassification of certain documents concerning our nuclear testing program over the years. And the whole focus of our government stated that only four atolls and the people living in these atolls were directly affected by our nuclear testing program. I recall distinctly they were the atolls of Rongelap, Utirik, and there were two others. And I am sure that it was Bikini and Enewetak. I want to say this for the benefit of my friends here on the committee. They have just declassified some documents and found out that the entire island group of the Marshall Islands was exposed to serious nuclear radiation. And guess what? We have not done anything to address this declassification of how we went about in making these examinations of human beings who were exposed as a result of our nuclear testing program.

It might also be of interest to my colleagues, why did we stop our nuclear testing program all of a sudden? Well, there is this nuclear cloud that tends to float, you know, after you detonate a nuclear bomb. And this cloud went all the way to Minnesota and Wisconsin. We found out there was something in these nuclear clouds which affected the safety of the use of dairy products among these two States. Guess what? We stopped.

So we decided that the State of Nevada would be the next victim for where we then conducted almost 1,000 underground nuclear testings in the State of Nevada. I want to get to my good friend from Arizona, but I still have two more questions if I may, Mr. Flake.

Mr. McGann, you indicated that there are approximately 1,800 United States workers on the Kwajalein Missile Range center that—this main island that we have developed quite well, and there are some 1,300 Marshallese. You are well aware of the fact that not one Marshallese lives on the Kwajalein Island. You are well aware of the fact that, after each working day, ships or boats, ferries take every one of these Marshallese and take them to Ebeye. And the excuse we use is, for security purposes, there may be some dangers involved here where we might do this.

And I will say to you, Mr. McGann, even to our good friend, the Interior Department, shameful, absolute disgrace of what is going on, on the Island of Ebeye, where some 10,000 Marshallese live on that terrible island simply because of the congestion, the desire for more work and the problems that we created simply because of the need for work. And to suggest that we ought to just leave it to the Republic of the Marshall Islands and the people there in Ebeye, is this really the best way that we ought to proceed in taking care of this problem that has been there for I would say the last 20 years? Shouldn't this be a responsibility of our government as well and not just leave it to the Republic of the Marshall Islands to take care of?

Mr. McGann.

Mr. MCGANN. Thank you, Mr. Chairman.

Mr. Chairman, I would just like to go back to the context of my statement, which was that there was a dispute between the landowners and the Government of the Republic of the Marshall Islands. We believe quite strongly that the processes within the Marshall Islands should go forward without intervention from us.

Now, this is not to say that we have abdicated any type of responsibilities here, but we still emphasize the fact that the RMI is an independent country and has a responsibility and an opportunity to work with its own citizens. The second point—I would just like to say that we do understand that there are Marshallese who do live on the atoll. But if you like, I could take this back as a question and confer with our colleagues from the Department of Defense and come back to the committee with an appropriate answer.

Mr. FALEOMAVAEGA. Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chairman.

And actually, Acting Deputy Assistant Secretary McGann, you know, said the point I was going to make. Neither Mr. McGann nor I were suggesting that we just leave to the government or the Mar-

shall Islands to deal with the conditions on Ebeye. You know, we as the United States Government have agreed to provide a significant amount of financial assistance to Ebeye, you know. Our compact grant funds, a very significant proportion of those funds benefit Ebeye. In addition to that, there are the 3.1 million- and 1.9 million-dollar pots of money that are specifically for the people of Ebeye. And I just sent Secretary Kempthorn to Ebeye. He was intending to visit the Marshall Islands and I made sure he saw the conditions on Ebeye. I thought that was very important, and he was very moved by the conditions that he saw. But we also explained that the conditions there are—the situation is complicated.

Mr. FALEOMAVAEGA. Mr. Secretary, the bottom-line is that it is obviously the Republic of the Marshall Islands have limited resources to provide for those 10,000 people that live on that island. Now, shouldn't our government do something to give assistance to alleviate this terrible situation that we find ourselves in?

Mr. COHEN. Certainly I agree with you that we should.

Mr. FALEOMAVAEGA. But we are not doing it.

Mr. COHEN. We certainly do. We have—in addition to our compact funds, we have \$3.1 million in the special needs fund for Ebeye, as well as a separate pot of money of \$1.9 million specifically for this community. And some of the efforts that Interior and the rest of the U.S. Government have made in the past haven't worked out as planned. For example, overcrowding on Ebeye. Well, there was a hope that the population there could spread out to neighboring islands to the north all the way up to Gujigu. And—of course the U.S. Government funded the construction of a causeway that would enable people to, you know, travel easily.

Mr. FALEOMAVAEGA. What is the obvious reason for the Marshallese to come to Ebeye? To seek employment. Isn't that really the number one reason why they are there?

Mr. COHEN. Sure.

Mr. FALEOMAVAEGA. Why would I want to go back to Majuro if my intent really is to wait for an opportunity to find—to be among those 1,300 Marshallese who are working on Kwajalein.

Mr. COHEN. I am sorry, Mr. Chairman. I guess what I was meaning to refer to is not that the people could spread out and go to other atolls, but that people could actually spread out and go to neighboring islands where it would still be convenient to commute to, you know, Kwajalein to work on the base, but they wouldn't have to be, you know, packed into that tiny island of Ebeye. You know, there are neighboring islands up the atoll—

Mr. FALEOMAVAEGA. Do you mean islets? Not islands or atolls. They are really islets. They are just little dinky ones. You can't even—only two or three people can live on those islets.

Mr. COHEN. With the greatest of respect—and I visited the area and I have traveled the causeway which by now is virtually—you know, it is not drivable. It is in very poor condition because the population has not been allowed to spread out on to those islands. And, you know, I respect those decisions, and I am not passing judgment on that. I am merely pointing out that we have tried to work with our colleagues in the Marshall Islands, the Kwajalein landowners, the Government of the Marshall Islands, to find ways to alleviate the overcrowded conditions on Ebeye. And some of

those have, you know, not panned out for reasons that are beyond our control.

Mr. FALEOMAVAEGA. Well, I am going to get back to you on this, Mr. Secretary.

Mr. Flake?

Mr. FLAKE. I just wanted to ask, Mr. McGann, what kind of relationship do you have with the Embassy of the RMI? Good relationship, I assume? I look at the votes, like, at the U.N., and no one votes with us more than the Marshall Islands. Is it a good relationship?

Mr. MCGANN. Mr. Congressman, it is an excellent relationship. We not only have good contacts at post with our Ambassador in Majuro, but in New York, for instance, I regularly meet with all of the Pacific Island ambassadors once a quarter to discuss our own issues as well as areas in which we can better foster cooperation. I would point, again, to the fact that the President himself played a major leadership role just in early May at the Pacific Island conference of leaders, not only in the overall planning of that session, because he was a cochairman of what is called a PICL, which we held here in Washington in collaboration with the East-West Center, which has the lead on the leader session. But, again, President Note played a role. His Embassy also had an opportunity to review the agenda for the meetings that we held at the State Department. We are in regular contact with the government and Republic of the Marshall Islands. And we appreciate the work that we do together.

Mr. FLAKE. Thank you. I was pleased to join with Mr. Faleomavaega who passed a resolution last year I believe celebrating the anniversary of the constitution of the Marshall Islands. I also appreciate the government there for the work that they are doing and for the good friendship that we have. Thanks.

Mr. FALEOMAVAEGA. I just want to note also for the record, to no fault of yours, Secretary McGann, you know that I was very critical of the fact that we had four Prime Ministers and four heads of state visiting Washington for the first time in the history of our country, and the fact that they were not even—they did not even have the privilege of having at least just a chance to say hello to our President. You know, these same island leader nations, they get invited by President Chirac personally to Paris. They get invited by the Prime Minister of Japan to Tokyo. They get invited by the Prime Minister of China. And it was good that they met with Secretary Rice. But I still feel very strongly, why couldn't they meet with our own President? Every time the Prime Minister of New Zealand and Australia come, we wine and dine them; they meet with our President. But when any of these island nation Prime Ministers and heads of state come to Washington, they are not even given the time of day by our President, and that is unfair. It sends a very different signal to the fact that we don't seem to pay that much attention to the issues affecting our Pacific region.

I have also been very critical of the fact that the only foreign policy that we have toward the Pacific is only toward New Zealand and Australia. And the needs of these island nations are only incidental, incidental to our interests in that important region of the world. I just want to note that for the record, then.

Gentleman from New York.

Diane, did you have some questions?

Well, my good friend from New York, did you have some questions?

Mr. MEEKS. Let me just—you know, because I am still miffed, you know. On this Foreign Affairs Committee, we have had a number of hearings, and we have seen the polls where internationally everyone is starting to look at the United States through different eyes. So I am really concerned about how the rest of the world views us. And if we treat an island such as the Marshall Islands, who is voting with us as Congressman Flake indicated, more than anyone else in the U.N., if we treat an island where people are volunteering to still come into our military forces, work with us and—in a war I didn't even want to go into in Iraq; if we treat our allies after we have done testing and still have bases and other things on these islands, if we treat them as poorly as I see us treating them now, what is everybody else—I mean, in my district, I would have—for example, we have technology now. You have these brown field areas where there is junk in the ground. And I know when you deal with—because we have got to come up with something so that we can come in and figure out a way to get the contaminants out so that people can utilize the land again. It is not good enough.

And maybe you can give me—it is not good enough to tell me that, “Well, the Government of the Marshall Islands is not doing enough.” So my question is, what technical assistance are we providing and how much money are we putting into that technical assistance in regards to creating ways for economic development as well as fixing or trying to reproduce the land and the soil that has now been so endangered by our testing projects. I limit it to that question now first. What are we doing?

Mr. COHEN. Thank you, sir. And also let me clarify that whereas in response to previous questions where I was specifically asked, you know, what more can the Government of the Marshall Islands do that I responded, I did not in any way mean to imply that, you know, it is only for them to, you know, make reforms and make changes and that we don't have a responsibility. So I agree with you that the United States Government has a responsibility that we are trying to own up to and that we are not putting all of the responsibility on the Marshall Islands. In terms of what we are doing for technical assistance to help improve the economy—and I think you also asked about remediation and things of that sort. But to improve the economy, for example, my office approved a grant of several hundred thousand dollars to enable the fiber optic cable connection that is being built from Kwajalein to Guam to have a spur so that it can connect the civilian population of the Marshall Islands as well. We are definitely talking about doing this for Majuro. And hopefully Ebeye, the other main population center in the Marshall Islands, will be included as well. And then to finance the actual construction of the spur, I believe and perhaps the Foreign Minister will be able to confirm, that we are working with another U.S. agency, the U.S. Department of Agriculture to finance the construction of the spur to make sure that high-speed telecommunication services are available to the civilian population of the Marshall Islands, which is a very, very important means of de-

feating the tyranny of distance that these isolated small island communities face all the time.

A lot of our compact assistance is going to build an infrastructure which we hope will result in a more educated, more healthy population. And that assistance can also be used for technical assistance to help, you know, develop the private sector economy. To date, the Marshall Islands Government through its priorities is focused more on building schools, and we support that. You know, it is the first step, get your primary education in order. So they haven't really put a lot of funds into, you know, the Private Sector Economic Development Grant for example. And in the future, you know, these funds will be available to help—

Mr. MEEKS. What is the future?

Mr. COHEN. Well, we have a 20-year Compact Free Association Financial Assistance Program. I think we are in year four. It started in fiscal year 2004. So we are about 4 years into it. And, you know, there is a fixed amount of funds that are available for all of the sectors, health, education, public infrastructure, private sector development, environmental protection and public sector capacity building. But within that, we defer to the priorities that are set by the Republic of the Marshall Islands to say, well, we want to focus most of this—most of this money, you know, to build schools and then—and now they are shifting to bolster their healthcare infrastructure. So it is a staged process. The money is there, and we defer to their wishes as to how it should be used. In addition to that, my office, the Department of Interior's Office of Ancillary Affairs, we have a technical assistance budget where we provided numerous grants to the Marshall Islands for a number of private sector development efforts. We have an operations and maintenance improvement budget where their critical infrastructure can be maintained.

Like all government agencies, we don't have unlimited resources. And reasonable people can disagree as to whether the resources we are providing are sufficient. But we are certainly making every effort to take the resources that Congress, you know, has granted us and make them work as hard as, you know, as possible to benefit the people of the Marshall Islands. But, you know, like anything, there are a lot of challenges that we face. We are trying to use the resources that are available to us and to the Republic of the Marshall Islands to address these problems. But we have to continue to work together as partners to try to make progress.

Mr. MEEKS. Last question, Mr. Chairman, and I might have missed this. I am not sure. But I know that—I think it was 2005 when it was determined that there was no legal basis to continue for compensation for the nuclear testing that was going on. So there was no test compensation. My question is, on what grounds, if any, do you think—and I think that we should be real creative here—might the U.S. Government consider providing additional compensation to the Marshall Islands? And do you have any idea if we were to do such, given that you have been on the ground and you have seen what is taking place with reference to whether it is education, with reference to remediation of soil or whatever, how much money do you think the United States—I am just asking you

now, on a moral basis, how much do you think the United States should come up to and should we consider in Congress?

I know you think that we should come up with some more money. I'm sure if you have been on the ground and you know what is taking place, that we should give some more compensation. So any of your expertise from being there and et cetera, you know, how much more money do you think to help push the Marshall Islands up so—as far as the economic development is concerned and moving them in the right direction?

Mr. FALEOMAVAEGA. Will the gentleman yield before my good friend responds?

Mr. MEEKS. Sure. Yes.

Mr. FALEOMAVAEGA. Almost 400 Marshallese were exposed to nuclear radiation. This is almost 50 years ago. You know, when nuclear radiation gets in your system, it passes onto the next generation. You are talking about a 50-year period. You are talking about these people exposed directly—the whole archipelago was exposed to nuclear radiation. I might also add to my good friend, the gentleman, we never really conducted a thorough review or diagnostic tests, whatever it takes to find out what has happened. I met with women there who have had five operations of cancer throats as a result of our nuclear testing program. And that is just the tip of the iceberg. We have not even gone into the whole situation of what we have done and as far as compensating these people who were exposed to nuclear testing. I will say to my good friend, this is definitely an issue that our subcommittee is going to pursue in the coming months.

Mr. COHEN. Mr. Secretary, sure. And I have to apologize, congressman, that I guess I am not authorized to cite a figure. My job is really to take the resources, you know, that have been provided under the compact, working with my colleagues and the executive branch and try to make those go as far as possible. However, in terms of additional compensation, even though, you know, the administration did express the position that the specific, you know, requirements of the test were changed circumstances in the administration's opinion, that those requirements had not been satisfied as spelled out in the compact. You know, the change of circumstances petition, you know, was a petition to Congress and the administration, provided the service at the request of Congress of, you know, providing the analysis. And, you know—and having done that, you know, the petition is really back with Congress.

Mr. FALEOMAVAEGA. I just want to make sure I am clear. I thought the petition was through the administration; the administration rejected it; and so now they refer it to the Congress for consideration.

Mr. COHEN. No. Actually if I may—

Mr. FALEOMAVAEGA. Please.

Mr. COHEN. Either way. Well, if I may, Mr. Chairman, under the compact, the change of circumstances petition is made to Congress, and that is the procedure and that was the procedure that was duly followed by the Government of the Marshall Islands. And then Congress, having received the petition, turned around and said to the administration, will you please review this and provide your analysis? And the administration looked at the, you know, specific

language of the compact—you know, I think there was a three- or four-prong test that has to be met—and render the opinion for the benefit of Congress that in our opinion that those prongs have not been met. As a policy matter, Congress is always free to, you know, provide funds for whatever purpose it wants. So the administration wasn't, you know, telling Congress to do something or not do something. We were simply, you know, doing our best under the leadership of the State Department to answer the question that was put to us by Congress.

Mr. FALEOMAVAEGA. Mr. McGann?

Mr. MCGANN. I would re-affirm that the RMI did submit its request to congress in 2000, and actually, it asked the Congress for over \$4 billion in compensation. And Secretary Cohen is quite correct when he said that Congress asked the administration to evaluate the request. As Congressman Meeks pointed out in January 2005, the administration sent its evaluation to Congress concluding that the RMI request did not qualify as changed circumstances within the meanings of the Claims Settlement Agreement. As a result, there was no legal basis under the original settlement agreement for considering additional payments. However, that said, the last word is still with Congress because the petition sits with Congress.

Mr. FALEOMAVAEGA. I am glad to hear that. I just thought maybe we are being a little too technical about those three-prong tests just to make sure these poor people never get compensated. Of course, the \$4 billion they requested is somewhat a little high. But I am sure reasonable people could negotiate and work out something that would be reasonable. But I appreciate, Mr. Secretary, your explanation. So the ball is in our court. So now we have to decide what we can do to help. This issue has been going on for too long. As a former staffer here, 1975, this is almost 30 years ago, and we are still going round and round and round and people are dying and not being properly compensated. This is immoral in my humble opinion. We can come up with the best legal minds and whatever policy decision that we might want to do, but this is just too much. But I am not faulting you gentlemen. You were just simply stating what has been said. But I sincerely hope that the members of this subcommittee will definitely be meeting to see what we can do to pursue this issue a little better and maybe the approach needs to be changed. My good friend from Arizona, Mr. Flake.

Mr. FLAKE. I am good.

Mr. FALEOMAVAEGA. Okay. Diane? I just have one more question of Mr. Donovan. As I stated earlier, my colleagues and I have introduced H.R. 2705 that addresses the very issue where we are trying to bring USAID and FEMA working together to assist not only RMI but also FSM and Palau for emergency conditions and situations like hurricanes, typhoons. Is this basically—I just want to make sure for the record that this is in essence the intent of this proposed bill and for which I am an original cosponsor. I just want to know, for the record, that this is—I know this is an issue that has been pursued for a while also from our friends, from the FSM, Palau, as well as RMI, that we give this kind of assistance. And it is only fair that we should do so. Do you have any other additional comment on that legislation, Mr. Donovan?

Mr. DONOVAN. I think what I would say is that this proposed legislation would actually help make better the transition from FEMA to USAID. FEMA will still be involved. They will be involved in the assessments once a disaster occurs, and they will be involved in the actual disaster declaration process, both coordinating with the Embassy and the President. But USAID will soon be actually delivering the disaster assistance. What your proposed legislation does is make that transition much more effective and efficient. And so that is why we are supportive of it. Because we obviously want to do the best job we can in working with our FEMA colleagues.

Mr. FALEOMAVAEGA. Gentlemen, I want to thank you for bearing through the trials and tribulations of this subcommittee's efforts that is just trying to make our record clear. And I do want to thank you sincerely for your testimony and the suggestions and the thoughts that you have shared with the members of the subcommittee. Thank you so much for coming, and I look forward to continue to work with you in maybe some other areas that will be helpful not only to the Republic of the Marshall Islands, but also in Palau as well as FSM. I will now dismiss you gentlemen. You can't wait to leave here. I know that.

But I would like to ask for our next panel, my good friend and distinguished Minister of Foreign Affairs, Mr. Joe Zackios, and also my good friend, Dr. Gootnick. If the two of you could please come forward for your testimony.

The subcommittee is honored to have with us the distinguished Minister of Foreign Affairs representing the Republic of the Marshall Islands, my good friend, Mr. Joe Zackios. Mr. Zackios is a lawyer by profession and has served as a Senator from the Arno Atoll, was then appointed as Minister to the President in 1999 and currently serves as the Minister of Foreign Affairs now for the past 6 years. Minister Zackios enjoys fishing like me, lawn and table tennis, not like me, and also loves to play basketball, not like me. So we are very good at that.

And also with us is Dr. Gootnick, who is a medical doctor by profession and now currently works for the General Accounting Office and would welcome both of you gentlemen. Your statements will be made part of the record without objections of members of the subcommittee.

And I would like now to have Minister Zackios for his statement.

**STATEMENT OF THE HONORABLE GERALD M. ZACKIOS,
FOREIGN MINISTER, REPUBLIC OF THE MARSHALL ISLANDS**

Mr. ZACKIOS. Thank you, Mr. Chairman. Chairman, colleague—

Mr. FALEOMAVAEGA. Could you get closer to the mic, Mr. Minister? You probably need to push the mic closer to you.

Mr. ZACKIOS. Thank you, Chairman.

Chairman, Ranking Member Manzullo, members of the subcommittee, ladies and gentlemen, His Excellency, President Kessai H. Note, sends his appreciation to the chairman and the subcommittee for convening this briefing as you and he discussed, Mr. Chairman, when the President visited last fall. The first item I would like to discuss relates to United States nuclear testing in the Marshall Islands. There is no question that the United States Gov-

ernment's detonation of 67 atmospheric nuclear weapons in our country created profound disruptions to virtually every aspect of Marshallese life. A small country with 70 square miles of land and a population 1/10th the size of Washington, DC, does not have the capacity to respond to the magnitude of problems caused by the nuclear weapons testing program. The RMI Government certainly appreciates the assistance the U.S. Government has given to the RMI to address some needs related to the testing program.

However, the needs are much greater than the U.S. is currently taking responsibility for. The U.S. Government must update its antiquated policies on the scope of radiation damage and injury. Currently, the United States Government employs science and standards of radiation knowledge from the 1970s and 1980s. Healthcare and environmental programs in the Republic of the Marshall Islands need to incorporate decades of new knowledge that demonstrates that smaller amounts of radiation do more harm than previously understood, and that damages and injuries are not confined to the four atolls or the result of just the bravo event. BRAVO accounts for only 1/7th of those tested in the Marshall Islands.

The RMI Government asked Congress to address the impacts of the remaining 6/7ths of the mega tonnage detonated in the Republic of the Marshall Islands. The biggest change regarding the RMI is to the healthcare system. A Band-Aid approach of providing small increases to healthcare will not address the systematic failures of an inadequate and unsustainable system.

In the health sector, we must address the following: First, patient population. There are multiple subsets of RMI citizens that require monitoring and care because of their exposure yet remain ineligible for U.S. Healthcare linked to the testing program.

Second, levels of funding. Funding needs to be stable and permanent rather than discretionary to avoid budget fluctuations that impact patient care. Future funding also has to help the RMI build capacity so our citizens do not become burdens on areas where they seek public health services outside the Republic of the Marshall Islands, such as Hawaii.

Third, scope of illnesses. Cancer is the major health detriment resulting from exposure to radiation, but hundreds of individuals also suffer from a variety of thyroid conditions, which although benign, affect their lives on a daily basis. There is a need to identify and address health burdens resulting from the testing program beyond cancer.

Fourth, early detection and treatment options. The RMI Government wants to develop a program that can detect and treat the additional cancers that the U.S. NCI told us to expect. Cancer remains a death sentence for those outside the extremely narrow parameters of the DOE programs or those with personal financial means to seek treatment outside of the country.

In the environment sector, we must address, one, the Runit-Dome. The RMI Government kindly asks Congress to assign responsibility for monitoring the integrity of the Runit-Dome to a U.S. agency.

Second, continued monitoring. Environmental monitoring needs to continue so resettled communities can have assurances their health will not be compromised.

Third, resettlement. All islands on Rongelap, Bikini and Enewetak—not just the main islands—need rehabilitation.

And fourth, environmental accounting. The RMI Government respectfully asks Congress for a complete accounting of contaminants in our environment resulting from U.S. military activities. On Kwajalein, this should include a study of both radiation and other chemicals released during the Cold War as well as environmental releases from the missile program.

There are other issues, Mr. Chairman, that we would like to discuss. In addition to the health and environmental program changes required, the RMI Government also asks for supplemental funding to allow the Nuclear Claims Tribunal to make awards for future personal injury cases that the NCI tells us to expect as well as for the land awards that the Nuclear Claims Tribunal lacks the funding to provide.

On the issue of compact implementation, compact sector grants, overall, Mr. Chairman, we have made a great deal of progress with the compact as amended. The procedures that we developed regarding the Joint Economic Management and Financial Accountability Committee have worked well through a process of requiring consensus between our two governments on the allocation and division of compact annual sector grant funding.

With your permission, Mr. Chairman, I would submit for your record my testimony from yesterday to the House Resources Committee. This statement discusses our experiences implementing the compact, including the four issues I will briefly highlight for you and members of the committee.

First, the Postal Services Agreement imposes international rates and substantially increases the cost of doing business in the Republic of the Marshall Islands. The RMI Government kindly requests the support of the subcommittee to encourage the USPS to amend the Postal Services Agreement.

Second, a request for full inflation adjustment for compact funds so that the grant assistance and compensation provided by the compact does not lose real value and fully supports the compact's mutual commitments. This is particularly important given the rapidly rising cost of imported fuel which is causing major problems with the provisions of public utilities and inter-island services for our widespread communities and creating an overall inflationary effect that is putting a damper on our economic growth. We encourage H.R. 2705 include an amendment to section 104(j) of public law 108-188, the Compact Act, to provide that full inflation could be made available in fiscal year 2010 instead of fiscal year 2014.

Third, the RMI is experiencing difficulties as a result of delays in receiving supplemental education grants and a substantial shortfall in appropriated funds in comparison to plan amounts the RMI was to receive. A shortfall of some \$700,000–\$1,200,000.

Fourth, the RMI is concerned about a difference in opinions about the purpose of the compact trust fund. The RMI believes it would be fruitful for our governments to consider what can be done between now and fiscal year 2024 to maximize trust fund income and to make it viable in the future. Mr. Chairman, I want to touch briefly on issues pertaining to Kwajalein. I know others will speak to that issue. But Kwajalein matters must be kept on a govern-

ment-to-government basis. The problem with implementing provisions of the amended compact as they relate to Kwajalein continues to be a very divisive internal political issue within the Republic of the Marshall Islands, and I don't believe it is appropriate to air those internal problems here. Our government wants to move forward on Kwajalein because it is in our national interest to do so. In this respect, the RMI Government will continue to press forward in working toward a new or amended land-use agreement with the landowners and people of Kwajalein. Finally, Mr. Chairman, I feel obliged to comment on certain matters that were raised yesterday at the resources committee on ancillary affairs hearing. Mr. Chairman, no one would ever question your leadership and good faith and your long standing friendship, not only to me but to most particularly the people of the Marshall Islands.

But one thing that we all have to contend with is that this is an election year in the Republic of the Marshall Islands. No matter what our intentions are here in this hearing, this is a political year for the people of the Marshall Islands. There are real issues that need to be discussed, issues that we come to Washington, DC, to make progress on. But the fact of the matter is that this important process has become inflammatory because of the inescapable fact that this is an election year in the Republic of the Marshall Islands. I know from your questioning in yesterday's hearing about the internal politics in the Republic of the Marshall Islands, that you were feeling frustrated. We are also feeling frustrated. We look forward to working with you, and I personally look forward to working with you. And I want to support the work of this subcommittee. What the RMI seeks with the subcommittee is a more deliberative process. When there is a short notice before a hearing there is little time for our offices to work together. I believe the subcommittee and staff seem to have received a lot of misinformation. A lot of questions that are being asked, including yesterday's can be responded to with documents.

We look forward to working with you, Mr. Chairman, and the staff to set the record straight in a very orderly fashion and sharing documents with you that will clear up any misinformation. Mr. Chairman and members of this subcommittee, this completes my prepared statement. I will be most happy to respond to any questions you may have at this time. Thank you very much. [Speaks in a foreign language.]

[The prepared statement of Mr. Zackios follows:]

PREPARED STATEMENT OF THE HONORABLE GERALD M. ZACKIOS, FOREIGN MINISTER,
REPUBLIC OF THE MARSHALL ISLANDS

Chairman Faleomaveaga, Ranking Member Manzullo, Members of the Subcommittee, Ladies and Gentlemen:

Thank you for the opportunity to appear before you today. His Excellency President Kessai H. Note sends his warm personal regards and thanks the Chairman and the Subcommittee for convening this briefing that you, Mr. Chairman, and the President discussed during his trip to Washington, D.C. this Fall.

The Government of the Republic of the Marshall Islands (RMI) has also appreciated the opportunity to work closely with your staff these past several months, Mr. Chairman, to discuss the health and environmental needs linked to the testing program and to consider options for addressing those needs.

As this Subcommittee appreciates, the RMI has an extremely close and unique relationship with the United States which began when our citizens worked as scouts for the U.S. military during World War II to terminate Japanese occupation of our

islands. Our relationship deepened substantially during the next four decades when the Marshall Islands was a trust territory of the United States, and the U.S. Government was the sole administering authority in our nation. During this time, the U.S. Government deemed our geographically isolated islands a strategic location to learn more about the capabilities of its atomic and thermonuclear weapons. After the trust territory relationship was mutually terminated in 1986, our nations have remained strategic partners; our Marshallese sons and daughters serve in every branch of the U.S. armed forces and currently put their lives on the line in Iraq and Afghanistan to support U.S. strategic interests. The U.S. Army also continues to lease the Ronald Reagan Ballistic Missile Test Site on Kwajalein Atoll to advance the U.S. Government's program to develop a missile shield.

NUCLEAR ISSUES:

There is no question that the U.S. Government's detonation of sixty-seven atmospheric nuclear weapons in our county created profound disruptions to human health, the environment, as well as our economy, culture, political system, and virtually every aspect of Marshallese life. The U.S. nuclear weapons testing program was the marking period of our modern history; the trajectory of our people, our islands, and our institutions reflect the chaos and problems caused by extensive contamination, public health crises, and the upheaval and repeated relocation of several populations.

A small country with seventy square miles of land and a population one tenth the size of Washington, D.C. does not have the financial, human, or institutional capacity to respond to and address the magnitude of problems caused by the nuclear weapons testing program—problems which continue to plague our nation to this day.

The RMI Government certainly appreciates all the assistance the U.S. Government has given to the RMI to date to address some needs related to the testing program. The health programs, the environmental monitoring, and the food support programs for the atolls most impacted by the testing program are perhaps the most important programs that the U.S. provides to the RMI, particularly from a symbolic perspective as they demonstrate a U.S. interest in taking responsibility for the damages and injuries caused by U.S. testing. However, the RMI Government and the atoll leaders have been telling the U.S. Government loudly and persistently over many decades and through multiple administrations that the needs are much greater than the U.S. is taking responsibility for. For example, we all know about the proven link between radiation exposure and cancer. The magnitude of the testing program in the Marshall Islands was one hundred times as much as the program in Nevada, yet to this day I find it astounding to believe that there is no oncologist in the Marshall Islands. The lack of an oncologist reflects both the need of the RMI to focus its limited resources on preventative health as well as a shortcoming in U.S. assistance for health consequences resulting from the testing.

The U.S. Government must update its antiquated policies on the scope of radiation damage and injury. Currently, the U.S. Government employs science and standards of radiation knowledge from the 1970s and 1980s. Healthcare and environmental programs in the RMI need to incorporate decades of new knowledge that demonstrate that smaller amounts of radiation do more harm than previously understood, and that damages and injuries are not confined to the four atolls (Bikini, Enewetak, Rongelap and Utrik), even if these atolls experienced the largest burdens. Furthermore, U.S. assistance in Section 177 of the Compact is based on radiation exposures from just one of the sixty-seven events, the Bravo test. Although Bravo was the largest and dirtiest detonation there were seventeen other tests in the megaton range included in the sixty-six additional tests that contaminated our islands and compromised the health of the people. Bravo accounts for only one-seventh of the megatonage tested in the Marshall Islands; the RMI Government asks the U.S. Congress to address the impacts of the remaining six-sevenths of the megatonage detonated in the RMI. The failure to address the full scope of damages and injuries resulting from the testing program is not the responsibility of the Department of Energy (DOE) or the Department of Interior (DOI) who implement the programs according to mandate. Congress needs to acknowledge the policy updates required, and take action.

Since the focus of this briefing is on what needs to change, I will list the changes related to U.S. responsibility for the testing program that the RMI Government feels are most pressing. The biggest change required, however, is to the healthcare system. A band-aid approach of providing small increases to healthcare will not address the systemic failures of an inadequate and unsustainable system:

In the health sector:

1. *Patient population.* There are entire populations in the RMI that need access for healthcare because of their exposure to radiation, but are denied care because of current U.S. Government policies. The U.S. National Cancer Institute predicts hundreds more cancers will develop in the RMI as a result of the testing program, and that the cancer burden will extend to at least ten atoll populations, and fifteen additional atolls received low or very low exposure levels that might result in an increase in cancer levels for those populations. Yet, the DOE program is designed for less than one-hundred and twenty patients, and the 177 Healthcare Program (HCP) is limited to four atolls and does not have funds to provide care for radiological illnesses. The “control” population that was resettled on contaminated islands, and in some cases exposed to radiation during experiments acknowledged by the White House, needs continued care. DOE currently attends to the healthcare needs of this population, but it is not stipulated in Congressional language and a future policy interpretation could remove vital services to this population. DOE contractors involved in the clean-up of the test site areas also require medical monitoring and care like U.S. citizens exposed to radiation during employment for DOE.
2. *Three tier system.* There are three levels of healthcare in the RMI which sometimes overlap, but more often create gaps in care and lead to enormous frustration for patients. Older patients suffering health outcomes linked to the testing cannot be expected to navigate back and forth between programs that focus on radiogenic or non-radiogenic illnesses and treat some conditions but not others.
3. *Levels of funding.* Current levels of funding for the DOE program seem adequate for its mandate, but the RMI Government is concerned that expensive illnesses for a few people could devour the budget and leave the program without funds to provide adequate treatment for others. The level of funding for the 177 Health Care Program (HCP) is grossly inadequate, and needs to return to a level where the administrators can provide healthcare for both radiogenic and non-radiogenic healthcare needs. Funding needs to be permanent, rather than discretionary, so we will not continue to experience budget fluctuations that impact patient care nor be required to lobby Congress every year for essential healthcare services resulting from the testing.
4. *Establishing sustainability.* Future funding for healthcare needs to be sustainable so the RMI can build predictable, stable programs for patients. Also, the RMI is no closer to being able to care for the healthcare needs of its population now than it was at the end of the trusteeship. The RMI needs to build capacity so its citizens do not become burdens on the areas where they go to seek public health services outside the RMI, including Hawaii and other areas.
5. *Scope of illnesses.* Cancer is the major health detriment resulting from exposure to radiation, and is the second leading cause of death in the Marshall Islands. Many cases go untreated and cause great suffering. Hundreds of individuals also suffer from a variety of thyroid conditions which, although benign, affect their lives on a daily basis. There is a need to identify and address health burdens resulting from the testing program beyond cancer. Toxic substances in the detonations such as thallium and arsenic were released during the tests, PCBs from generators that supported the testing program entered our waterways and land, and relocation, changes in diet, stress, and psychological duress are examples of health problems beyond simply radiation exposure.
6. *Early detection and treatment options.* The RMI Government wants to develop a program that can detect and treat the additional cancers the U.S. NCI told us to expect so our citizens can have the best chance of survival. There is no nationwide screening and treatment program, and the RMI is lacking in diagnostic ability because of an insufficient laboratory. The RMI does not have the ability to provide chemotherapy and other life-saving treatments for cancer. Cancer remains a death sentence for those outside the extremely narrow parameters of the DOE program or the personal financial means to seek treatment outside of the country. The RMI has developed, with the assistance of Center for Disease Control (CDC) funding, a National Comprehensive Cancer Plan. The plan discusses the dearth of cancer screening, prevention, diagnosis, and treatment in the RMI where approximately \$280 is spent per capita per year (compared to approximately \$5,300 in the U.S.).

In the environmental sector:

1. *Runit Dome.* The RMI Government kindly asks Congress needs to assign responsibility for monitoring the integrity of the Runit Dome to a U.S. agency.

2. *Continued monitoring.* Environmental monitoring to date has been very good, but work needs to continue so resettled communities and those hoping to return to their homelands in the future can have assurances their health will not be compromised as a result.
3. *Resettlement.* Every community displaced by the testing program must have the ability to restore islands and return home, if possible. The people of Enewetak are not just one community; the community of Enjebi needs to have its land rehabilitated so they no longer have to live on other peoples' land. Similarly, all islands on Rongelap and Bikini, not just the main islands, need rehabilitation so people can have access to their ancestral homelands, and have the ability to secure food from multiple islands.
4. *Whole Body Counters.* These machines that detect radiation present in the human body are important to monitoring populations exposed to radiation in the environment. Machines and technicians are needed in every location where Marshallese come in contact with radiation.
5. *Environmental accounting.* The RMI Government respectfully asks Congress to authorize a complete accounting of contaminants in our environment resulting from U.S. military activities. On Kwajalein, this should include a consideration of both radiation and other chemicals released during the Cold War as well as environmental releases from the missile program. To date, the RMI receives environmental data in a piecemeal fashion—radiation from the Bravo test, impacts of a single missile test—but there has been no effort to consider the cumulative impact of environmental toxins and the consequences for human and environmental health.

Other:

In addition to the health and environmental program changes required, the RMI Government also asks for supplemental funding to allow the Nuclear Claims Tribunal (NCT) to make awards for future personal injury cases that the NCI tells us to expect as well as for the land awards that the NCT lacks the funding to provide.

Compact Sector Grants

Overall, we have made a great deal of progress with respect to implementing the Compact, as amended. The procedures we developed regarding the Joint Economic Management and Financial Accountability Committee (JEMFAC) have worked well through a process of requiring consensus between our two governments on the allocation and division of Compact annual sector grant funding.

During the past three years, the RMI Government has invested heavily in the Education, Health, and Public Infrastructure sectors in terms of allocating available annual grant funding—in fact, the Public Infrastructure grant allocations have been mostly for improving education and health facilities. The Health and Education sectors are identified within the body of the Compact as priority sectors. The RMI Government intends to remain fully committed and focused on improving our education and health outcomes.

Our Government has also done much to improve the groundwork for more robust private sector development with enactment of further changes to our land registration laws, enactment of a secured transactions law, and other reforms to create an environment conducive to the private sector growth. I must, however, mention one aspect of the amended Compact which is not consistent with our mutual desire to promote private sector development. I am referring to the Postal Services Agreement under the new Federal Programs and Services Agreement, which imposes international rates on mail sent to the RMI and makes other unfavorable changes to the previous Postal Services Agreement. The current Postal Services Agreement has been bitterly opposed by our Chamber of Commerce, has substantially increased the cost of doing business in the RMI, and serves as a disincentive for RMI-U.S. commerce. I would therefore, ask for the Subcommittee's support in encouraging the USPS to engage our Government in restoring these lost benefits and amending the current Postal Services Agreement.

We believe that implementation of the accountability provisions in the amended Compact in respect to annual sector grant funding has to date, been largely a success for the RMI. We must, however, continue to improve on our performance and see positive and measurable results that will encourage greater ownership of the new system within our government, and to the Marshallese people who are the real beneficiaries of better accountability and good governance.

I mention "ownership" because that is the most crucial component to a successful implementation of the new annual grant procedures and new Fiscal Procedures Agreement (FPA). Contrary to the statements by people who have opposed the Compact, as amended, many of these procedures were already part of the domestic law

of the RMI. We already had a Financial Management Act and Procurement Act which, in many respects, mirror provisions of the new FPA. The problem was that these laws were largely ignored in the past.

As we have endeavored to usher in an era of greater accountability, we are cognizant that such efforts must start from the top. As we move forward and enforce our own laws, we are aware that problems with local capacity remain, and must be resolved if we are to institutionalize the changes we are undertaking.

The RMI has also moved forward over the past three years with taking measures to implement the Compact, as amended, and adopting a system of performance based budgeting within the government. We started this program with the core sectors of Health and Education. We are now moving to a performance based budget system within other sectors of the government that are not funded from the Compact.

Consequently, we are gradually seeing how performance based budgeting can be an important management tool within the government; to better plan out government's activities; and to measure the results of those activities over time. This is why ownership is so important. We need to understand and implement these processes not because someone is telling us to do so, but because we understand their benefits and choose to do so. This is the difference between going through the motions of a procedure simply because it is required, and adopting a system because you know and understand that it will lead to better performance and better results.

This is also why it is necessary for the Department of Interior to show restraint and understanding as our government moves forward on implementation of annual sector grant assistance. While the RMI realizes that we have internal capacity issues and constraints, DOI must similarly realize that micromanagement and imposing additional burdensome requirements will more likely result in resentment, and not progress.

The reporting obligations of the new Compact are the key to monitoring this progress. Our capacity is growing to meet these many requirements and the most critical among these is the annual report to the President of the United States on the progress of the Compact implementation. I think it is true to say that both sides recognize that the present timing for the preparation of this report is unrealistic and I would suggest that this is an area in need of review if we are to best reflect the Compact's progress.

We also see the need for the foreseeable future to coordinate Compact activities within the Government through a viable framework that focuses only on matters related to the Compact. In this respect, I am pleased to announce that our Cabinet has recently approved the formal creation of an Office of Compact Implementation that will oversee all aspects of Compact implementation on behalf of the RMI.

FULL INFLATION ADJUSTMENT

While I do not wish to dwell on the past, I would like to raise again a couple of issues I mentioned in my Statement of July 10, 2003, with respect to outstanding matters in the Compact as amended, that needed to be addressed.

The first issue that I mentioned in my statement before this Committee in 2003 was the need for a full inflation adjustment. At that time, I stated:

“First, a full inflation adjustment for Compact funds so that the grant assistance and compensation provided by the Compact does not lose real value and fully supports the Compact's mutual commitments. We do not know why a partial adjustment is mandated unless the United States has the intention of deflating the grant assistance and compensation, and thus our budget and economy. I would like to draw you and your staff's attention to one chart in our Issue Paper that is particularly interesting. The chart shows the amount of funds we are losing to inflation as well as to the grant assistance decrement. While we can achieve more revenue generation and cut budget costs to fill this increasing gap, we cannot do it with such a rapid decline in the funding. A full inflation adjustment would reduce this gap and make fiscal stability more manageable.”

The issue of full inflation continues to be problematic for the RMI in terms of the Government maintaining fiscal stability as annual grant assistance declines over the years as was predicted by the RMI four years ago. The GAO also dedicated an entire report to dealing with the long term effect of declining grant assistance under the amended Compact. In the RMI's comments to the GAO Report in November, 2006, we noted:

“One of the major challenges regarding social and economic stability remains the size of the annual decrement of the Compact Title Two Section 211 sector

grant funding (\$500,000) and the only partial inflation adjustment. The resulting significant annual decline in the nominal and real value of this funding will place pressure on providing adequate social services and fiscal stability as well as impact private sector performance. This is despite the changes the RMI is making in focusing amended Compact funding mainly on health, education and infrastructure development and maintenance.³⁷

Recently, this situation has been further exacerbated by rapidly rising costs of imported fuel, which is causing major problems with the provision of public utilities and inter-island services for our widespread communities and creating an overall inflationary effect that is putting a damper on our economic growth.

Although annual decrements of \$500,000 are a major improvement over the original Compact with decreases of \$4 million every four years, these decrements over time may result in the same problems that plagued the RMI under the original Compact that cannot be overcome through reducing essential government services or changing the tax structure. Full inflation adjustment to amounts provided under Article II of the amended Compact remains an important issue, and one if not addressed in the short term, will cause significant fiscal problems in the long term.

SUPPLEMENTAL EDUCATION GRANTS

The second issue that I raised in my testimony of July 10, 2003, concerned the elimination of eligibility for many federal education programs that the RMI had received during the term of the original Compact.

This issue was addressed through provision of a supplemental education grant (SEG) of \$6.1 million annually, to be adjusted for inflation which was to allow the RMI Government to design and implement education programs to replace those lost through the termination of certain federal programs. These funds were to be made available to the RMI within 60 days after the date of appropriation.

Unfortunately, these appropriations have taken place well into the fiscal year, and delays in the RMI receiving the funds have been in excess of six months as opposed to 60 days as required by law. In addition, rather than adjusting the \$6.1 million for inflation, the RMI has seen this amount decrease over the years as it has been subject to across the board budget cuts. For example, over the past two fiscal years there has been a \$712,000 shortfall between the planned SEG amounts, and the actual amounts appropriated. There is now a real danger of creating a de facto ceiling for the SEG that is below the authorized amount, and does not include inflation.

These problems arise as a result of the fact that SEG funding is an annual discretionary appropriation under the U.S. Compact of Free Association Amendments Act 2003. This has caused tremendous problems for our Ministry of Education in developing and implementing crucial education programs supplementing the Education sector grant in the Compact. In addition, the lower amount will impact education sector performance by limiting the scope and depth of sector operational, development and reform activities.

This issue is of such great importance to the RMI that on March 8, 2006, President Note wrote a letter to Secretary Spelling asking that the SEG be made available as a permanent appropriation in the same manner as other Compact assistance.

I would now ask the Administration and Congress once again to make provision that the SEG be made available to the RMI as a permanent appropriation and adjusted for inflation in the same manner as other financial assistance under the Compact. This will be crucial for the success of efforts to improve the educational outcomes for the Marshallese people.

TRUST FUND

The Compact of Free Association, as amended, also includes provision for a Trust Fund which will build up until 2023, at which time income from the Trust Fund will be made available to the RMI to coincide with the end of annual grant assistance.

As we noted in our comments to the last GAO Report, we agree with their findings questioning the adequacy of the Trust Fund in 2023 to fulfill its purpose. What became clear in the U.S. agency comments to the GAO Report is that there are differences of opinion as to the purposes of the Compact Trust Fund.

References are made to the negotiations history of the Trust Fund Agreement (TFA), and in particular to Article 3 of the TFA which states that the Fund is to provide an annual source of revenue after 2023.

This provision and others were hotly debated during the negotiations, but Article 3 cannot be viewed as a stand-alone provision. Rather, the TFA must be read as a whole, and when one does that, it is clear that the goal established in the Agree-

ment is to provide for a smooth transition between the end of annual economic assistance, and income from the Trust Fund. The TFA also provides that starting in FY 2024, the RMI may receive an amount equal to the annual grant assistance in 2023 plus full inflation. The Agreement does not say “up to” that amount or any other amount, and the negotiating history will show that the reason the word “may” appears rather than “shall” is that the disbursement of the funds would be based on RMI compliance with whatever rules are in place at that time governing their use. Since this reference is the only reference in the TFA to amounts available starting in FY 2024, and thereafter, we believe that this is the benchmark that we should be striving to achieve in the future.

We point this out not for the reason of engaging in another protracted debate on the purpose of the Trust Fund, but to point out that the Fund should have goals other than simply saying that it will produce revenues starting in FY 2024. Our discussion should center around what can be done between now and then to maximize Trust Fund income and to make it viable in the future.

There are many ways in which future viability of the Trust Fund can be achieved. Over the past year, the TFC has considered the possibility of securitizing future U.S. contributions to the Trust Fund. This could permit investment of larger amounts in the early years allowing the corpus and income producing potential of the Fund to substantially increase over current projections. The RMI Government looks forward to receiving a report on the advisability and risk of securitizing future U.S. contributions, but urges that this be done as quickly as possible since this is a time sensitive concept. If feasible, we would strongly support securitization of future Trust Fund contributions.

A second way to improve the long-term viability of the Fund would be to extend the term of annual grant assistance for at least another two years before distributing income from the Trust Fund. This would be consistent with the intent of both governments when the Trust Fund was originally negotiated, and it was anticipated that the Fund would be invested for a full 20 years before it would be expected to produce annual income. This did not happen due to the delay in approving and implementing the Compact, and the wording of Section 216(b) of the amended Compact.

Another way to improve the Trust Fund’s viability would be to attract additional subsequent contributors to the Fund. The RMI is most pleased that it was able to bring Taiwan in as a subsequent contributor to the Fund, and looks forward to participation by other Subsequent Contributors. In this respect, we would encourage the U.S. Government to actively seek additional contributions from other sources as the RMI has done over the past three years.

Finally, we were anticipating that a technical amendment would be included in H R 2705, the Compacts of Free Association Amendments Act of 2007, which would allow the RMI and U.S. Governments to make certain technical amendments to the Trust Fund Agreement regarding the Fund custodian and sub-custodian in order to facilitate investments by the Investment Advisor, Goldman Sachs, and to streamline the cumbersome process noted by the GAO in their report. It is our understanding that the Administration had submitted such an amendment, but it does not seem to have been included in the current version of HR 2705.

The good news about problems concerning the future adequacy and viability of the Trust Fund is that there is time to take measures to address these concerns. The RMI believes, however, that these measures need to be taken as quickly as possible. Already there is concern among the Marshallese people that the Trust Fund will not be a viable and sustainable source of revenue in the future. This belief was further supported by the findings of the GAO in their Report. As time passes, this will lead to increased migration as people will lack confidence in the future of their nation.

Both Governments have a strong interest in seeing to it that the Trust Fund is successful, and fulfills its purpose.

KWAJALEIN

No discussion of implementation of the Compact, as amended, by the RMI would be complete without referring to the situation with respect to Kwajalein, the MUORA, and land use issues.

The Compact, as amended, also amends the Military Use and Operating Rights Agreement (MUORA) and Status of Forces Agreement (SOFA) between our two governments. The economic provisions of these changes are reflected in Sections 211(b) and 212 of the Compact, as amended.

Section 211(b)(2) provides for the continuation of what had previously been referred to as “impact funding” under Section 213 of the original Compact, but unlike

the original Compact, is now partially adjusted for inflation. This payment is to be made as long as the MUORA is in effect. Despite a great deal of acrimony between the Government and the Kwajalein leadership, these funds are currently being utilized for their intended purposes on a somewhat limited basis. I have attached a letter from the Kwajalein Leadership and my response to that letter on behalf of President Note on these issues expressing our concerns about the fact that these funds were not being put to use for the improvement of the Ebeye community, as provided by the Compact.

Section 212 entitled "Kwajalein Impact and Use" provides the sum of \$15 million annually, adjusted for inflation, from FY 2004 to FY 2013. Starting in FY 2014, this amount is increased to \$18 million annually, or the \$15 million plus inflation adjustment, whichever is greater for the term of the MUORA.

The amended MUORA provides for U.S. use of Kwajalein until at least 2023, and possibly until 2086.

The RMI Government views the U.S. base at Kwajalein as a national asset and of great importance to our development and economy. This was the view we brought to the Compact negotiations and we were pleased that the U.S. also saw the Compact negotiations as an opportunity to provide for the use of Kwajalein on a long term basis.

Unfortunately, many of the Kwajalein landowners have not seen the use of Kwajalein from the same perspective. The amended MUORA requires that the RMI Government enter into a new or amended Land Use Agreement to amend or replace the existing Land Use Agreement of 1982, which expires in 2016.

This problem was known when Congress approved the Compact, as amended, and provision was made that the difference between what the Kwajalein landowners were receiving under the LUA of 1982, and what they would receive under a revised LUA pursuant to the amended MUORA would be put in an escrow account until a revised LUA was concluded, or for a term of 5 years. If at the end of 5 years from the date of enactment of the Compact legislation, (November, 2008), there is no revised LUA, the funds are to be paid back to the U.S. Treasury or as otherwise agreed between the two governments. Presently, the balance in the escrow account is approximately \$16 million.

Although the RMI has offered to meet with the Kwajalein leadership and landowners on many occasions, and has proffered a draft Amended LUA to conform with the Amended MUORA, the Kwajalein leadership has refused to meet with the government to discuss a way forward on this issue.

Instead, the Government has been falsely accused of excluding the Kwajalein landowners from the Compact negotiations. Unlike the original Compact negotiations, the Kwajalein landowners were specifically included during the amended Compact negotiations, and met jointly with the RMI and U.S. negotiating teams on several occasions. We know that the record reflects this fact.

There is nothing new to this pattern and it serves to demonstrate that Kwajalein matters must be kept on a government to government basis. The Kwajalein leadership/landowners will continue to attempt to deal directly with the U.S. Government to achieve their goals. We can only hope that the U.S. government supports and does not undermine our efforts in this regard.

The problem with implementing provisions of the amended Compact as they relate to Kwajalein continues to be a very divisive internal political issue within the RMI, and I don't believe that it is appropriate to air those internal problems here. Our Government wants to move forward on Kwajalein as we know that it is our national interest to do so. In this respect, we will continue to press forward in working toward a new or amended LUA.

Mr. FALCOMA. Thank you, Mr. Minister.
Dr. Gootnick.

STATEMENT OF DAVID B. GOOTNICK, M.D., DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Dr. GOOTNICK. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to discuss GAO's recent work regarding the Compact of Free Association with the RMI. As you are well aware, the amended compact provides for decreasing grant assistance paired with increasing trust fund contributions intended to assist the RMI toward eco-

conomic advancement and budgetary self-reliance. The amended compact also strengthens plans, reporting and accountability over grant funds.

Congress has directed GAO to report on the U.S. and effectiveness of U.S. assistance under the amended compact. Today, drawing on this work, I will discuss three issues: (1) RMI's economic outlook; (2) implementation of grant assistance; and (3) potential trust fund earnings.

As you correctly observed in your opening statement, Mr. Chairman, I am not in the position to discuss the land-use agreement or the changed circumstances petition related to nuclear claims compensation. Our work mandated by the compact's implementing legislation does not touch on these issues.

RMI's prospects for economic development are limited, and progress and policy reforms necessary to stimulate private sector growth have been slow. At present, the public sector represents roughly 60 percent of GDP. And after some downsizing in the late 1990s, government payroll nearly doubled between 2000 and 2005. In addition, the private sector is weak and subsidized state-run enterprises crowd out private industry.

The industries with the greatest growth potential, fisheries and tourism, face significant barriers to expansion as has been mentioned, including geographic isolation, poor infrastructure, poor business environments and public sector wages that are twice the private sector level.

Additionally, although a stated priority for government, progress in improving policy reforms, progress in implementing reforms on tax, land, foreign investment and the public sector have been slow. For example, although RMI has established land registration offices, registration is voluntary and a very small number of parcels are being registered. Continued disputes and uncertainty over ownership in land values limits the use of land as an asset. Regarding implementation of grants, the RMI has allocated funds to prioritize infrastructure, health and education.

However several factors hamper their use to meet long-term development goals. First, disputes over land rights have hampered overall infrastructure projects and may significantly delay future infrastructure development, a key priority for the government. Second, on Kwajalein, disagreement between the government and landowners over the management of the compact funds significantly delayed the use of funds on Ebeeye. Third, capacity limitations constrain the government's ability to measure progress or monitor day-to-day grant activities as the compacts require. Fourth, we project that per capita grant assistance will decline in real terms from over \$600 per person today to roughly \$300 per person in 2023.

Finally, regarding the trust fund, as you know, in addition to the U.S. and RMI contributions, the fund will also receive a \$40 million contribution from Taiwan. However, under different projections of market volatility and investment strategy, we found increasing probability that in some years the fund will not disburse the maximum level allowed or over the long term be able to disburse any income. Trust fund income could be supplemented from several sources, but each has limitations. Tax revenue or remittances, if

bolstered, could supplement the fund's income. In fact, according to recent data, almost half of the Marshallese living in Hawaii and Guam live in poverty. Also the option of securitization of the trust fund entails risks that have not been fully analyzed.

Through our recent work, we recommended that the Department of Interior work with the RMI Government to ensure that the compact management committees address the limited progress in implementing economic reforms, develop plans to improve RMI's capacity to monitor grants and proactively manage the decrement and ensure that the trust fund committee reports on the fund's likely status as a source of revenue after 2023. Interior has generally agreed with our recommendations and has already taken steps to address some of them. OIA has been active and committed to the success of the amended compact. Likewise the RMI is constructively engaged in pursuing its health, education and infrastructure goals. However success will require ongoing resources, diligence and difficult choices. Mr. Chairman, this concludes my statement. I will be happy to answer your questions.

[The prepared statement of Dr. Gootnick follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Asia, the Pacific,
and the Global Environment, Committee on
Foreign Affairs, House of Representatives

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**MILLENNIUM
CHALLENGE
CORPORATION**

**Projected Impact of Vanuatu
Compact Is Overstated**

Statement of David B. Gootnick, Director
International Affairs and Trade



GAO-07-1122T

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss our recent work regarding the Millennium Challenge Corporation's (MCC) compact with Vanuatu.¹

In January 2004, Congress established MCC to administer the Millennium Challenge Account for foreign assistance. MCC's mission is to reduce poverty by supporting sustainable, transformative economic growth in developing countries that have demonstrated a commitment to ruling justly and democratically, encouraging economic freedom, and investing in people. Congress appropriated almost \$6 billion to MCC for fiscal years 2004 through 2007, and the President has requested an additional \$3 billion in MCC funding for fiscal year 2008. As of March 2007, MCC had signed 11 compacts totaling approximately \$3 billion.² MCC's 5-year, \$65.7 million compact with Vanuatu focuses on increasing economic activity and incomes in rural areas through investments in transportation infrastructure. Although MCC's Vanuatu compact is its smallest compact monetarily, it provides by far the largest amount relative to the country's population and gross domestic product (GDP).³

Publicly available documents show that MCC expects its compacts to significantly benefit the countries' economies. In its Vanuatu compact and its March 2006 congressional notification, MCC states that it expects the compact to have a "transformational" impact—that is, as MCC defines it, "a dramatic and long-lasting impact on poverty reduction through sustainable economic growth."⁴ Using its projected benefit and cost data, MCC calculated of the compact's expected economic rate of return (ERR)⁵ and impact on poverty reduction and

¹GAO, *Millennium Challenge Corporation: Vanuatu Compact Overstates Projected Program Impact*, GAO-07-909 (Washington, D.C.: July 2007).

²An MCC compact is an agreement between the U.S. government, acting through MCC, and the government of a country eligible for MCA assistance. In June 2007, the MCC board approved a \$362.6 million compact with Lesotho and a \$506.9 million compact with Mozambique.

³MCC's \$65.7 million compact with Vanuatu provides \$317 per capita; in contrast, MCC's \$547 million compact with Ghana—its largest compact—provides \$25 per capita. The amounts provided per capita by the 11 compacts signed to date range from \$6 for Madagascar to \$317 for Vanuatu.

⁴Millennium Challenge Account, *Best Practices in Compact Development* (Washington, D.C.: 2006).

⁵Project cash flows are determined by comparing program spending against future expected increases in value added or income. The internal rate of return is calculated for these cash flows to summarize the economic impact. MCC refers to this internal rate of return as the economic rate of return.

economic growth. MCC states that its compacts will provide or contribute to a transformational impact in 5 of its 11 compacts.⁵

In my testimony today, I will address (1) MCC's methods of projecting and calculating the Vanuatu compact's impact on poverty reduction and economic growth, (2) MCC's portrayal and analysis of the Vanuatu compact's projected impact, and (3) risks that could affect the Vanuatu compact's actual impact. This statement summarizes the findings in our report released today.

In our report, we addressed our first and second objectives by evaluating MCC's economic analysis of the Vanuatu compact proposal and MCC's public statements about the compact's impacts. We could not validate most of MCC's underlying data and assumptions, because the data were not available or could not be checked within the time frames of our engagement. To address our third objective, we identified risks to MCC's compact results, based on our review of MCC's internal documentation, donor reporting, and academic literature. To illustrate the impact of these risks on MCC's economic analyses of ERR, GDP, and per capita income, we modeled the risks using the data from MCC's economic analyses; however, we did not validate these data. We focused our analysis and field work on MCC's three transportation infrastructure projects on Vanuatu's two most populous islands, Santo and Efate, which represent 56 percent of compact cost. We interviewed Vanuatu and MCC officials and interested parties such as tourism and agriculture business owners and contacted MCC's contractor. We conducted this work from August 2006 through May 2007 in accordance with generally accepted government auditing standards.

Summary

MCC projected the Vanuatu compact's impact by estimating the program's benefits, costs, and beneficiaries and calculating the compact's effect on per capita income, GDP, and poverty reduction. According to MCC, transportation infrastructure improvements will provide direct benefits, such as construction spending in the local economy, reduced transportation costs, and improved services, as well as induced benefits from growth in Vanuatu's tourism and agriculture sectors. MCC estimated the value of these benefits over a 20-year period, beginning in full in 2008 or 2009 and growing each year. MCC developed its project cost estimates based on existing cost estimates prepared for

⁵For example, in Nicaragua, MCC expects that the compact will transform project areas into an engine of economic growth; in El Salvador, MCC states that the compact provides an historic opportunity to transform the country's economic development; and in Armenia, MCC is undertaking road and irrigation projects to transform the economic performance of Armenia's agricultural sector.

the government of Vanuatu and for another donor. To determine the number of poor, rural beneficiaries, MCC defined a catchment area—the geographic area in which benefits may be expected to accrue—using maps of Vanuatu and data from the most recent Vanuatu census. Using its projected benefit and cost data, MCC calculated the compact’s ERR by comparing projected benefits with projected costs; calculated the compact’s impact on per capita income by determining the total benefits and dividing the total value by Vanuatu’s baseline population; and calculated the compact’s impact on Vanuatu’s GDP by computing the total benefits added to the economy.

In the compact and the congressional notification, MCC portrays projected impacts on per capita income and GDP that do not reflect the underlying data and analysis, which are not publicly available. Also, MCC does not establish the proportion of monetary benefits that will accrue to the rural poor.

Per capita income. MCC states that as a result of the compact, per capita income will increase by approximately \$200, or 15 percent, by 2010 and \$488, or 37 percent, by 2015. This statement suggests that per capita income in 2010 and 2015 will be, respectively, 15 percent and 37 percent higher than without the compact. However, MCC’s data show that these percentages represent sums of per capita income gains for individual years. The actual gains in per capita income, relative to income in 2005, would be \$51, or 3.9 percent, in 2010 and \$61, or 4.6 percent, in 2015.

GDP. MCC states that Vanuatu’s GDP will increase by “an additional 3 percent a year.” However, MCC’s underlying data and calculations show that although the level of Vanuatu’s GDP will grow by 6 percent in 2007, the economy’s growth rate in subsequent years will continue at approximately 3 percent, the growth rate that MCC assumes would occur without the compact.

Poverty reduction. MCC states that the compact is expected to benefit approximately 65,000 poor, rural inhabitants “living nearby and using the roads to access markets and social services.” According to MCC’s underlying documentation, 57 percent of the compact’s monetary benefits will accrue to tourism services providers, transport providers, government workers, and local businesses and 43 percent of the benefits will go to the local population—that is, local producers, local consumers, and inhabitants of remote communities. However, MCC does not establish the proportion of local-population benefits that will go to the rural poor.

Our analysis shows five key areas of risk that may affect the Vanuatu compact’s actual impact on poverty reduction and economic growth.

Construction costs. The contingencies included in MCC's calculations of construction costs may not be sufficient to cover potential cost overruns. The risk of excessive cost overruns is especially significant in a small country such as Vanuatu. Any construction cost overrun could cause MCC to reduce the compact's scope and therefore its benefits.

Timing of benefits. Although MCC projects that the compact's benefits will begin shortly after completion of the projects, some benefits are likely to accrue more slowly. For example, according to agricultural and timber producers, their businesses will likely respond gradually to any increased market opportunities.

Project maintenance. MCC's benefit projections assume continued maintenance of completed projects; however, its ability to ensure such maintenance will end in 2011. Moreover, previous donors to Vanuatu have found the country's maintenance of donor projects to be poor. Reduced maintenance would lead to reduced benefits from the project.

Induced benefits. MCC projects that induced benefits from Vanuatu's tourism and agriculture—for example, increased tourist traffic and agricultural trade—will lead to expansion of these economic sectors. However, realization of such benefits depends on businesses' and rural inhabitants' responses to opportunities created by the compact's infrastructure improvements.

Efficiency gains. MCC's projections count efficiency gains from the infrastructure improvements, such as time saved in transit, as direct benefits. However, such gains may not be put to economic use or result in increased per capita income as MCC projects. Accounting for these risks could reduce overall compact ERR from 24.2 percent, as projected by MCC, to between 5.5 percent and 16.5 percent.⁷

To help MCC better express and determine the impact of its compacts, our report recommends that MCC's Chief Executive Officer (CEO) (1) revise the public reporting of the projected impact of the Vanuatu compact, (2) assess whether similar statements in other compacts accurately reflect underlying data, and (3) improve MCC's economic analysis by phasing costs and benefits and more fully accounting for risks to project benefits. In comments on a draft of our report, MCC responded that it had not intended to make misleading statements and that its portrayal of projected results was factual and consistent with underlying data.

⁷MCC expresses the compact's ERR—the ratio of its benefits and costs—as a percentage.

Background

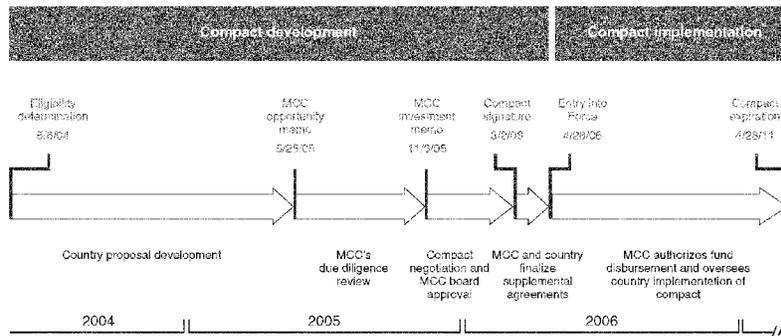
Vanuatu consists of 83 islands spread over hundreds of miles of ocean in the South Pacific, 1,300 miles northeast of Sydney, Australia. About 39 percent of the population is concentrated on the islands of Santo and Efate. Vanuatu's capital, Port Vila, is on Efate, and Vanuatu's only other urban center, Luganville, is on Santo.

In the past decade, Vanuatu's real GDP growth averaged 2 percent, although more rapid population growth led to a decline in per capita GDP over the same period. Average growth of real GDP per capita was negative from 1993 to 2005. An estimated 40 percent of Vanuatu's population of about 207,000 has an income below the international poverty line of \$1 per day. Agriculture and tourism are the principal productive sectors of Vanuatu's economy, contributing approximately 15 percent and 19 percent to GDP, respectively. Although agriculture represents a relatively small share of Vanuatu's overall economy, approximately 80 percent of Vanuatu's residents live in rural areas and depend on subsistence agriculture for food and shelter. The tourism sector is dominated by expatriates of foreign countries living in Vanuatu, who also predominate in other formal sectors of the economy such as plantation agriculture and retail trade.

On May 6, 2004, MCC determined that Vanuatu was eligible to submit a compact proposal for Millennium Challenge Account funding.⁸ Vanuatu's proposal identified transportation infrastructure as a key constraint to private-sector development. The timeline in figure 1 shows the development and implementation of the Vanuatu proposal and compact.

⁸The Millennium Challenge Act of 2003 requires MCC to determine whether countries are eligible for MCA assistance each fiscal year. Countries with per capita income at or below a set threshold may be selected as eligible for assistance if they meet MCC indicator criteria and are not statutorily barred from receiving U.S. assistance. MCC uses 16 indicators divided into three categories: Ruling Justly, Encouraging Economic Freedom, and Investing in People. To be eligible for MCA assistance, countries must score above the median relative to their peers on at least half of the indicators in each category and above the median on the indicator for combating corruption. GAO, *Millennium Challenge Corporation: Compact Implementation Structures Are Being Established: Framework for Measuring Results Needs Improvement*, GAO-06-805 (Washington, D.C.: July 28, 2006).

Figure 1: Development and Implementation of Vanuatu Compact



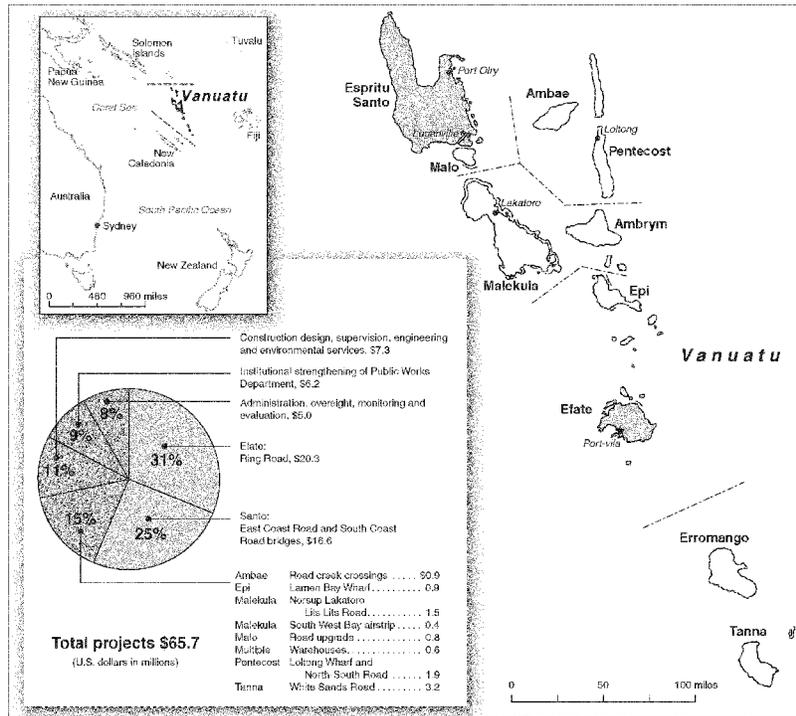
Source: GAO analysis of MCC data contained in Investment Memos.

The \$65.7 million Vanuatu compact includes \$54.5 million for the rehabilitation or construction of 11 transportation infrastructure assets on 8 of Vanuatu's 83 islands, including roads, wharves, an airstrip, and warehouses (see fig. 2). The compact also includes \$6.2 million for an institutional strengthening program to increase the capacity of the Vanuatu Public Works Department (PWD) to maintain transportation infrastructure.⁹ The remaining \$5 million is for program management and monitoring and evaluation. More than half of the compact, \$37 million, is budgeted for three road projects on Santo and Efate islands. The compact provides for upgrading existing roads on both islands; the compact also includes five new bridges for an existing road on Santo.¹⁰

⁹The institutional strengthening program includes \$5.74 million for equipment purchases; of this amount, \$1.4 million is provided directly to PWD and the remainder will purchase equipment for the use of the MCC construction contractor, to be turned over to the PWD in specified condition 4 years later.

¹⁰As of March 2007, MCC had disbursed \$1.72 million in compact funds, or about 16 percent of planned disbursements by that date.

Figure 2: MCC Vanuatu Projects by Size and Location



Source: GAO based on MCC data. Map Resources (map).

MCC's compact with Vanuatu and congressional notification state that the compact will have a transformational impact on Vanuatu's economic development, increasing average per capita income by approximately \$200—15 percent—by 2010 and increasing total GDP by “an additional 3 percent a year.” MCC's investment memo further quantifies the per capita income increase as \$488—37 percent—by 2015.¹¹ The compact and the congressional notification also state that the compact will provide benefits to approximately 65,000 poor, rural inhabitants (see fig. 3).

Figure 3: MCC Statement of Impacts in March 2006 Congressional Notification

“The Transport Infrastructure Project is expected to have a transformational impact on Vanuatu's economic development, increasing average income per capita (in real terms) by approximately \$200, or 15 percent of current income per capita, by 2010. GDP is expected to increase by an additional 3 percent a year, as a result of the program.

Based on the areas covered by the transport assets, the program can be expected to benefit approximately 65,000 poor, rural inhabitants living nearby and using the roads to access markets and social services.”

Source: MCC Congressional Notification, March 2006.

MCC Projected Compact's Impact Using Estimates of Benefits, Costs, and Catchment Area

In projecting the impact of the Vanuatu compact, MCC estimated the benefits and costs of the proposed infrastructure improvements. MCC also estimated the number of beneficiaries within a defined catchment area—that is, the geographic area in which benefits may be expected to accrue. MCC used the estimated benefits and costs to calculate the compact's ERR and impact on Vanuatu's GDP and per capita income.

MCC's analysis determined that the compact will reduce transportation costs and improve the reliability of access to transportation services for poor, rural agricultural producers and providers of tourism-related goods and services and that these benefits will, in turn, lead to increases in per capita income and GDP and reduction in poverty. MCC projects several direct and induced benefits from the compact's infrastructure improvement projects over a 20-year period, beginning in full in 2008 or 2009 and increasing by at least 3 percent every year.

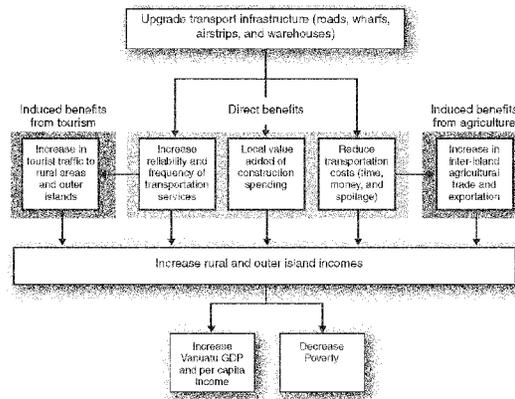
¹¹The “investment memo” is an MCC internal document prepared by MCC's compact assessment team and submitted to MCC's investment committee—consisting of MCC's Chief Executive Officer (CEO), vice presidents, and other senior officials. The committee reviews the memo and decides whether to recommend proceeding to compact negotiations.

Direct benefits. MCC projects that direct benefits will include, for example, construction spending, reduced transportation costs, and time saved in transit on the improved roads.

Induced benefits. MCC projects that induced benefits from tourism and agriculture will include, for example, increased growth in Vanuatu tourism, tourist spending, and hotel occupancy and increased crop, livestock, and fisheries production.

Figure 4 illustrates MCC's logic in projecting the compact's impact.

Figure 4: MCC's Logic Model for the Vanuatu Compact



Source: MCC, with GAO analysis.

MCC expects compact benefits to flow from different sources, depending on the project and its location. In Efate, the Ring Road is expected to provide direct benefits from decreased road user costs and induced benefits through tourism and foreign resident spending. In Santo, MCC anticipates similar benefits as well as the induced benefit of increased agricultural production. On other islands, where

tourism is not as developed, MCC expects benefits to derive primarily from user cost savings and increased agriculture.¹²

To calculate construction and maintenance costs¹³ for the transportation infrastructure projects, MCC used existing cost estimates prepared for the government of Vanuatu¹⁴ and for another donor as well as data from the Vanuatu PWD.

To estimate the number of poor, rural beneficiaries, MCC used Vanuatu maps to identify villages in the catchment area and used the 1999 Vanuatu National Population and Housing Census to determine the number of persons living in those villages. In all, MCC calculated that approximately 65,000 poor, rural people on the eight islands would benefit from MCC projects.

On the basis of the costs and benefits projected over a 20-year period, MCC calculated three summaries of the compact's impact: its ERR, effect on per capita income, and effect on GDP. MCC projected an overall compact ERR of 24.7 percent over 20 years.¹⁵ In projecting the compact's impact on Vanuatu's per capita income, MCC used a baseline per capita income of \$1,326 for 2005.

MCC also prepared a sensitivity analysis to assess how a range of possible outcomes would affect compact results. MCC's tests included a 1-year delay of the start date for accrued benefits; a 20 percent increase of all costs; a 20 percent decrease of all benefits; and a "stress test," with a 20 percent increase of all costs and a 20 percent decrease of all benefits. MCC calculated a best-case compact ERR of 30.2 percent and a worst-case compact ERR of 13.9 percent.

¹²Benefits other than those included in its economic analysis may accrue to Vanuatu as a result of the compact. For example, increased economic activity in tourism may benefit other sectors of the economy and that the welfare of Vanuatu's citizens may improve with increased access to health care and educational opportunities.

¹³MCC's economic model assumes that construction costs are incurred in the first year after compact signing and counts 16 percent of total construction spending as a benefit to the local economy for that year.

¹⁴MCC's cost estimate for construction and maintenance of the projects on Santo and Hhate was based on an estimate prepared for the Vanuatu government by a contractor in 2004. We asked MCC for a copy of the 2004 estimate; however, according to MCC officials, MCC did not have a copy and the government was not willing to provide the estimate for our review.

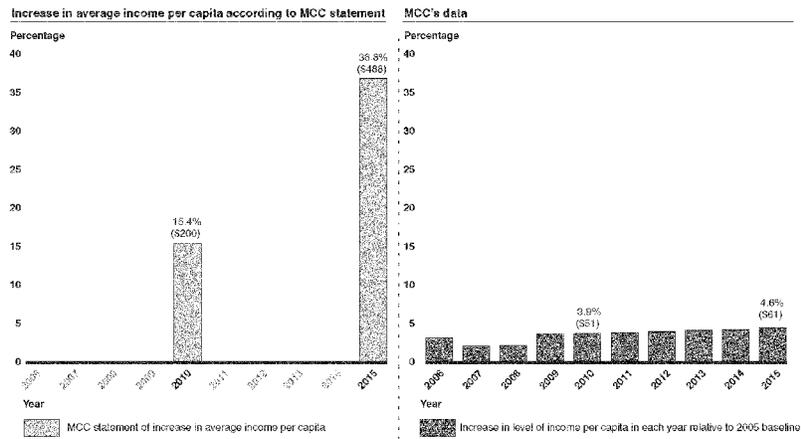
¹⁵In its final April 2006 economic analysis, MCC adjusted this calculation downward slightly to 24.2 percent.

MCC's Data Do Not Support Its Portrayal of Compact Benefits

MCC's public portrayal of the Vanuatu compact's projected effects on per capita income and on GDP suggest greater impact than its analysis supports. In addition, MCC's portrayal of the compact's projected impact on poverty does not identify the proportion of benefits that will accrue to the rural poor.

Impact on per capita income. In the compact and the congressional notification, MCC states that the transportation infrastructure project is expected to increase "average income per capita (in real terms) by approximately \$200, or 15 percent of current income per capita, by 2010." MCC's investment memo states that the compact will cause per capita income to increase by \$488, or 37 percent, by 2015. These statements suggest that as a result of the program, average incomes in Vanuatu will be 15 percent higher in 2010 and 37 percent higher in 2015 than they would be without the compact. However, MCC's underlying data show that these percentages represent the sum of increases from per capita income in 2005 that MCC projects for each year. For example, according to MCC's data, Vanuatu's per capita income in a given year between 2006 and 2010 will range from about 2 percent to almost 4 percent higher than in 2005; in its statements, MCC sums these percentages as 15 percent without stating that this percentage is a cumulative increase from 2005. Our analysis of MCC's data shows that actual gains in per capita income, relative to income in 2005, would be \$51, or 3.9 percent, in 2010 and \$61, or 4.6 percent, in 2015 (see fig. 5).

Figure 5: Vanuatu Compact's Projected Impact on Real Per Capita Income According to MCC Statement and MCC Data Relative to 2005 Per Capita Income

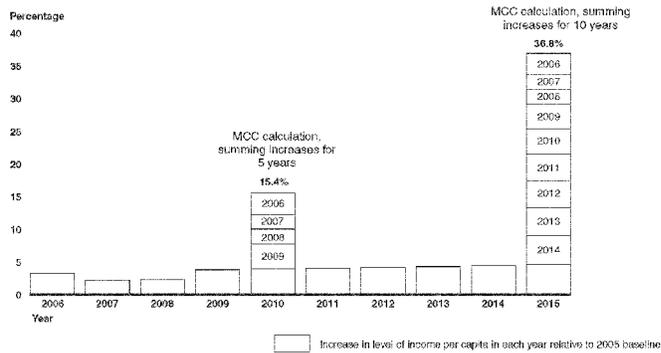


Source: GAO analysis of MCC data contained in Investment Memo.

Note: MCC's statement: "increasing average income per capita (in real terms) by approximately \$200 or 15 percent of current income per capita by 2010" and by \$488—37 percent—by 2015.

Figure 6 further illustrates MCC's methodology in projecting the compact's impact on per capita income levels for 2010 and 2015.

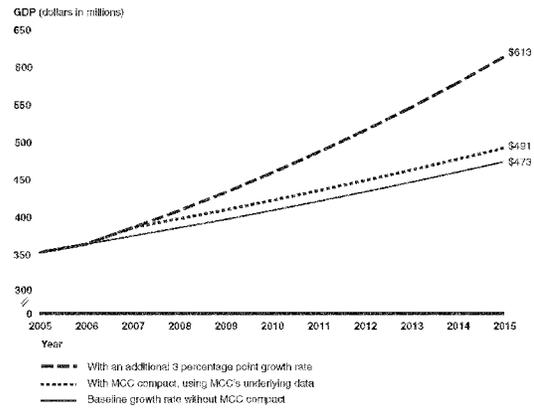
Figure 6: MCC Methodology for Projecting Vanuatu Compact's Impact on Real Per Capita Income



Increase in level of income per capita in each year relative to 2005 baseline
 Source: GAO analysis data contained in Investment Memo.

Impact on GDP. Like its portrayal of the projected impact on per capita income, MCC's portrayal of the projected impact on GDP is not supported by the underlying data. In the compact and the 2006 congressional notification, MCC states that the compact will have a transformational effect on Vanuatu's economy, causing GDP to "increase by an additional 3 percent a year." Given the GDP growth rate of about 3 percent that MCC expects in Vanuatu without the compact, MCC's statement of a transformational effect suggests that the GDP growth rate will rise to about 6 percent. However, MCC's underlying data show that although Vanuatu's GDP growth rate will rise to about 6 percent in 2007, in subsequent years the GDP growth rate will revert to roughly the rate MCC assumes would occur without the compact, approximately 3 percent (see fig. 7). Although MCC's data show that the compact will result in a higher level (i.e., dollar value) of GDP, the data do not show a transformational increase to the GDP growth rate.

Figure 7: Vanuatu GDP Growth with and without MCC Compact



Source: GAO analysis of MCC data.

Notes:

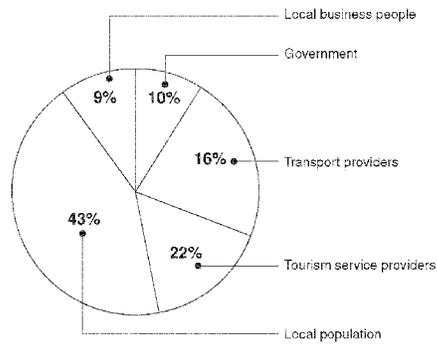
According to MCC, "GDP is expected to increase by an additional 3 percent a year as a result of the MCA program."

According to MCC data, the compact will have a small impact on GDP growth rate in later years. In 2010 to 2015, the GDP growth rate resulting from the compact will be 3.1 percent, compared with 3 percent without the compact.

Impact on poverty. MCC's portrayal of the compact's projected impact on poverty does not identify the proportion of the financial benefits that will accrue to the rural poor. In the compact and the congressional notification, MCC states that the program is expected to benefit "approximately 65,000 poor, rural inhabitants living nearby and using the roads to access markets and social services." In its underlying documentation, MCC expects 57 percent of the monetary benefits to accrue to other beneficiaries, including expatriate tourism services providers, transport providers, government, and local businesses; 43 percent is expected to go to the local population, which MCC defines as "local producers, local consumers and inhabitants of remote communities" (see fig. 8).

However, MCC does not establish the proportion of local-population benefits that will go to the 65,000 poor, rural beneficiaries.¹⁶

Figure 8: MCC Analysis of Distribution of Vanuatu Compact Benefits



Source: MCC analysis.
 Note: MCC defines "local population" as comprising local producers, local consumers, and inhabitants of rural communities.

Several Risks May Lead to Reduced Project Benefits

Our analysis shows that risks related to construction costs, timing of benefits, project maintenance, induced benefits, and efficiency gains may lessen the Vanuatu compact's projected impact on poverty reduction and economic growth. Accounting for these risks could reduce the overall compact ERR.

¹⁶Our review of MCC's analyses also identified some calculation errors in MCC's determination of the compact's impact on per capita income and estimation of the number of compact beneficiaries. In addition, we identified questionable assumptions regarding the beneficiary population. For example, MCC counted all residents of the catchment area as poor and assumed that residents of off-shore islets and villages near paved portions of the Efate Ring Road not improved by MCC would benefit from the compact. Correcting these errors and fully discounting these assumptions would reduce the beneficiary count on Efate and Santo by 32 percent—from 26,553, as stated by MCC, to 18,070—indicating that MCC may have overestimated the compact's beneficiaries.

Construction costs. Although MCC considered the risk of construction cost increases, the contingencies used in its calculations may not be sufficient to cover actual construction costs. Cost estimate documentation for 5 of MCC's 11 construction projects shows that these estimates include design contingencies of 20 percent. However, cost overruns of more than 20 percent occur in many transportation projects,¹⁷ and as MCC's analysis notes, the risk of excessive cost overruns is significant in a small country such as Vanuatu.¹⁸ Any construction cost overrun must be made up within the Vanuatu compact budget by reducing the scope, and therefore the benefits, of the compact projects;¹⁹ reduced project benefits would in turn reduce the compact's ERR and effects on per capita income and GDP.

Timing of benefits. Although MCC's analysis assumes compact benefits from 2008 or 2009—shortly after the end of project construction—we found that benefits are likely to accrue more slowly. Our document review and discussions with tourism services providers and agricultural and timber producers suggest that these businesses will likely react gradually to any increased market opportunities resulting from MCC's projects, in part because of constraints to expanding economic activity.²⁰ In addition, MCC assumes that all construction spending will occur in the first year, instead of phasing the benefits from this spending over the multiyear construction schedule.

¹⁷ A study of more than 250 transportation projects in Europe, North America, and elsewhere found that costs for all projects were 28 percent higher, on average, than forecasted at the time of decision to build, while road projects averaged escalations of 20.4 percent. See Bent Flyvbjerg, Mette Skamris Holm, and Soren Buld, "Underestimating Costs in Public Works Projects: Error or Lie?," *Journal of the American Planning Association*, Vol. 68, No. 3 (2002), cited in GAO, *Highway and Transit Investments: Options for Improving Information on Projects' Benefits and Costs and Increasing Accountability for Results*, GAO-05-172 (Washington, D.C.: January 24, 2005).

¹⁸ MCC cites the "design-construct" contract proposed for the MCA program, which will include design and construction of all the projects as one package, as key to mitigating this risk. However, MCC's analysis also recognizes that nonconstruction-related issues (such as access to parts of the project site) have the potential to delay the contractor and increase costs and that such issues can be significant for major road upgrade projects where the competing interests of the contractor, adjacent villages, and the general public must be balanced. MCC's analysis states that, to help manage the risk of project-related disputes and delays, MCC plans to have experienced consultants work with local PWD staff who have an understanding of the social and cultural issues.

¹⁹ According to the compact, the government of Vanuatu must pay any environmental mitigation and remediation costs in excess of the budget.

²⁰ Benefits from construction activities may also be reduced by a delayed procurement. MCA-Vanuatu officials initially told us they anticipated issuing an invitation for bid to contractors by the end of February 2007. As of May 2007, the invitation had not yet been issued. MCC currently expects construction to begin in 2008, further reducing the likelihood of benefits starting in 2007 as MCC anticipated in its analyses.

Project maintenance. Uncertainty about the maintenance of completed transportation infrastructure projects after 2011 may affect the compact's projected benefits. Vanuatu's record of road maintenance is poor. According to World Bank and Asian Development Bank officials, continuing donor involvement is needed to ensure the maintenance and sustainability of completed projects. However, although MCC has budgeted \$6.2 million for institutional strengthening of the Vanuatu PWD, MCC has no means of ensuring the maintenance of completed projects after the compact expires in 2011; the Millennium Challenge Act limits compacts to 5 years. Poor maintenance performance will reduce the benefits projected in the MCC compact.

Induced benefits. The compact's induced benefits depend on the response of Vanuatu tourism providers and agricultural producers. However, constraints affecting these economic sectors may prevent the sector from expanding as MCC projects. Limited response to the compact by tourism providers and agricultural producers would have a significant impact on compact benefits.

Efficiency gains. MCC counts efficiency gains—such as time saved because of better roads—as compact benefits. However, although efficiency gains could improve social welfare, they may not lead to changes in per capita income or GDP or be directly measurable as net additions to the economy.

Accounting for these risks could reduce the overall compact ERR from 24.2 percent, as projected by MCC, to between 5.5 percent and 16.5 percent (see table 1).

Table 1: Summary of Compact ERR under Alternative Scenarios of Accounting for Risks to Benefits

	Compact ERR
MCC's anticipated effect	24.2 percent
GAO analysis^a	
(1) Costs are phased over 3 years and benefits are phased over 5 years	16.5 percent
Costs are phased over 3 years and benefits are phased over 5 years, and	
(2) induced benefits are not realized ^b	5.5 percent
(3) efficiency gains are not monetized ^c	11.8 percent
(4) large-scale maintenance is not undertaken ^d	13.8 percent

Source: GAO analysis of MCC data.

^aIn our analysis, benefits start in 2010 and are phased in equal increments over 5 years, from 2010 to 2014, with phasing completed by year 5. Costs are phased over 3 years to reflect projected timing of construction.

^bIn addition to phasing benefits and costs, we eliminated induced effects of the project on agriculture, tourism, fisheries, and the development of subdivided beachfront land.

^cIn addition to phasing benefits and costs, we eliminated road user cost savings and savings from reduction of wasted surface trips, lost trips, longer diversions, and enforced longer trips from road closures.

^dIn addition to phasing benefits and costs, we assumed that total benefits will increase, peak, and decrease such that their value in 2027 will equal their original value in 2012. The large capital outlays for road rehabilitation in 2017 and 2026 in Santo and Efate have been eliminated.

Conclusions

MCC's public portrayal of the Vanuatu compact's projected benefits—particularly the effect on per capita income—suggests a greater impact than MCC's underlying data and analysis support and can be understood only by reviewing source documents and spreadsheets that are not publicly available. As a result, MCC's statements may foster unrealistic expectations of the compact's impact in Vanuatu. For example, by suggesting that per capita incomes will increase so quickly, MCC suggests that its compact will produce sustainable growth that other donors to Vanuatu have not been able to achieve. The gaps between MCC's statements about, and underlying analysis of, the Vanuatu compact also raise questions about other MCC compacts' projections of a transformational impact on country economies or economic sectors. Without accurate portrayals of its compacts' projected benefits, the extent to which MCC's compacts are likely to further its goals of poverty reduction and economic growth cannot be accurately evaluated. In addition, the economic analysis underlying MCC's statements does not reflect the time required to improve Vanuatu's transportation infrastructure and for the economy to respond

and does not fully account for other risks that could substantially reduce compact benefits.

Recommendations

In our report, we recommend that the CEO of MCC take the following actions:

revise the public reporting of the Vanuatu compact's projected impact to clearly represent the underlying data and analysis;

assess whether similar statements in other compacts accurately reflect the underlying data and analysis; and

improve its economic analysis by phasing the costs and benefits in compact ERR calculations and by more fully accounting for risks such as those related to continuing maintenance, induced benefits, and monetized efficiency gains as part of sensitivity analysis.

In comments on a draft of our report, MCC did not directly acknowledge our recommendations. MCC acknowledged that its use of projected cumulative compact impact on income and growth was misleading but asserted that it had no intention to mislead and that its portrayal of projected compact benefits was factually correct. MCC questioned our finding that its underlying data and analysis do not support its portrayal of compact benefits and our characterization of the program's risks. (See app. VI of our report for MCC comments and our response.²¹)

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

GAO Contact and Staff Acknowledgments

For further information about this testimony, please contact me at (202) 512-3149 or goolnickd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the person named above, Emil Friberg, Jr. (Assistant Director), Gergana Danailova-Traitor, Reid Lowe, Angie Nichols-Friedman, Michael Simon, and Seyda Wentworth made key

²¹GAO-07-909.

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Mr. FALEOMAVAEGA. Thank you, Dr. Gootnick.

I will begin by asking you a couple of questions. And I do appreciate both of you and your most eloquent statements that have been made for this subcommittee.

Minister Zackios, a couple of questions. We kept saying something about this change of circumstances, a petition. Can you share with us for the record when this petition—was it ever submitted to the administration or to the United States Government? If so, when was it submitted?

Mr. ZACKIOS. Thank you, Mr. Chairman. The petition was first submitted in September 2000 to the congress, and we likewise did make copies available to the administration.

Mr. FALEOMAVAEGA. Can you provide a copy of that for the record of the subcommittee? I would appreciate it.

Mr. ZACKIOS. We will provide copies of the changed circumstances petition as it was submitted and the amendments thereto. Thank you.

Mr. FALEOMAVAEGA. Thank you. I have noted here, in terms of the problems with contaminants, if there was ever—I don't recall if there was ever any study conducted either by the GAO or by any branch of the Federal agencies, especially the Department of Energy. Have they ever made any studies concerning contaminants in the Marshall Islands?

Mr. ZACKIOS. The Department of Energy has continued to do monitoring programs in the Marshall Islands and studies, and has reports on those. But the Nuclear Claims Tribunal and the Government of the Marshall Islands has also done some studies on issues of contamination in the Marshall Islands.

Mr. FALEOMAVAEGA. For the record, when did the Nuclear Tribunal Commission start its work? This is organized by the Marshallese Government. Am I correct on that? Was this all done locally by the Republic of the Marshall Islands? Or was it a joint effort with the United States Government?

Mr. ZACKIOS. The Nuclear Claims Tribunal is an independent tribunal provided for under the section 177 agreement. But it is bound by any legislation of the Marshall Islands Parliament, and it commenced operations in 1988.

Mr. FALEOMAVAEGA. So this is as a result of the first Compact of Free Association?

Mr. ZACKIOS. That is correct.

Mr. FALEOMAVAEGA. How many years did this commission carry on its work? I don't mean to put you on the spot there, Mr. Minister, but I think maybe a couple of friends down the line—I think Mr. Plasman might be able to help us out. So I will retract my question. I am sorry to do that.

I just want to say that, in terms of what transpired in yesterday's committee hearing with the Natural Resources, the ancillary subcommittee, I just want to say, in fairness to your government and to the current administration, when some of the issues raised concerning the rights of the landowners and the problems that we were faced with, do you recall what the first administration did with this situation dealing with the landowners? I am talking about the late Amata Kabua's administration. Do you recall as to how his administration tried to resolve this problem with the land-

owners? I am saying this in fairness to the current administration because I am not in any way wanting to implicate or suggest that your efforts have been any less than what has been done from the previous administrations.

Mr. ZACKIOS. Thank you, Mr. Chairman. I am not an expert to go back and deal with issues of that period.

Mr. FALEOMAVAEGA. You were probably—

Mr. ZACKIOS. From my understanding and reading of the records, the challenges were also great at that timing and including the land user agreements, particularly given the nature and sensitivity of land in the Marshall Islands. And land is like a seaport for the Marshallese people. And it is very important to the Marshallese people, and it is always a sensitive topic of discussion.

Mr. FALEOMAVAEGA. And I also want to note there is a very similar situation in my culture. There are two things you can die from, fights over land and also your traditional title as a chief, whether you should deserve being a chief. I suppose it is probably the same thing in the Marshall Islands.

Mr. ZACKIOS. In the first round of negotiations on Kwajalein, we've had administration sit-ins, arrest of our own citizens and traditional leaders. And those were issues that, you know—even subjects, things to issues of how land was dealt with. But it is a very sensitive issue. And as I said in response to your question yesterday, I think that the best thing for us is to continue to work with our people, particularly given the intricacies of land and finding resolution to a most important issue that will—a positive impact for the landowners as well as the people of the Marshall Islands.

Mr. FALEOMAVAEGA. My only purpose in wanting to probe the issue isn't so much as to cast any shadow or cloud in terms of what the Republic of the Marshall Islands is doing in reference to the residents of those that own lands in Kwajalein and other atolls. My only intent was to find what we, the United States Government, has failed to do in being as a help, rather than just sitting there doing nothing, at least trying to be as—at least in terms of—I just want to make sure that maybe we may have failed in our position in what we may have done in our dealings with the Republic of the Marshall Islands. That really is what I was trying to raise the issues and the questions that, maybe, if the shortcoming came as a result of our failure, I want to know about it. And that really is what I was trying to raise the questions and the issues of the Kwajalein atoll and the problems with the landowners.

Mr. ZACKIOS. Thank you very much, Mr. Chairman. That is much appreciated. As you know, when we went into the second rounds of negotiations on the compact, there were certain expiring provisions, one of which was not the military and defense relationship. But that was opened up for discussions. And through the process, the government—and involved the landowners in becoming a part of the negotiation process, particularly given that Kwajalein is an integral part of the Marshall Islands and is considered as a national asset to the Marshall Islands. So we had involved the landowners, the traditional leadership of Kwajalein in the negotiation process. During the negotiation process, we had agreed, as I indicated to you yesterday, an agreement on an eight-point proposal that we will submit to the U.S. Government in the negotia-

tion process outlining some of the agreements between the landowners and government on what may be a way forward in terms of agreement.

Obviously, the negotiations were in the government response. The U.S. Government response did not cover every aspect of that eight-point proposal. That led to some of what is now being disputed with the landowners as to the conclusion of a land-use agreement.

Mr. FALEOMAVAEGA. So, basically, the response from my government said it was nonnegotiable.

Mr. ZACKIOS. We got some responses, for example, in our request for a \$19 million land-use compensation, the United States Government provided \$15 million, plus \$1.9 million on Kwajalein impact and \$3.1 million on special needs. Obviously, the \$19 million was a request by the landowners and agreed by the government in its submission that it would go directly to the landowners. But the response was \$15 million will go directly as land payments to the landowners; \$1.9 million as was indicated earlier in submission as development money to the Kwajalein people; and \$3.1 million in special needs money to Ebeye and surrounding communities to address services that are being provided as a result of the impact of the United States presence on Kwajalein.

Mr. FALEOMAVAEGA. So there was no arm twisting or anything on the part of my government saying, take it or leave it, right? You don't have to respond to that, Mr. Minister. Dr. Gootnick, I want to thank you for the GAO study that was conducted, as I am quite sure that some of the results of your findings and recommendations—as I am sure it is quite sobering in terms of, what can the Marshall Islands really do realistically in developing, just as we had raised earlier with Secretary Cohen, for economic private-sector development? Noting with all the issues that you brought out, it is almost the most difficult situation. What is a possible option by way of solutions, increase the funding? Obviously for infrastructure development alone, there is no way that you can conduct an infrastructure development, only \$35 million, and that doesn't even touch on education, doesn't even touch on healthcare, doesn't even touch on other basic needs, especially where these islands are separated far distances. Again, this is not like driving to Richmond, Virginia, or some other State. You have to cross the oceans. I just wanted your thoughts on this.

Dr. GOOTNICK. Mr. Chairman, I would not presume to suggest that there are easy answers that others simply haven't observed yet. Let me mention a couple of things. First, on one level, in terms of strengthening the private sector, you need to promote your key industries. Tourism and fishing are the industries that are seen by the ADB and others to have the most potential. Particular aspects of tourism may have more potential than others. And while, again, not a solution, promoting those two key industries may assist the private sector.

Mr. FALEOMAVAEGA. How do you view tourism when just about every island country is competing for the same industry, tourism? How do you compete against Fiji or Hawaii or Palau or even FSM? They are trying to do the same thing. Guam.

Dr. GOOTNICK. No question there is a pie that is divided up there. Now I will say that in the case of the Marshall Islands, public sector reform—increasing demand for public sector reform, creating an environment that will allow business to develop is one thing that the Marshallese recognize they need to do but that requires political will and consensus and ultimately action on the part of the government to improve that climate.

Let me mention one or two other things. Much has been discussed about land here today. And I would also not presume to fully understand the cultural significance and dimensions of land. However, land is also a key asset. And without the ability to register and title land and use land as an asset there is going to be limited prospects for private sector growth.

Thirdly, I think reducing the subsidies on State subsidized industries, the copra production and others, may allow the private sector to develop.

Fourthly, continued diligence in trying to keep the public sector from crowding out the private sector. If the public sector wages have doubled, that leaves less space for the private sector to develop.

Mr. FALEOMAVAEGA. But can you understand and appreciate why most people would rather work for the government, because it is a stable form of employment? To venture out there to suggest that there are huge business opportunities out there, come on. Just about every island entity is faced with the same situation.

Mr. GOOTNICK. I by no means disagree or again presume to have answers that others have not found. But I do want to suggest those things that at least from a rational standpoint would offer some options.

The last thing I would mention is remittances. One of the values of the health and education sector grants, to the extent that the Marshallese are able to foster better education and better health amongst their population, with the nonimmigrant status of Marshallese coming to the United States, while it is not a policy of the Marshallese Government to foster immigration, there certainly is a clear path to immigration. And many nations in the Pacific are remitting significant sums of money. Your neighbor in Samoa, the remittances to Samoa are by all estimates larger than the value of compact assistance to the Marshallese at this point. So there are some options for bolstering remittance income that while not government policy, the sector grants may indeed assist with making that a possibility.

Mr. FALEOMAVAEGA. Well, I know that most island nations don't consider remittances as a policy. But the fact of the matter is that this has become a situation where anybody would want to leave the islands just to find opportunities elsewhere. You're absolutely correct. For the 12 million illegal immigrants that we have working here in this country, do you know how much they send in remittances to Latin America? Fifty-two billion dollars. The Philippines, approximately half a million Philippines are working all over the world illegally and add approximately \$10 billion to \$12 billion to the Philippine economy. And this is not just through the Pacific. It is that way throughout the Middle East. Jordan is one of the biggest exports of Jordanians working all over the world, especially in

the Middle East. So it is not something just confined to the Marshall Islands. This is worldwide, with the exception maybe of our own country. But remittances definitely, and not just Western Samoa. It is true with Tonga; it is true with most other island nations. So if that is a cushion, a way to help bring in more income or by way of helping assist, or assisting families, I don't see a problem with it. You might say it is a safety valve. If there is no employment in the islands, come to America. Maybe join the military. Even my own people do it for the same reasons. It is an economic interest. And that is the reality that we are faced with. It is a tough situation, and I am just trying to figure how it is possible. And you say that we will send them more money. That seems to be the quick cure. We always seem to say to remedy the situation, if you want to help send more money. But without any further development on how we could better utilize those resources they have and the resources that they need.

My good friend from California.

Ms. WATSON. Thank you so much, Mr. Chairman. I want to thank our witnesses for their input and their patience. I am saying ditto to much that my chairman has said. But I was sitting here and reading through all the presentations and I really appreciate those who put their comments and their testimony in writing because you give a history of the problem. And I am thinking, How do we improve the situation? Well, one of the problems I see is that we don't have the kind of tourist attractions that somebody would get on a plane and fly 26–28 hours to go to. And we don't have the beach fronts. Now, I was thinking maybe we ought to put golf courses on these islands. We have got to have something to attract people to come there. Then we have got to have a climate that will accept it. And I ran into a wall, much frustration. People would come to the islands with proposals but the consideration process went on and on and on and they went elsewhere. We didn't get tourist ships down in those islands. Planes flew out of Micronesia twice a week. So it really is not set up for a tourist base. And I notice that in the islands where I was the growth of the economy only grew by 2 percent over those 2 years.

So I would like to ask Mr. Gootnick and Mr. Zackios, what has been your growth pattern in your islands, what has been the amount of growth on an annual basis?

Mr. ZACKIOS. Economic growth has been stagnant in the Marshall Islands.

Mr. GOODNICK. Yes, I concur. Per capita GDP has been stagnant or declining slightly, is roughly, depending on the source of the estimate, \$2,000–\$2,200 per year.

Ms. WATSON. The educational system was based on what we do here in the U.S., and after the 12th grade that was it, very few went on and they all use PELL Grants. And as I mentioned before, they come here and they go back. If they are not involved in farming there was not much else. And the fishing industry, I know that Japan was coming in and so on. But we had a display by a biologist who said that after the experimentation with the atomic bombs, decades later they could see the ocean, the pattern moving down and the radioactive waves getting into the shell life. And there were more instances of cancer. And I am just wondering if you see

this as an actuality down in the islands closer to the equator, and if so, is fishing an industry that could sustain the population into the future?

Mr. ZACKIOS. Thank you, Congresswoman Watson. The maritime fishing industry has been one of our largest economic sustainers. I cannot speak to the issue of whether the effects of radiation have a direct impact on our fish resources, but it certainly has been one of our largest economic sustainers. And our fishery industry, in fact, is a leading industry providing for sources into our government resources and revenues.

This year we will be completing the construction and operation of a loining plant that will begin employment of some 600 Marshallese in Majuro. We have a multilateral agreement, as some other Pacific Island countries have with the United States that generates \$18 million in that agreement. That gives money to the membership. And we have bilaterals with Japan and other distant-water fishing nations. Within the region we have established a tuna commission, which is a management and conservation organization that the Marshall Islands is a part of.

Ms. WATSON. Do you feel that your fishing industry will be sufficient, let's say, throughout the next 3 to 4 decades to sustain the population in the Marshalls?

Mr. ZACKIOS. Well, there have been questions of over fishing. And that is one of the things that we are certainly looking at as part of the tuna commission management regime. But fishing still poses a great potential for the Marshall Islands in the near to medium term.

Ms. WATSON. Let me ask this about your handicrafts and so on—I notice that down in these islands the handicraft industry was something that people did and enjoyed doing. But I didn't see much push out beyond the islands. Is that an area, is that a business that you think could be enhanced?

Mr. ZACKIOS. That is very true, Madam Congresswoman. I think this is an industry that can be developed. I think the Marshallese are very good in producing handicrafts. And they are one of the most unique. They produce unique handicrafts I think among people in the world. Particularly some of our purses. The bikini bag is a very popular handicraft that has been made in the Marshall Islands, including other handicrafts, and I think this is an industry that we can develop. Obviously, we have started growing out, but it is still small, and it is an industry that we can certainly work into.

Ms. WATSON. What about shells for buttons on fashion garments?

Mr. ZACKIOS. Some years ago we had developed a button manufacturing factory.

Ms. WATSON. That is why I asked that question, because I know the history of that. Let me ask Dr. Gootnick, and this will be my last question. Mr. Chairman, I do have an appointment waiting. I know you have completed a report, but as you look out into the future in all of the FAS area, what do you see are the businesses that could support and sustain and bring prosperity to the people of the islands? Have you done a study looking out to the future?

Mr. GOOTNICK. Thank you. I would say that in the work that we have done, and the chairman will hold a very timely hearing to-

morrow on Vanuatu as an example of a country that similarly relies on agriculture and tourism as the potential growth industries and sources of private sector revenue. As you look out into the future I think it is important also to note that this declining grant assistance over time will be an important feature as the amended compacts carry through to 2023. As I mentioned in my statement, per capita grant assistance at this point is approximately \$600 per capita. Grant assistance by the end of the compact is likely to be, based on our projections, approximately \$300 per capita. There is going to need to be activities that compensate for that loss of income if overall standard of livings are going to be preserved.

Ms. WATSON. Didn't they sell their call letters to television, TV? I think they did, and they got a healthy sum. I really would like to see us take an in-depth look in all of the FAS and see if we could do a study, Mr. Chairman, or a study could be done that would project into the future. Because I just don't see the situation getting any better. And I found that in these islands that they were so culture bound that looking into the future was something most people did not do. It was a day-to-day thing. And I think that as we start looking at these compacts we need to suggest, we need to come up with a scientific base of how we could assist in improving the business climate. And I don't know what the businesses will be. So I think this would be something that we ought to study, taking into consideration their history, their cultural patterns, their belief systems and see what would inspire the people, and if there are private sector businesses that would come in and invest in these islands and which ones would want to come in and which ones would you project to be successful. And this is something I just throw out there out of a sense of frustration.

Mr. FALEOMAVAEGA. Will the gentlelady yield?

Ms. WATSON. Please.

Mr. FALEOMAVAEGA. As I recall, when we first enacted these compacts of free association we made such a big deal that for the first 15 years we are going to give \$2 billion to these Micronesian entities and to think that this is really going to solve all the problems that they had, not realizing that these islands never had schools, never had health facilities. The most fundamental and the most basic infrastructures, they didn't even have it. And then after the first 15 years we became so demanding that they need to do this, they need to do that and expect them overnight in the 15-year period that they are going to catch up to the 20th century, which was totally unrealistic to think that \$2 billion is going to solve the problems. In fact, it barely scratched the surface, as far as I am concerned.

So this is the mindset it seems that many of our colleagues here in the Congress has, even in the Federal Government for that matter, to make these demands and expectations from these island communities and not realizing that they are at least 50 years behind on any of these basic infrastructure developments. So when you talk about schools, when you talk about health care facilities, the most basic, they had to start with ground zero to try to build this kind of a thing. And this is merely after the first 15 years.

So I think that this is something that we ought to look at very closely, and then I definitely want to look forward to working with

the gentlelady from California. We are going to be instituting several requests, not only from the General Accounting Office, also to make actual site visits and even hold field hearings. I think the people in Micronesia deserve this kind of attention. It has been long overdue. And I really want to thank the gentlelady for her interest and look forward to working with her and addressing some of these serious issues affecting our friends, especially from the Marshall Islands.

Thank you. Mr. Zackios and Dr. Gootnick, again, thank you so much for coming.

We have a good number of witnesses that will be testifying this afternoon. If I could call now the Honorable Senator Tony de Brum; Senator Abacca Anjain-Maddison; Senator Hiroshi Yamamura; Senator Jack Ading; Mr. James Plasman, the chairman of the Marshall Islands Nuclear Claims Tribunal; and Mr. Jonathan Weisgall, my good friend Jonathan Weisgall, legal counsel to the People of the Bikini Atoll.

Without objection, all these statements of these witnesses will be made part of the record, and any other extraneous materials or items that they want to include in this record. And again, I want to thank our witnesses for making this long trip in coming all the way to Washington, DC. I sincerely hope that in the coming weeks and months that we will reverse the course and have us come to your respective islands, and hopefully to conduct not only meetings by field hearings, as it is our express desire to work with the leaders and the people of the Marshall Islands to address some of the issues that has been festering now for how many years. And I think part of that too has been the failure of this government to address and to work closely with our good friends and the leaders of the Marshall Islands and see what we can do to help. If I could have Senator Tony de Brum, please, your statement.

**STATEMENT OF THE HONORABLE TONY DE BRUM, SENATOR,
REPUBLIC OF THE MARSHALL ISLANDS**

Mr. DE BRUM. Thank you, Mr. Chairman. With me today representing the people of Kwajalein are Iroij Senator Christopher Loeak, chairman of the Kwajalein Leadership Group and Senator Jeban Riklon, my fellow Senator from Kwajalein. We bring you greetings and best wishes from Irojlaplap Imata Kabua, Irojlaplap Anjua Loeak, Iroij Senator Michael Kabua and the elders and people of Kwajalein.

The importance of Kwajalein to the relationship between our counties is well known to this committee. As allies and good friends of the United States from the ending years of World War II, the people of Kwajalein have been called upon to support the requirements of the Armed Forces of the United States by providing their atoll, first as a naval air station, then as a support base for the testing of nuclear weapons. To this day Kwajalein remains one of America's foremost facilities where the most modern developments in missile defense technology are developed and tested at the Ronald Reagan Test Site.

When the Compact of Free Association went into effect in 1986, a concurrent Military Use and Operating Rights Agreement, MUORA, covering the usage of Kwajalein also took effect. Under

that arrangement a prerequisite Land Use Agreement, or LUA, was entered into between the people of Kwajalein and the Marshall Islands Government, RMI. Under the LUA, the people of Kwajalein allowed the use of their atoll by the U.S. Armed Forces for a period of 30 years commencing in 1986. The LUA provided for, among other things, lease payments and impact programs for the benefit of the people whose lands were being used and who had to be resettled on Ebeye, a small island located close to the base where the labor camp for the Kwajalein Test Site is situated. It also dismissed lawsuits then pending and expedited the clearing of lands that people had previously occupied in protest.

After the first 15 years of the compact relationship, the Government of the United States and the RMI negotiated to put into effect a second or an amended compact, better known in the islands as Compact II. The Congress enacted this compact in 2003 with overwhelming support from the administration, which assumed that the provisions for the use of Kwajalein beyond 2016 and into 2086 would be validated. Prior to the signing of this agreement with the United States the RMI representatives presented the proposal to the leadership of Kwajalein. It was rejected out of hand. And the reasons therefore were respectfully presented to the RMI Government. The RMI nevertheless signed a new compact promising to deliver Kwajalein prior to the election of 2003. To this date the RMI has not moved any closer to "delivering Kwajalein in spite of promises to do so."

Mr. Chairman, it is not fair to say that this is an internal matter for the Government of the Marshall Islands to deal with because the United States set the terms of that agreement so the RMI would get the land. And now because land is not available we are running into problems in Ebeye and the communities there close by. While in the view of the RMI it has secured adequate funding under Compact II to provide for the public needs of Kwajalein, the delivery of these services has been severely curtailed since 2003. Kwajalein will not accept funds under Compact II which may result in RMI or the United States, assuming landowner de facto approval of a yet to be negotiated Land Use Agreement of one that is not existent.

The RMI is withholding full support of governmental services to provide the people of Kwajalein, to pressure the people of Kwajalein to agree to a new LUA. The people of Kwajalein pay taxes and expect their due share from the government. But the government takes the position that only those funds provided in the Compact II are available for use to provide public services in Ebeye.

In fact, RMI's use of some of these funds without the approval of the people of Kwajalein has raised questions about a possible breach of the 1986 Land Use Agreement. All attempts prior to this to bring this matter to the United State Government's attention have been waved away by the excuse that this is an internal matter, as you heard also today, Mr. Chairman.

The agreement involves three parties, as was the original one. The original one was incorporated and was a mirror of Compact I as part and parcel of that agreement. The people of Kwajalein will have satisfied themselves waiting for a 5-year period that the compact requires for an evaluation of the relationship in a report by

the President of the United States as to whether Kwajalein is needed further or what the solution might be to this impasse.

The people of Kwajalein have not accepted any additional payment for the lease and are receiving basically what they were offered and received in 1986 if it had not been for this serious problem with Ebeye. The problems of overpopulation and failure of infrastructure on Ebeye have been well known for years. Population densities unmatched anywhere in the Pacific, Ebeye was called the slum of the Pacific, suicide capital and other names less complimentary. Electricity and water woes still plague the community. Sanitation and sewage issues constitute health hazards which the under funded local government cannot handle. There exists a memorandum of agreement between the RMI and the local government to provide certain local services. Funds for this agreement to fund this agreement have not been forthcoming for the past 3 fiscal years.

We believe that to begin to resolve the problems of Kwajalein one must integrate the community once more. The separation of the Marshallese population from our American friends is a vestigial remnant of the unenlightened policies of the 1940s and 1950s. It does not fit into today's world. Integrating the power, water and communication system, the building of a land connection between Ebeye and Kwajalein, in other words, expanding Ebeye southward, not northward, would be a good step in the right direction. Housing and schools also are badly needed. But good planning must focus on integrating public service and avoid wasteful duplication of effort, especially in power and water generation.

We are ready to begin to work on these issues, Mr. Chairman, with the military officials on Kwajalein. But Congress must encourage the parties to begin meaningful dialogue, and it is necessary to begin with the United States Government. Mr. Chairman, your committee is considering legislation to help resolve some compelling issues pertaining to the compact relationship. Kwajalein, it has been said at this table today, is to be probably the most important component in that relationship and it should not be left out of the loop.

We cordially invite your committee to Kwajalein to discuss these matters with the most directly affected people and all other stakeholders. A hearing on Ebeye may be just what we need to extract ourselves from this difficult impasse confronting us, the Marshall Islands Government and the United States of America.

Thank you, Mr. Chairman.

[The prepared statement of Mr. de Brum follows:]

PREPARED STATEMENT OF THE HONORABLE TONY DE BRUM, SENATOR, REPUBLIC OF THE MARSHALL ISLANDS

Thank you, Mr. Chairman for inviting us to this hearing. With me today, representing the people of Kwajalein are Iroj Senator Christopher Loeak, Chairman of the Kwajalein Leadership Group and Senator Jeban Riklon, my fellow Senator from Kwajalein. We bring you greetings and best wishes from Irojlaplap Imata Kabua, Irojlaplap Anjua Loeak, Iroj Senator Michael Kabua and the elders and people of Kwajalein.

The importance of Kwajalein to the relationship between our countries is well known to this committee. As allies and good friends of America from the ending years of World War II, the people of Kwajalein have been called upon to support the requirements of the United States Armed Forces by providing their atoll, first

as a naval air station, then as the support base for the testing of nuclear weapons, and as a missile test site. To this day, Kwajalein remains one of America's foremost facilities where the most modern advancements in missile defense technology are developed and tested at the Ronald Reagan Test Site. No Micronesian community has been more closely tied to American military interests in the former Trust Territory than the people of Kwajalein.

When the Compact of Free Association went into effect in 1986, a concurrent Military Use and Operating Rights Agreement (MUORA) covering the usage of Kwajalein also took effect. Under that arrangement, a prerequisite Land Use Agreement (LUA) was entered into between the people of Kwajalein and the Marshall Islands Government (RMI). Under the LUA, the people of Kwajalein agreed to allow the use of their atoll by the US Armed Forces for a period of 30 years commencing in 1986 and ending in 2016. The LUA provided for, among other things, lease payments and impact programs for the benefit of the people whose lands were being used and who had to be resettled on Ebeye, a small island located close to base, where the labor camp for the Kwajalein Test Site is situated. It also dismissed lawsuits then pending and expedited the clearing of lands the people had previously occupied in protest. It, along with two other Interim Use Agreements, was incorporated with the MUORA as the agreement package providing for use of Kwajalein.

The problems of overpopulation and the failures of the social infrastructure on Ebeye have been well known throughout the years. With population densities unmatched anywhere in the Pacific, Ebeye was called the "slum of the Pacific," "the suicide capital of the Pacific Islands," and other names less complimentary. Efforts to alleviate these problems enjoyed brief success but very quickly deteriorated back to levels which have recently raised fears of a severe humanitarian crisis. In the meantime, the problems to overcrowding continue with citizens from islands throughout the Marshalls and Micronesia seeking shelter on Ebeye while working on Kwajalein.

Electricity and water woes still plague the community. Sanitation and sewerage issues constitute health hazards that the under funded local government cannot handle. A recent government study reports that fully 25% of the student population of Ebeye fails to attend school each day for one reason or another, including lack of water to bathe, or electricity to cook food. As we speak, because of Exxon Mobil's recent abrupt withdrawal from Ebeye, there is a fuel shortage on island aggravating this problem and already impacting the ability of the indigenous labor force to access the military facilities on Kwajalein. Additionally, there are health problems which may adversely affect the operation of the base. Immediate attention is required to avoid further deterioration of an already intolerable situation.

One concept that was offered for mitigation of the problems of Ebeye was the construction of a road to link up the nearby islands to the north thereby expanding the land area available for housing. The fifty six acres on Ebeye are simply not adequate to house the over 15,000 people estimated to be living there. Unfortunately, this has not had the impact that was hoped for. While schools were built on nearby Gugeegu to help accommodate the children of Ebeye, now transportation to those schools has become a problem.

In 2006, the leadership of Kwajalein requested the RMI to declare a state of emergency for Kwajalein. It was their hope that this would help generate the necessary funds to alleviate power and water problems and prevent a worsening of the situation there. The RMI responded that it would not do so because funds which have been set aside in the Compact, as amended, are adequate to cover the needs of Ebeye. Therein lies the problem.

After the first fifteen years of the Compact of Free Association relationship, the Government of the United States and the Government of the Marshall Islands negotiated and put into effect an amended Compact, popularly known in the islands as Compact II. The Congress enacted Compact II with overwhelming support from the Administration. The Defense Department was pleased with what it viewed as a commitment from the Marshall Islands Government extending the use of Kwajalein from 2016 to 2086. Article X (3) of the new MUORA states, "This agreement shall remain in effect until the end of Fiscal Year 2066." There are also provisions for further extension until 2086.

Prior to signing this agreement with the United States, the RMI representatives presented the proposal to the leadership of Kwajalein. It was rejected out of hand and reasons therefore were respectfully presented to the RMI government. The RMI nevertheless signed the new Compact and it was enacted by Congress. The Department of Defense was satisfied that written assurances from the RMI that they would "deliver Kwajalein," were sufficient to warrant support of Compact II. This was in 2003. To date, the RMI has not moved any closer to "delivering Kwajalein" in spite of promises to do so before the elections of 2003 and again before the elec-

tions of 2007 due in November. In the meantime the Kwajalein situation deteriorates. Both the Commanding Officer on the Kwajalein facilities (USAKA), and the United States Ambassador to the Marshall Islands have expressed grave concern about the looming humanitarian crisis in Kwajalein.

When the MUORA under Compact I was negotiated, it was with the caveat that it would not be signed unless the prerequisite Land Use Agreement was reached between the RMI and the people of Kwajalein. Under the Constitution of the Marshall Islands, this is a requirement because the Marshall Islands Government does not own any land at all. This time around, the RMI agreed to a new MUORA under Compact II without the necessary changes to the Land Use Agreement which can only be amended by mutual consent. As a result the RMI promised the use of Kwajalein until 2086 when it only has rights to do that until 2016. The people of Kwajalein have pledged to honor their commitment until 2016.

While in the view of the RMI, it has secured adequate funding under Compact II to provide for the public needs of the Kwajalein community, the delivery of these services is a dilemma that has proven difficult to overcome. Kwajalein will not accept funds under Compact II which may result in RMI assuming landowner defacto approval of a yet to be negotiated Land Use Agreement. That is why Kwajalein is still being paid at rates established in Compact I, under the Land Use Agreement which came into effect in 1986. The RMI, with encouragement from the United States Government, is withholding full support of governmental services to pressure the people of Kwajalein to agree to a new LUA even though they have stated unequivocally their opposition to an extension under the terms proposed. The people of Kwajalein pay taxes and expect their due share of the Marshall Islands General Fund for provision of public services. The RMI takes the position that funds provided under Compact II, especially impact funds and special needs funds earmarked for Ebeye and Kwajalein communities, are the only funds it has for this purpose. In fact, RMI's use of some of these funds without the approval of the People of Kwajalein has raised questions about a possible breach of the 1986 LUA, the document which provides the only legitimate access to Kwajalein that the United States Army enjoys. What we have here is an impasse of constitutional proportions.

While it has become obvious that no resolution is available to RMI in the foreseeable future, all attempts by the Kwajalein people to bring this to the attention of the American government have been waived off by the argument that the Compact is a government to government agreement and the problem with Kwajalein is an internal one for the RMI. We submit this is not so. The need for Kwajalein is an American issue and marginalizing the people with the power to meaningfully consider that requirement is misguided and counterproductive. The stand off does not only affect the provision of governmental services and long term infrastructure plans for the RMI, but it also adversely affects long term planning on the part of the United States with respect to its Kwajalein facilities. It is not strictly an internal issue for the Marshallese people.

Recently, during joint discussions about Kwajalein matters, the United States announced plans for the development of fiber optic communication capacities in Kwajalein. Likewise, in view of worsening outlooks on energy sources, the military has expressed interest in developing alternate energy facilities in Kwajalein including the introduction of Ocean Thermal Energy Conversion (OTEC) technology. The people of Kwajalein have been supportive of these plans and, for this reason, are deeply appreciative of Rep. Faleomavaega's recent introduction of two important bills that will facilitate the installation of OTEC at Kwajalein, HR 2838 and HR 3105. Any innovative proposal to make electricity and water more affordable in Kwajalein is of vital importance to us. Mr. Chairman, we will forever be grateful to you for your interest and support for our efforts to realize these developments. We have informally expressed our willingness to be good partners in these plans but until the larger issues of life beyond 2016 are resolved, it is difficult for anyone to get serious about fixing the problems of Kwajalein today. We still stand by our commitment to respect our Land Use Agreement and all that it stands for and we expect no less from our American allies.

One way to begin to resolve the problems of Kwajalein is to integrate the community once more. The separation of the Marshallese population from our American friends is a vestigial remnant of the unenlightened policies of the forties and fifties. It does not fit in today's world. Integrating the power, water, and communication systems, the building of a land connection between Ebeye and Kwajalein, repair of the Gugeegu road are but a few ideas which will result in immediate improvement. Housing, schools and other social infrastructure are badly needed as well. But good planning must focus on integrating public service and avoid wasteful duplication of effort in public services. Also, Congress must encourage the parties to begin meaningful dialogue and this must necessarily begin with the United States government.

The RMI is caught in the middle of a problem where it has neither right nor capacity to offer the other two parties a solution to the impasse. No one can argue that perpetuating the current situation on Kwajalein is conducive to a successful long term relationship.

Mr. Chairman, your committee is considering legislation to help resolve some compelling issues pertaining to the Compact relationship. Kwajalein, being probably the most important component in the relationship, should not be left out of the loop. We respectfully invite your committee to Kwajalein to discuss these matters with those people most directly affected. Almost forty years have passed since your first visit to Ebeye, with the late Representative Patsy Mink. The people of Kwajalein appreciate the care and concern for them which you have demonstrated in your many years in Congress. A hearing on Ebeye may be just what we need to extract ourselves from this difficult impasse confronting us, the Marshall Islands Government, and the United States of America.

Thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. Thank you, Senator. Our next witness, Senator Maddison, welcome. Good to see you.

STATEMENT OF THE HONORABLE ABACCA ANJAIN-MADDISON, SENATOR, REPUBLIC OF THE MARSHALL ISLANDS

Ms. ANJAIN-MADDISON. Mr. Chairman, please allow me to extend my greetings on behalf of the people of my island to you and the members of the subcommittee. In addition to my own statement, I would like to submit a written statement by Rongelap Mayor James Matayoshi for the record.

Mr. FALEOMAVAEGA. Without objection, it will be made part of the record.

Ms. ANJAIN-MADDISON. I also want to recognize the presence of Rongelap Councilman Norio Kebenli and Kwajalein Senator Jeban Riklon, who are living survivors endured in the 1954 BRAVO disaster that exposed the people of Rongelap to high level radiation. Last but not least, our high chief Iroj Christopher Loeak.

Mr. Chairman, I have the honor of serving as a Senator in the Marshall Islands Parliament on behalf of the people of Rongelap. My father, Senator Jeton Anjain, also represented Rongelap in our national legislature. On a personal note, Mr. Chairman, let me say that my father always regarded you as a friend of his and a friend of the Marshall Islands. My father had a vision of a future in which the United States and the world treated all people with respect and justice. He also had a vision of the Marshall Islands as a partner with the United States and the rest of the world in seeking peace and international security.

The partnership defined by the compact negotiated by the Reagan administration was approved by Congress with overwhelming partisan support in 1985. The first 15-year compact was not perfect, but it was better than continuing the U.N. Trusteeship. The RMI became a nation, achieved full democracy and more economic development and received more compensation for use of Kwajalein by the United States Army and for nuclear testing claims than we would have under trusteeship.

However, we expected the second compact to be more perfect than the first, not less. Instead, the RMI had no leverage as the time for negotiations approached due to forces we could not control. The U.S. lost focus on the long-term U.S. interest in the success of the new compact and the negotiations were not managed by the U.S. at a high level. This became even worse because of the national emergency and war following the 9/11 attacks on America.

Debating about why this happened accomplishes nothing. Showing the U.S. what is wrong with the compact and asking for improvements that are in the U.S. interest is a better way.

We all know there are real problems with the new compact, from the loss of postal services to the total U.S. denial of changed circumstances concerning nuclear claims. We were told this was going to be the important hearing in the history of U.S. policy on the nuclear claims. This raised expectations very high. So I hope this briefing will result in something real, something fair and something that improves the compact so it is not a failure.

One thing for sure, any improvements to the compact must include a renewed commitment by DOE to meeting the health and safety needs of the nuclear test survivors and the funding for the section 177 health care program.

In Congress and the U.S. courts we are seeking justice and fair compensation through the U.S. legal and political process. No one who knows the facts can really believe there were no changed circumstances or that the compensation paid so far is adequate. And the U.S. is too great a nation to hide behind the cruel argument that there is nothing else that the U.S. can do.

Since the lawyers will speak about the legal cases, I will not offer any argument about this in the short time I am allowed. Instead, I will just offer a prayer that this meeting leads to something real that makes the compact a success for America and the RMI.

In conclusion, let me take you back, Mr. Chairman, to the last codel you were in several years ago to the Marshall Islands. You met with a group of ladies from the Rongelap community. They were not just any ladies. They were the survivors of BRAVO shot. And they were so hopeful to have seen and met the congressional delegation. Well, allow me to inform you, Mr. Chairman, that almost all of those ladies have passed away. And it is only what, 3, 4 years ago. The point I am trying to say, Mr. Chairman, is no more delays. Please let not any more deaths occur before justice is served. We all know, and the whole world knows, that this great nation of the United States has moral obligations to fulfill. This is the time, Mr. Chairman, this is the time. Thank you.

[The prepared statement of Ms. Anjain-Maddison follows:]

PREPARED STATEMENT OF THE HONORABLE ABACCA ANJAIN-MADDISON, SENATOR,
REPUBLIC OF THE MARSHALL ISLANDS

Mr. Chairman, please allow me to extend my greetings on behalf of the people of my islands to you and the members of the subcommittee. In addition to my own statement I would like to submit a written statement by Rongelap Mayor James Matayoshi for the record. I also want to recognize the presence of Rongelap Councilman Norio Kebenli, who is a living survivor of the 1954 BRAVO test disaster that exposed the people of Rongelap to high level radiation.

Mr. Chairman, I have the honor of serving as a Senator in the Marshall Islands Parliament on behalf of the people of Rongelap. My father, Senator Jeton Anjain, also represented Rongelap in our national legislature, and on a personal note, Mr. Chairman, let me say that my father always regarded you as a friend of his and a friend of the Marshall Islands.

My father had a vision of a future in which the United States and the world treated our people with respect and justice. He also had a vision of the Marshall Islands as a partner with the U.S. and the rest of the world in seeking peace and international security.

The partnership defined by the Compact negotiated by the Reagan Administration was approved by Congress with overwhelming bipartisan support in 1985. The first 15 year compact was not perfect, but it was better than continuing the U.N. trustee-

ship. The RMI became a nation, achieved full democracy, and more economic development, and received more compensation for use of Kwajalein by the U.S. Army and for nuclear testing claims, than we would have under trusteeship.

However, we expected the second compact to be more perfect than the first, not less. Instead, the RMI had no leverage as the time for negotiations approached, but this was beyond our control. The U.S. lost focus on the long term U.S. interests in the success of the new compact, and the negotiations were managed at a very low level. This became even worse because of the national emergency and war following the 9/11 attacks on America.

Debating about why this happened accomplishes nothing. Showing the U.S. what is wrong with the compact and asking for improvements that are in the U.S. interest is a better way. We all know there are real problems with the new compact, from the loss of postal services to the total U.S. denial of changed circumstances concerning nuclear claims.

We were told this was going to be the important hearing in the history of U.S. policy on nuclear claims. This raised expectations very high. So I hope this briefing will result in something real, something fair and something that improves the compact so it is not a failure. One thing for sure, any improvements to the Compact must include a renewed commitment by DOE to meeting the health and safety needs of the nuclear test survivors, and funding for the Section 177 health care program.

In Congress and the U.S. courts we are seeking justice and fair compensation through the U.S. legal and political process. No one who knows the facts can really believe there were no changed circumstances, or that the compensation paid so far is adequate. The U.S. is too great a nation to hide behind the cruel argument that there is nothing else the U.S. can do.

Since the lawyers will speak about the legal cases, I will not offer any argument about this in the short time I am allowed. Instead, I will just offer a prayer that this meeting leads to something real that makes the compact a success for America and the RMI.

Thank you.

Mr. FALEOMAVAEGA. Thank you very much. Senator Yamamura.

**STATEMENT OF THE HONORABLE HIROSHI YAMAMURA,
SENATOR, REPUBLIC OF THE MARSHALL ISLANDS**

Mr. YAMAMURA. Thank you. Chairman Faleomavaega, distinguished members of the committee, ladies and gentlemen, good afternoon. Here today Mr. Chairman with me is Honorable George Sullivan from Utrok Atoll, our legal counsels, John Mesick and Alex Mason, and our special assistant to the Utrok community, Pete Givich, who is residing here in Washington, DC.

I am here to share with you the painful story of the Utrok and the nuclear testing program. The impact of nuclear testing upon the people of Utrok has been devastating. The lives of our people have been forever changed by the lingering radiation which poisoned U.S.' and our islands. Utrok was downwind of the nuclear tests. Fallout from the tests exposed our people to two levels of radiation several thousand times greater than that permitted in the United States under current EPA regulations. The results were tragic. An epidemic of cancer, thyroid disease, birth defects and other illnesses swept through Utrok. Not one family on Utrok has escaped the terrible consequences of the bomb, including my mother and my grandfather who died of cancer. In the wake of the bomb the number of stillbirths and miscarriages skyrocketed on Utrok Atoll. Before the bomb only three stillbirths and one miscarriage were reported on Utrok. After the testing the number jumped to 41 stillbirths and 51 miscarriages.

One resident, Bella Compoj, stated after our return to Utrok, Nerik gave birth to something like intestines of a turtle, which was very sticky like a jellyfish. This never happened before the bomb.

The nightmare of severely deformed babies is not yet over on Utrok. In 2005, if you would recall, Mr. Chairman, you showed those photos before the committee, in 2005 five babies were born with terrible mutations such as swollen heads, no ears and other malformations. All of these children died within a month of their birth. Behind closed doors the danger of future exposure was recognized.

In 1956, a classified meeting of the Atomic Energy Commission Advisory Committee on Biology and Medicine, a highly respected United States scientist said Utrok was the most contaminated place in the world, and it will be very interesting to go back and get good environmental data and determine what isotopes are involved just to get a measure of human uptake when people live in a contaminated environment.

Today the members of the Utrok communities seek remediation for what was done to them and their lands. First, we need a comprehensive cleanup of Utrok Atoll to reduce levels of radioactivity to as low as reasonably achievable. Recent whole body counting data has proven that the people of Utrok are still being exposed to radioactive fallout. The elimination of this lingering exposure is a moral imperative and can be accomplished at the total of approximately \$5 million.

Second, the whole body counter operated by the U.S. Department of Energy should be relocated to Utrok Atoll. At present the whole body counter facility is located on Majuro Atoll. People living on Utrok must fly to Majuro at their own expense. This is very costly. Majuro airfare is \$300 and people must stay 7 days as flights are only once a week.

Third, a single comprehensive monitoring and treatment program for all the people of Utrok is necessary. At present two separate inadequate medical programs are in existence. The first program, administered by the Department of Energy, only caters to a small portion of the population. In addition, this program only covers so-called radiogenic illnesses. This leaves patients with the belief that the program is just an extension of early medical research work done on them in the past. And it is not really designed to meet their health care needs.

A second health care program, the 177 health care, is seriously under funded. It does not have the capability of the addressing the many medical problems stemming from radiation exposure.

Finally, Mr. Chairman, we seek settlement of our nuclear claims tribunal award issued on December 15, 2006. This multi-million dollar award was based on U.S. law. At present nothing has been paid on this claim. As with American claimants, the people of Utrok deserve to be compensated for their legally determined losses. And, Mr. Chairman, I got an additional exhibit here that maybe if I maybe submit it later on as a part of my written statement.

[The prepared statement of Mr. Yamamura follows:]

PREPARED STATEMENT OF THE HONORABLE HIROSHI YAMAMURA, SENATOR, REPUBLIC OF THE MARSHALL ISLANDS

The impact of Nuclear Testing upon the people of Utrok has been devastating. The lingering radiation, which poisoned us and our lands, has forever changed the lives of our people in the wake of America's atomic tests.

The lands of Utrok and neighboring atolls such as Wotje, were 'downwind' of the test sites. Deadly radioactive ash from bombs ignited on the nearby Pacific Proving Grounds blanketed Utrok and Wotje. Our people were exposed to levels of radiation several thousand times greater than levels permitted in the United States under current Environmental Protection Agency regulations. The result was tragic. An epidemic of cancer, thyroid disease, birth defects and other health related complications swept through Utrok and other communities. Not one family on Utrok has escaped the terrible consequences of the bomb. Many families have lost one or more members to cancer. The exposure to radiation in conjunction with the neglect from the United States has taken its toll. Today there are less than 10 people over the age of 60 still alive on Utrok. Those elders know first hand the terrible effects of radiation. They can tell stories of loved ones, neighbors, and friends who have died an extremely painful death due to cancer. They recall babies born hideously mutated by radiation. They experienced first hand the fear and dread of knowing that their entire community had been exposed to high doses of radiation, which in the Marshallese language is simply known as "poison."

In the wake of the bomb the number of stillbirths and miscarriages skyrocketed on Utrok. Before the bomb, only 3 stillbirths and miscarriages were reported on Utrok. After the testing, that number jumped to 56.

Bella Compoj, a woman from Utrok, described the dreadful mutations of the bomb:

"I recall seeing a woman named LiBila after our return and her skin looked as if someone had poured scalding water over her body, and she was in great pain until she died a few years after "the bomb." LiBila had a son two years after 'the bomb' who died a few months after birth, and I remember that his feet were quite swollen and his body was burning—the Atomic Energy Commission doctors said he died because of the "poison." Also, after our return to Utrok, Nerik gave birth to something like the intestines of a turtle, which was very sticky like a jellyfish. This was quite new for the women here, and this never happened before the bomb."

Women on Utrok continue to have severely deformed babies. In 2005, five babies were born with terrible mutations, such as swollen heads, no ears, and other malformations. All of these children died within weeks of their birth.

It is difficult to believe that those responsible for the nuclear tests believed Utrok was a safe place to live when they sent the people back to their atoll in 1954.

Behind closed doors, the danger of future exposure was recognized by scientists of the Atomic Energy Commission Health and Safety Laboratory. In 1956, at a classified meeting of the Atomic Energy Commission Advisory Committee on Biology and Medicine a highly respected U.S. scientist said Utrok was "the most contaminated place in the world . . ." and "it will be very interesting to go back and get good environmental data, and determine what isotopes are involved, so as to get a measure of the human uptake when people live in a contaminated environment." His view of the Marshallese people was revealed in his statement, that: "while it is true these people do not live, I would say, the way Westerners do, civilized people, it is nevertheless also true that these people are more like us than the mice."¹

Today the members of the Utrok community seek remediation for what was done to them and their lands. The following is a list of 4 actions we believe the United States must take to right the wrongs done to Utrok.

1. CLEAN-UP OF UTROK ATOLL.

First, no clean up to Utrok was ever completed. We request a comprehensive clean-up of Utrok atoll to reduce levels of radioactivity to levels "as low as reasonably achievable." Recent whole body counting data has proven that the people of Utrok are still being exposed to radioactive fallout. In fact, the levels of radiation exposure on Utrok today are higher than those currently recorded in any other part of the Marshall Islands. The elimination of this lingering exposure is a moral imperative, and can be accomplished at the cost of approximately \$5,000,000 for potassium treatments.

2. RELOCATION OF WHOLE BODY COUNTER TO UTROK ATOLL.

Second, the Utrok whole body counter operated by the US Department of Energy should be re-located to Utrok. At present, the whole body counter facility is located on Majuro Atoll. People living on Utrok must fly to Majuro at their own expense.²

¹ Transcript of the Advisory Committee on Biology and Medicine, January 13–14, 1956.

² Roundtrip airfare is \$330, and there is only one flight per week.

This is very costly, and those who cannot afford the cost of travel do not have the opportunity to get tested. At a very modest cost the necessary infrastructure can be established to relocate the facility to Utrok. Such a move is justified by the whole body counting data gathered by the Lawrence Livermore Laboratory. Furthermore, it is imperative that monitoring efforts be focused on those most at risk; the inhabitants of Utrok atoll.

3. MEDICAL MONITORING AND HEALTHCARE.

Third, we request a comprehensive medical monitoring and treatment program for all of the people of Utrok. Such a program should have sufficient resources to meet the needs of all exposed members of the community. At present, two separate and inadequate medical programs exist. The first program, administered by the Department of Energy only caters to the small portion of the population that was present on Utrok on March 1, 1954. In addition, this program only covers so-called 'radiogenic' illnesses. This leaves patients with the belief that the program is merely an extension of past medical research work conducted, and is not really designed to meet their healthcare needs.

The second program, the 177 Healthcare program, also has not solved Utrok's healthcare needs, primarily because it is seriously under-funded. It is not capable of meeting the patient's needs or addressing the myriad range of medical problems stemming from radiation exposure.

Medical care for the entire community is desperately needed. The devastating effects of radiation exposure mandate such a remedy.

4. SETTLEMENT OF THE NUCLEAR CLAIMS TRIBUNAL AWARD.

In 1986, the U.S. and RMI governments signed the Compact of Free Association and the subsidiary Section 177 Agreement, which established a \$150 million Nuclear Claims Fund. The income from the Fund was dedicated for the people of the four atolls "as a means to address past, present, and future consequences of the Nuclear Testing Program."³ Income was also allocated to fund a Nuclear Claims Tribunal, which was established with "jurisdiction to render final determination upon all claims past, present and future, of the Government, citizens, and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program."⁴

In accordance with the US-Marshall Islands agreement, the people of Utrok brought their claim before the Nuclear Claims Tribunal. After 8 years of litigation before the Tribunal, the people of Utrok were awarded \$3.07 million in total damages. The Nuclear Claims Fund established to pay these costs is wholly inadequate as its projected return of \$270 million has fallen far short, with a return of only \$160 million. At present, nothing has been paid on this claim. As with American claimants, the people of Utrok deserve to be compensated for their legally determined losses.

CONCLUSION

Utrok has and continues to suffer immeasurable damage as a result of the US Nuclear Testing Program. The community was devastated by radiation exposure. Today we have an opportunity to move forward and provide the people of Utrok with the resources and tools necessary to overcome this appalling experience.

Mr. FALEOMAVAEGA. Without objection. Could you describe what those materials are, Senator?

Mr. YAMAMURA. This is one of the classified information that has been declassified and is part of the statement by Dr. Isenbat. And also the numbers accumulated by events and location. I think this one was taken from claims tribunal data. So I'll submit it for the record.

Mr. FALEOMAVAEGA. Without objection.

Mr. YAMAMURA. Thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. Thank you, Senator. Senator Ading.

³ Compact Section 177 Agreement, Article I, Section 2.

⁴ *Id.*, Article IV, Section 1(a).

**STATEMENT OF THE HONORABLE JACK ADING, SENATOR,
REPUBLIC OF THE MARSHALL ISLANDS**

Mr. ADING. Thank you, Mr. Chairman. I represent the people of Enewetak/Ujelang. I am a Senator in the Marshall Island Nitijela. I ask that my written statement be made part of the record.

Mr. Chairman, I appear before you today to describe to you and to the members of the subcommittee the challenges we face as the only population ever resettled on a nuclear test site. As you know, Enewetak Atoll, our ancestral homeland, was the site of 43 of the 67 nuclear bomb tests conducted by the United States in the Marshall Islands.

How was it that the most powerful country on Earth used our land for its nuclear weapon test? Well, the United States had full control over the Marshall Islands after World War II and it decided that Enewetak Atoll would be a suitable test site. There was a problem, however. We live on that land. We own that land. In fact, it was the only land we ever owned. Generation after generation of our ancestors worked the land, planted fruit crops, built homes and otherwise made the land productive. So how could we be removed? The United States removed us from our homeland because it had the power to do so. But the U.S. recognized that we had rights and it had responsibilities and obligations to us as a result of that removal.

These rights, responsibilities and obligations were described in the memorandum attached to the 1947 directive of President Harry Truman providing for our removal. In that memorandum the U.S. said that we would be accorded all rights which are the normal constitutional rights of the citizens under the Constitution. In addition, the United States in the memorandum promised that we would be taken care of while exiled from Enewetak and that we would be placed in no further danger than the people of the United States as a result of these test activities.

None of these promises were kept by the United States. We were not taken care of during the 33-year exile from Enewetak. We were placed in greater danger than people in the U.S. as a result of the test. And we have yet to receive the just and adequate compensation to which we are entitled under the Constitution. The exile on Ujelang was particularly difficult for us leading to hopelessness and despair. During the 33-year exile on Ujelang we endured near starvation and other hardships.

In 1980, the United States permitted us to return to Enewetak after undertaking a cleanup effort. Unfortunately, the cleanup effort left half of the atoll contaminated. This prevented the Enjebi island members of our community from resettling on their land in the northern part of the atoll and left a waste storage site filled with material radioactive for thousands of years on the heavily contaminated island of Runit.

To accomplish restoration of our atoll, the resettlement of the northern islands, and to be justly compensated for the years we were denied use of our land, we filed an action against the U.S. in the U.S. Claims Court in 1982. In 1987, the compact went into effect. In the compact the U.S. accepted responsibility for loss or damage to property and person resulting from the nuclear testing program and agreed that the Nuclear Claims Tribunal was to

render final determination of all claims, past, present and future, relating to the nuclear testing program. So the claims we had in the U.S. court were to be determined by the tribunal. The tribunal did so and in 2000 awarded us \$386 million for the cost to restore our land, for the loss of the use of our land and for the hardship and suffering we endured while in exile on Ujelang.

But the tribunal's funding was limited to \$45 million and it is unable to pay us our awards other than a small portion. After 6 years of effort to get our award paid by the U.S. proved unsuccessful, we filed an action in the U.S. Court of Federal Claims seeking damages in the amount of \$384 million, the amount awarded to us by the tribunal less the amount paid.

What can Congress do now? First, we need to point out that the citizens of the United States benefited greatly by having the nuclear testing conducted at Enewetak Atoll far from the United States mainland, thereby avoiding the damaging health and environmental consequences of radioactive fallout. Our land was sacrificed for the benefit of the people of the United States. We bore and continue to bear the burden of a damaged and radiation contaminated homeland.

The United States accepted responsibility for the damage it caused at Enewetak and it agreed that the tribunal was to determine just compensation. It has done so. Now the award must be addressed. Congress need not wait for resolution of our pending claim before the Court of Federal Claims. Congress can act now. This can be done by Congress through the Changed Circumstances Petition, by direct funding of the award or by an ex gratia payment.

Mr. Chairman, that concludes my prepared remarks. I would be pleased to answer any questions. Thank you.

[The prepared statement of Mr. Ading follows:]

**STATEMENT OF THE ENEWETAK/UJELANG LOCAL GOVERNMENT
BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC
AND THE GLOBAL ENVIRONMENT
U. S. HOUSE OF REPRESENTATIVES**

July 25, 2007

Submitted by the Honorable Jack Ading, Senator, Nitijela of the Marshall Islands

Mr. Chairman and distinguished members of this Subcommittee:

Thank you for providing this opportunity to the people of Enewetak to describe issues that relate to the challenges we face as the only population ever resettled on a nuclear test site.

In this statement, we hope to provide a perspective on our unique experiences which resulted from the use of our land for nuclear testing and what needs to be done so that we can, once again, be self-reliant and self-sufficient.

In addition, we intend to mention other issues, some addressed by the Compact, others which need to be addressed by the U.S. whether in the Compact or otherwise. These issues relate to our ability to live on Enewetak and include: funding of a health care program, monitoring of our people for radiation exposure, continued and increased funding of the Enewetak Food and Agriculture Program, and monitoring of the U.S. created radiation waste site known as the Runit Dome.

Enewetak Atoll as a Nuclear Test Site

As you know, our ancestral homeland, Enewetak Atoll, was the site of forty-three of the sixty-six nuclear tests conducted by the United States in the Marshall Islands between 1946 and 1958. One of the tests at Enewetak was especially significant as it was the first test of a hydrogen bomb. This test occurred on October 31, 1952 and was known as the "Mike" test. The test had a yield of 10.4 megatons (750 times greater than the Hiroshima bomb). The destructive power of the Mike test was exceeded only by the Bravo test (15 megatons) in all the nuclear tests conducted by the United States anywhere. The Mike test vaporized an island, leaving a crater a mile in diameter and 200 feet deep. The Mike test detonation and the detonation of the other 42 nuclear devices on our land resulted in the vaporization of over 8% of our land and otherwise devastated our atoll. The devastation is so severe that to this day, forty-seven years after the last nuclear explosion, over half of our land and all of the lagoon remain contaminated by radiation. The damage is so pervasive that we cannot live on over 50% of our land. In fact, we can't even live on any part of our land without the importation of food.

How was it that the most powerful country on earth used our land for its nuclear weapons tests? Well, the United States had full control over the Marshall Islands after World War

II, and it decided that Enewetak Atoll would be a more suitable test site than Bikini Atoll. There was a problem, however; we lived on that land and we owned that land. In fact, it was the only land we ever owned. Generations after generations of our ancestors worked the land, planted food crops, built homes, and otherwise made the land productive. So, how could we be removed?

The United States removed us from our homeland because it had the power to do so. But, the U.S. recognized that we had rights and it had responsibilities and obligations to us as a result of that removal.

These rights, responsibilities and obligations were described in the memorandum attached to the Directive of President Harry Truman providing for our removal from our land. President Truman's Directive to the Secretary of Defense, dated November 25, 1947, reads as follows:

Dear Mr. Secretary:

You are hereby directed to effect the evacuation of the natives of Eniwetok Atoll preliminary to the carrying out of tests of atomic weapons early in 1948, and in accordance with the enclosed memorandum addressed to me by the Chairman of the Atomic Energy Commission.

Sincerely yours,

HARRY S. TRUMAN

The memorandum attached to President Truman's Directive described the rights we had and the responsibilities and obligations assumed by the United States. The memorandum reads in relevant part as follows:

1. *They will be accorded all rights which are the normal constitutional rights of the citizens under the Constitution, but will be dealt with as wards of the United States for whom this country has special responsibilities.*

2. *The displacement of local inhabitants will be kept to a minimum required for their own safety and well being and will not be accomplished merely for considerations of convenience.*

3. *The displacement of local inhabitants will be effected by agreements reached with them regarding resettlement, including fully adequate provisions for their well being in their new locations.*

The Atomic Energy Commission and the Secretary of Defense will undertake to supply to the State Department evidence sufficient to demonstrate in an international forum that in conducting such experimentation in Eniwetok, the United States is not thereby subjecting

the local inhabitants of the Trust Territory of the Pacific to perceptibly greater danger than, say, the people of the United States.

In a dispatch from Admiral Ramsey, the Chief of Naval Operations, dated 5 December 1947, our rights and the responsibilities and obligations of the United States were summarized as follows:

PURSUANT TO ORDERS FROM THE PRESIDENT THE SECRETARY OF DEFENSE HAS DIRECTED SECNAV TO EFFECT THE EVACUATION OF THE NATIVES OF ENIWETOK. IN RECOMMENDING THIS ACTION THE ATOMIC ENERGY COMMISSION STATED THAT THE INHABITANTS OF THE ATOLL WOULD BE ACCORDED THE NORMAL CONSTITUTIONAL RIGHTS ACCRUING TO U S CITIZENS UNDER THE CONSTITUTION AND TREATED AS WARDS OF THE UNITED STATES; AND THAT ADEQUATE PROVISION WOULD BE MADE FOR THEM IN THEIR NEW LOCATION.

So, the U.S. recognized that we had constitutional rights. That means that we, as the owners of property used by the U.S., were entitled to just and adequate compensation for the use and damage of our land.

In addition, we were promised that we would be taken care of while exiled from Enewetak and that we would be placed in no greater danger than the people of the U.S.

None of these promises were kept by the U.S.: We were not taken care of during our 33 year exile from Enewetak; we were placed in greater danger than people in the U.S. as a result of the test; and we have yet to receive the just and adequate compensation to which we are entitled under the Constitution.

To better understand these unkept promises, we believe that it is useful to review the history of the use of Enewetak by the United States, our experiences as a result that use, the effect of that use on us and our land, and the unfinished obligations of the U.S.

U.S. Use of Enewetak from 1947 to 1980

The U.S. used Enewetak for a variety of purposes between 1947 and 1980. U.S. use consisted of nuclear weapons testing, intercontinental ballistic missile testing, high energy rocket testing, cratering experiments, the study of marine biology, and radiological remediation and soil rehabilitation efforts.

Nuclear Weapons Testing. The U.S. Department of Energy described the devastating effects of the 43 nuclear tests on Enewetak as follows:

The immense ball of flame, cloud of dark dust, evaporated steel tower, melted sand for a thousand feet, 10 million tons of water rising out of the

lagoon, waves subsiding from a height of eighty feet to seven feet in three miles were all repeated, in various degrees, 43 times on Enewetak Atoll.

About 8% of the land mass of the atoll was vaporized, numerous nuclear bomb craters dotted the land mass, and much soil and most vegetation was either removed or severely disturbed. In addition to such physical damage, the testing left most of the atoll contaminated by radiation.

Intercontinental Ballistic Missile Testing. During the 1960's, Enewetak was the target and impact area for tests of Intercontinental Ballistic Missiles fired from Vandenberg Air Force Base in California.

High Energy Upper Stage (HEUS) Rocket Tests. In 1968 and 1978, two test firings of a developmental HEUS rocket motor were conducted on Enjebi Island. The rocket motors tested each contained 2,500 pounds of propellant of which 300 pounds was beryllium. Beryllium is toxic to man when inhaled and lodged in the lungs. The first test, in April 1968, resulted in an unexpected explosion which scattered propellant, including beryllium, over the western tip of Enjebi. The second test in January 1970 fired successfully scorching the land but did not result in an explosion.

Pacific Cratering Experiments. This program occurred in the 1970's and involved the detonation of charges of high explosives to provide a means of predicting the impact of nuclear detonations upon strategic defense installations. This resulted in twelve detonations of 1,000 pound charges, drilling of over 190 holes into various islands of the atoll from 200 feet to 300 feet in depth, movement of 185,000 cubic yards of soil, and the digging of 86 trenches on various islands each 7 feet deep.

Marine Biology Research Laboratory. The laboratory began operations in 1954 under the auspices of the Division of Biology and Medicine of the U.S. Atomic Energy Commission. Research supported by the laboratory was chosen by an advisory committee which evaluated written proposals concerning a broad spectrum of marine and terrestrial science. This activity continued into the early 1980's.

Radiological Remediation and Resettlement Activities. The United States undertook a radiological remediation and resettlement program that took place from 1977 to 1980. Unfortunately, this effort left half the atoll contaminated, left the habitable parts without vegetation or topsoil, prevented the Enjebi island members of our community from resettling on their land in the northern part of the atoll, left the lagoon contaminated with plutonium, left a concrete waste storage site filled with contaminants radioactive for thousands of years, and left the heavily contaminated island of Runit without any radiological remediation whatsoever.

While this use of Enewetak was going on, we lived on Ujelang Atoll.

Removal to Ujelang Atoll

A few days before Christmas in 1947, the U.S. removed us from Enewetak to the much smaller, resource poor, and isolated atoll of Ujelang. We were told by the U.S. that our removal would be for a short time. In fact, Captain John P. W. Vest, the U.S. Military Governor for the Marshall Islands told us that our removal from Enewetak would be

temporary and last no more than three to five years. Unfortunately, we were exiled on Ujelang for a period of over thirty-three years.

Hardship on Ujelang

The exile on Ujelang was particularly difficult for us leading to hopelessness and despair. During the 33 year exile on Ujelang we endured the suffering of near starvation. We tried to provide food for ourselves and our children, but one meal a day and constant hunger was the norm. Malnutrition caused illness and disease. Children and the elderly were particularly vulnerable. Health care was woefully inadequate. In addition, our children went largely uneducated in the struggle for survival. We became so desperate that in the late 1960's we took over a visiting government field-trip ship, demanding that we be taken off of Ujelang and returned to Enewetak.

Our suffering and hardship while on Ujelang was eventually acknowledged by the U.S. The U.S. Department of Interior in a letter to the President of the U.S. Senate, dated January 14, 1978, said, in relevant part:

The people of Enewetak Atoll were removed from their home atoll in 1947 by the U.S. Government in order that their atoll could be used in the atomic testing program. The people were promised that they would be able to return home once the U.S. Government no longer had need for their islands.

During the thirty years that the Enewetak people have been displaced from their home atoll they have suffered grave privations, including periods of near starvation, in their temporary home on Ujelang Atoll. The people have cooperated willingly with the U.S. Government and have made many sacrifices to permit the United States to use their home islands for atomic testing purposes.

The physical difficulties experienced on Ujelang were made more difficult by the loss of our ancestral homeland. We have close ties to our land. These close ties were forged by centuries of making a life on our land. Our ancestors worked the soil and nurtured the plants. We buried our dead on our land. We feel that we are a part of the land and it is a part of us. Our connection with our land is spiritual in nature. It is something of great meaning because it was the one place in the world given to us by God. And this was taken away from us causing us to live lives of hardship, neglect, and isolation on Ujelang. It is no surprise that after years of hardship, neglect and isolation we became increasingly insistent that we be returned home. Eventually, the U.S. said it would attempt to make our homeland habitable.

Initial Cleanup Attempt of Enewetak Atoll

In 1972, the U.S. said that it would soon no longer require the use of Enewetak. The U.S. recognized that the extensive damage and residual radiation at Enewetak would require radiological cleanup, soil rehabilitation, housing and basic infrastructure before we could

resettle Enewetak. An extensive cleanup, rehabilitation and resettlement effort was undertaken between 1977 and 1980.

Unfortunately, the cleanup left over half of the land mass of the atoll contaminated by radiation confining us to the southern half of the atoll. This has prevented the Enjebi island members of our community from resettling their home island, and has prevented us from making full and unrestricted use of our atoll. In addition, the cleanup and rehabilitation was not effective in rehabilitating the soil and revegetating the islands. An extensive soil rehabilitation and revegetation effort is still required to permit the growing of food crops. The cleanup also left us with a radioactive waste site on the island of Runit. Over 110,000 cubic yards of radioactive waste, which consist of radiation contaminated dirt scrapped off the islands, are stored in a nuclear test-created crater on Runit Island.

Enewetak Claims in the U.S. Claims Court

When we resettled on the southern half of our atoll, we recognized then, for the first time, that the land required further restoration (radiological remediation, soil rehabilitation, and revegetation), that the Enjebi island members of the Enewetak community needed to be resettled on their home island, and that we were never adequately compensated for the loss of use of our land and the hardships we endured during our exile. To accomplish restoration, resettlement of the northern islands, and to be justly compensated for the 33 years we were denied use of our land, we filed an action against the U.S. for damages in the U.S. Claims Court in 1982.

In addition to the Enewetak lawsuit, thirteen other lawsuits were filed in the U.S. Claims Court by our fellow Marshall Islanders seeking compensation from the U.S. for damages as a result of the nuclear testing program.

U.S. Accepts Responsibility for Damages Resulting from the Nuclear Testing Program in the Compact of Free Association

While these lawsuits were pending, the Compact of Free Association went into effect. In Section 177 of the Compact, the U.S. confirmed its constitutional obligations, first described in President Truman's 1947 directive, when it accepted responsibility for compensation owing to Marshall Islanders for loss or damage to property and person resulting from the nuclear testing program.

After the Compact of Free Association went into effect, the U.S. moved to dismiss our claims. We opposed dismissal on several grounds, most notably on the ground that the compensation provided under the Compact was inadequate and did not constitute just compensation under the Constitution. In 1987, the Claims Court dismissed these cases holding that it lacked subject matter jurisdiction over these claims because the consent of the U.S. to be sued on those claims had been withdrawn in conjunction with the establishment of a Marshall Islands Nuclear Claims Tribunal to provide just compensation. The Claims Court recognized that the adequacy of the amount provided to

Marshall Islanders under the Compact was to be determined by the Nuclear Claims Tribunal

Enewetak Claims in the Nuclear Claims Tribunal

After our claims were dismissed by the U.S. courts, the only forum available to hear our claims was the Nuclear Claims Tribunal. Our claims before the Tribunal were for the loss of use of our land, for the costs to restore our land to a condition of full and unrestricted use, and for the hardship and suffering we endured while in exile on Ujelang. In 2000, the Tribunal, following well established U.S. constitutional, legal, and regulatory principles, determined that the compensation to be provided to us was an amount of \$386 million after deducting all compensation received by us from the U.S.

However, the Tribunal's Compact funding was limited to \$45 million to pay personal injury and property damage awards. Due to the inadequate funding of the Tribunal, the Tribunal has been able to pay out a total of only \$1.6 million on our Tribunal award — or less the 4/10 of one percent of the actual award. In fact, the remaining funds available to the Tribunal for its award payments and internal administrative expenses are now less than \$2 million.

Changed Circumstances Petition

In September 2000, the Marshall Islands government filed a petition with the U.S. Congress, requesting additional funds to cover unpaid Tribunal awards due to "Changed Circumstances" pursuant to Article IX of the Section 177 Agreement. To date, Congress has not acted on the petition, although a January 24, 2005 State Department letter advised Congress that the petition should be denied.

Claims before the Court of Federal Claims

After six years of effort to get our award paid by the U.S. proved unsuccessful, we filed an action in the U.S. Court of Federal Claims seeking damages in the amount \$384 million – the amount awarded to us by the Nuclear Claims Tribunal, less the amount received.

Although the \$384 million award is a significant amount, it is only a fraction of the amount that was expended to create the damage at Enewetak. It is also a fraction of the amount necessary to cleanup sites in the U.S. contaminated as a result of the nuclear weapons testing program. The U.S. DOE has revised its cleanup estimates upwards to \$168 billion to \$212 billion for the cleanup of U.S. sites contaminated as a result of the nuclear weapons testing program.

It is also noteworthy that a few years ago the U.S. Congress appropriated over \$400 million for the cleanup of Kahoolawe Island, yet that site is affected by material that is non-nuclear and non-toxic.

What Congress Can Do

The citizens of the U.S. benefited greatly by having the nuclear testing conducted at Enewetak Atoll far from the U.S. mainland thereby avoiding the damaging health and environmental consequences of radioactive fallout. Enewetak's land, lagoon and reef were sacrificed for the benefit of the people of the United States. We bore, and continue to bear, the burden of a damaged and radiation-contaminated homeland. We also endured suffering and hardship the consequences of which continue to affect our community to this day. The U.S. accepted responsibility for the damages it caused at Enewetak, and it agreed that the Tribunal was to determine just compensation. It has done so. Now the award must be addressed. Congress need not wait for resolution of our pending claim before the Court of Federal Claims. Congress can act now. This can be done by Congress through the Changed Circumstances Petition, by direct funding of the award, or by an *ex gratia* payment.

Funding of the award would permit us to rid our land of radiological contamination, rehabilitate the soil, re-vegetate the land, resettle the Enjebi people on their home island, and provide the means by which we could establish a local economy in the fishing and tourism sectors. The funding would permit us to once again become self-reliant and self-sufficient.

Other Issues that Relate to Our Ability to Live on Enewetak

Although the funding of the Nuclear Claims Tribunal award is the issue most important to us, there are other issues that affect our ability to live on Enewetak. These include, funding of a health program; radiation monitoring of our people, our environment, and the U.S. created nuclear waste site at Runit Island; and, increased funding of the Enewetak Food and Agriculture Program.

Funding of the Health Care Program

In Section 102 of Public Law 96-205, the Congress authorized a program of medical care and treatment for the peoples of the atolls of Bikini, Enewetak, Rongelap, Utrik and other Marshallese determined to be affected as a result of the U.S. Nuclear Testing Program in the Marshall Islands. The funding for such program continued, in an amount of \$2 million annually for 15 years, under the terms of the Compact. The funding for such medical care and treatment program expired as of October 21, 2001.

Funding is necessary to continue the program. We appreciate the funding for such program provided by the Congress in the amount of \$1 million for FY 2007. However, continued funding in an amount of at least several million dollars per year is required to maintain the key elements of the program which provide for an on-site physician for each of the four atolls, necessary medicines and supplies, funding for a health aide for each atoll, and funding for care of the people of the four atolls at the hospitals in the Marshall Islands when required.

Radiation Monitoring of the People, the Environment, and Runit Island

Because of the residual radiation contamination at Enewetak Atoll, we and our environment need to be monitored. We have reached an agreement with the U.S. Department of Energy (DOE) on an appropriate whole body counting and plutonium detection regime for our people. The DOE's responsibilities under such a regime need to continue until Enewetak is radiologically remediated. In addition, the Runit Dome (Cactus Crater Containment Site) contains over 110,000 cubic yards of material including plutonium and other radioactive debris. This site needs to be monitored to assure the integrity of the structure and to assure that no health risks from the radioactive waste site are suffered by us. To effect the foregoing, a long-term stewardship program of the Runit Dome and the remainder of Runit Island needs to be implemented by the U.S.

Increased funding of the Enewetak Food and Agriculture Program

This program is necessary because over one-half of Enewetak remains contaminated by radiation. The remaining fifty percent of the land was turned into a desert-like wasteland in the course of the nuclear testing program. As a result of such activities, there is insufficient food and other resources on Enewetak atoll to support the people.

Congress has provided a sum of not less than \$1.3 million annually for 20 years for the Enewetak Food and Agriculture Program in the Compact. The Enewetak people greatly appreciate such mandatory funding. However, the program has been funded at a level of approximately \$1.8 million for the past several years and such funding level needs to continue to maintain the minimum components of the program. The components of the program include a soil and agriculture rehabilitation program, the importation of food, and the operation of a vessel. Much progress has occurred over the past several years with regard to the agriculture rehabilitation effort. In addition, we have become more and more involved with the soil rehabilitation effort and the planting and maintenance of food bearing plants. Funding of the program at approximately the \$1.8 million level these past several years has helped the program keep up with inflation and has created a momentum that we would like to maintain. Therefore, we ask that the Congress increase the annual funding of the program by \$500,000, for a total of \$1.8 million.

Conclusion

We thank this subcommittee for the opportunity to express our concerns relating to the Compact, the nuclear testing program that occurred on our homeland, the funding of the Nuclear Claims Tribunal award, and for the opportunity to describe the challenges we face as the only population ever resettled on a nuclear test site.

Mr. FALEOMAVAEGA. Thank you very much, Senator Ading. Mr. Plasman.

**STATEMENT OF MR. JAMES H. PLASMAN, CHAIRMAN,
MARSHALL ISLANDS NUCLEAR CLAIMS TRIBUNAL**

Mr. PLASMAN. Thank you, Mr. Chairman, Ranking Member Manzullo, distinguished members, ladies and gentlemen. Thank you for the invitation to appear before you today, Mr. Chairman, and a special thanks to you and Congresswoman Watson for your attendance at a hearing of the tribunal several years ago for a hearing of the class action claim of the people of Utrok. We appreciate your sincere and continued interest in these nuclear issues, and I would like to address those issues for you here today.

Mr. Chairman, among the provisions of the 177 agreement were the creation of \$150 million claims fund and the creation of a claims tribunal to determine claims arising out of the testing program. And although the agreement states it constitutes a full settlement of all claims from the testing program, it also includes Article 9, entitled Changed Circumstances. This provision allows the Government of the Marshall Islands to return to Congress if new loss or damage to property or person is discovered rendering the settlement manifestly inadequate. And I would like to focus today on some of the new knowledge and understandings that have arisen since the 177 agreement came into effect which lead to the conclusion that changed circumstances exist.

The BRAVO test in 1954, as you noted in your remarks, had an explosive yield the equivalent of 15 million tons of TNT which was 1,000 times more powerful than the atomic bomb dropped on Hiroshima. But while BRAVO was the biggest nuclear device ever detonated by the United States and the largest of the 67 tests in the Marshall Islands there were 17 other tests in the Marshall Islands that exceeded 1 megaton in explosive yield and which produced radioactive fallout on atolls and islands throughout the Marshall Islands.

Since 1986, we have learned more about the extent of radioactive fallout in the Marshall Islands. A major source of this information is a 1955 report that was declassified and made available to the Marshall Islands in the mid-1990s. It reported on exposures over—

Mr. FALEOMAVAEGA. Mr. Plasman, is that report available?

Mr. PLASMAN. Yes, sir, we can make that report available.

Mr. FALEOMAVAEGA. I would appreciate it if you could submit a copy of that report. It will be made part of the record.

Mr. PLASMAN. Yes, sir.

This report discussed the exposures over a 12-week period throughout the Marshall Islands from the Castle series of tests that included BRAVO. The report shows that 10 of the 22 populated atolls surveyed exceeded the maximum annual exposure limit of 500 millirem for the general public established in 1957 by the National Council on Radiation Protection. An additional 10 populated atolls exceeded the annual general public limit of 170 millirem set in 1959 by the International Commission on Radiological Protection. But this information, Mr. Chairman, was not available to those negotiating the settlement on behalf of the Mar-

shall Islands. In fact, fallout measurements from the last two series of tests in the Marshall Islands still remain classified nearly 40 years after the final test.

The settlement embodied in the section 177 agreement was predicated in part on the nuclear claims fund being able to create and maintain in perpetuity, a means to address past, present and future consequences of the nuclear testing program. In order to do that the fund was expected to produce average annual proceeds of at least \$18 million to make distributions required by the agreement, a rate of return that the GAO calculated to be 12½ percent. Although we know today that rate of return was not realistic, when the agreement was negotiated long-term U.S. Government bonds were returning 13½ percent annually making a 12½ percent return appear reasonable. As a result the value of the fund was reduced to about \$45 million after the first 15 years of the compact. And today, Mr. Chairman, the balance of the fund stands at under \$1 million.

Additionally, and perhaps most importantly, we now have much better knowledge of the severity of the effects of radiation exposure on human health. A report issued in September 2004 by the National Cancer Institute estimates 532 radiation related cancers among the 14,000 people who were living in the Marshall Islands during the testing period. Included in those excess cancers are 297 estimated to occur among the people outside the 4—

Mr. FALEOMAVEGA. Mr. Plasman, I would also like to have a copy of that report to be made part of the record.

Mr. PLASMAN. Yes, sir.

Included in those excess cancers, Mr. Chairman, are 297, which are estimated to occur among the people outside the four northern atolls that the agreement regarded as exposed. The NCI study also estimates that 289 of the 532 radiation related cancers will occur after 2003.

In addition to cancers, Mr. Chairman, people in the Marshall Islands have suffered from an excess of several different thyroid conditions likely caused by the high levels of Iodine-131 released by the testing. In 1998, the Center for Disease Control estimated that approximately 6.3 billion curies of Iodine-131 had been released to the atmosphere as a result to the testing in the Marshall Islands. That amounts to 42 times the 150 million curies released from events at the Nevada test site, 157 times the releases from the Chernobyl accident, and more than 8,500 times the releases associated with Hanford operations in Washington State. Nearly half of the medical conditions for which the tribunal has awarded personal injury compensation are non-cancerous thyroid conditions.

The severity and extent of these health effects from radiation were not and could not have been known at the time the agreement went into effect. Ten years ago the three Brookhaven National Laboratory doctors who had primary responsibility for the special medical program in the Marshall Islands for 25 years following the BRAVO test published a paper summarizing their findings. The epilogue of that paper begins by saying, "There is a long, sad and tangled story of confusing top level management in the U.S. Government in which no one person or agency seemed willing to take

the responsibility, finance or assign authority for getting the job done.”

Mr. FALEOMAVAEGA. What is the name of that report again, Mr. Plasman.

Mr. PLASMAN. That was published in the July 1997 special issue of *Health Physics*. The authors were Drs. Cronkite, Conard and Bond.

Mr. FALEOMAVAEGA. Were they assigned by the Department of Energy to conduct this study?

Mr. PLASMAN. I think it was originally the Atomic Energy Commission, Mr. Chairman.

Mr. FALEOMAVAEGA. I would like a copy of that report also to be made part of the record.

Mr. PLASMAN. Yes, sir.

In closing, Mr. Chairman and members of the committee, the story has grown longer, but it is no less sad and no less tangled, and I would be happy to answer any questions you may have, you or other members of the committee.

[The prepared statement of Mr. Plasman follows:]

James H. Plasman
Chairman, Marshall Islands Nuclear Claims Tribunal
July 25, 2007
House Committee on Foreign Affairs,
Subcommittee on Asia, the Pacific and the Global Environment

Introduction

In order to address the consequences of the U.S. Nuclear Testing Program in the Marshall Islands after World War II, the U.S. and Marshall Islands governments entered into an agreement to settle claims arising from the testing program as part of the Compact of Free Association, establishing the independence of the Marshall Islands. Among other provisions, the agreement created a \$150 million Nuclear Claims Fund and provided for the establishment of a Claims Tribunal to adjudicate claims and make awards from the Fund. Created in 1988, the Tribunal has made awards over \$90 million for personal injuries and over \$2 billion for damages to property. None of the awards have been paid in full and the balance of the Fund is now under \$1 million. Based upon a recent report from the National Cancer Institute, well over half of an estimated 530 cancers resulting from the testing program will appear in the future in the affected Marshallese population. The settlement between the two governments provided that if there are changed circumstances which render the settlement agreement "manifestly inadequate," the Marshall Islands government could request additional funding from Congress.

Creation of the Nuclear Claims Tribunal

Between 1946 and 1958, the United States conducted 67 nuclear tests in the Marshall Islands. The 67 tests had a yield of 108.5 megatons, almost 100 times the 1.1 megaton yield of tests carried out at the Nevada test site in the continental U.S. This testing had tragic consequences for the people of the Marshall Islands. The people of the atolls closest to the testing were removed from their homelands. Land throughout the Marshall Islands was contaminated by radioactive fallout that in some cases prevents resettlement to this day. The people of the Marshall Islands have been afflicted by a variety of radiation related health effects including an array of cancers. These health effects were not only present in the past, but continue and will continue into the future.

When the Compact of Free Association, establishing the independence of the Marshall Islands, was being negotiated, law suits claiming damages over a billion dollars resulting from the nuclear testing program in the Marshall Islands were pending in U.S. courts. In order to address these and all other claims arising from the testing program, the governments of the U.S. and Marshall Islands agreed to settle these claims.

In June 1983, the governments entered into a formal Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association (177 Agreement). In that agreement, the U.S. recognized the contributions and sacrifices made by the people of the Marshall Islands in regard to the Nuclear Testing Program and accepted the responsibility for compensation owing to citizens of the Marshall Islands for loss or damage to property and person resulting from that testing.

Under the 177 Agreement, in return for dismissal of pending claims and resolution all other past, present and future claims, the United States provided to the Marshall Islands the sum of \$150 million as a

financial settlement for the damages caused by the nuclear testing program. That money was used to create a fund intended to generate \$270 million for distribution over a 15-year period with average annual proceeds of approximately \$18 million per year through the year 2001. Over these 15 years, the funds were distributed among the peoples of Bikini (\$75 million), Enewetak (\$48.75 million), Rongelap (\$37.5 million), Utrik (\$22.5 million), for medical and radiological monitoring, and the payment of claims.

The 177 Agreement also provided for the establishment of a Claims Tribunal with jurisdiction to "render final determination upon all claims past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program." The operations of the Tribunal are also paid from the Nuclear Claims Fund.

Tribunal Approach to Personal Injuries

The Tribunal has adopted an administrative program to address compensation for personal injuries resulting from the testing program. One of the critical issues in consideration of personal injuries is proof of causation. A property of cancers caused by radiation is that there is no specific characteristic that distinguishes such cancers from those resulting from other causes. While some experts recommended the Tribunal adopt a "probability of causation" analysis to determine if cancers suffered by the people were caused by radiation from the testing program, it became clear that there was simply insufficient information to support such a methodology.

Instead, the Tribunal's approach to personal injury claims is closely patterned after similar U.S. statutory programs providing compensation for American civilian and military personnel harmed by their own country's nuclear testing program.

In Public Law 101-426, the Radiation Exposure Compensation Act of 1990 (often referred to as the "Downwinders' Act"), the U.S. Congress found that fallout emitted from the atmospheric nuclear tests conducted at the Nevada Test Site exposed American civilians "to radiation that is presumed to have generated an excess of cancers among those individuals." In view of that finding, the Congress established a presumptive program of compensation for specified radiogenic diseases contracted by people who were physically present in the "affected area" during the periods of atmospheric testing in Nevada.

The similarities between the Downwinders and the Marshall Islands situations provided justification for adoption of the presumptive approach by the Tribunal. In both cases, the affected populations were unknowing victims of the fallout from the testing program. In both cases, there was little effort made to monitor exposures to the population at large. Although the Marshall Islands was geographically somewhat larger than the area covered by the Downwinders program (see attached map), the total yield of the nuclear tests in the Marshall Islands was almost 100 times greater than that in Nevada.

With this U.S. precedent, in August 1991 the Tribunal adopted regulations providing for awards to people who had been physically present in the Marshall Islands during the testing period and who had been medically diagnosed as having one of 25 separate medical conditions. This list was based upon the conditions recognized as radiogenic by the U.S. in the Downwinders program and recommendations from the former Chief of Epidemiology for the National Cancer Institute, Dr. Robert Miller. Based on extensive review of the latest scientific and medical research about the effects of radiation on human beings, the list of presumed medical conditions was expanded by two conditions in January 1994, by seven more conditions in October 1996, one more condition in October of 1998, and an additional condition in 2003. The Nitijela (parliament) in 1994 amended the Tribunal's enabling legislation to expand the presumption of causation to those whose mothers were present in the Marshall Islands during the testing period.

The most recently adopted compensatory program for radiation related injuries in the U.S. is the Energy Employee Occupational Injury Compensation Program. This program, designed to compensate Department of Energy workers exposed to radiation in weapons development facilities, adopted a probability of causation approach which awarded compensation to workers who were able to show that it was probable their medical condition was the result of their exposure to radiation. However, even in this context, where there was careful monitoring of worker exposures, there were special provisions made for workers for whom there was inadequate information to develop a dose reconstruction and for whom there was a reasonable likelihood of harm. Such workers may be recognized as a "Special Exposure Cohort" for whom causation would be presumed without reference to level of exposure, if they developed a listed radiogenic condition.

The reality is that a radiation-induced cancer has no specific indicator to separate it from cancers generally. Recognizing this, the U.S. has provided when there is insufficient information to provide a probability of causation analysis of the origin of a radiation related condition, it is appropriate to adopt a presumptive approach. In compensating all radiogenic cancers where there is a reasonable possibility of harm, these programs require acceptance of the likelihood that there will be an element of over-inclusiveness in compensation. The NCT has adopted that philosophy as well. The over-inclusiveness of such compensation must be accepted as a necessary part of compensation for such injuries.

The Tribunal's presumptive program meets the need for an efficient, simple, and cost-effective system of resolving personal injury claims where proof of causation would be impossible given the fact that exposure level information is not available. It follows U.S. precedent for compensation of its own citizens wrongfully exposed to radiation.

Another element of the Tribunal's personal injury compensation program is the level of compensation for awards. The Tribunal has adopted a scaled approach, with awards ranging from \$12,500 for certain benign conditions, to \$125,000 for the most serious cancers, while the U.S. programs tend to be lump sum awards, ranging from \$50,000 for Downwinders (\$75,000 if "on-site") to \$150,000 for Department of Energy employees, who also receive medical care for their conditions.

It may reasonably be argued that both the U.S. and Tribunal programs significantly under compensate awardees. It should be acknowledged that awards of this nature tend to be smaller than awards in fully adjudicated legal actions. If award levels were based on the value of a statistical life, as utilized by regulatory agencies for cost-benefit analysis, the award levels would also be much higher. For instance, it has been reported ("Valuation of Human Health and Welfare Effects of Criteria Pollutants" Appendix H, The Benefits and Costs of the Clean Air Act, 1990 to 2010, EPA, 1997) that while values differ from program to program, the mean value of a statistical life for regulatory purposes is \$4.8 million. Under such a valuation, total compensation to date by the Tribunal for personal injuries is far from adequate compensation for the injuries suffered by the people of the Marshall Islands.

It must also be acknowledged that the level of diagnostic service in the Marshall Islands in the past, particularly in the outer islands, would likely not be of a quality to diagnose many cancerous conditions that would have qualified for compensation, thus reducing the overall number of awards.

An analysis of personal injury awards through 2004 is addressed in Attachment 1, "ANALYSIS OF PERSONAL INJURY AWARDS THROUGH APRIL 16, 2004."

As of December 31, 2006, \$91,402,000 in compensation had been awarded under the Tribunal's presumptive personal injury compensation program. This amount was awarded to or on behalf of 1,999

individuals, some of whom have received multiple awards because they suffered from more than one compensable medical condition. Just over half are for non-cancerous conditions, primarily thyroid related conditions, especially benign thyroid nodules.

Of those 1,999 awardees, more than 1,000 have died having received only partial payment of the compensation awarded for their personal injuries. As of December 31, 2006, a total of \$73,261,198 had actually been paid to awardees or their heirs, leaving an unpaid balance of \$18,140,802.

Property Claims

The Tribunal approached property claims initially through a traditional adjudicatory approach. By taking up the class action claims for the people of the four atolls most directly affected by the testing program, the Tribunal anticipated utilizing the precedents and determinations from these claims to develop an administrative program to address property claims from the rest of the Marshall Islands. In reaching its decisions, the Tribunal heard extensive expert testimony from both claimants and the Defender of the Fund. In accordance with Article IV, Section 3 of the Section 177 Agreement, the Tribunal has referred to the laws of the United States in making its decisions in the absence of applicable Marshall Islands law or international law. The Tribunal's decisions in property claims relied heavily upon established U.S. laws and precedents.

The Tribunal has issued decisions in the property claims for the people of Enewetak, Bikini, Utrik and Rongelap and is now in the process of devising an administrative program to address the claims from the remaining atolls and islands of the republic. The people of Bikini and Enewetak have filed cases in the U.S. Court of Claims in light of the inadequacy of the Nuclear Claims Fund to address their awards. The Tribunal's treatment of property claims is discussed more fully in Attachment 1, "Summary of Property Damage Compensation Awards Made by the Marshall Islands Nuclear Claims Tribunal."

Changed Circumstances

Article IX of the Section 177 Agreement is entitled "Changed Circumstances." It provides that:

If loss or damage to property and person of the citizens of the Marshall Islands, resulting from the Nuclear Testing Program, arises or is discovered after the effective date of this Agreement, and such injuries were not and could not reasonably have been identified as of the effective date of this Agreement, and if such injuries render the provisions of this Agreement manifestly inadequate, the Government of the Marshall Islands may request that the Government of the United States provide for such injuries by submitting such a request to the Congress of the United States for its consideration. It is understood that this Article does not commit the Congress of the United States to authorize and appropriate funds.

The Government of the Marshall Islands presented a formal petition to the Congress in September of 2000. Hearings were held in the House and Senate in 2005. There is compelling evidence to justify a conclusion that changed circumstances exist.

Increased Medical and Scientific Understanding of the Biological Effects of Radiation

In the fall of 1976, the Office of Radiation Programs, Environmental Protection Agency, asked the National Academy of Sciences (NAS) for current information relevant to an evaluation of effects of human exposure to low levels of ionizing radiation. In 1980, the NAS appointed Committee on the Biological

Effects of Ionizing Radiation (BEIR III Committee) issued its report in response to that request. The report encompassed a review and evaluation of scientific knowledge developed since the first BEIR report, published in 1972, concerning radiation exposure of human populations.

On the first page of the Summary and Conclusions section of the BEIR III report, the Committee cautioned that the risk estimates presented "should in no way be interpreted as precise numerical expectations. They are based on incomplete data and involve a large degree of uncertainty, especially in the low-dose region. These estimates may well change as new information becomes available." Nevertheless, those estimates of increased risk of radiation-induced solid tumors (such as breast, thyroid, and lung cancers) and of leukemia stood as the mainstream view for ten years.

In April 1986, the Office of Science and Technology Policy's Committee on Interagency Radiation Research and Policy Coordination asked the National Research Council to form a new BEIR committee to report on the effect of ionizing radiation on the basis of the new information that was becoming available. That committee (BEIR V) issued its report in 1990. In the Preface of the report, the committee noted that "The need for replacement of the BEIR III report became obvious when it was determined that the long standing estimates of the radiation exposures received by the A-bomb survivors, that had been utilized by the BEIR III Committee, required extensive revision."

The Executive Summary of the BEIR V report states: "Since the completion of the 1980 BEIR III report, there have been significant developments in our knowledge of the extent of radiation exposures from natural sources and medical uses as well as new data on the late health effects of radiation on humans, primarily the induction of cancer and developmental abnormalities."

With particular regard to cancer induction, the Executive Summary states: "Knowledge of the carcinogenic effects of radiation has been significantly enhanced by further study of such effects in atomic bomb survivors. Reassessment of A-bomb dosimetry at Hiroshima and Nagasaki has disclosed the average dose equivalent in each city to be smaller than estimated heretofore . . . As a result, lifetime risk of cancer attributable to a given dose of gamma radiation now appears somewhat larger than formerly estimated." That increased risk is reported in the Executive Summary of BEIR V as follows: "The cancer risk estimates derived with the preferred models used in this report are about 3 times larger for solid cancers (relative risk projection) and about 4 times larger for leukemia than the risk estimates presented in the BEIR III report."

In other words, within the realm of scientific and medical knowledge of the effects of radiation, circumstances had changed dramatically between the time the 177 Agreement was implemented and the time the BEIR V report was published in 1990.

Subsequent to 1990, significant further increases in such knowledge have been reported by the Radiation Effects Research Foundation (RERF) in Japan. In 1994, Thompson et al reported for the first time comprehensive data on the incidence of solid cancer and risk estimates for A-bomb survivors [Cancer Incidence in Atomic Bomb Survivors, Radiation Research 137, 1994]. In 1996, Pierce et al updated earlier findings on cancer mortality to include the five-year period 1986-1990; that analysis also included an additional 10,500 survivors with recently estimated radiation doses [Studies of the Mortality of Atomic Bomb Survivors, Radiation Research 146, 1996].

National Cancer Institute Findings

This increased understanding of the effects of radiation on human health was applied to the Marshall Islands by the National Cancer Institute in 2004 in a report entitled "Estimation of the Baseline Number of

Cancers Among Marshallese and the Number of Cancers Attributable to Exposure to Fallout from Nuclear Weapons Testing Conducted in the Marshall Islands,” prepared for Senate Committee on Energy and Natural Resources, September 2004 (“NCI Report.”) This study, by a respected, non-partisan U.S. institution, firmly establishes a justification for a finding of changed circumstances. At the effective date of the Section 177 Agreement, there was acknowledgement of less than 20 cancers, past and future, resulting from radiation from the nuclear testing program (see Robbins and Adams, “Radiation Effects in the Marshall Islands,” published in Radiation and the Thyroid: Proceedings of the 27th Annual Meeting of the Japanese Nuclear Medicine Society, Nagasaki, Japan, October 1 -- 3, 1987, Shigenobu Nagataki, editor, Excerpta Medica, Amsterdam-Princeton-Hong Kong-Tokyo-Sydney, 1989, and the U.S. Department of Energy, “The Meaning of Radiation for Those Atolls in the Northern Part of the Marshall Islands That Were Surveyed in 1978,” 1982.)

In contrast to the handful of cancers resulting from the testing program acknowledged in 1986, the NCI study estimates that, primarily as a result of past exposures, 532 radiation related cancers may be expected to occur among the 1954 Marshall Islands population of 13,940.

Included in those 532 excess cancers are 297 estimated to occur among people from atolls other than the four specifically provided for in the Section 177 Agreement (per Table 3 at page 20 of the study). NCI estimates 70 radiation related cancers among people who lived in the southern atolls that were not included in the 1978 DOE radiological survey of the northern atolls of the Marshall Islands, as well as an unspecified number among people who lived at Wotje (indicated as an “Other northern atoll” in Table 3 but not included in the 1978 survey).

Tables 2a and 2b of the NCI study indicate that of the 532 expected radiation related cancers, only 243 are estimated to have occurred during the 1946-2003 time period while 289 are estimated to occur in 2004 and later.

The estimated 532 excess cancers, attributable to radiation created by the nuclear testing program, are in addition to an estimated 5,600 cancers “expected to occur in the absence of exposure to radioactive fallout from tests conducted in the Marshall Islands” (page 14).

The NCI study addressed only cancers because other radiation related diseases are outside its area of expertise, and only the population present during the testing period, ignoring possible cancers arising from exposure to residual radiation present in the environment after the end of the testing program. Nonetheless, the differences in what was known in 1986 and what is known today based simply on the NCI study are staggering. In 1986, a handful of cancers were acknowledged to result from the testing; today, over 500 radiation-related cancers are estimated to be caused by the testing program. In 1986, no exposures were acknowledged to people outside of the four northern atolls of Enewetak, Bikini, Rongelap and Utrik; today, almost 300 radiation-related cancers are estimated to occur outside the four atolls. In 1986, only two future cancers were acknowledged (DOE, 1982) to result from the testing program; today, 289 radiation-related cancers are estimated to arise after 2003. The numbers speak for themselves.

Declassified Information and the extent of contamination in the Marshall Islands

During 1995, a January 1955 report from the U.S. Atomic Energy Commission entitled “Radioactive Debris From Operation Castle, Islands of the Mid-Pacific,” by Alfred J. Breslin and Melvin E. Cassidy, was made available to the Republic of the Marshall Islands for the first time. That report, which had remained in a classified status for 40 years, includes tables listing radiation fallout doses as measured for 27 Marshall

Islands atolls for each of the six tests conducted in that 1954 series and revealed significant exposures throughout the Marshall Islands.

Historically, the only individuals considered to have been "exposed" were those who were physically present on Rongelap, Ailinginae or Utrik atolls at the time of the Bravo test on March 1, 1954, at 15 megatons the most powerful atmospheric weapon ever detonated by the U.S. (The people of Enewetak and Bikini had been evacuated from their home atolls.)

However, the Breslin and Cassidy report revealed that significant doses were monitored throughout the Marshall Islands following not only the Bravo test but also after each of the other tests conducted during Operation Castle in 1954. The comparisons between doses suffered by Downwinders and the Marshall Islanders is discussed more fully at Attachment 1, "Comparison of Cumulative External Radiation Exposures Between High-End U.S. "Downwinders" and "Unexposed" Individuals Living in the Marshall Islands."

The average external exposure to Downwinders of about 0.48 rem. External exposures in the "unexposed" Marshall Islands ranged from a high of 18 rem in Ailuk to a low of 0.51 rem in Ujae. These findings show the extent of radioactive contamination and resultant exposures was far beyond what was known at the effective date of the 177 Agreement. Further, these findings justify the extension of the presumption of causation throughout the Marshall Islands based upon the precedent of the U.S. Radiation Exposure Compensation Act.

The cumulative doses contained in the Breslin and Cassidy report were apparently not of great concern at the time, except for Rongelap, Ailinginae and Utrik. However, radiation protection standards established just three years later should have raised concern for most of the other atolls. In 1957, the U.S. National Bureau of Standards published an addendum to its report #59 for the National Council on Radiation Protection (NCRP) in which a new public limit of 0.5 rem (500 mrem) per year was established for maximum permissible exposure. Two years later, in 1959, the International Commission on Radiological Protection set a maximum general public limit of 0.17 rem (170 mrem) per year (ICRP Publication 2). [It should be noted that in 1990 the ICRP reduced the general public limit to 1 mSv (100 mrem) per year (ICRP Publication 60).]

The cumulative doses contained in the 1955 AEC report for the Castle series are external only and do not combine internal doses, as current radiation protection standards now require. Also, for various reasons discussed in the report, the external values given are, in general, underestimations. It should also be noted that the monitoring was conducted over only a 12-week period, not an entire year. It is reasonable to assume that unmeasured radioactive debris continued to fallout, in decreasing amounts, during the weeks and months following the conclusion of the series.

Nevertheless, the exposure levels in that report show that 10 of the 22 populated atolls listed exceeded the NCRP 1957 maximum limit of 500 mrem over the period of an entire year for the general public and an additional 10 populated atolls exceeded the ICRP 1959 general public limit of 170 mrem for a whole year.

This information was not available to those negotiating the settlement on behalf of the Marshall Islands. In fact, fallout measurements from the last two series of tests in the Marshall Islands still remain classified nearly 40 years after the final test, despite numerous requests made by the RMI government. Those two series - - Operation Redwing in 1956, comprising 17 tests totaling 20.8 megatons, and Operation Hardtack I in 1958, comprising 33 tests totaling 28 megatons - - had a combined yield greater than the Operation Castle series in 1954.

The fact that the exposure levels sustained by people living on nearly every atoll in the Marshall Islands in 1954 exceeded U.S. and international maximum permissible levels established shortly thereafter establishes that it was not only the four atolls of Enewetak, Bikini, Rongelap and Utrik that suffered radiation exposures from the testing program and constitutes another area of changed circumstances.

The Evolution of Maximum Permissible Exposure Levels

Radiation protection standards are put in place to protect the health of the general public from the harmful effects of exposure to radiation. As the scientific understanding of the effects of radiation on human health has developed, it has come to be understood that the risk per unit dose is more harmful than previously thought. Corresponding to this increase in understanding, radiation protection standards have become more strict by lowering the limits for exposure. In "The Meaning of Radiation for those Atolls in the Northern part of the Marshall Islands that Were Surveyed in 1978," (ERDA 1980), the radiation protection standards in effect at that time were described as follows at page 29:

The U.S. government has established that an American should not receive more than 500 mrem of radiation exposure in one year, in addition to radiation that doctors use and that which has always been part of the world. They also establish that the amount of radiation that people who live in the United States may receive over a 30 year period should not be more than 5000 mrem.

In 1990 the standards were reduced dramatically with the promulgation of revisions to the radiation protection standards set forth by the U.S. Nuclear Regulatory Commission in 10 CFR 20. These revisions included a radiation protection standard of 100 mrem/yr for members of the general public (not including medical exposures or exposures to background radiation), along with the adoption of the as-low-as-reasonably-achievable (ALARA) philosophy as a regulation. The adoption of ALARA as a regulatory requirement is especially noteworthy since it requires that radiation exposures to the general public be maintained as far below 100 mrem per year as is reasonably achievable.

Protection standards were reduced further in 1997, as the U.S. EPA adopted a 15 mrem standard. As noted by the Congressional Research Service:

The Environmental Protection Agency (EPA) issued the 15 millirem standard in 1997 in an agency guidance document. This guidance recommends safe levels of human exposure to determine the degree of cleanup at Superfund sites in the United States where radioactive contamination is present. To date, EPA has not proposed this standard in federal regulation, and it therefore is not legally enforceable or binding in the United States. However, EPA issued the standard based on an enforceable federal regulation, which requires a degree of cleanup that would result in a cancer risk of no greater than 1 in 1 million, or as much as 1 in 10,000 in certain circumstances. (footnotes omitted) Congressional Research Service, "Republic of the Marshall Islands Changed Circumstances Petition to Congress," March 14, 2005, Order Code RL32811.

It should be noted that this is the standard adopted for protection of the general public in relation to the proposed Yucca Mountain radioactive waste depository. It is also the standard adopted by the Nuclear Claims Tribunal in consideration of claims for damage to property. This evolution of standards for protection of human health from radiation from 500 mrem in 1986, the effective date of the Section 177 Agreement, to 15 mrem at present is a change that was not known and could not have been known in 1986.

Status of the Nuclear Claims Fund

The Nuclear Claims Fund has eroded in value from \$150 million to its current level of less than \$1 million for a variety of unforeseen reasons. These include the stock market crash of 1987, the failure to meet the performance goal of 12.5% (reasonably anticipate when the agreement was negotiated,) and the decline in the market following the tragic events of September 11, 2001. The history of the Fund and the failure to meet performance goals is further discussed in Attachment 1, "The Failure of the Nuclear Claims Fund to Meet Its Expected Performance Goal." Absent these circumstances, the Fund would have retained its value and it could "provide, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program" (Article I, Section 2 of the Section 177 Agreement). The failure to do so, coupled with the level of damages determined by the Tribunal, provides an additional changed circumstance for consideration under the Agreement.

Conclusion

The Nuclear Claims Fund currently stands under one million dollars. The level of awards made by the Nuclear Claims Tribunal, the duly authorized forum for adjudicating claims pursuant to the Section 177 Agreement, renders the settlement manifestly inadequate. The settlement made in 1986 was not based upon any reasonable evaluation of damages, but was a political settlement that expressly recognized the need to revisit the settlement in the event changed circumstances could be shown. The increase in knowledge of the harmful effects of radiation on human health exemplified by the NCI study and new information about the extent of radioactive contamination in the Marshall Islands clearly shows changed circumstances and a critical need for additional funding to address test related medical conditions that have yet to manifest in the population.

A renegotiation of the nuclear claims settlement based on the Changed Circumstances provision contained in Article IX of the Section 177 Agreement is clearly warranted. Without an extensive and impartial review of the currently known damages caused by the nuclear testing program and a substantial increase in the funding for payment of awards, it cannot truly be said that the "Agreement constitutes the full settlement of all claims, past, present and future . . . related to the Nuclear Testing Program" (Article X of the Section 177 Agreement).

**THE OPERATIONS OF THE MARSHALL ISLANDS NUCLEAR CLAIMS TRIBUNAL
ESTABLISHED PURSUANT TO U. S. PUBLIC LAW 99-239**

Outline of prepared remarks for Congressional Staff Briefing on April 23, 2004
Bill Graham, Public Advocate

The Section 177 Agreement provided that the Tribunal “shall have jurisdiction to render final determination upon all claims past, present and future ... which are based on, arise out of, or are in any way related to the Nuclear Testing Program.” In carrying out that mandate, the Tribunal was specifically directed “to the laws of the Marshall Islands, including traditional law, to international law and, in the absence of domestic or international law, to the laws of the United States” in determining any legal issue. [Article IV, Claims Adjudication Process]

The Tribunal has had to determine numerous legal issues in its less than 16-year existence and many of those determinations have been based on reference to the laws of the United States. In fact, Tribunal regulations include a section entitled “Comparability With United States Compensation Schemes.”

The determinations of the Tribunal and the compensation awards resulting from them are in large part based on comparable determinations made under U.S. law. Specifically:

1. The Tribunal’s personal injury compensation program is largely comparable to U.S. programs providing benefits both to atomic veterans and to civilians who were deemed to have been exposed by atomic testing at the Nevada Test Site (NTS).

- ¶ Basis for Presumption of Exposure - In the Radiation Exposure Compensation Act [PL 101-426], the U.S. Congress found that fallout emitted during above-ground nuclear tests in Nevada exposed individuals who lived in parts of Nevada, Utah, and Arizona “to radiation that is presumed to have generated an excess of cancers among these individuals.” The RECA (“Downwinders”) program, administered by the Department of Justice, provides presumptions of exposure and causation for 19 listed medical conditions and the defined “affected area” includes points as far as 560 miles from the NTS. Given the vastly greater yields and levels of radioactive fallout of the testing in the Marshall Islands, the Tribunal’s extension of the same presumptions of exposure and causation to anyone who lived in the Marshall Islands is both reasonable and credible. [see attached paper *Comparison of Cumulative External Radiation Exposures Between High-End U.S. “Downwinders” and “Unexposed” Individuals Living in the Marshall Islands*]
- ¶ Radiogenic Conditions - As adopted by the Congress in 1990, RECA provided compensation for 13 medical conditions. The program adopted by the Tribunal in 1991 provided compensation for 25 medical conditions. RECA’s list was increased to 19 conditions in 2000 as a result of PL 106-245, in which the Congress found that “scientific data ... provide medical validation for the extension of compensable radiogenic pathologies.” The Tribunal’s list has been increased on four separate occasions by a total of 11 conditions (two in 1994, seven in 1996, one in 1998 and one in 2003) which current scientific research findings demonstrate are radiogenic in nature. [see attached paper *Analysis of Personal Injury Awards through April 16, 2004*]
- ¶ Relative Award Amounts and the Real Value of Money - Compensable medical conditions on the RECA list are awarded \$50,000 while the Tribunal awards as much as \$125,000 for some of the same conditions. However, awards to Americans are paid in full in a lump sum while the Section 177 Agreement [Article II, Section 7(b)] requires that “All monetary awards made by the Claims Tribunal ... shall be paid on an annual pro-rata basis.” If a \$50,000 Downwinder’s check had been used to

create a trust fund earning the 12.5% annual return expected for the Nuclear Claims Fund, the \$6,250 in yearly dividends would have totaled \$62,500 after ten years. Combined with the original \$50,000 principal, a total of \$112,500 in benefits would have been received under such a scenario. During the 10-year period from the inception of the Tribunal's personal injury compensation program in 1991 to October 2001, the most that any of its awardees had received in payment was \$82,500 (representing 66% of \$125,000).

2. Property damage awards made by the Tribunal are credible because they are based largely on current U.S. Environmental Protection Agency (EPA) standards and the underlying belief that Marshallese are entitled to a comparable level of radiation protection as U.S. citizens. [see attached paper *Summary of Property Damage Compensation Awards Made by the Marshall Islands Nuclear Claims Tribunal*]

¶ **Basis for Radiological Cleanup and Remediation** - In December 1998, the Tribunal issued a formal written Memorandum of Decision and Order in which it stated that the principle of the International Atomic Energy Agency (IAEA) "whereby the victims of a transboundary exposure are treated no less favorably than the citizens of the offending country, is consistent with the Tribunal's policy of comparability with U.S. policies and procedures" in its personal injury compensation program. The Tribunal's decision applied that principle to the situation in the Marshall Islands, where the U.S. had conducted nuclear testing, and went on to adopt the "policies and criteria" set out in a 1997 U.S. EPA memorandum. Those policies provide that "If a dose assessment is conducted at the site then 15 millirem per year (mrem/yr) effective dose equivalent (EDE) should generally be the maximum dose limit for humans." That standard has provided the basis on which the Tribunal has determined the need for and cost of radiological cleanup and remediation.

¶ **Awards for Cleanup and Remediation** - In 2000, the Tribunal concluded a lengthy and extremely complex hearing and evidentiary process by issuing a decision in the class action property damage claim that had been filed on behalf of the People of Enewetak 10 years earlier. In its Memorandum of Decision and Order for that claim, the Tribunal acknowledged that "Both the United States and Marshall Islands Constitutions prohibit the taking of private property for public use without just compensation." The Tribunal award of such compensation included "the reasonable costs of clean-up and rehabilitation" in the amount of \$107.8 million. In its 2001 Memorandum of Decision and Order in the class action property damage claim on behalf of the People of Bikini, the Tribunal awarded net clean-up and rehabilitation costs of \$251,500,000.¹

The credibility of the Tribunal's decisions, however, cannot ultimately be established until and unless its awards are actually paid. With the abject failure of the Nuclear Claims Fund to attain its performance goal, the original \$150 million settlement amount has proven to be manifestly inadequate. At its present value of \$5.8 million, the Fund cannot possibly "maintain, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program, including the resolution of resultant claims." [Section 177 Preamble] [see attached paper *The Failure of the Nuclear Claims Fund to Meet Its Performance Goal*]

¹ Enewetak cleanup and remediation costs include: soil removal - \$22,500,000; potassium treatment - \$15,500,000; soil disposal (causeway) - \$31,500,000; Fig/Quince clean-up - \$10,000,000; surveys - \$4,510,000; soil rehabilitation and revegetation - \$17,700,000; \$16.1 million additional to restore the soil and revegetate the 558 acres subject to soil removal as part of the radiological cleanup; less \$10,000,000 stipulated value of the Enjebi Trust Fund. Total remediation costs in Bikini include (1) soil excavation and removal; (2) periodic clearing of land of underbrush prior to potassium applications; (3) purchase and periodic application of potassium/potassium fertilizer; (4) soil management that ensures proper dosage of potassium/potassium fertilizer; (5) a comprehensive surveillance program involving soil and crop samples, analyses and bioassays; and (6) disposal of contaminated soil.

Comparison of Cumulative External Radiation Exposures Between High-End U.S. “Downwinders” and “Unexposed” Individuals Living in the Marshall Islands

In the U.S. Radiation Exposure Compensation Act [RECA, PL 101-426], the U.S. Congress found that fallout emitted during above-ground nuclear tests in Nevada exposed individuals who lived in the downwind affected area in Nevada, Utah, and Arizona “to radiation that is presumed to have generated an excess of cancers among these individuals.” Under the RECA program, such individuals (“Downwinders”) are provided presumptions of exposure and causation for 19 listed medical conditions. The defined “affected area” under RECA includes points as far as 560 miles from the NTS.

The 67 nuclear tests conducted by the United States between 1946 and 1958 resulted in fallout that contaminated all atolls and islands of the Republic of the Marshall Islands (RMI) to varying degrees. For many years, however, the only individuals considered by the U.S. to have been “exposed” were those who were physically present on Rongelap, Ailinginae or Utrik atolls at the time of the Bravo test on March 1, 1954, at 15 megatons the most powerful atmospheric weapon ever detonated by the U.S.

Consistent with the view that health impacts of the nuclear testing program were confined to a very small population were the limited past efforts to quantify radiation exposures and their consequences to other Marshall Islands groups which were characterized as “unexposed,” implying that the RMI population at large either received no radiation exposures from any of the 67 nuclear tests or that exposures were so small so as to be of no consequence.

However, information declassified by the U.S. government in 1994 revealed that significant doses were monitored throughout the Marshall Islands following not only the Bravo test but also after each of the other tests conducted during Operation Castle in 1954.*

Given this understanding and the knowledge that the total explosive yield of the testing in the Marshall Islands was 93 times that of all atmospheric tests in Nevada, a more comprehensive assessment of dose estimates was conducted in 2002 for Marshall Islanders at 21 “unexposed” atolls for all 67 nuclear tests. The results of that assessment indicate that the average individual external radiation dose to populations at every atoll in the Marshall Islands exceeded the average exposures of those individuals living in the six counties closest to the Nevada Test Site during the respective periods of atmospheric testing.

The accompanying two tables provide cumulative exposure data during the respective periods of atmospheric testing for people living in the six U.S. counties and for people living on 21 atolls and islands in the RMI who have traditionally been viewed as “unexposed.”

In addition, people living in the Marshall Islands were exposed to significantly greater amounts of radioactive iodine, a nuclide which concentrates in the thyroid and can cause both cancer and a number of non-malignant medical conditions affecting that gland. In 1998, scientists at the Radiation Studies Branch of the U.S. Centers for Disease Control and Prevention (CDC) estimated that approximately 6.3 billion curies of radioactive Iodine-131 were released to the atmosphere as a result of the U.S. weapons testing in the Marshall Islands. That amount is 42 times greater than the 150 million curies released as a result of the testing in Nevada. It is also 150 times greater than the 40 million curies released as a result of the Chernobyl

* “Radioactive Debris From Operation Castle, Islands of the Mid-Pacific,” by Alfred J. Breslin and Melvin E. Cassidy, January 18, 1955, United States Atomic Energy Commission

nuclear accident and 8,500 times greater than the estimated 739,000 released from Atomic Energy Commission (AEC) operations at Hanford, Washington.

In view of this new understanding of the relative exposures of U.S. downwinders, the Tribunal's extension of the same presumptions of exposure and causation to anyone who lived in the Marshall Islands during the testing period is both reasonable and credible.

**Distribution of Individual Cumulative External \square Exposures
by Exposure Range During the Three Major Time Periods**

[Source: Anspaugh et al. 1990, *Health Physics* 59(5)]

Exposure Range (R)	Persons Within Exposure Range		
	1951 to 1958	1961 to LTBT ^a	LTBT to 1975
< 0.1 to 0.1	61,000	180,000	180,000
0.1 to 0.5	80,000	480	6
0.5 to 1.0	19,000	0	0
1.0 to 5.0	20,000	0	0
5.0 to 10.0	520	0	0
10.0 to 15.0	45	0	0
Total Persons	180,000 ^b	180,000 ^b	180,000 ^b
Collective Dose (Person-R)	~85,000	610	320
Average Individual Dose (R)	0.472	0.0034	0.0018

^a Limited Test Ban Treaty (LTBT) signed 5 August 1963.

^b Exposed persons are those living in the counties of Clark, Lincoln, Nye, and White Pine in Nevada and the counties of Iron and Washington in Utah

**Summary of Exposure Dose Data: Best Estimates to Individuals and Population Groups
(from Radiation Exposures Associated with the U.S. Nuclear Testing Program for 21 Atolls/Islands in
the Republic of the Marshall Islands, SC&A August 2002)**

Location	Acute and Intermediate Doses	
	Population Size (1946-1958)	Average External to Individual Whole Body Dose (Rem)
Ailuk	387	18.0
Mejit	333	15.3
Wotje	317	7.9
Likiep	622	6.7
Kwajalein	1042	5.6
Wotho	47	3.3
Arno	1109	2.2
Maloelap	412	1.8
Majuro	1981	1.9
Mili	334	1.7
Jaluit	1156	2.0
Ebon	806	1.7
Aur	382	1.6
Kili	147	1.3
Ailinglaplap	947	1.1
Jabat	49	1.1
Namodik	431	1.1
Namu	370	0.88
Lib	52	0.86
Lae	137	0.77
Ujae	185	0.51
TOTALS	11,061	

ANALYSIS OF PERSONAL INJURY AWARDS THROUGH APRIL 16, 2004**Group A - Conditions Covered by U.S. Radiation Exposure Compensation Act**

<u>Compensable Medical Condition</u>	<u>Number of Awards</u>	<u>Net \$ Awarded</u>
1. Leukemia	50	\$4,479,000
2. Cancer of the Thyroid		
a. recurrent or requiring multiple treatments	31	2,012,500
b. non-recurrent	101	4,275,000
3. Cancer of the breast		
a. recurrent or requiring mastectomy	36	3,425,000
b. non-recurrent or lumpectomy	23	1,687,500
c. cause of death or end stage	37	4,161,000
4.a. Cancer of the pharynx, non-fatal within 5 years	8	800,000
4.b. Cancer of the pharynx, cause of death or end stage	17	1,863,000
5. Cancer of the esophagus	7	768,000
6. Cancer of the stomach	33	3,582,500
7. Cancer of the small intestine	3	238,000
8. Cancer of the pancreas	24	2,551,500
9. Multiple myeloma	5	541,000
10.a. Lymphoma, non-fatal within 5 years	29	2,500,000
10.b. Lymphoma, cause of death or end stage	28	3,055,000
11. Cancer of the bile duct	3	300,000
12. Cancer of the gall bladder	0	0
13. Cancer of the liver	36	4,001,500
14.a. Cancer of the colon, non-fatal within 5 years	17	1,100,000
14.b. Cancer of the colon, cause of death or end stage	11	1,095,500
15.a. Cancer of the urinary tract, non-fatal within 5 years	7	487,500
15.b. Cancer of the urinary tract, cause of death or end stage	3	301,000
16.a. Malignant Salivary Gland Tumors	6	275,000
18. Cancer of the ovary	57	5,899,500
29. Cancer of the brain	11	1,025,500
33. Cancer of the cecum (listed separately by the Tribunal but medically part of the small intestine)		
a. non-fatal within 5 years	2	150,000
b. cause of death or end stage	1	101,000
	586	\$50,675,500

Group B - Conditions Clearly Linked to Fallout from the Bravo Test*

<u>Compensable Medical Condition</u>	<u>Number of Awards</u>	<u>Net \$ Awarded</u>
19. Unexplained hypothyroidism	18	481,250
20. Severe growth retardation due to thyroid damage	2	125,000
23. Radiation sickness	72	900,000
24. Beta burns	72	900,000
25. Severe mental retardation	0	0
	164	\$2,406,250

* Nearly all of these awards have been made to individuals who were physically present on Rongelap during the Bravo test of March 1, 1954. At least seven (7) of the hypothyroidism cases received a \$25,000 *ex gratia* payment from the U.S. for that condition. Such payments are deducted from Tribunal awards as prior compensation for the same injury.

Group C - Conditions Covered by U.S. Radiation-Exposed Veterans Compensation Act

<u>Compensable Medical Condition</u>	<u>Number of Awards</u>	<u>Net \$ Awarded</u>
31.a. Cancer of the kidney, non-fatal within 5 years	10	\$ 750,000
31.b. Cancer of the kidney, cause of death or end stage	<u>2</u>	<u>171,500</u>
	12	\$921,500

Group D - Conditions Covered by U.S. Energy Employee Occ. Illness Comp. Act

<u>Compensable Medical Condition</u>	<u>Number of Awards</u>	<u>Net \$ Awarded</u>
35. Cancer of the bone	8	\$698,000

Group E - Conditions on the Veterans' Administration Regulatory List

<u>Compensable Medical Condition</u>	<u>Number of Awards</u>	<u>Net \$ Awarded</u>
17. Non-malignant thyroid nodule		
a. not requiring surgery	721	8,500,000
b. requiring partial thyroidectomy	245	7,575,000
c. requiring total thyroidectomy	17	700,000
22.a. Meningioma, non-fatal within 5 years	15	1,250,000
22.b. Meningioma, cause of death or end stage	2	242,000
28. Bronchial cancer	206	7,687,500
29. Benign tumors of the brain (in addition to brain cancers)	3	312,500
30. Cancer of the central nervous system	0	0
32.a. Cancer of the rectum, non-fatal within 5 years	13	937,500
32.b. Cancer of the rectum, cause of death or end stage	6	500,000
34. Non-melanoma skin cancer	<u>1</u>	<u>37,500</u>
	1,229	\$27,742,000

* Meningioma is listed as a separate condition by the Tribunal. It is understood that it is covered under VA regs as a benign tumor of the brain.

Group F - Conditions deemed radiogenic by the Tribunal but not known to be by U.S.

<u>Compensable Medical Condition</u>	<u>Number of Awards</u>	<u>Net \$ Awarded</u>
16.b. Benign salivary gland tumor not requiring surgery	3	31,250
16.c. Benign salivary gland tumor requiring surgery	26	881,250
27.a. Malignant parathyroid gland tumors	0	0
27.b. Benign parathyroid gland tumor not requiring surgery	0	0
27.c. Benign parathyroid gland tumor requiring surgery	4	150,000
26. Unexplained hyperparathyroidism	1	12,500
21. Unexplained bone marrow failure	<u>6</u>	<u>414,500</u>
	40	\$1,489,500

SUMMARY:

Group A (Downwinders' list)	587	\$50,725,500
Group B (Rongelap Bravo conditions)	164	2,406,250
Group C (Veterans' presumed list)	12	921,500
Group D (Energy Employees' list)	8	698,000
Group E (Veterans' regulatory list)	1,229	27,742,000
Group F (Additional Tribunal conditions)	<u>40</u>	<u>1,489,500</u>
GRAND TOTALS	2,040	\$83,982,750

**Summary of Property Damage Compensation Awards
Made by the Marshall Islands Nuclear Claims Tribunal**

On April 13, 2000, the Tribunal issued a Memorandum of Decision and Order in the class action property damage claim of the *People of Enewetak*. In deciding its first property damage award, the Tribunal stated that "The goal of compensation, where there has been harm to property, should be to make the owner whole through the award of proper damages. A general statement for determination of damages to land may be found at the Restatement (Second) Torts §929, Harm to Land from Past Invasions:

- (1) If one is entitled to a judgment for harm to land resulting from a past invasion and not amounting to a total destruction of value, the damages include compensation for (a) the difference between the value of the land before the harm and after the harm, or at his election in an appropriate case, the cost of restoration that has been or may be reasonably incurred, (b) the loss of use of the land, and (c) the discomfort and annoyance to him as an occupant."

The April 2000 decision of the Tribunal awarded net amounts of \$91,710,000 for restoration and cleanup of Enewetak, \$199,154,811 for past and future loss of use of the atoll, and \$34,084,500 for hardships and suffering experienced by the people during their 33-year removal from their home atoll. The total amount of that award was \$324,949,311. [An electronic version of the Memorandum of Decision and Order is available at the Tribunal website at <http://www.nuclearclaimstribunal.com>.]

On May 5, 2000, the Tribunal issued an Order amending the April Memorandum of Decision and Order "to include an additional \$16.1 million as the cost to restore soil and revegetate the 558 acres subject to soil removal as part of the radiological cleanup, thus bringing the total amount of damages to \$341,049,311."

On August 3, 2000, the Tribunal issued an Order amending the amount awarded for loss of use to take into account pre-judgment interest from the original date of the loss of use calculation in January 1997 to the date of the award decision in April 2000. The effect of that Order was to increase the total award for past and future loss of use to \$244,000,000.

The net total of the Tribunal award in the Enewetak claim as of April 2000 was \$385,894,500. This includes \$244.0 million for past and future loss of use of the atoll, \$107,810,000 to restore the atoll to a safe and productive state, and \$34,084,500 for the hardships suffered by the people as a result of their relocation to Ujelang.

Interest earned on the lost use and restoration portions of the award increased the total from \$386 million as of April 2000 to \$431.5 million as of January 28, 2002. In February 2002, the Tribunal issued an initial payment on the Enewetak award in the amount of 0.25% or \$1,078,750. By December 16, 2002, an additional \$24,480,368 in interest had accrued, bringing the amount due as of that date to \$454,986,118. In February 2003, the Tribunal issued a second payment on the Enewetak award in the amount of 0.125% of the updated (December 2002) amount or \$568,733.

On March 5, 2001, the Tribunal issued a Memorandum of Decision and Order awarding a total of \$563,315,500 for property and consequential damages in the class action property damage claim of the *People of Bikini*. Of that amount, \$278 million was for past and future loss of use; \$251.5 million was for restoration; and \$33,814,500 was "for the hardships suffered by the People of Bikini as a result of their relocation attendant to their loss of use." [The Tribunal's Memorandum of Decision and Order in Bikini is also available at the Tribunal website.]

Interest earned on the lost use and restoration portions of the Bikini award increased the total from \$563 million March 2001 to \$596,723,771 million as of January 28, 2002. In February 2002, the Tribunal issued an initial payment on the Bikini award in the amount of 0.25% or \$1,491,809.43. By December 16, 2002, an additional \$34,674,358 in interest had accrued, bringing the amount due as of that date to \$629,896,320. In February 2003, the Tribunal issued a second payment on the Bikini award in the amount of 0.125% of the updated total, amounting to \$568,733.

Summary of Enewetak Property and Hardship Damage Award Amounts

Loss of use award as of April 13, 2000 (per amended decision of August 3, 2000)	\$244,000,000
Restoration award as of April 13, 2000 (per amended decisions of 5/5/00 and 8/3/00)	<u>107,810,000</u>
Subtotal of lost use and restoration as of April 13, 2000 (per amended decisions)	\$351,810,000
Hardship award	<u>34,084,500</u>
Total award as of April 13, 2000	\$385,894,500
Due as of April 13, 2000 on lost use and restoration (rounded from \$351,810,000)	\$352,000,000
Interest earned from April 13, 2000, to January 28, 2002 on lost use and restoration	45,540,000
Hardship award (rounded, not subject to interest)	<u>34,000,000</u>
Revised total as of January 28, 2002 (rounded)	\$431,500,000
Less 0.25% payment made in February 2002 (applied to loss of use)	<u>(1,078,750.)</u>
Balance due after initial payment (\$396,421,250 lost use plus \$34 million hardship)	\$430,421,250
Balance due on lost use and restoration after initial payment	\$396,421,250
Interest earned from Jan. 29, 2002, to Dec. 16, 2002 on lost use and restoration	24,480,368
Hardship award	<u>34,084,500</u>
Revised total as of December 16, 2002	\$454,986,118
Less 0.125% payment made in February 2003	<u>(568,733.)</u>
Balance due after second payment	\$454,417,385

Summary of Bikini Property and Hardship Damage Award Amounts

Loss of use award as of March 5, 2001	\$278,000,000
Restoration award as of March 5, 2001	<u>251,500,000</u>
Subtotal of lost use and restoration as of March 5, 2001	\$529,500,000
Hardship award	<u>33,814,500</u>
Total award as of March 5, 2001	\$563,314,500
Total due as of March 5, 2001 on lost use and restoration	\$529,500,000
Interest earned from March 5, 2001, to January 28, 2002 on lost use and restoration	33,409,271
Hardship award (not subject to interest)	<u>33,814,500</u>
Revised total as of January 28, 2002	\$596,723,771
Less 0.25% payment made in February 2002 (6% applied to hardship, 94% to LoU/R)	<u>(1,491,809.)</u>
Balance due after initial payment (\$561,496,971 LoU/Res. plus \$33,724,991 hardship)	\$595,221,962
Balance due on lost use and restoration after initial payment (94% of total award)	\$561,496,971
Interest earned from Jan. 29, 2002, to Dec. 16, 2002 on lost use and restoration	34,674,358
Balance due on hardship award after initial payment (6% of total award)	<u>33,724,991</u>
Revised total as of December 16, 2002	\$629,896,320
Less 0.125% payment made in February 2003	<u>(787,370.)</u>
Balance due after second payment	\$629,108,950

The Failure of the Nuclear Claims Fund to Meet Its Expected Performance Goal

Concern existed in the Republic of the Marshall Islands (RMI) as early as 1987 about the ability of the Nuclear Claims Fund to achieve the “performance goal of producing ... average annual proceeds of at least \$18 million (Annual Proceeds) for disbursement” [Article I, Section 2 of the Section 177 Agreement].

A huge loss in the Fund’s value occurred less than one year into its existence, just when it had become fully invested, primarily in the U.S. equity market. During the week of trading from Tuesday, October 13, 1987 through Monday, October 19, 1987, the Dow Jones Industrial Average declined by almost one third and the value of the Nuclear Claims Fund was reduced by more than 15% to approximately \$132 million. That loss meant that a sustained rate of return of nearly 14% was required in order to generate the required \$18 million per year in Annual Proceeds.

Congressional concern about the Fund’s performance is evidenced by its 1991 request that the U.S. General Accounting Office (GAO) review the status of the Fund to “determine whether the trust fund (1) was being distributed as required and (2) is adequate to meet the distribution requirements.” In its report Marshall Islands: Status of the Nuclear Claims Trust Fund (GAO/NSIAD-92-229), the GAO stated that:

“With modest rates of return, the Nuclear Claims Trust Fund should be adequate to make the payments required by the section 177 agreement. However, the trust fund is not achieving the 12.5-percent investment returns expected when it was agreed on and may be nearly depleted when the 15-year terms of required disbursements is completed.” (page 2)

“For the trust fund to meet the required distributions and retain the original \$150 million in principal, a 12.5-percent annual return would have been required.” (page 24)

“Because earnings have been lower than total payments, the trust fund’s principal has been drawn on to make disbursements. As of December 31, 1991, the trust fund’s market value was about \$138 million.” (page 24)

“Cognizant U.S. and RMI government and investment firm officials said that a 12 percent or higher return was considered achievable in the early 1980s, when negotiations for the agreement were taking place. If the RMI government had been able to invest in no-risk, long-term U.S. government bonds in June 1982, immediately after an early version of the Compact was signed, the investment could have yielded 13.57-percent annually on average through 2001. However, the funds were not provided by the United States until 1986, when the average yield on long-term bonds had declined to 6.67-percent annually.” (page 25)

Information on the performance of the Fund since its inception follows. That information was compiled from various sources including quarterly reports prepared by the RMI investment advisors during the period from 1991-98, a preliminary survey of the fund’s overall performance conducted by the RMI Auditor General in 1995, and communications from the current RMI investment advisor, Smith Barney Citigroup.

As the initial 15-year period of the Compact of Free Association drew to a close, personal injury awardees had received payment of 25% to 66% of their compensation from the Tribunal (depending on when the award had been approved). A formal Statement of Determination issued by the Tribunal on October 3, 2001, noted that:

“This year is the fifteenth anniversary of the Compact and the Section 177 Agreement under which the Tribunal was created and funds made available for payment of claims from the U.S. Nuclear Testing Program. This marks the end of the distribution regime under which the Tribunal was allocated a set amount to make payment of awards. Under that regime, the Tribunal was forced to make payments on a pro rated basis. While this prorating allowed at least some payment to be made to all those who received a personal injury award, it also had the unjust result of stretching payment out over a period of years so that many have passed away before receiving full payment.”

“In order to address this injustice, the Tribunal this year will make an unprecedented distribution which will pay off 50% of the unpaid balances of personal injury awards... While this will have the effect of significantly reducing the corpus of the Nuclear Claims Fund, the Tribunal has determined that payment in this manner most effectively addresses the effects of the nuclear testing program with the remaining funds available to it.”

In order to make such a distribution, the Tribunal requested a drawdown from the Fund in the amount of \$16.9 million in September 2001. Additional drawdowns totaling more than \$3 million were requested by the RMI at that time in order to make the 60th and final quarterly distributions to the four LDAs.

Although it was not specifically identified as an issue in the formal Petition submitted to the U.S. Congress on September 11, 2000, by the Republic of the Marshall Islands, the failure of the Fund to earn the required \$18 million per year in Annual Proceeds is in and of itself a “Changed Circumstance” that forced the RMI to make distributions from the corpus of the fund rather than from such proceeds.

Such distributions resulted in the Fund balance being severely reduced, to the point that it can no longer “provide, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program” (Article I, Section 2 of the Section 177 Agreement).

Republic of the Marshall Islands Nuclear Claims (177) Fund Historical Balances		
<u>DATE</u>	<u>Balance</u>	<u>Remarks</u>
Dec. 31, 1986	\$150,330,000	Per RMI Auditor General May 1995
Dec. 31, 1987	131,830,300	Per RMI Auditor General May 1995 (noting \$21.9 million loss during the October-December 1987 quarter)
Dec. 31, 1988	137,724,665	Per RMI Auditor General May 1995
Dec. 31, 1990	131,777,000	Shearson Lehman Bros. Consultant Group report (noting 8.39% annualized return since December 1986)
Dec. 31, 1991	138,000,000	GAO Report <u>Status of the Nuclear Claims Trust Fund</u>
Dec. 31, 1992	125,907,444	Shearson Lehman Bros. Consultant Group report
Dec. 31, 1993	125,587,723	Smith Barney Shearson Consultant Group report
Dec. 31, 1994	103,149,398	Smith Barney Consultant Group report
Oct. 31, 1995	101,092,202	SB Consultant Group table, reporting \$76,117,500 in investments

		overseen by Paine Webber and \$24,974,702 by
Consulting Group		
March 31, 1997	92,493,095	Smith Barney Consultant Group report
Dec. 31, 1997	94,292,878	Smith Barney Consultant Group report
June 30, 1998	95,871,613	Smith Barney Consultant Group report
May 31, 1999	83,600,000	Notes from meeting of July 14, 1999, with former
RMI investment		advisor (the Fund was transferred from Smith Barney
to Morgan		Stanley Dean Witter in early June 1999)
Jan. 1, 2000	76,000,000	Notes from meeting of Feb. 27, 2001, with RMI
investment advisor		
Jan. 1, 2001	60,800,000	Notes from meeting of Feb. 27, 2001, with RMI
investment advisor		
Aug. 31, 2001	46,108,952	e-mail communication from Salomon Smith Barney
Nov. 2, 2001	28,763,335	e-mail communication from Salomon Smith Barney
Feb. 1, 2002	24,234,955	e-mail communication from Salomon Smith Barney
June 28, 2002	20,052,463	e-mail communication from Salomon Smith Barney
Sep. 20, 2002	17,945,376	e-mail communication from Salomon Smith Barney
Dec. 31, 2002	12,598,016	e-mail communication from Salomon Smith Barney
April 3, 2003	9,649,608	e-mail from First Hawaiian Bank Institutional Funds
Management		
July 31, 2003	8,641,757	e-mail from First Hawaiian Bank Institutional Funds
Management		
Sep. 19, 2003	8,975,198	e-mail communication from Smith Barney
Dec. 31, 2003	5,794,702	e-mail communication from Smith Barney
April 12, 2004	5,830,000	e-mail communication from Smith Barney

Mr. FALEOMAVAEGA. Thank you very much.
Mr. Weisgall.

**STATEMENT OF MR. JONATHAN M. WEISGALL, LEGAL
COUNSEL, PEOPLE OF THE BIKINI ATOLL**

Mr. WEISGALL. Thank you, Mr. Chairman. I have been serving as legal counsel for the people of Bikini for 33 years. You and I go back quite a ways to the days of Chairman Burton and Pat Krause and our other friends. I am here today joined by Senator Tomaki Juda, Mayor Eldon Note and Bikini liaison Jack Niedenthal.

What I would like to do, Mr. Chairman, is come at this from a legal perspective. I am going to change my remarks based on what you have already heard. In the early 1980s, the people of the four atolls and other atolls in the Marshalls brought these claims in the United States Claims Court, as you know, then came the compact. What did the compact do to stop these cases? Listen again to the language of 177(a). You have heard it, but listen to this. The Government of the United States accepts the responsibility for compensation owing to the citizens of the Marshall Islands for loss or damage resulting from the nuclear testing program. That is pretty clear. The United States accepts responsibility. That is the liability issue.

Then came we will negotiate a separate agreement. That set up the \$150 million trust fund that established the tribunal that Mr. Plasman oversaw. Part and parcel of that agreement was dismissing those claims from the Claims Court while the tribunal heard those cases. I will come to that. That is not all that bad, depending on your conditions. The Marshallese plaintiffs, though, argued that the government couldn't settle their claims and they challenged the whole constitutionality of this 177 process. The fact that there was limited funding and the fact that there was a complete cutoff to all Federal Courts.

Now, what the U.S. courts did in the 1980s, and this is misunderstood, they dismissed the cases. But all they said was it is premature to hear those constitutional challenges. Let these claims run their course in the tribunal. And what they said, whether the 177 agreement provides adequate compensation cannot be determined at this time, so the alternative procedure can't be challenged until it runs its course. That is a quotation. And the appellate court affirmed that. That is not unreasonable. It says we don't know if there is enough money, find out.

So what happens for the next 19 years, the various plaintiff groups go to the tribunal, they get awards cumulatively for the four atolls of over \$2 billion. And Mr. Plasman and his colleagues pay out \$3.9 million. We are talking 2/10ths of 1 percent. That is all he has got. Now, having exhausted their remedies the people of Bikini, like Sleeping Beauty, I mean, we are back in the Claims Court 20 years later and I have lost my hair. Rongelap and Utrok will be there.

Mr. FALEOMAVAEGA. I want your spirit. I really, really wanted to say that, and commitment if I might say, John.

Mr. WEISGALL. Let me go through the constitutional issues. They are really not that complicated.

Can the Federal Government take private property for a public purpose? Absolutely. As long as it pays the landowners. Now, nuclear testing, that is a pretty good public purpose. We don't want to use everyone's land for that. Can Congress set up an alternative remedy like this tribunal to determine just compensation? Absolutely. It is okay. Can Congress determine the adequacy of the compensation, set the limit at \$150 million? Absolutely not. That is the function of a court, that is not the function of the executive branch or the judicial branch. And can Congress give the exclusive power to this alternative tribunal and bar Federal Court review? Absolutely not. If that were the case, Congress could pass a law abolishing the fifth amendment, simply cutting off jurisdiction to any Federal court to hear a takings claim. You can't bar access to Federal courts to enforce Federal constitutional rights.

Now, this \$150 million, at the time of the compact hearings, I don't know if it was Mr. Seiberling, I have it in my records, but one of your colleagues then said to the administration, it is in the hearing record, ask for documents that reflect the thinking of the administration to determine how much to pay, where this number came from. The answer in the record at Natural Resources "no such documents exist."

And what the government did after the compact was passed, it assured the U.S. courts that this \$150 million was the beginning point. In fact, the appellate court that dismissed these cases specifically two times in its opinion refers to the \$150 million fund as an initial sum. Because the U.S. Government in its briefs implied there would be more money. The U.S. pulled a bait and switch. It told the U.S. courts that this was an initial sum that Congress would need to consider additional funding. And in its briefs to dismiss our cases in the 1980s they talked about the changed circumstances provision and they talked about the need for Congress "to consider possible additional funding under the changed circumstances provision in case of unforeseen, substantial unforeseen damages."

And you know how that is the manifest in equity. Fast forward to 2005, Congress sends the Changed Circumstances Petition to the State Department when the tribunal has now got 2 million. The quote, the facts do not support a funding request under changed circumstances. That is called a shell game. The United States is negotiating with the Marshalls on Compact II and Minister Zackios wants to negotiate nuclear claims, huh, huh, huh, can't do it, there is a changed circumstances provision pending in Congress and meanwhile it says to Congress, no, the circumstances don't provide for changed circumstances. That is a little bit the fox guarding the henhouse, by the way.

What should you do? One thing that this tribunal has established—no one knew the extent of the damages in the 1980s. The tribunal has completed its review and we now at least know what the gap is. We know what the damages are now. We know what the funding is. Call it *ex gratia*, call it just compensation, call it whatever you want to call it. You can act without the courts. The issue here is the United States should honor its moral, its legal, its constitutional obligations to people who had no other options.

They gave up their lands to help the U.S. win the Cold War. You do not have to wait for courts to act.

Thanks.

[The prepared statement of Mr. Weisgall follows:]

PREPARED STATEMENT OF MR. JONATHAN M. WEISGALL, LEGAL COUNSEL, PEOPLE OF THE BIKINI ATOLL

Thank you, Mr. Chairman. I am Jonathan Weisgall, and I have served as legal counsel for the people of Bikini for 33 years. I commend you for holding this hearing, and I hope in my testimony to walk you through more than two decades of litigation and legislation.

I. BACKGROUND

Mr. Chairman, I know that you are familiar with the Bikinians' odyssey. The 167 islanders were moved off their atoll by the U.S. Navy in March 1946 to facilitate Operation Crossroads, the world's third and fourth atomic bomb explosions. The following year, the U.S. Government moved the people of Enewetak off their atoll. The dispossession of the people of the Marshall Islands and the health consequences of nuclear weapons testing that began in the shadow of World War II and continued through the United States' victory in the Cold War has yet to end—more than six decades later.

The United States' nuclear weapons testing program had a dramatic effect on the Marshall Islands. In the 12-year period from 1946–1958, the United States conducted 67 atomic and hydrogen atmospheric bomb tests at Bikini and Enewetak atolls, with a total yield of 108 megatons. This is 98 times greater than the total yield of all the U.S. tests in Nevada. Put another way, the total yield of the tests in the Marshall Islands was equivalent to 7,200 Hiroshima bombs. That works out to an average of more than 1.6 Hiroshima bombs per day for the 12-year nuclear testing program in the Marshalls. During these years, the Marshall Islands were a United Nations Trust Territory administered by the United States, which had pledged to the United Nations to “protect the inhabitants against the loss of their land and resources.”¹

The March 1, 1954 Bravo shot at Bikini was the largest nuclear bomb ever exploded by the United States. Its explosive yield—equal to nearly 1,000 Hiroshima-type atomic bombs—was more than 200 times greater than the yield of the largest test ever conducted at the Nevada Test Site, and its fallout covered an area of 50,000 square miles, with serious-to-lethal radioactivity falling over an area almost equal in size to the entire state of Massachusetts.² Tragically, radioactive fallout drifted in the wrong direction and irradiated the 236 inhabitants of Rongelap and Utrok Atolls, as well as the crew of a Japanese fishing vessel.

The Bravo shot touched off a huge international controversy that eventually led to the U.S. moratorium on atmospheric nuclear testing and the U.S.–U.S.S.R. Limited Nuclear Test Ban Treaty.³ President Eisenhower told a press conference that U.S. scientists were “surprised and astonished” at the test, and a year later the Atomic Energy Commission (AEC) admitted that about 7,000 square miles downwind of the shot “was so contaminated that survival might have depended upon prompt evacuation of the area . . .”⁴ Put another way, if Bravo had been detonated in Washington, DC, and the fallout pattern had headed in a northeast direction, it would have killed everyone from Washington to New York, while near-lethal levels of fallout would stretch from New England to the Canadian border.⁵

In March 1946, prior to the first nuclear weapons test in the Marshall Islands, the U.S. Government moved the Bikinians to Rongerik Atoll, 125 miles east of Bikini, where they nearly starved to death, then briefly to Kwajalein and then finally to Kili in 1948. Sadly, Kili remains home to most Bikinians more than 53 years after the testing began, and life there remains difficult. Kili is a single island, not an atoll with a lagoon. Bikini, with its 23 islands and 243-square mile lagoon, is

¹ Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, 80th Cong., 1st Sess. (1947), Art. 6, Sec. 2.

² *Findings of the Marshall Islands Nationwide Radiological Study Summary Report* (December 1994) at 3; Jonathan M. Weisgall, *Operation Crossroads: The Atomic Tests at Bikini Atoll* (Naval Institute Press 1994) at 306.

³ See, e.g., Peter Pringle and James Spiegelman, *The Nuclear Barons* (Holt, Rinehart and Winston 1981) pp. 243–59.

⁴ *New York Times*, March 25, 1954, pp. 1, 18.

⁵ Jonathan M. Weisgall, *Operation Crossroads: The Atomic Tests at Bikini Atoll* (Naval Institute Press 1994), pp. 304–05.

thousands of times bigger, and its land area is more than nine times bigger. Kili has no sheltered fishing grounds, so the skills the people had developed for lagoon and ocean life were rendered useless on Kili. This drastic change from an atoll existence, with its abundant fish and islands as far as the eye could see, to an isolated island with no lagoon and inaccessible marine resources, continues to take a severe psychological toll on the people.

Following President Johnson's August 1968 announcement that Bikini was safe and that the resettlement of Bikini would "not offer a significant threat to [the Bikinians'] health and safety," he ordered the atoll rehabilitated and resettled.⁶ The first Bikinians returned to their atoll in 1969. They lived there until 1978, when medical tests by U.S. doctors revealed that the people had ingested what may have been the largest amounts of radioactive material of any known population, and they determined that the people had to be moved immediately.⁷ What went wrong? An Atomic Energy Commission blue-ribbon panel, in estimating the radiation dose the people would receive, relied on an AEC scientist's erroneous data that threw off one part of their calculations by a factor of nearly 100. "We just plain goofed," the scientist told the press.⁸

History sadly repeated itself in late August 1978, as U.S. ships once again entered Bikini lagoon and the 139 people living on the island packed up their possessions and left. The 2,500 Bikinians living today remain scattered throughout the Marshall Islands and the United States, with the largest number still living on Kili.

The statistics 61 years after testing began are sobering:

- The Bikinians remain exiled from their homeland.
- Approximately half the Enewetak population cannot return to their home islands in the northern part of the atoll, where radiation still renders the islands too radioactive. The Runit Dome, containing over 110,000 cubic yards of radioactive contaminants, remains on Enewetak Atoll.
- At least four islands at Bikini and five at Enewetak were completely or partially vaporized during the testing program.
- Although they were over 100 miles from Bikini, the people of Rongelap received a radiation dose from Bravo equal to that received by Japanese people less than two miles from ground zero at Hiroshima and Nagasaki. They suffered from radiation poisoning; all but two of the nineteen children who were under ten at the time of Bravo developed abnormal thyroid nodules, and there has been one leukemia death.⁹ The people were moved off the islands for three years after the Bravo shot, and they moved off again in 1985 amid concerns about radiation dangers. Resettlement activities are currently underway, but the moderate resources of the people will delay a full resettlement for many years.
- The people of Utrok were returned to their home atoll a mere three months after Bravo and were exposed to high levels of residual fallout in the ensuing years. This unnecessary exposure led to thyroid problems and other cancers.
- The inhabitants of Rongelap and Utrok were the subjects of a medical research program designed to understand the effects of ionizing radiation, and they continue to suffer from radiation-related diseases. Indeed, recent Department of Energy whole body counting data has shown that the people living on Utrok are still exposed to radioactive cesium-137.

II. U.S. CLAIMS COURT LITIGATION AND THE COMPACT OF FREE ASSOCIATION

In the early 1980s, Marshall Islanders from Bikini, Enewetak, Rongelap, Utrok, and other atolls brought lawsuits against the United States in the U.S. Claims Court seeking compensation under the Fifth Amendment of the U.S. Constitution for the taking of their lands and for damages for breaches of fiduciary duties owed by the United States resulting from the U.S. nuclear testing program.

⁶Shields Warren, "Report of the Ad Hoc Committee To Evaluate The Radiological Hazards Of Resettlement Of The Bikini Atoll," DOE/CIC Document No. 41847; *New York Times*, August 13, 1968, p. 1; August 2, 1968 memorandum for the President from Bromley Smith entitled "Return Of The Bikini People," National Security file, Lyndon B. Johnson Library.

⁷*Washington Post*, April 3, 1978, p. 1, and May 22, 1978, p. 1

⁸*Los Angeles Times*, July 23, 1978, p. 3.

⁹Edwin J. Martin and Richard H. Rowland, Castle Series (Defense Nuclear Agency Report No. 6035F 1954), pp. 3, 235; Robert A. Conard et al., *A Twenty-Year Review of Medical Findings in a Marshallese Population Accidentally Exposed to Radioactive Fallout* (Brookhaven National Laboratory 1974), pp. 59–76, 81–86).

The Justice Department moved to dismiss all of the claims, on various grounds, but the Claims Court allowed many of the claims to go forward. In the Bikinians' case, the Court in 1984 denied the government's motion to dismiss, ruling that the Fifth Amendment's just compensation clause is applicable to the Marshall Islands and that "[d]uring the course of the program to test atomic weapons, the United States created a relationship with plaintiffs that exceeded in both nature and degree the relationship normally taken with a 'foreign' county or by a trustee charged to protect the inhabitants against the loss of their lands . . ." *Juda v. United States*, 6 Cl.Ct. 441, 458. It also held that the Bikinians' Fifth Amendment taking claims were not barred by the statute of limitations, so the case moved forward to trial.

These cases were stopped by the Compact of Free Association Act, which Congress passed in December 1985, and President Ronald Reagan signed it into law on January 14, 1986. Pub. L. No. 99-239, 48 U.S.C. § 1681. What did that do?

First, the Compact was an agreement negotiated between the United States government and the government of the Marshall Islands, still a United Nations Trust Territory, which was a ward of the United States, not an independent sovereign. For the Marshall Islands government, the Compact was the price of its admission to the international community. Until it achieved independence when President Reagan proclaimed the Compact in effect, the Republic of the Marshall Islands had no separate existence under international law. In a very fundamental sense, the Compact was a deal the United States was making with itself as a condition of dissolving the United Nations trusteeship, rather than one struck with a co-equal sovereign.

Second, the Compact resolved disputes arising from the United States' nuclear weapons testing program with an open-ended admission of liability in Section 177(a). The language is crystal clear: "The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands . . . for loss or damage to property and person . . . resulting from the nuclear testing program . . ." Section 177(b) goes on to state that the two governments shall "set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have . . . and which have not as yet been compensated or which in the future may arise . . ."

Third, the "separate agreement," the so-called "Section 177 Agreement," established a \$150 million trust fund, \$45 million of which went to fund a Nuclear Claims Tribunal, which was given jurisdiction to "render final determination upon all claims past, present and future, of the Government, citizens, and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program." In addition, Article X of the Section 177 Agreement, entitled "Espousal," provides that the agreement constitutes the full settlement of all claims of the Marshall Islands and its citizens against the United States arising out of the testing program, and Article XII provides that all such claims pending in U.S. courts are to be dismissed.

The Bikinians were not parties or signatories to either the Compact or the Section 177 Agreement, and they voted nearly 80% against the Compact.

Relying on provisions of the Section 177 Agreement, the government moved to dismiss the nuclear claims for lack of jurisdiction. The Bikinians and the other Marshallese plaintiffs opposed dismissal, arguing that the Marshall Islands government could not settle their claims, and challenging this scheme as unconstitutional in giving limited funding to the Tribunal and cutting off federal court review of the adequacy of just compensation.

The Court of Claims concluded that it was "premature" to decide the constitutionality of the agreement until the alternative remedy provided in the Section 177 Agreement had been exhausted, at which point it would be possible to determine whether just compensation had been paid:

The settlement procedure, as effectuated through the Section 177 Agreement, provides a "reasonable" and "certain" means for obtaining compensation. Whether the settlement provides "adequate" compensation cannot be determined at this time . . . This alternative procedure for compensation cannot be challenged judicially until it has run its course. *Juda v. United States*, 13 Cl.Ct. 667, 689 (1987).

The U.S. Court of Appeals for the Federal Circuit affirmed this decision:

The [Compact] and the section 177 Agreement, provide, in perpetuity, a means to address past, present and future consequences, including the resolution of individual claims, arising from the United States nuclear testing program in the Marshall Islands . . . [W]e are unpersuaded that judicial intervention is appropriate at this time on the mere speculation that the alternative remedy may prove to be inadequate. *People of Enewetak v. United States*, 864 F.2d 134, 136 (Fed. Cir. 1988).

III. THE NUCLEAR CLAIMS TRIBUNAL CASES

The Marshallese plaintiffs spent most of the next 19 years litigating their claims before the Nuclear Claims Tribunal, which has issued awards for the four atolls totaling more than \$2.2 billion. However, because of its limited funding, it was only able to pay out \$3.9 million, which represents less than 2/10 of one percent of its awards.

The Bikinians' claims, like those filed by other Marshallese claimants, sought damages for the loss of use of Bikini Atoll; restoration costs for a radiological cleanup of the atoll; and consequential damages and hardships suffered by the people of Bikini. The people of Bikini litigated their claims before the Tribunal for over seven years, and on March 5, 2001, the Tribunal awarded them \$563,315,500 for property and consequential damages, after deducting \$194,725,000 for compensation and restoration costs already received by the Bikinians from the U.S. Government. *In the Matter of the People of Bikini, Claimants for Compensation*, NCT No. 23-04134. This deduction was required by Article IV, Section 2 of the Section 177 Agreement, which provides that "in making any award, the Claims Tribunal shall take into account the validity of the claim, any prior compensation made as a result of such claim and such other factors as it may deem appropriate."

The Nuclear Claims Tribunal's award of \$563,315,500 was broken down into three categories: (1) \$278,000,000 was designated for past and future loss of use of Bikini Atoll; (2) \$251,500,000 was designated for restoration costs for a radiological cleanup of the atoll; and (3) \$33,814,500 was designated "for the hardships suffered by the People of Bikini as a result of their relocation attendant to their loss of use." The Tribunal considered radiological cleanup strategies estimated to cost from \$217 million to \$1.4 billion for Bikini, but only awarded an amount in the lower range of those estimates—\$251.5 million—selecting the same cleanup method recommended by the U.S. Department of Energy's contractor, Lawrence Livermore National Laboratory.

Because of limited funding, the Tribunal was only able to issue two small payments on the Bikini one in 2002 equal to 0.25% of its award (\$1,491,809), and another in 2003 equal to 0.125% of the award (\$787,370). The Tribunal has assets today of under \$1 million and there is no realistic way it will ever be able to fund the Bikinians' entire award or those for other nuclear-affected atolls.

IV. RETURN TO COURT

Having exhausted their remedies and demonstrated that the Nuclear Claims Tribunal's funds were inadequate to pay them just compensation, the people of Bikini and Enewetak are now back in the Court of Federal Claims raising the same constitutional questions that arose more than 20 years ago, and the people of Rongelap and Utrik will file similar lawsuits shortly.

The U.S. Government, pointing to Article XII of the Section 177 Agreement that says no U.S. court has jurisdiction to hear a claim relating to the nuclear testing program, has moved to dismiss these cases, and the issue is now before the Court of Federal Claims.

What is the constitutional issue here? Can the federal government take private property under its sovereign control for a public purpose, such as testing nuclear weapons? Absolutely, but the Fifth Amendment provides that it must also compensate the owners for what it has taken. Can Congress establish an alternative forum to determine just compensation? Yes. Can Congress determine the adequacy of compensation or limit the amount? No; that is a function solely of the judicial branch. Can Congress give exclusive power to that alternative forum and bar federal court review of its determinations? No. Otherwise, Congress could legislate away the Fifth Amendment. Congress cannot bar access to federal courts to enforce federal constitutional rights.

This is exactly what happened with the Iran hostage crisis in the early 1980s. As part of the deal struck to end the crisis, all claims against Iran in U.S. courts were terminated and switched to the U.S.-Iran Claims Tribunal. But when the issue reached the Supreme Court, the government agreed that it could not terminate the claims against Iran in favor of the Tribunal unless the Court of Claims would have jurisdiction to decide the Fifth Amendment issue at the end of the day. *Dames & Moore v. Regan*, 453 U.S. 654 (1981).¹⁰

¹⁰The U.S. government conceded at oral argument—and the Supreme Court held—that claimants who were dissatisfied with the Tribunal's award could sue in the Court of Claims, which would retain its jurisdiction to hear takings claims against the United States based on the extinguishment of the rights of action against Iran. Although the Court concluded that it was then premature to decide whether there was a valid takings claim—the adequacy of the tribunal

The United States government cannot cap its liability under the Fifth Amendment, nor can it close the doors of the federal courts to takings claims if the alternative forum turns out, as the Nuclear Claims Tribunal has proven, to be inadequate to provide just compensation. Reading the Compact that way, we have argued to the Court of Federal Claims, would be unconstitutional. We do not believe that Congress intended, on the one hand, to accept responsibility for compensating the Marshallese, and on the other, to limit payments to a small fraction of the compensation that is due.

V. THE U.S. GOVERNMENT'S BAIT AND SWITCH

How could the United States accept responsibility for compensation without qualification in the Compact on the one hand, while on the other, limit its liability to no more than \$150 million in the Section 177 Agreement? It didn't. Before the Compact became effective, the United States did its best to express an open-ended commitment to the Marshall Islands, notwithstanding the provision establishing a \$150 million trust fund, because at the time nobody knew what kind of compensation was really required.

Where did this \$150 million figure in the Section 177 Agreement come from? The U.S. Government never attempted to calculate the magnitude of the damages and injuries inflicted upon the Marshall Islanders. During the Compact hearings, one of your colleagues on the House Interior Committee asked for "documents which reflect the calculations" the Administration made "to determine how much should be paid to each group of claimants." The Administration's response? "No [such] documents exist."

In seeking to dismiss these cases in the 1980s, the U.S. Government assured the courts that it would honor its constitutional obligation to pay just compensation if the \$150 million trust fund proved insufficient. This is why the appellate court called that \$150 million an "initial sum" and an "initial amount." *People of Enewetak v. United States*, 864 F.2d 134, 135–36 (Fed. Cir. 1988).

To put it politely, the United States in 1988 characterized the Compact scheme to the Federal Circuit in 1988 as more of an open-ended commitment than it did subsequently. To put it bluntly, the defendant pulled a bait-and-switch. In 1988, the United States sought to assure the Federal Circuit that it would provide just compensation for all possible claims. It therefore represented to the Court that "the Compact and Section 177 Agreement provide a permanent alternative remedy, with substantial and regenerating funding, for compensating all claims, as necessary, in perpetuity," and its brief is replete with reassurances that the Section 177 compensation scheme would be permanent, substantial, continuous, and comprehensive.¹¹ In fact, it argued, "[t]here is no basis to presume that the [177] Agreement . . . will fail to provide a just and adequate remedy." Brief of the United States at 45, *People of Bikini v. United States*, Nos. 88–1206–1207–1208 (Fed. Cir., June 24, 1988).

But what if the funding proved to be inadequate? No problem, according to the U.S. Government: "It is, of course, conceivable that the Fund could become depleted because of radical long-term investment difficulties, or substantial unforeseen damages," and it went on to quote Article IX, the changed circumstances provision, as one example of how additional funding would be available, assuring the court that "[i]n ratifying the [Section 177] Agreement, Congress also recognized that should changed circumstances arise which would prevent the program from functioning as

process being untested—it was not premature to determine the availability of a United States judicial forum to hear a takings claim. "[T]he possibility that the President's actions may effect a taking of petitioner's property . . . make ripe for adjudication the question whether petitioner will have a remedy at law under the Tucker Act." 453 U.S. at 689. The Court held that the Court of Claims would have jurisdiction, *id.*, thus avoiding the grave constitutional question that would have been posed by a scheme that created a non-judicial remedy and extinguished judicial power to determine just compensation. See also *id.* at 691 (Powell, J., concurring in part and dissenting in part) ("parties whose valid claims are not adjudicated or not fully paid may bring a 'taking' claim against the United States in the Court of Claims. . . .").

¹¹Brief of the United States at 14, *People of Bikini v. United States*, Nos. 88–1206–1207–1208 (Fed. Cir., June 24, 1988). See also *id.* at 33: "a complex, permanent mechanism for compensating claimants"; "a comprehensive, permanent means of resolving . . . nuclear claims"; 34: an "Agreement to provide *continuous* funding to resolve, not avoid, [the] consequences [of the Nuclear Testing Program]" (emphasis in original); "create and maintain, *in perpetuity*, a means to address . . ."; "resultant claims" from the nuclear testing program (emphasis in original); 37: "reasonable" and "well funded"; 38: "permanent funding mechanism"; "comprehensive, long-term compensation plan"; 45: "structured to operate permanently" to "provide continuous funding"; "structured and financed to operate 'in perpetuity'"; "no basis to presume that the Agreement . . . will fail to provide a just and adequate settlement."

planned, Congress would need to consider possible additional funding.” *Id.* at 34–35.

If this were not a clear enough avowal that the \$150 million was an “initial sum” that would be replenished if necessary, the U.S. Government returned to this point later in its brief to emphasize that the \$150 million was a “base investment” and that additional funding could become available through other means, such as the changed circumstances provision:

In the Section 177 Agreement . . . the United States has responded to the complex consequences of the nuclear testing program by negotiating a diverse compensation plan providing . . . a mechanism for direct adjudication of *all* claims. This plan has been structured to operate permanently, and, at a base investment of \$150 million, to generate sufficient proceeds to address all identified needs. In ratifying the Agreement, Congress also recognized that should changed circumstances arise which would prevent the program from functioning as planned, Congress would need to consider possible additional funding.

Federal Circuit Brief at 44–45 (emphasis in original).

Fast forward 17 years, to January 2005, with the value of the “perpetual” \$150 million fund down to less than \$2 million. Did defendant still believe, as it had represented to the Federal Circuit, that “in ratifying the [177] Agreement, Congress . . . recognized that should changed circumstances arise which would prevent the program from functioning as planned, Congress would need to consider possible additional funding”? No. By that time, the Compact had been renewed without any discussion of Section 177, and the Marshall Islands government’s changed circumstances petition had languished before Congress for several years. In contrast to its earlier assurances, despite evidence of substantial uncompensated and unforeseen harm, the government told Congress that “the facts . . . do not support a funding request under the ‘changed circumstances’ provision . . .” 2005 Report Evaluating the Request of the Government of the Republic of the Marshall Islands presented to the Congress of the United States of America (Report), p. iv.

The procedure has now run its course, and Lucy has pulled away the football from Charlie Brown. “We were just kidding,” says the United States today. “You can’t invoke the changed circumstances provision, and there is no forum or remedy for your inadequately compensated taking claims.”

VI. DOESN’T THE SECTION 177 AGREEMENT CONSTITUTE A FINAL SETTLEMENT OF ALL NUCLEAR CLAIMS?

Many on Capitol Hill take a “been there, done that” attitude towards a request for additional funding under the Compact, taking the view that the Section 177 Agreement was a final settlement of all claims.

This argument is legally incorrect, both under U.S. and international law. The Compact was an agreement between the Marshall Islands Government and the United States Government. The people of Bikini were not parties to the negotiations, voted nearly 80% against the Compact, and never authorized the Marshall Islands Government to settle their claims, so the validity of a settlement turns on the international law principle of espousal, under which an international sovereign can advocate the claims of its nationals and settle them. No court has ever held that the Marshall Islands Government validly espoused and settled the claims the Marshallese had brought in the Court of Claims, and no court is likely to do so, because the preconditions for espousal under international law were not satisfied.

First, espousal is an attribute of international sovereignty. A government must be recognized as a sovereign nation when the settlement is made. The reason for this is that the doctrine of espousal is based on the principle that an injury to the national of a sovereign state is an affront to the sovereign, for which the sovereign is entitled to redress using the means of international diplomacy. The people of Bikini were not Marshall Islands nationals for purposes of espousal at the time the claims accrued because the Marshall Islands Government was not then an international sovereign capable of invoking international remedies. Put another way, injuries to the people of Bikini were not affronts to the Marshall Islands Government because it was not a sovereign state, and because the Marshalls was not a sovereign when it executed the Section 177 Agreement on June 25, 1983, it could not claim to have been injured by harm to its nationals. The Marshall Islands Government was not recognized as a sovereign nation until November 1986, at the earliest, when President Reagan proclaimed the Compact of Free Association in effect, or later, when the United Nations formally terminated the United States’ trusteeship (December 22, 1990) and admitted the Marshall Islands to the United Nations (August 9, 1991).

In other words, at the time the Compact was negotiated, the Marshall Islands Government was a ward of the United States. Indeed, execution of the Compact was the Marshall Islands Government's price of admission to the international community. It was the United States, not the Marshalls, that had the power to espouse the claims of the Marshallese under international law during the Compact negotiations, but the United States could not settle claims against itself by espousing them. Nor could it do so by requiring the Marshall Islands Government to espouse and settle private claims as a condition for entering into the Compact.

Second, espousal is improper until "local" remedies have been exhausted. The idea is that a sovereign nation will not intervene on behalf of its nationals unless until they have tried and failed to obtain relief by invoking the law of the nation committing the injury. That is precisely what the Marshallese plaintiffs were doing in the U.S. Court of Claims. The Compact prevented them from obtaining relief there. There was no role for international espousal because they had a forum to obtain redress under the laws and Constitution of the United States. Indeed, the Marshall Islands Government prevented the people of Bikini from exhausting their local law (*i.e.* U.S.) remedies against the United States, which is ordinarily a precondition for espousal.¹²

Third, the claims of the people of Bikini against the United States—their trustee—were domestic claims of persons under U.S. sovereignty based on U.S. law, not international claims subject to espousal. The United States, as the United Nations' administering authority over the Marshall Islands, exercised international sovereignty over the Marshalls, and the U.N. Trusteeship Agreement explicitly made it responsible for extending the diplomatic and consular protection to the Marshallese that is the basis for espousal. Trusteeship Agreement, Art. 11.2, 61 Stat. 3301 (1947). The power to espouse claims under international law thus resided in the United States, which cannot invoke international law espousal to defeat its own domestic law obligations.

Lastly, even if the Marshall Islands Government had the authority to espouse and settle claims against the United States, such a settlement would not be valid under settled U.S. law. It is a black letter rule that fiduciaries, such as trustees, can only make deals with the trust beneficiaries if they disclose everything about the deal, not take advantage of their superior knowledge or superior bargaining power, and refrain from any trickery or coercion.

No one, I think, would argue that the Compact meets that standard. From bugging the Marshallese negotiators, to using its trusteeship power to impose economic and political pressure, to downplaying the extent of the damage, the United States breached its fiduciary duty to the Marshall Islands. For example:

- During the course of the Compact negotiations talks, Bob Woodward of the Washington Post reported in December 1976 that the CIA had regularly conducted electronic surveillance on Micronesian negotiators to obtain intelligence on their negotiating positions in the political status talks. Senate hearings in 1977 confirmed that Secretary of State Henry Kissinger had ordered these actions, which included the bugging, as well as placing a spy on the Micronesian negotiating team.
- Although the Marshall Islands Government initialed the Compact in 1980, it did not become effective until 1986. During this period, the government, as its Chief Secretary testified before the U.S. Congress, was "critically confronted with a serious financial crisis" and on the verge of bankruptcy. Its infrastructure had deteriorated badly, due in large part to earlier U.S. neglect. However, based on U.S. assurances that the Compact would go into effect in 1981, the Marshall Islands Government borrowed against Compact funding to initiate a major capital improvement program, but this only led to further economic dependence on the United States, and thus weakened the government's bargaining position on the Compact and any possible nuclear claims settlement.
- Simple trust law principles provide that the release of claims by a beneficiary against a trustee is invalid if the beneficiary did not know material facts the trustee knew or should have known; the release was induced by the trustee's improper conduct; or the transaction involved a bargain with the trustee, which was not fair and reasonable to the beneficiary.¹³ Therefore, at a minimum, before seeking a release of liability, the U.S. Government had a duty to determine that the payments it was offering to make were equivalent in

¹² *Restatement (3rd) of Foreign Relations* §713, Comment f; §902, Comment k (1987).

¹³ *Restatement (2nd) of Trusts* §217(2) (1959); *Restatement (2nd) of Contracts* §173 (1981); *Bogert's Trusts and Trustees* §943 (2d ed.).

value to the damages incurred by the Marshallese and the corresponding value of their claims. But the government told Congress it had no basis for concluding that a \$150 million fund would be adequate to satisfy the claims. Moreover, it assured the Marshall Islands Government, the Congress, and the courts that the Section 177 trust fund would “create and maintain, in perpetuity, a means” to pay claims from the nuclear testing programs,” predictions all of which have proved illusory.¹⁴ Nor did it fulfill its duty to make full disclosure to the Marshallese, as it consistently understated the risks of occupying land contaminated by nuclear testing.

VII. ISN'T THE \$150 MILLION SETTLEMENT FUND ADEQUATE?

Part of the “been there, done that” attitude towards funding the Nuclear Claims Tribunal’s awards assumes that the \$150 million provided in the Section 177 Agreement adequately covered any just compensation claims. This argument is wrong, both legally and factually.

First, as noted above (p. 7), the government cannot set a cap on just compensation for taking private property and deprive the courts of jurisdiction to determine the adequacy of the payment any more than Congress can do so by legislation or the President can do by executive fiat. That is a function solely of the judicial branch. The Supreme Court has repeatedly recognized that it is for a court, not the political branches, to determine what just compensation is due.¹⁵

For example, in *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 327 (1893), Congress enacted a statute severely limiting the amount of compensation it would provide for the condemnation of plaintiff’s property by mandating that plaintiff’s franchise to collect tolls for passage along the river not be considered in determining the sum to be paid by the United States. The Supreme Court soundly rejected the government’s position that Congress, through legislation, could have the final say in determining the amount of compensation due under a Fifth Amendment taking:

By this legislation congress seems to have assumed the right to determine what shall be the measure of compensation. But this is a judicial, not a legislative, question. The legislature may determine what private property is needed for public purposes; that is a question of a political and legislative character. But when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public, taking the property, through congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry . . . If anything can be clear and undeniable, upon principles of natural justice or constitutional law, it seems that this must be so.

The United States has accepted responsibility and the Fifth Amendment requires payment of just compensation. No one in 1986 knew the extent of the damage, and if the \$150 million figure had been characterized as a final number—which it never was—it would not have withstood constitutional muster. As noted above (p. 7), the U.S. Government never calculated the extent of the damages, so the \$150 million figure was nothing more than a number plucked out of the air to satisfy a political imperative. At the time the Compact was ratified, no one had any real basis for thinking that the nuclear testing damages could be satisfied from the \$150 million fund. No one really knew the extent of personal injuries, how many individual claims there would be, how much it would cost to decontaminate and resettle the nuclear affected atolls, or what the real value of the property rights taken was when the Compact was negotiated.

Second, the Nuclear Claims Tribunal has now completed its review of the claims of the four atolls that sustained the greatest damage from nuclear weapons testing,

¹⁴Brief of the United States at 34, 45, *People of Bikini v. United States*, Nos. 88–1206–1207–1208 (Fed. Cir., June 24, 1988). Looking into its own crystal ball, the government also predicted that “the 1987 stock market ‘correction’ . . . in no way impairs the long-term performance and viability of the Fund,” because it anticipated that those losses “will be fully restored in the near future.” Moreover, it assured the court that “[i]n ratifying the [Section 177] Agreement, Congress also recognized that should changed circumstances arise which would prevent the program from functioning as planned, Congress would need to consider possible additional funding.”

¹⁵See also *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1923) (“Just compensation is provided for by the Constitution and the right to it cannot be taken away by statute. Its ascertainment is a judicial function.”); *Baltimore & Ohio Ry. Co. v. United States*, 298 U.S. 349, 368 (1936) (“The just compensation clause may not be evaded or impaired by any form of legislation . . . [W]hen [an owner] appropriately invokes the just compensation clause, he is entitled to a judicial determination of the amount. The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved.”)

so that it is possible to show the tremendous gap between the United States' obligations to pay compensation and what it has actually paid through the alternative remedy.

VIII. AREN'T THE NUCLEAR CLAIMS TRIBUNAL AWARDS EXCESSIVE?

No. The Section 177 Agreement, to which the U.S. Government was a party, established the Nuclear Claims Tribunal as the body responsible for conducting fact-finding to determine how much compensation should be paid and to whom. After the Nuclear Claims Tribunal issued its decisions in the Bikini and Enewetak cases, some officials in Congress and the Administration suggested that the "home field" advantage of the Tribunal resulted in skewed and inflated awards and somehow invalidated the tribunal's judicial process. In response, the Marshall Islands Government retained former Attorney General Dick Thornburgh and his law firm to perform an independent assessment of the Nuclear Claims Tribunal's procedures and decisions.

On May 20, 2005, Attorney General Dick Thornburgh issued his report to Representative Richard Pombo, chairman of the House Resources Committee. "Simply stated," Attorney General Thornburgh wrote, "the report finds that the [Nuclear Claims Tribunal] fulfilled the basic functions for which it was created in a reasonable, fair and orderly manner, and with adequate independence, based on procedures, closely resembling legal systems in the United States, that are entitled to respect."

The Thornburgh report also concluded that property damage claims before the Tribunal have been asserted through class action vehicles similar to those used in the United States, with litigation "characterized by the kind of legal briefing, expert reports, and motion practice that would be found in many U.S. court proceedings," and hearing procedures and rules of evidence that resemble those used in administrative proceedings in the United States.¹⁶ At the request of the chairman at today's hearing, a copy of the entire Thornburgh report is attached to this testimony.

With respect to the amount of the awards, it is important to note that the people of Bikini presented cleanup options that ranged as high as \$1 billion. The option selected by the Tribunal, with a cost of just over \$250 million, is the same cleanup method recommended by the U.S. Department of Energy's contractor, Lawrence Livermore National Laboratory.

The restoration costs are significant, but they must be considered in the context of the cost of the tests themselves:

- The Department of Defense costs for all nuclear tests in the Marshall Islands exceeded \$5.2 billion.¹⁷ Civilian costs are harder to calculate, but in transferring its materials, facilities and properties to the new AEC in 1946, the Manhattan Project spent \$3.8 billion to manufacture nine new atomic bombs and continue research.¹⁸ The AEC spent over \$4.3 billion from July 1, 1946 through June 30, 1947,¹⁹ and from 1948–1958, the AEC spent nearly \$130 billion on production research, development, and testing of nuclear weapons.²⁰
- The United States never questioned the cost or value of the nuclear tests at Bikini and Enewetak because they assured U.S. nuclear superiority over the Soviet Union and led to immediate savings of billions of dollars in the Defense Department budget in the late 1940s and 1950s. As the Atomic Energy Commission told Congress in 1953: "Each of the tests involved a major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development, they saved far more than their cost."²¹
- Representative John Seiberling of Ohio, a member of the House Interior Committee, made these very points during Congress' review of the Compact:

¹⁶Dick Thornburgh et al., "The Nuclear Claims Tribunal of the Republic of the Marshall Islands: An Independent Examination and Assessment of its Decision-Making Process" (Kirkpatrick & Lockhart, LLP 2003), p. 2.

¹⁷Stephen I. Schwartz, ed., *Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons Since 1940* (Brookings Institution Press 1998), pp. 101–03. The dollar figures in this book, expressed in 1996 dollars, have been updated through 2004 using a cumulative Consumer Price Index increase of 21.9% from 1996–2004. See <http://www.bls.gov/cpi/home.htm#tables>.

¹⁸*Id.* at 61–62.

¹⁹*Id.* at 63.

²⁰*Id.* at 65–75.

²¹U.S. Atomic Energy Commission, *Thirteenth Semiannual Report of the Atomic Energy Commission* (1953), p. 18.

“There will be questions raised, I am sure, as to whether there is a less costly way of taking care of the people who were affected by our nuclear testing, and there will be a question as to whether we should go as far as some of us think we need to go, including the restoration of Bikini. I would only say that the costs of this program are a tiny fraction of the costs of that nuclear testing program that went on.”²²

- The Department of Energy’s budget for the cleanup of radioactive, chemical and other hazardous waste at 53 U.S. nuclear weapons production and development sites in 23 states dwarfs the numbers under consideration here. That cleanup program has been estimated to cost between \$168–\$212 billion.²³ Congress appropriated an average of \$5.75 billion annually for the program in the late 1990s, and it is anticipated that this funding level will continue at this rate indefinitely.²⁴
- The U.S. Government spent more than \$10 billion at the Hanford, Washington nuclear weapons site without removing one teaspoonful of contaminated soil.²⁵ That is what DOE has spent on studying radiation problems at an area exposed to a miniscule percentage of the radiation that was unleashed in the Marshall Islands.
- The U.S. Government has already approved compensation claims of more than \$917 million to claimants who were on-site at Nevada nuclear tests, those downwind from the testing, and those working in radioactive mines.²⁶ The nuclear tests in Nevada were nearly 100 times smaller in magnitude than the tests conducted in the Marshall Islands.²⁷

IX. CHANGED CIRCUMSTANCES

Article IX of the Section 177 Agreement, entitled “Changed Circumstances,” provides: If loss or damage to property and person of the citizens of the Marshall Islands, resulting from the Nuclear Testing Program, arises or is discovered after the effective date of this Agreement, and such injuries were not and could not reasonably have been identified as of the effective date of this Agreement, and if such injuries render the provisions of this Agreement manifestly inadequate, the Government of the Marshall Islands may request that the Government of the United States provide for such injuries by submitting such a request to the Congress . . . for its consideration.”

It is important to note that Congress, not the executive branch, determines what constitutes changed circumstances. On September 11, 2000, the Marshall Islands Government filed a changed circumstances petition with the U.S. Congress specifically requesting the appropriation of additional funds to cover unpaid Nuclear Claims Tribunal property claims. To date, Congress has not acted on the petition, and on January 24, 2005, the U.S. State Department advised Congress that the “facts [in the petition] regarding loss and damage to property do not support a funding request under the ‘changed circumstances’ provision of the Section 177 Agreement.”

The most obvious manifestation of changed circumstances is the tremendous gap between America’s obligation to pay just compensation and what it has actually paid through the Nuclear Claims Tribunal. Today, more than 24 years after the U.S. and Marshall Islands Governments signed the Section 177 Agreement, the Nuclear Claims Tribunal has completed its review of claims brought by the four atolls that sustained the greatest damage from the U.S. nuclear weapons testing program and

²² *Compact of Free Association: Section 177 Of The Proposed Compact Of Free Association: Compensation For Victims Of U.S. Nuclear Testing In The Marshall Islands*, Before the House Interior and Insular Affairs Subcommittee on Public Lands and National Parks, 98th Cong., 2nd Sess. at 3 (May 8, 1984) (statement of Rep. Seiberling) (hereinafter referred to as “Compact Section 177 Hearing”).

²³ Status Report on Path to Closure (U.S. Department of Energy, Office of Environmental Management) (March 2000) at 11 (<http://web.em.doe.gov/closure/fy2000/index.html>); Closure Planning Guidance (U.S. Department of Energy, Office of Environmental Management) (June 1, 2004) at 14; http://www.em.doe.gov/vgn/images/portal/cit_1819/26/34/94385Vol1_Final_Printed_Version_Word4.pdf.

²⁴ *Accelerating Cleanup: Paths to Closure* (U.S. Department of Energy, Office of Environmental Management) (June 1998) at 2, 5–8. See also *Environmental Management: Program Budget Totals* (FY 1998–FY 2000) and *Environmental Management’s FY 2000 Congressional Budget Request*.

²⁵ *Environmental Management: Progress & Plans of the Environmental Management Program* (November 1996) (DOE/EM–0317) at 120; Closure Planning Guidance, *supra* n. 25, at 35, 65–66.

²⁶ See http://www.usdoj.gov/civil/omp/omi/Tre_SysClaimsToDateSum.pdf.

²⁷ Thornburgh Report, *supra* n. 17 at 3

has issued awards for the four atolls totaling more than \$2.2 billion. However, because of its limited funding, it was only able to pay out \$3.9 million, which represents less than 2/10 of one percent of its awards.

Another clear manifestation of changed circumstances is the change in radiation protection standards since the Section 177 Agreement was signed. For example, Article VIII (a) of the Agreement states that the United States “has concluded that the Northern Marshall Islands Radiological Survey and related environmental studies conducted by the Government of the United States represent the best effort of that Government accurately to evaluate and describe radiological conditions in the Marshall Islands.” Article VIII (b) provides that this survey and the related studies can be used to evaluate and estimate radiation-related health consequences of residing in the Northern Marshall Islands after 1978.

At the time that the Northern Marshall Islands Radiological Survey was published in 1978, the scientific community’s standard that defined the degree of cleanup required to bring a radioactively contaminated site up to an adequate and appropriate level of radiation health protection was defined by the National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation (“BEIR I”) Report, issued in 1972. At the time the Section 177 Agreement was signed, the radiation dose limit for a member of the public, as established by the BEIR I Report, was 500 millirem per year. One millirem is one-thousandth of a rem, which is a unit for measuring the biological effect of absorbed doses of radiation.

Consistent with the scientific community’s revised understanding of radiation health risks, dose limits have been incrementally reduced since the time of the Section 177 Agreement. For example, the 1990 National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation Report (“BEIR V”) concluded that radiation exposure was almost nine times as damaging as that estimated by the BEIR I Report. Accordingly, the BEIR V report recommended a radiation protection standard of 100 millirem per year for members of the public from all sources, along with the adoption of an “as-low-as-reasonably-achievable” standard. The Nuclear Regulatory Commission subsequently adopted these recommendations as regulatory requirements. 10 C.F.R. Part 20 (1993).

In 1997, the U.S. Environmental Protection Agency issued an agency guidance document under the Comprehensive Environmental Response, Compensation and Liability Act (“Superfund”) recommending a radiation protection standard of 15 millirem per year as a safe level of human exposure to determine the degree of cleanup at Superfund sites in the United States where radioactive contamination is present. (“Establishment of Cleanup Levels for CERCLA Sites with Radioactive Contamination, OSWER No. 9200.4–18 August 22, 1997). The U.S. Department of Energy and Environmental Protection Agency have agreed to this standard for the cleanup of radioactive soil at Hanford in Washington State and Rocky Flats in Colorado, both of which are former nuclear weapons production sites.

In addition to the Environmental Protection Agency’s recommended standard of 15 millirem, the Nuclear Regulatory Commission promulgated a legally binding radiological cleanup standard of 25 millirem in 1997. 10 C.F.R. 20.1402. Although these two agencies still do not agree on whether the 15 or 25 millirem standard should apply, these two standards represent a safety level that is 20 to 33 times stricter than the standard in effect in 1978, which provided guidance for the Section 177 Agreement. As a result, the cost of a radiological cleanup of Bikini Atoll that meets minimum radiological safety standards recognized by the U.S. Government is many times greater than was estimated at the time the Section 177 Agreement was signed.

To the extent that payments to the Bikinians under the Section 177 Agreement were based on radiation protection and cleanup standards in the BEIR I Report, the changes in these standards since 1987 meet the three-part test of the “Changed Circumstances” provisions: the knowledge of the additional cleanup costs of Bikini Atoll arose after the effective date of the Section 177 Agreement; these costs “were not and could not reasonably have been identified” at that time; and these dramatically higher costs render the provisions of the Section 177 Agreement “manifestly inadequate.”

Other facts discovered after the signing of the Section 177 Agreement that support a finding of changed circumstances include the following:

- For years the Bikini people thought the only islands at Bikini that were vaporized were the ones near the 1954 Bravo shot. They now know from a 1968 AEC document that the area of one island in the Aerokoj-Eneman group was reduced from 67.1 acres to 25 acres, the loss of 42 acres, nearly two-thirds of the entire island. The destruction to this island from a hydrogen bomb test was more than twice as great as the damage caused by the Bravo shot, but

this document, a copy of which is attached to my testimony, was not made public until 1998.²⁸ If it had been made public during the original Compact negotiations, it would have had an impact on those negotiations.

- An April 1952 memorandum to AEC chairman Gordon Dean warned that “Bikini may be necessary in connection with future weapons tests, either because the 1952 [Mike] test at Eniwetok may result in its elimination, or the fall-out may be so bad that we could not go back for so long that we would have to find another test site.”²⁹
- Another internal AEC memorandum made the same point, stating that “[i]t is possible that the tests planned for Eniwetok may result in the destruction of a part or all of the atoll. A severe shock may . . . cause the crumbling of the entire structure.”³⁰
- A third memorandum made the point in less bureaucratic style: “AEC may need Bikini if Eniwetok goes up with M[ike].”³¹
- The Navy in 1953 suggested evacuating the residents of Rongelap before the Bravo shot, but the Interior Department balked. “Their reaction to an enlargement of the area of activity will be apprehension and fear that . . . may place many of them in the same homeless position as the Bikini people now occupy,” wrote the Trust Territory High Commissioner, the highest ranking U.S. official in Micronesia. “[T]he most probable result would be, first, a lowering of morale with a consequent reluctance to fend for themselves, followed by the expectation that the Government would provide their food in return for the land that had been taken.” In urging (successfully) that the danger zone not be expanded to include Rongelap, he concluded: “This would at least avoid the necessity of informing the Marshallese of the expanded Danger Zone and so protect them and the administration from the results of what would be, at the very best, unsettling knowledge for them to have.”³²
- The AEC went along, and the results were tragic for Rongelap. As the AEC later explained the decision: “[T]he Department of the Interior was not sympathetic to removing the natives, having experienced considerable difficulty with the Bikini natives who were relocated . . .”³³
- And majors will be pleased to know that one month after the Bravo shot the AEC drew up plans to return the Rongelapese under the code name “Project Hardy (The Return of the Native).” At least the AEC could find something to chuckle about in this tragedy.³⁴

X. CONCLUSION

What should Congress do? The United States has accepted responsibility and the Fifth Amendment requires payment of just compensation. No one in 1986 knew the extent of the damage, and if the \$150 million figure had been characterized as a final number—which it never was—it would not have withstood constitutional muster.

It’s time for Congress to act. The Tribunal has completed its review of the largest claims, and the true extent of the compensation due can now be determined. Congress can appropriate funds under any label—“changed circumstances,” “ex gratia,” or simply “just compensation.” That doesn’t matter. What does matter is that the United States honor its constitutional, statutory and moral obligations to the people it damaged and the others who, with no real options, gave up their lands to help

²⁸ November 19, 1968 correspondence from William Bonnet, Manager, AEC Honolulu Area Office, to Maj. General Edward B. Giller, USAF, Assistant General Manager for Military Applications, regarding “Land Area—Bikini Atoll.”

²⁹ April 9, 1952 memorandum for Gordon Dean, prepared by AEC General Manager M. W. Boyer, DOE/CIC Document No. 138945.

³⁰ April 10, 1952 memorandum to files by John Bugher entitled “Return of Natives to Bikini,” AEC Division of Biology and Medicine, Box 326–78–3, MRA Bikini and Eniwetok, Doc. No. 9458, U.S. Department of Energy.

³¹ April 7, 1952 memorandum entitled “Possible Return of Bikini Natives,” DOE/CIC Document No. 103587.

³² February 5, 1953 letter from Elbert Thomas to James P. Davis, Director, Office of Territories, U.S. Department of the Interior, Record Group 326, DMA Collection, Box 3782, U.S. Department of Energy Archives, DOE/CIC Document No. 30094.

³³ March 30, 1954 memorandum from Vincent G. Huston to Kenneth D. Nichols entitled “Chronology of Establishment of Danger Area around Pacific Proving Grounds,” DOE/CIC Document No. 29635.

³⁴ April 14, 1954 memorandum entitled “Project Hardy (The Return of the Native),” DOE/CIC Document No. 125302.

the United States win the Cold War. You do not have to wait for the courts to act. Thank you.

Mr. FALEOMAVAEGA. Thank you very much. I don't recall if we have ever had a hearing addressing this very issue in all the years that I have served, and this is 19 years now since serving as a member of the committee. And being in the minority for the past 12 years, we say—being in the doghouse for the past 12 years, I don't know of any other member besides my good friend Ambassador Watson, or Congresswoman Watson who has personal experiences not only as Ambassador to the FSM but also to understand the situation there and Micronesia. And I really appreciate all of your testimonies.

I have written so many questions I don't know where to begin. Several of you are probably wondering, My gosh, he is only there by himself, what can you expect of this? I want to build a record, and I want to say that the testimonies that you have borne today is going to be a tremendous help in establishing this record. You definitely are going to be hearing a little more in terms of what our efforts are going to be to address some of the issues that have been raised in your testimonies.

We are spending \$2 billion a month in this terrible war that we are faced with in Iraq. We have already expended well over \$600 billion in the past 4 or 5 years on this war in Iraq and yet we can't even solve this very problem where the people of the Marshall Islands have sacrificed their lives, their properties and their means so that our country could conduct this nuclear testing program as it was part of the Cold War sense of competition that existed between our country and the Soviet Union.

Mr. Plasman, you cited some very interesting data here about the Iodine-131 victims that were subjected to—were there—as you notice, I twice reminded my colleagues about the declassification of certain documents that showed the emphasis of the whole government was focused on four atolls. And maybe Mr. Weisgall can help me on this. Only now to realize the entire Marshall Islands was exposed at much higher rems, doses, as you would, anywhere else in the world. Has there been any additional review conducted by the Department of Energy since now making public in the declassification of this document that was held for many years now.

Mr. Plasman?

Mr. PLASMAN. Yes, Mr. Chairman. In 1978, the Department of Energy conducted a radiological survey of the northern Marshall Islands. Additionally as part of the section 177 agreement, money was made available for surveillance and survey of the Marshall Islands, which was conducted by Dr. Steve Simon as part of the nationwide radiological survey. Most recently, although not a formal survey of levels of contamination, but as evidence of contamination throughout the nation, we do have that 2004 National Cancer Institute report which indicates radiation related cancers occurring at a great rate outside of the four atolls.

Mr. FALEOMAVAEGA. Mr. Weisgall?

Mr. WEISGALL. Mr. Chairman, I would only add as far as the declassification efforts, nothing really got going until Hazel O'Leary, 1993, with DOE, well after the compact had been negotiated. We are talking a decade after the 177 agreement. I think that is an

important piece of the chronology. As you have heard, there still are documents being declassified.

The second point I want to make is—and this is publicly known—even since the signing of the compact, worldwide recommended radiation predicted levels have been getting stricter and stricter. What was permitted at 500 milligram per year went down to 100. There is a dispute within U.S. agencies. But that dispute—that is 15 versus 25 versus 50. So we are already seeing those numbers come down. I can't think of anything else that would be more obvious as a changed circumstance.

Mr. FALÉOMAVAEGA. There was mentioned earlier about the changed circumstances, that petition that was submitted in the year 2000 and for which the administration and the Congress supposedly assigned the administration to review the substance of that petition. I don't know if there was ever a record or if there was ever any congressional hearing held to review the results of that petition.

Do you, Mr. Weisgall?

Mr. WEISGALL. There was no hearing. What you did hear earlier today, by the way, was correct. On September—September 11, 2000, the RMI did submit the changed circumstances petition to Congress. We then had an election in 2000. It got resubmitted right after the election. Deputy Assistant Secretary Cohen was correct. I think it was Chairman Murkowski and the ranking member, then Bingaman, and then the chairman over here at Natural Resources that did ask the State Department for an opinion, an advisory opinion. And then 5 years later, the State Department says no, there was no hearing.

In fairness, we have got Congress, not you, but we have got the institution of Congress with this Changed Circumstances Petition for 7 years doing nothing. We have got an executive branch saying we are not negotiating nuclear claims. This is why my clients—this is why we are at the third branch of government now. We are at the judicial branch. Or this is why perhaps it is time for the legislative branch to revisit the issue. There has never been a hearing on the Change of Circumstances Petition in Congress.

Mr. FALÉOMAVAEGA. Well, I really appreciate that comment, Mr. Weisgall, because I do intend to hold a hearing on that very specific issue you mentioned.

Mr. WEISGALL. One hearing in 2005 before Natural Resources Committee got into some of the issues, some of the differences. There was discussion of some of the awards, but not the kind of exhaustive hearing as to let us hear what you want government, let us act on it. So there was one examination at the time. Again, you had the executive branch coming in, though, and, you know, essentially they weren't stonewalled, but they were about to issue or they had just issued their opinion of saying we don't think there are changed circumstances here.

Mr. FALÉOMAVAEGA. Go ahead, Mr. Plasman.

Mr. PLASMAN. Mr. Chairman, if I may, there was also a hearing in 2005 in front of the House Resources Committee in relation to the Changed Circumstances Petition. And at that hearing—I believe you were there, sir. But the administration did come in and

say that there was no basis for changed circumstances based on the petition that they reviewed.

I should maybe further note that the administration review consisted of a multi-agency task force to review the contents of the petition. And although this 2004 National Cancer Institute report was submitted to the Senate Energy Committee at the end of 2004, the administration task force asserted that it had not had the opportunity to review that and it was not a part of their considerations and because of its nature as a multi-agency operation, they were unable to get together and make further considerations based on that.

I have heard since that the administration is asserting that because that report has not undergone peer review, it should not be given full weight for consideration. Thank you.

Mr. FALEOMAVAEGA. Senator de Brum, you had mentioned and indicated earlier—and I say this again in fairness, you probably have a very excellent institutional memory in terms of understanding as a member of the delegation negotiating the terms of the compact. And I want to say that in fairness to the efforts of the current administration presently noted, do you recall hearing again the question of the land use agreement at the time when the late President Amata Kabua was President of the Marshall Islands? What efforts were made at the time in trying to find some settlement to the problems or the needs of the landowners in Kwajalein and in terms of getting a proper lease agreement with the United States?

Mr. DE BRUM. Mr. Chairman, your recollection is correct on this. The first Government of the Marshall Islands—and even though Amata himself was a resident of Kwajalein and a landowner at that had difficulty obtaining a land use agreement from the people. Kwajalein had been used from 1944 until 1964 without a lease. There was no land agreement at all.

Mr. FALEOMAVAEGA. And has the Federal Government ever—have you made any claims on behalf of the Kwajalein Atoll against the United States Government for the use—

Mr. DE BRUM. No. But when the compact came into effect it wiped out the 1964 lease. But it only allowed for the use of Kwajalein until 2016. When this—when the area came into effect—

Mr. FALEOMAVAEGA. Let me take you back. When you signed the 1986 compact, was there ever any discussion to the fact that the United States Government used militarily Kwajalein for the 20-year period—from 1946 to some—

Mr. DE BRUM. There was discussion, that is right. There was discussion. And part of the—part of the extraordinary precaution that the landowners took to make sure that there was—and that the government also took to make sure that there was a land use agreement prior to the signing of a military use and operating license agreement was because of that. The Government of the Marshall Islands did not sign a new agreement under the compact with the United States until they had secured a land use agreement with the people of Kwajalein because the Marshall Islands Government has no land to give. And under the constitution it must secure those rights prior to giving them away. What happened in

Compact II was an extension of MUORA from 2016 to 2086 without a prerequisite land use agreement.

Mr. FALEOMAVAEGA. I think I may have made the statement that there was a lot of undue influence on the part of the United States Government in putting this new lease agreement. And I suspect that this is probably what got the landowners in Kwajalein very upset about the whole situation.

Mr. DE BRUM. You are correct, Mr. Chairman.

Mr. FALEOMAVAEGA. Well, I noted also with interest as part of the Kwajalein agreement on Compact II, is that an annual appropriation of, what, \$15 million is just to go to Kwajalein or is this to also be utilized for the needs of the people in Ebeye? Or is it just to compensate the landowners who—

Mr. DE BRUM. For the compensation of the landowners. When the eight-point proposal that the Minister referred to earlier was presented, the 19.1 figure of—19.1 million was based on the 1986 payment plus inflation. Nothing else. So when the 50 million was offered, the people of Kwajalein took that as in real dollars, less payment for the second compact than they actually got for the first compact. And when you consider the situation with Ebeye, that was like saying we are going to perpetuate this discrepancy and status between Kwajalein and all the problems they are in for another 60 years because we are really offering less money and not more to take care of a very serious population and immigration problem.

Mr. FALEOMAVAEGA. I don't know if I properly asked the question to Secretary Cohen and Mr. McGann, Secretary McGann, to the fact that where does Ebeye figure into this whole situation? Is Ebeye also owned by certain landowners?

Mr. DE BRUM. That is correct. Ebeye is owned by certain landowners of Kwajalein.

Mr. FALEOMAVAEGA. And Ebeye is in no way connected to the Kwajalein land use agreement, right.

Mr. DE BRUM. No, Ebeye is out of the purview of that particular agreement. Ebeye does not fall into the so-called mid-corridor agreement.

Mr. FALEOMAVAEGA. So how did Ebeye end up with 10,000 people coming there from all over the Marshalls?

Mr. DE BRUM. Ebeye was chosen as a labor camp when the United States military decided to move—the Marshallese were living on Kwajalein Island proper.

Mr. FALEOMAVAEGA. Before the compact—

Mr. DE BRUM. Before the compact to make room for the golf course. They were placed on Ebeye and there the labor force was required to stay. Then when other people throughout the Marshalls moved, they moved to Ebeye.

Mr. FALEOMAVAEGA. So this is on the part of the conduct of the United States Government, just simply took all the Marshallese living on Kwajalein to Ebeye and to this day this is how it has been?

Mr. DE BRUM. That is correct.

Mr. FALEOMAVAEGA. And as you heard Secretary McGann mentioned, that this is really something that is not of their concern.

But I would kind of like to think that the U.S. Government was very much part of the problem.

Mr. DE BRUM. That is correct. Mr. Chairman, Ebeye is Ebeye because the Americans wanted to use Kwajalein as a naval base before and as a missile base now. It affects people who seek work on the base, but it does not have the infrastructure to support that number of people on such a small space. That is the problem that is Ebeye. And to say that it is an internal matter I think is a little bit disingenuous.

Mr. FALEOMAVAEGA. Senator, I cannot thank you enough for your most eloquent statement and I feel so helpless as you should with the experience of what happened to those three ladies or five ladies that we met and the fact that they passed on is simply because we still have not done our job to properly compensate them for this. I want to just ask the whole group here if there have been any real serious studies conducted as to the current status of those affected by the nuclear testings. And I realize that this may have happened 40, 50 years ago. And I suspect many have already passed away. What about the descendants? Has there been any study about those who are children or grandchildren of those who were affected or exposed at the time these testings took place? Anybody know anything about that? Mr. Plasman?

Mr. PLASMAN. Mr. Chairman, there has, of course, been a follow-up program for the people on Rongelap and Utirik conducted by the Department of Energy. But they have focused on the people that they have defined as exposed. And as far as I know, there has been no intergenerational examination of effects of radiation in either that population or the population of the Marshall Islands at large.

Mr. FALEOMAVAEGA. Well, as an indicator—Senator Maddison, is this still happening among the women in the Marshalls, of having deformed babies, anything that is connected with the nuclear testing exposure?

Ms. ANJAIN-MADDISON. Yes, Mr. Chairman. Thank you. From time to time we have seen birth defects that happen in our second and third, fourth generations. The NCI report that was done, it mentioned that there are going to be more Marshallese people that will be affected, will die of cancer caused by radiation. And with the Department of Energy medical program, for the Rongelap people and of course to the Utirikese, it is only provided to the exposed population. The UE doesn't think that there are genetic effects and therefore our medical program is not extended to the second and third generations.

Mr. FALEOMAVAEGA. I think it is my understanding that the Department of Energy currently has presence in the Marshall Islands only to monitor and then after monitoring there is really nothing being done afterwards. Am I correct on this? How many years have they been doing this so-called study or monitoring system? Does anybody know? I remember when I was there at the Marshall Islands, they had a representative or somebody there.

Mr. WEISGALL. I think 10 days after the BRAVO shot, the Atomic Energy Commission doctors were present. That has got its own conspiracy theory by the way. You know, you also had a situation in the 1950s and 1960s, you had an Atomic Energy Commission—I mean, again, you know, the charge was the fox guarding the hen-

house but you did have the Atomic Energy Commission both promoting nuclear power and opining on radiation safety, good, bad or indifferent, very controversial documents from the Atomic Bomb Casualty Commission, the ABCC tracking generations after Hiroshima and Nagasaki. But to answer your question precisely, the Department of Energy or the Atomic Energy Commission before that and then ERDA was tasked right after the BRAVO shot to come out to the Marshall Islands and track the exposed, I want to say, 139 people of Rongelap and Utirik. And again one of the controversies in the Marshall Islands has been what about the others. But that has been their statutory directive and that has also been controversial with Congress.

In their defense, these doctors have said that is all we have been tasked to do. But that has been continuous since late march of 1954.

Mr. FALEOMAVAEGA. Do you think we need to make it more definitive as a matter of record that since the declassification in recent years are showing that it just isn't Rongelap and Utirik being exposed, but the whole island group was exposed? Is that a fair assessment or am I out in left field on this?

Mr. WEISGALL. Look, your story about the dairy farms in Minnesota is correct. I can go you one more. You had Kodak laboratories in Rochester, New York, inform the Atomic Energy Commission that the film they were developing was defective. That is because it was exposed also to airborne radioactivity. That is why the one positive impact of the BRAVO shot is it led to the protest against atmospheric nuclear testing. And finally President Eisenhower imposed a moratorium in 1958 and Kennedy before he was assassinated signed the Atmospheric Test Ban Treaty. So certainly you had airborne radioactive material from BRAVO circulating the entire globe.

Mr. FALEOMAVAEGA. I might also add for the record—

Mr. DE BRUM. Mr. Chairman, one of the remarkable documents that has surfaced from this declassification in 1993, 1994, it indicates that there was a study called the project 4.1 that was conducted by the United States in the Marshall Islands. The study was entitled a Study of Human Beings Exposed to—correct me if I am wrong, John—Ionized Radiation, something to that effect. The documents showed that this study was conceived and placed on the list of possible studies for the test in November 1953. BRAVO was March 1, 1954. When the people of Rongelap were first treated by AEC doctors in Rongelap 10 days or 10–15 days after the BRAVO shot, each one of them was assigned a number. And this number was a project 4.1 number. Each one had a placard that read project 4.1 with their specific number listed under the project—

Mr. FALEOMAVAEGA. In other words, they were Guinea pigs.

Mr. DE BRUM. Some of the wombs of their mothers that week were also given 4.1 numbers. Some of these documents, as John very correctly said, have given rise to people speculating about conspiracy theories. They are very real and these are not our documents. These are American Government documents recently declassified. But no one has actually gone in and restudied those documents to chase down what else is there that were not released as part of the release of previously classified documents. We have

asked on several occasions that documents be released to us and to our specialists to study. But those requests have not been handled by the United States Government. We have not gotten any response on those.

Mr. FALEOMAVAEGA. Do you remember, Mr. de Brum, if you have the documentation of your request made because I really would like to receive copies of the request made?

Mr. DE BRUM. Yes, sir. We will make those copies available to you.

Mr. FALEOMAVAEGA. I think I have got my work cut out. To say that the buck stops here—I don't want to mislead anyone, but this is something that over the years I felt very strongly about, that somewhere along the line to set the record in fairness and especially what Mr. Weisgall has shared with us this afternoon. We need to do better. And I sincerely hope that in the coming weeks and months that we will continue this process of slowly and hopefully in a more thorough way find ways that we can make some factual conclusions. And to the extent that Congress will do its part, and taking on your advice, Mr. Weisgall, not necessarily having to wait for the courts, but in areas where I hope the Congress will be part of the solution and not an extension of the problems that has festered now for how many years. I sincerely hope that we will continue to pursue this line of questioning not only the administration, but as a means of how this subcommittee could be in the best position possible to address some of the issues that we have discussed this afternoon.

Mr. Weisgall, how many court cases are currently pending as a result of all of the foot dragging that has taken place as far as compensation and all that has been requested as a result of the Nuclear Claims Commission's work?

Mr. WEISGALL. Well, I am on my fourth case in 33 years. And, I mean, there was one point where—I mean, quite frankly, the only way to obtain leverage against the United States Government was to go to court. The fact of the matter is, the judge back in the 1980s, a wonderful man named Judge Harkins, he is still alive, denied the United States motion to dismiss the first Bikini case. And we were set for trial. Believe me, that had quite an impact on the compact negotiations and the desire of the United States to settle.

I don't know what the court is going to do here. Again, we are in the same situation where the United States quite appropriately has moved to dismiss these claims, pointing to the 177 agreement that says no U.S. court has jurisdiction. The plaintiffs are arguing wait a minute, you can't do that because of the Fifth Amendment, you can't legislate away the Fifth Amendment. And we should have a decision, I would hope, on that issue possibly by the end of August. It could be soon. There are two cases right now pending, an Enewetak case, Bikini. I think that Rongelap and Utirik lawyers will bring their cases—they simply got their awards from the tribunal later. So those will probably be filed and we may see others.

Mr. FALEOMAVAEGA. What I am sensing here, Mr. Plasman, is that the tribunal has taken its course making recommendations or have actually given awards with what money that were given by the Congress. Am I correct on this?

Mr. PLASMAN. We have attempted to discharge our duties as best we can.

Mr. FALEOMAVAEGA. \$2 billion claim and you are only given \$2 million.

Mr. PLASMAN. Our current balance is less than \$1 million. I would say, Mr. Chairman, the work of the tribunal is not yet done. We know from the National Cancer Institute study that there will continue to be new cancers arising in the population that are caused by the testing program. And the tribunal, if no additional money is made available, will not be in a position to address those. There are additionally claims from, you know, throughout the nation claiming damage to their property on the basis of past exposures that the tribunal is in the process of establishing an administrative program to address. So we are faced with a somewhat critical situation that the tribunal's funding source, the Nuclear Claims Fund, is virtually exhausted. The work of the tribunal I am sad to say is not yet complete.

Mr. FALEOMAVAEGA. Mr. Weisgall.

Mr. WEISGALL. One footnote and Mr. Plasman should not blow his own horn, so I am going to blow it for him. Dick Thornburgh was hired to examine the procedures of the tribunal and issued a report—I forget the year. About 5 or 6 years ago—saying these are procedures that are used in U.S. courts, these are the basic—this is a tribunal that pretty much followed the type of procedures that you would see in a similar case in the United States. There was concern about if I could have home field advantage. And to have President Reagan's former Attorney General issue what I would call more than a Good Housekeeping Seal of Approval I think speaks volumes for the integrity of the nuclear claims tribunal process.

Mr. FALEOMAVAEGA. And I would like to ask if I could get a copy of the Mr. Thornburgh's report. I would appreciate that.

Again, I think there is a lot of questions and puzzles here about the extent of the tribunal's work. And again, Mr. Plasman, the existence of the tribunal is a result of the Marshall Islands' Government doing or is this somewhere—is it part of the provision of the compact association that allows a tribunal to function as kind of like a joint effort between my government and—I say my government—the United States Government and the Marshall Islands.

Mr. PLASMAN. Mr. Chairman, the section 177 agreement did require the establishment of a tribunal. The enabling legislation and implementation of that was left to the Marshall Islands' Government. The United States Government has not played a role in the hearings or judgments of the tribunal.

Mr. FALEOMAVAEGA. I am just trying to get just a little better understanding. The tribunal comes out with a judgment awarding so and so and the money comes from where?

Mr. PLASMAN. Mr. Chairman, the \$150 million claims fund was established which required \$18 million to be disbursed on an annual basis. And a portion of that went to the people of Bikini, a portion went to the people of Enewetak, a portion went to the people of—

Mr. FALEOMAVAEGA. I didn't mean to interrupt you. The Congress gave you \$150 million as a part of the whole package?

Mr. PLASMAN. Yes, sir. And the idea was over the 15-year period over the first compact, the earnings of the fund would provide some \$270 million available for distribution. And then at the end of that period, the fund would be available to pay such additional claims as were still to be paid off. And we are at a situation now where instead of having \$150 million in the fund and a perpetual source to address the damages and consequences of the nuclear testing program, we have less than a million dollars because the annual disbursement schedule exceeded the amount of income earned by the fund.

Mr. FALEOMAVAEGA. How did the Congress come out with this \$150 million figure as the basis to supposedly fully compensate the claims?

Mr. PLASMAN. Well, my understanding, Mr. Chairman, is that was pretty much a purely political type of determination. I think Mr. Weisgall may be in a position to shed some light on that.

Mr. WEISGALL. I don't have it in my written statement. When that very question was asked, the administration's written response, where did you get this figure? No such documents exist. I interpret that to mean it was a political judgment, let us see if we can buy these off for \$150 million. And the courts called that an initial sum because before the U.S. courts, the Justice Department in its briefs and all the way up to the Supreme Court, clearly left the impression that there would be more funding. There was funding for food programs, there would be funding for health care. This is part of a process. And if any record needs to be set by this committee, it is that the \$150 million did not close the books on the nuclear legacy. It is a down payment on that legacy. And thanks to the work of the tribunal, a fact finding group, one now has some sense of the magnitude of the damage.

Mr. FALEOMAVAEGA. We are about to spend over \$600 million in building our new Embassy in Baghdad. Unbelievable. And to think that that Embassy is going to stand and last with whatever happens in the future of that terrible situation that we find ourselves in.

Mr. Plasman, has the tribunal ever made a recommendation to the Congress or to the administration for additional funding.

Mr. PLASMAN. Mr. Chairman, I think the tribunal views its role as an adjudicatory body. Really, the authority and responsibility for requesting additional funds lies, I think, with the Government of the Marshall Islands. And we have worked closely with the government to, you know, try and find a way to pay our awards.

Mr. FALEOMAVAEGA. Did you say earlier the total amounts of the tribunal's recommendations for funding is about \$2 billion.

Mr. PLASMAN. Yes, sir.

Mr. FALEOMAVAEGA. And as a result, the Congress has given you \$150 million and now we are almost zero in terms of payments that have been made.

Mr. PLASMAN. You have captured the essence perfectly, sir.

Mr. FALEOMAVAEGA. In your best opinion, do you think all the cases and claims and petitions that have been submitted to the tribunal for all these years, that the tribunal's best estimate in terms of the awards given at \$2 billion is considered reasonable.

Mr. PLASMAN. Well, yes, sir. I think that the \$2 billion in awards that the tribunal has made is well justified in reasons based on the facts that we had before us, based on expert opinions that we received, based on legal precedent from the United States.

Mr. FALEOMAVAEGA. I am not suggesting that the Congress is going to be very receptive to the idea, Mr. Weisgall, but do you think this would alleviate any more petitions to the courts for compensation? I am trying to figure this out with what we just heard from our friends from Bikini and Enewetak.

Mr. WEISGALL. You know, you are dealing here with moral claims that we all can agree to. That is a tough one. That is a tough one to play before this Congress. I see my role as trying to translate those moral claims into legal ones.

Mr. FALEOMAVAEGA. The department is the excuse that we always give. We can't give you any compensation because the cases are pending in court. So that was the way that we ducked the issue. Usually this is what we do and say, we can't get involved in any of these situations because the matter is in court.

Mr. WEISGALL. It actually went one step beyond that because the 177 agreement actually threw those cases out of court for this predetermined settlement, this \$150 million out of the air figure, which, you know, is, as I said, is not the job of the Congress to do. So, you know, where you go with that, you still—I mean, the Congress can appropriate on an ex gratia basis. There is a lot that Congress can do, but I think ultimately a lot may depend on what the court decides. But you always have that changed circumstances provision. You know, why have an international agreement that invokes the concept of changed circumstances that might make an agreement manifestly "inadequate." Kind of strange to put in a document. Well, maybe this was a recognition by the United States that not all the cards were on the table. This was a desperate attempt by an emerging government that was a ward of the United States to try to say I don't know if you were telling us everything, let us at least, you know, get what we can out of you. And I think that you can read a lot into that provision under those circumstances. This is a government after all that was bugging the Micronesian negotiators, according to Bob Woodward, and the story was never refuted. So there is quite a history here and these are negotiations between a trustee and its ward, not exactly arm's length.

Mr. FALEOMAVAEGA. Senators, care to comment?

Mr. DE BRUM. Mr. Chairman, just in fairness to the people who accepted the \$150 million—whatever you call it, the 1978 northern Marshall Islands study was presented to us, to the Marshall Islands as the most complete, most representative statement of the true state of things in nuclear in the Marshalls. And that based on that, this is the kind of money you would need to take the claims that might arise. We had no expertise to advise us on whether or not this was correct or not. We had to take the word of the Department of Energy, ACD, ERDA at the time. So based on that, they said \$150 would be enough and that was sort of what the Marshall Islands took off with. But since then, as you have known and learned from this hearing as well, we have discovered that that was not indeed the case.

Mr. FALEOMAVAEGA. I am quite certain that the subcommittee is going to continue pursuing this issue of the nuclear claims. And I hope as I had mentioned to Congresswoman Watson, that we will be coming to the Marshall Islands to conduct field hearings and to see what else we can do to pursue this. I am still troubled by the fact that there is just so much money being thrown out there and saying that we have done all this, this and that. But as a result of all of that assistance, somehow I am not sensing that it adequately has provided for the needs of the Marshallese people. That is the big puzzle that I have right now, the question.

But I really want to thank all of you for coming all the way here to testify at this hearing. I realize it was kind of last minute and I do want to apologize for doing this. But sometimes we have to work in that fashion and I just wish it could have begun in a better way. But I promise you and the good leaders of the Marshall Islands that we will continue to pursue these issues and hopefully we can come out with better results.

If you have no further comments, I am going to conclude this hearing and we will continue it in the coming weeks and months, and I will look forward in continuing consultations with all of you. And, Mr. Weisgall, I should get a medal or something and give this to you. I notice you are getting more hair as you have done this now for the last 30 years, including myself as I was a young buck and it seems like I am getting older myself. But truly, the Marshall Island people deserve better. That is all I can say.

The hearing is adjourned.

[Whereupon, at 4:40 p.m., the subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ENI F.H. FALEOMAVAEGA, A REPRESENTATIVE IN CONGRESS FROM AMERICAN SAMOA, AND CHAIRMAN, SUBCOMMITTEE ON ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

For many, many years, despite the best intentions of Congress, I believe the US has failed in its obligation to better provide for the needs of the people of the Republic of the Marshall Island who to this day continue to suffer the consequences of our nuclear testing program in the South Pacific.

From 1946 to 1958, the United States detonated 67 nuclear weapons in the Marshall Islands, representing nearly 80 percent of all atmospheric tests ever conducted by the United States. If one were to calculate the net yield of these tests, it would be equivalent to the detonation of 1.7 Hiroshima bombs every day for twelve years. These tests exposed the people of the Marshall Islands to severe health problems and genetic anomalies for generations. The effects of the U.S. nuclear testing program in the Marshall Islands continues to devastate the Marshall Islands, and the funds provided by the United States under the Compact of Free Association are grossly inadequate to provide for health care, environmental monitoring, personal injury claims, or land and property damage.

As a Pacific Islander, I feel a special responsibility to safeguard the interests of our Pacific Island cousins from the Marshall Islands who have sacrificed greatly for our common good and it disappoints me that the prevalent attitude is that we should shelve the Compact for another 20 years just because Congress reviewed it a few years ago. The Compact did not constitute a final settlement of all claims, as evidenced by the inclusion of Article IX, authorizing the Government of the Marshall Islands to petition the U.S. Congress in the event of "Changed Circumstances" that "render the provisions of this Agreement manifestly inadequate."

While the Government of the Republic of the Marshall Islands did submit a request to Congress based on "Changed Circumstances," the Administration, as represented by the State Department, rejected the arguments. However, I believe there is a need for us to broadly consider whether or not some changes need to be made to the Compact and I am pleased that USAID, for example, has come to make its case regarding the need to amend the Compact to allow for a FEMA-USAID transfer of authority for disaster relief and to do so during this session of the 110th Congress.

USAID will not be able to testify regarding anything outside of the scope of this provision, and the Subcommittee understands this. The Subcommittee also recognizes that our Interior Department and GAO witnesses will also only be able to provide an overview of the Compact and its implementation but will not be able to testify about whether or not changes are needed.

However, following the testimonies of our government panel, we will hear from the leaders of the Republic of the Marshall Islands including Foreign Minister Gerald Zackios, Senator Tony de Brum, Senator Abacca Anjain-Maddison, Senator Hiroshi Yamamura, and Senator Jack Ading. We will also hear from Mr. James Plasman, Chairman of the Marshall Islands Nuclear Claims Tribunal, and Mr. Jonathan M. Weisgall, legal counsel for the people of the Bikini atoll.

Regardless of whether or not Republicans and Democrats can agree on whether or not changes need to be made to the Compact, we cannot deny that we have a duty to hear what the representatives of the Marshall Islands have to say. More than 50 years ago, the US began nuclear testing in the South Pacific and, today, we must not sidestep our responsibilities. Instead, we need to ask ourselves if we have done everything we can possibly do to make things right for the people of the

Marshall Islands, who have sacrificed their lives, their health and their lands for the benefit of the United States.

I submit that we have real work to do which includes taking a hard look at the problems surrounding the Kwajalein missile range. Kwajalein landowners have challenged the legality and adequacy of the Compact provisions, arguing that the US and RMI governments did not obtain their consent for lease of the land, and that basic services and economic conditions on the atolls are substandard.

The peoples of Bikini and Enewetak atolls have also filed lawsuits against the US Government seeking compensation and/or damages related to US nuclear testing. They have done so because the US Congress failed to act on their Changed Circumstances Petition, and our own State Department released a report concluding there was no legal basis for considering additional compensation payments.

I took issue with the State Department then and I take issue with the State Department now. I have reviewed the petition. I have researched this issue extensively and I believe enough evidence exists to justify a thorough review of the "changed circumstances" cited in the petition and, although the CCP is not the topic of today's hearing, I look forward to hearing from the representatives of the Marshall Islands who are with us today regarding nuclear claims.

For now, I wish to welcome our first panel of witnesses including Deputy Assistant Secretary David Cohen of the Office of Insular Affairs at the US Department of the Interior; Mr. Steven McGann, Acting Deputy Assistant Secretary of the Bureau of East Asian and Pacific Affairs of the US Department of State; and Mr. Francis Donovan, Director of the Office of East Asia Affairs at the US Agency for International Development.

PREPARED STATEMENT OF THE HONORABLE DONALD A. MANZULLO, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, thank you for calling this hearing to review the Compact of Free Association with the Republic of the Marshall Islands. This is a part of the world that is not often mentioned today but there are a lot of World War II veterans with strong memories about the Pacific Islands so I appreciate very much our relationship. Mr. Chairman, this is a part of the world in which you know much more about, and I appreciate your leadership on this issue. But you may be interested to know that Illinois alone exported \$191 million worth of merchandised goods to the Marshall Islands in 2006 up from \$158 million in 2005, mostly in the area of manufactured products. This is an amazing statistic knowing the population of the Marshall Islands is only about 62,000 people.

I also want to commend the Administration for doing a good job at negotiating the revised Compact in 2003 and in administering its funding. While I am a supporter of the Compact, I cannot imagine that there is a need at this point for significant changes because the agreement has only been in place for three years. Under Compact II, the U.S. Government will provide the Marshall Islands with more \$1.2 billion in assistance over a 20 year period. This funding includes monies for sector grants, a trust fund, and a Kwajalein land impact fund. According to the Government Accountability Office, funding for infrastructure, education, and health—the three largest sectors in the Marshalls—accounted for 92 percent of sector grant allocations in 2006. Over a three year period between 2004 and 2006, over \$47 million went towards infrastructure projects, over \$31 million went towards education, and over \$20 million were issued in the health sector. In fact, if taken on a per capita basis, the Marshall Islands receives far more U.S. assistance than what we provide to Israel, the next largest aid recipient. So, this is not an insignificant amount of funding.

The real question that we should focus on is how the Government of the Marshalls Islands manages these funds. I understand that while the Government is required to provide grant implementation data to the Department of Interior, its track record is uneven and often lacking. The real issue here is a long record of poor management and squandered opportunities.

Mr. Chairman, with regard to Kwajalein Atoll and the well known claims of its landowners, let me simply say that the U.S. Congress is not the proper forum to address these issues. My position on using the Congress to air grievances that the U.S. is directly not a party to is very clear. So I am disappointed that Kwajalein landowners are here today. We have a sovereign agreement with the Government of the Marshall Islands regarding the use of the Kwajalein test grounds. The dispute between the Government and the landowners is an internal affair and this hearing is not the proper forum to air their grievances.

Mr. Chairman, I look forward to hearing the testimony of the witnesses before us today.

PREPARED STATEMENT OF THE HONORABLE DIANE E. WATSON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

As a former Ambassador to the Federated States of Micronesia, I take great interest in the Compact of Free Association between the United States and the Republic of the Marshall Islands.

Since the end of World War II, the U.S. and the RMI have enjoyed a very close relationship. Not all of it has been necessarily positive, as the 1940s and 50s atmospheric atomic and thermonuclear tests in the RMI's atolls attest to. The U.S. has attempted to make amends for the adverse impacts of the nuclear tests on the people of the RMI. Final resolution of the issue, however, continues to be argued in our courts. This is but one issue that I am sure will be raised in the course of the hearing.

Mr. Chairman, in 2003 the U.S. amended the Compact to the RMI, providing \$1.5 billion in assistance from 2004 through 2023. The purpose of the Compact is to provide a resource of funds that will allow the RMI to engage in sustained economic development. But a number of issues continue to be raised about the Compact's long-term health and viability.

A 2006 GAO report, for example, lists problems that both the Marshall Islands and the FSM are having in administering the Compact funds. According to the report, among the problems they have are insufficient budgets, staff, and time to monitor and account for the use of Compact funds. I will be interested to hear the assessment of today's witnesses and briefers on the current health and status of the Compact and what they believe must be done to correct the situation.

I am particularly interested in hearing their assessment on how the Trust Fund for the RMI is currently performing. In particular, will the Trust Fund meet its funding goals once grant assistance is due to be terminated in 2023 and are these funding goals currently realistic to sustain the RMI past 2023? Or is this an issue that we or our successors again will be visiting over a decade down the road?

Thank you.

**Comments of
The Honorable James Naich
Charge d'Affaires, ad interim
Embassy of the Federated States of Micronesia
Washington DC**

To The Honorable Eni F. H. Faleomavaega, Chairman

**Sub-Committee on Asia, the Pacific,
and the Global Environment**

House Committee on Foreign Affairs

July 25, 2007

H.R. 2705

Mr. Chairman, distinguished Members, ladies and gentlemen:

The Government of the Federated States of Micronesia (FSM) appreciates this opportunity to express our views on H.R. 2705, which makes certain important amendments to the Compact of Free Association Amendments Act of 2003.

The Bill incorporates a number of needed changes and clarifications that accurately reflect the intentions of all parties who participated in the negotiation of the Compact Amendments. My Government supports the Bill in every aspect. In fact, we hope that the U.S. Congress can see fit to enact it as soon as reasonably possible. Several of its provisions address situations urgently in need of resolution.

Sections 2 and 3 would implement agreements reached shortly after Congress' action on the Compact Amendments. The language replaces the original Compact arrangement regarding disaster assistance with a redesigned structure. Previously the entire responsibility was borne by FEMA. Under the new arrangement the United States Agency for International Development, FEMA and the Government of the FSM all would play active roles in respect of disaster response.

While we do welcome and support this new arrangement, Mr. Chairman, I would like to take this opportunity to express the deep gratitude of all our people to the FEMA organization and the many fine people within it who, for so many years have faithfully provided generous assistance at our times of darkest need. Sadly, natural disasters in many forms are frequent visitors to our islands, and we remain incapable of adequate

response within our own means. We take comfort in knowing that FEMA retains an important place in our disaster response regime.

Section 4 corrects an oversight. The Compact Amendments Act makes FSM and RMI students attending colleges in the US, its Territories, and in the FSM or the Marshalls, eligible to receive BEOG and College work-study assistance for four years. The drafters simply were not aware at the time that there are about 150 FSM students enrolled at the Community College of Palau, or else they would have been included. The Bill extends eligibility to the FSM or RMI students at the Palau Community College.

Section 5 restores the ability of FSM, RMI and Palau citizens in the US to access the Legal Services Corporation by clarifying Compact language. Our citizens received this benefit under the first Compact, as had been intended, until about 5 years ago when LSC unilaterally reinterpreted the Compact language and refused to provide further services. Even though this amounted to a breach of the Compact obligation we have not been able, until now, to rectify it. If budget considerations present problems we would prefer to take such issues head on, rather than see individual US agencies be permitted to resort to expedient, after-the-fact and unilateral revisionism.

Finally, we also fully support the technical amendments set forth in Section 6.

Mr. Chairman, as you know, many if not most needs that are experienced regarding the Compacts of Free Association are felt by all three of the Freely Associated States. Thus, respectfully, I would like to add that the FSM shares the additional concerns raised by Palau and the RMI in their testimonies. We ask that consideration be given to dealing with them in this Bill, but if that is not possible, that a dialogue ensue with an eye toward possible action in the near future.

We remain very grateful to the Congress for having established the Supplemental Education Grant to ease the impact of discontinuance in the Compact Amendments of a number of long-running and important educational programs under Compact I. However, the capacities of our education departments are sorely taxed by the requirement that we justify the continuance of this grant on an annual basis. The essential activities being maintained with this grant are not new, nor are they experimental. This grant is, in any event, subject to the same intensive accountability requirements that apply to all Compact grants. We believe that the additional burden of securing re-appropriation each year should be seen as serving no one's interests. If nothing else, it makes forward planning a roll of the dice. This is not conducive to the sharp focus on education that is a hallmark of the philosophy underlying the Compact Amendments. The FSM joins others in asking the Congress to consider converting the SEG to a long-term appropriation.

The second additional concern we would raise, Mr. Chairman, is the need for a small amendment to Title 17, Section 111 of the United States Code in order to restore the ability of the Freely Associated States to air videotaped broadcasts of US network programming. This has been going on since Trusteeship days, but very recently had to be discontinued when the Micronesian company providing such services was sold to a US

company, giving rise to copyright problems. It is easily remedied by putting the FAS on the same footing as Alaska, Hawaii, Guam and the CNMI. Without belaboring the issue, it would hardly seem to serve US interests to cut off US-sourced TV programming in the FAS, leaving the field to Japan, China and other foreign interests.

Next, I wish to call attention to Section 342 of the Amended Compact, which provides to the FAS the opportunity to have one qualified student at all times enrolled at each of the US Coast Guard and the Merchant Marine Academies. This benefit, which was also extended in the original Compact, has proved difficult to utilize, partly because a Micronesian student, upon graduation, cannot be commissioned in the Coast Guard and cannot receive merchant mariner's licenses and associated documents. We are well aware of the citizenship limitations that our citizens so often have encountered in so many areas of US employment. We realize that the two examples raised here fall into that category. But with our "best and brightest" men and women fighting, being maimed and dying (we have lost two up to now) alongside US citizens in Iraq and elsewhere, we simply ask whether the time has not come at least to open fully the door of opportunity for advancement that is cracked in Section 342 of the Compact. Surely, if nothing else, qualified FAS merchant mariners, Academy graduates or otherwise, should be placed on an equal footing to acquire US papers and pursue beneficial careers upon the sea to which they were born – advancing at the same time progress toward the shared US/FAS objectives under the Compacts.

As always, Mr. Chairman and esteemed Members of the Committee, the Government of the Federated States of Micronesia places great value on opportunities such as this, for us to continue our dialogue on Compact-related issues. We deeply appreciate the resources you devote to this relationship through your regular staff work and through your periodic trips to our region. We express our thanks for your attention to the needs addressed in H.R. 2705, and respectfully request the Committee's favorable action on the Bill.



EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS

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August 2, 2007

The Honorable Eni Faleomavaega
Member of Congress
United States House of Representatives

Dear Congressman Faleomavaega,

I want to thank you and your staff for all of their efforts in organizing and holding the Oversight Hearing/Briefing on the overview the Marshall Islands' Compact of Free Association on June 25, 2007.

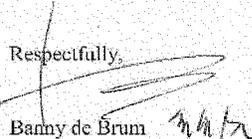
I found your leadership, your questions, and your comments to be very thoughtful and attentive to the needs of the Marshall Islands. I recognize that there was much undue stress placed on you as a result of this hearing and I appreciate your patience as you recognize how large and complicated some of the issues covered in the hearing have become over the years. The government of the Marshall Islands appreciates your diligent efforts and willing attitude as we continue to work with you and your colleagues in the U.S. government.

I am including with this letter the documents requested by you and your Subcommittee on Asia, the Pacific, and the Global Environment at the hearing. The documents included are:

- The Changed Circumstances Petition, with attachments,
- The Thornburg Report
- The 8-Point Proposal for the Kwajalein Land use Agreement

Should you or anyone else on your Subcommittee need further documents or answers to questions regarding the Compact, please do not hesitate to contact me or a member of my staff. Again, thank you for your continued leadership on issues of importance to the RMI, particularly the injuries and damages resulting from the U.S. nuclear weapons testing program.

Respectfully,

Banny de Brum 

PETITION
PRESENTED TO THE CONGRESS
OF THE UNITED STATES OF AMERICA
REGARDING CHANGED CIRCUMSTANCES
ARISING FROM U.S. NUCLEAR TESTING
IN THE MARSHALL ISLANDS

THE PRESIDENT OF THE UNITED STATES SENATE
AND
THE SPEAKER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES

Submitted by
THE GOVERNMENT OF THE REPUBLIC OF
THE MARSHALL ISLANDS (RMI)
PURSUANT TO ARTICLE IX OF THE NUCLEAR CLAIMS
SETTLEMENT APPROVED BY CONGRESS IN
PUBLIC LAW 99-239

September 11, 2000

As provided by Congress in Article IX of the nuclear test claims settlement enacted in law under Title II, Section 177(c) of the Compact of Free Association Act of 1985 [P.L. 99-239], the Republic of the Marshall Islands respectfully submits this Changed Circumstances Petition to the Congress of the United States. The Government of the Republic of the Marshall Islands hereby notifies the Congress of its determination that the criteria have been satisfied under applicable U.S. federal law for further measures to provide adequately for injuries to persons and property in the Marshall Islands that have arisen, been discovered, or adjudicated since the Compact took effect on October 21, 1986.

Section 177 of the Compact of Free Association provides that "The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands...for loss or damage to property and person...resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958."

As detailed herein, injuries and damages resulting from the United States Nuclear Testing Program have arisen, been discovered, or have been adjudicated in the Marshall Islands since the Compact took effect. These injuries and damages could not reasonably have been discovered, or could not have been determined, prior to the effective date of the Compact. Such injuries, damages and adjudication render the terms of the Section 177 Agreement manifestly inadequate to provide just and adequate compensation for injuries to Marshallese people and for damage to or loss of land resulting from the U.S. Nuclear Testing Program.

The terms of Section 177 represent a politically determined settlement (Attachment I, Hills testimony) rather than either a good faith assessment of personal injury or property claims, a legally adjudicated determination of actual damages, or monetary award for such damages. As a political settlement, Section 177 of the Compact requires that the U.S. provide \$150 million to the RMI to create a Fund that, over a 15-year period of the Compact, was intended to generate \$270 million in proceeds for disbursement "as a means to address past, present and future consequences of the U.S. Nuclear Testing Program, including the resolution of resultant claims" [Preamble of the 177 Agreement].

In lieu of an assessment of damages by the Federal courts, the government of the Marshall Islands accepted the U.S. proposal that it espouse and settle the claims of the Marshallese people arising from the nuclear testing program conducted by the U.S. in conjunction with the establishment of a Claims Tribunal. The U.S. expressly recognized that its technical assessment of radiological damage to persons and property in the RMI was limited to a "best effort" at the time of the Compact (Attachment II, Scientific Analysis), and was based on limited disclosure of available information and incomplete scientific knowledge. As a result, further adjudication of claims by an internal RMI Nuclear Claims Tribunal was agreed to by the United States.

In addition to creating the Tribunal, the U.S. agreed, in exchange for the RMI espousing and settling its citizens claims, to adopt a "Changed Circumstances" procedure, through which Congress accepted the authority and responsibility at a later date to determine the adequacy of the measures adopted under the 177 Agreement to compensate for the injuries and damages caused by the U.S. Nuclear Testing Program. Accordingly, in approving the Section 177 Agreement, Congress accepted the responsibility to determine if further measures are required to provide just and adequate compensation in light of the awards that have been made by the Tribunal, as well as the injuries and damages that have become known or been discovered since the settlement was ratified.

For the RMI to seek and ask for the Congress to provide additional funding is consistent with the commitment of the United States to provide just and adequate compensation for the nuclear claims. Indeed, such funding is contemplated by the Agreement and is the political process intended by Congress as a means to seek just and adequate compensation – if possible without further litigation. Under relevant federal court decisions, it is possible that claims could be recommenced in U.S. courts based on failure of the agreement to provide just and adequate compensation (Attachment III, Legal Analysis).

The settlement specifically authorizes direct access to the Congress of the United States by the RMI if “Changed Circumstances” were discovered or developed after the Agreement took effect, and render the provisions of the Agreement manifestly inadequate. As more knowledge and information emerges about the damages and injuries wrought by the testing program, the manifest inadequacy of Section 177 has become clear. As confirmed in Attachments IV, V, and VI, the most immediate needs resulting from inadequacies of the Agreement are funding to award personal injury claims through the Tribunal, funding to satisfy the Tribunal awards for property damage claims, and funding to address the gross inability of the 177 medical program to effectively address the health consequences of the U.S. Nuclear Testing Program.

Payment of personal injury awards made by the Claims Tribunal

As of August 15, 2000, the Nuclear Claims Tribunal established pursuant to the 177 Agreement had awarded \$72,634,750 for personal injuries, an amount \$26.9 million more than the \$45.75 million total available under Article II, Section 6(c) for payment of all awards, including property damage, over the Compact period. To date, at least 712 of these awardees (42%) have died without receiving their full award (Attachment IV, Decisions of the Nuclear Claims Tribunal).

Payment of property damage awards made by the Claims Tribunal

The Claims Tribunal awarded the Enewetak people compensation for damages they suffered as a result of the U.S. nuclear testing at Enewetak. The compensation included awards for loss of use of their land, for restoration (nuclear cleanup, soil rehabilitation and revegetation), and for hardship (for suffering the Enewetak people endured while being exiled to Ujelang Atoll for a 33 year period). The Tribunal fully deducted the compensation the Enewetak people received, or are to receive, under the Compact. The Tribunal determined that the net amount of \$386 million is required to provide the Enewetak people with the just compensation to which they are entitled. The Tribunal does not have the funds to pay the \$386 million award to the Enewetak people (Attachment V, Enewetak Land Claim).

Gross inability of the 177 medical program to effectively address health consequences

One of the measures adopted under the Section 177 Agreement to compensate the people and government of the Marshall Islands was a health care program for four of the atoll populations impacted by the testing program, including those who were downwind of one or more test, and the awardees of personal injury claims from the Tribunal. The medical surveillance and health care program established under the Section 177 Agreement has proven to be manifestly inadequate given the health care needs of the affected communities. The 177 Health Care Program was asked to deliver appropriate health care services within an RMI health infrastructure that was not prepared or equipped to deliver the necessary level of health care. Funding provided under Article II, Section 1(a) of the 177 Agreement has remained at a constant \$2 million per year. As a result of this underfunding, the 177 Health Care Program has only \$14 per person per month as compared to an average U.S. expenditure of \$230 per person per month for similar services (Attachment VI, Medical Analysis).

It is imperative that a new medical program be implemented, with adequate funding that empowers the affected downwind and other exposed communities to provide primary, secondary, and tertiary healthcare for their citizens in a manner compatible and coordinated with RMI and U.S. health care programs and policies.

Based on the inadequacy of funds for personal injury claims, property damage claims, and health consequences from the U.S Nuclear Testing Program, the RMI Government respectfully requests Congress to:

1. Authorize and appropriate \$26.9 million so the Claims Tribunal can complete full payment of the personal injury awards made as of August 15, 2000. Of this amount, approximately \$21 million is needed to pay off the estates of the 712 individuals known to have died. An additional \$5.9 million is needed to make full payments of awards to individuals who are still alive; approximately half of that amount is needed to pay 80 or more individuals who presently suffer from a compensable condition which is likely to result in their death and the remaining half is owed to other living awardees (Attachment IV, Decisions of the Nuclear Claims Tribunal).
2. Authorize and appropriate \$386 million to satisfy the Claims Tribunal award to the Enewetak people (Attachment V, Enewetak Land Claim).
3. Authorize and appropriate \$50 million in initial capitol costs to build and supply the infrastructure necessary to provide adequate primary and secondary medical care to the populations exposed to radiation from the U.S. Weapons Testing Program (Attachment VI, Medical Analysis).
4. Authorize and appropriate \$45 million each year for 50 years for a 177 Health Care Program to provide a health care program for those individuals recognized by the U.S. Government as having been exposed to high levels of radiation during or after the testing program, including those who were downwind for one or more test, and the awardees of personal injury claims from the Tribunal (Attachment VI, Medical Analysis).
5. Extend the U.S. Department of Energy medical monitoring program for exposed populations to any groups that can demonstrate high levels of radiation exposure to the U.S. Congress (Attachment II, Scientific Analysis, issue #6).

Beyond the five immediate changed circumstances, the RMI Government will present information to the U.S. Congress in the future regarding several other areas of changed circumstances. Some of these areas include:

Payment of property damage awards made by the Claims Tribunal

In April 2000, the Claims Tribunal issued its first award for property damage to the people of Enewetak Atoll. The full award of \$386 million addresses the claims of the Enewetak people for loss of use of their land, for costs of restoration, and for hardship suffered while in exile for a 33 year period. Additionally, the Claims Tribunal is expected to make an award for property damage to the people of Bikini. Two other property damage claims in the process of being developed include one by Rongelap, Alinginae, and Rongerik and, and one by Utrik, Taka, Tongai/Bokaak. These claims will

be presented to the Tribunal in the near future. The pending cases will better define the level of compensation that will ultimately be required to fully repair damage to all islands, including those not currently being rehabilitated for resettlement, and to provide for adjudication of all other claims.

Funding of environmental rehabilitation and resettlement

The U.S. Congress has recognized the need for environmental restoration to reduce radioactive contamination to acceptable levels at Bikini, Enewetak, and Rongelap atolls by establishing resettlement trust funds for those atolls. The Enewetak trust fund for the rehabilitation and resettlement of Enjebi Island is only \$10 million while evidence presented before the Claims Tribunal demonstrated that over \$148 million is required for environmental restoration of the atoll and resettlement of a portion of its population, the Enjebi people. Similarly, preliminary estimates for cleanup costs at Bikini and Rongelap atolls (approximately \$205-505 million for Bikini Atoll and \$100 million for just one island on Rongelap, Rongelap Island) exceed the funding levels currently provided. No rehabilitation and resettlement trust fund presently exists for Utrik.

Support for further medical surveillance and radiological monitoring activities, including tracer chemicals and toxic materials

Under Article II, Section 1 (a) of the 177 Agreement, \$3 million was provided to the RMI for medical surveillance and radiological monitoring activities. Those funds were used to conduct a nationwide radiological survey, a medical examination program in the outer islands, and a thyroid study on Ebeye Island. While valuable information was obtained from these activities, such as identification and treatment of radiogenic illnesses, the surveys indicate that thyroid and other radiation related illnesses are evident in populations that are presently unmonitored, yet the funds for medical surveillance are exhausted.

The health consequences of the U.S. Nuclear Testing Program are greater than originally suspected. Additionally, radiation from the testing program reached every corner of the Marshall Islands. Medical surveillance should have been, and should be targeted at monitoring frequencies of all real and potential health consequences of the testing program in a longitudinal fashion. It is only in this manner that a complete understanding of health trends and associations of specific illness and radiation can be appreciated. An onsite national health surveillance system needs to be developed, implemented, and sustained to monitor all health consequences of the nuclear weapons testing program for the next fifty years.

Occupational safety program

Section 177 does not include an occupational safety program for Marshallese and other workers involved in environmental remediation or cleanup programs. As a result, Marshallese and other workers are exposed to occupational sources of radiation. Medical screening of past and present radiation workers is greatly needed to reduce the risk of further illness and claims.

Community education and development programs

Section 177 provides no means to educate Marshallese citizens in radiation related fields or to build local capacity to undertake research, archive relevant information, or educate the public about the consequences of the U.S. Nuclear Testing Program in the Marshall Islands.

Nuclear stewardship program

Section 177 does not provide programs for communities to develop strategies for safely containing radiation and living near radioactive waste storage areas.

The inadequacies presented in this petition “could not reasonably have been identified” in the 177 Agreement [Article IX] both because the full extent of the damages caused by the testing program had never been assessed and because scientific and medical developments since the settlement was consummated would have rendered any prior assessment not just manifestly inadequate, but null and void. What might have been acknowledged by the Government of the United States in 1983 as “damages resulting from the Nuclear Testing Program” is only a small portion of what such injuries and damages are now known to be.

The 67 atomic and thermonuclear weapons detonated in the Marshall Islands allowed the United States Government to achieve its aim of world peace through a deterrence policy. The Marshallese people subsidized this nuclear détente with their lands, health, lives, and future. “As an ally and strategic partner, the Republic of the Marshall Islands has paid a uniquely high price to define its national interest in a manner that also has been compatible with vital U.S. national interests” (H. Con. Res. 92 – Sponsored by the Honorable Benjamin Gilman and the Honorable Don Young). As a strategic partner and friend of the United States, the RMI remains hopeful that Congress will take action to address the inadequacies of the 177 Agreement. The Government of the Republic of the Marshall Islands looks forward to working closely with the Congress of the United States to respond to changed circumstances in the Marshall Islands.

Respectfully submitted,

Kessai H. Note
President
Republic of the Marshall Islands

Attachments:

- I - Hills Testimony
- II - Scientific Analysis
- III - Legal Analysis
- IV - Decisions of the Nuclear Claims Tribunal
- V - Enewetak Land Claim
- VI - Medical Analysis

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**BEFORE THE NUCLEAR CLAIMS TRIBUNAL
REPUBLIC OF THE MARSHALL ISLANDS**

_____))
In the Matter of) NCT No. 23-0902
)
the People of Enewetak, et al.,)
)
Claimants for Compensation)
_____)

ORDER

On April 13, 2000, the Tribunal issued its DECISION AND ORDER in this claim, awarding damages in the amount of \$324,949,311. In that decision, the Tribunal ordered a hearing be set for post judgment proceedings. On April 26, 2000, claimants filed a MOTION TO AMEND MEMORANDUM OF DECISION AND ORDER, requesting the inclusion of certain rehabilitation costs. The Defender of the Fund did not oppose this MOTION and on May 5, 2000, the Tribunal issued an ORDER amending its April 13 DECISION to include an additional \$16.1 million for soil rehabilitation and revegetation. On May 26, 2000, a hearing was held and a briefing schedule established for examination of the outstanding issues of post-judgment interest and attorneys fees and costs. The parties filed their respective briefs in a timely manner and on June 6, 2000 filed a stipulation dealing with future loss of use, prior compensation, and prejudgment interest. At the Tribunal's request, the parties filed on July 21, 2000, a REVISED STIPULATION RE FUTURE LOSS OF USE, PRIOR COMPENSATION AND INTEREST.

Stipulation
The parties offered a REVISED STIPULATION RE FUTURE LOSS OF USE, PRIOR COMPENSATION, AND INTEREST, filed July 21, 2000 to address certain issues in the Tribunal's decision. The stipulation as to future loss of use incorporates a calculation which utilizes total of 1104.16 acres as opposed to the 1305.78 acres employed in the appraisal initially submitted to the

1 Tribunal. This change reflects the parties' agreement as to the proper acreage which will be denied to
2 claimants' use in the future. The prior compensation portion of the stipulation reflects the inclusion of
3 certain annual payments under the Section 177 Agreement (\$3.25 million received by claimants in 1997,
4 1998, and 1999) which were not included in the calculations adopted in the Tribunal's April, 2000
5 DECISION. In the April 2000 DECISION, the Tribunal determined the value of the future loss of use
6 (adjusted for Section 177 payments) to be \$50,154,811. Based upon the STIPULATION, this value
7 would change to \$47,001,908.¹ The bases of the stipulation are reasonable and will be adopted.

8 The final portion of the STIPULATION relates to pre-judgment interest, from the date of the
9 loss of use calculation, January 24, 1997, to the date of entry of the decision, April 13, 2000. The rate of
10 interest agreed to by the parties was 7 percent. The amount of interest to which the parties stipulated
11 was \$47,681,122. The inclusion of interest to the date of the decision is appropriate and consistent with
12 the methodology utilized by the parties in assessing the loss of use to claimants.

13
14 Attorneys Fees

15 This issue was extensively briefed by the parties in 1995. The Tribunal's ORDER of December
16 7, 1995 addressed the matters raised in claimant's MOTION for attorneys fees and costs filed June 19,
17 2000. The December 1995 ORDER allowed the Claimants to introduce evidence relating to attorneys
18 fees incurred by the People of Enewetak in the prosecution of their claims against the U.S. for damages
19 from the U.S. nuclear testing program in the Pacific before the U.S. Court of Claims prior to the
20 effective date of the Compact of Free Association. Claimants have been unable to develop evidence to
21 support this part of the claim in the time since that ORDER and the Tribunal does not believe that
22 additional time will reasonably lead to the discovery of additional evidence supporting this aspect of the
23 claim. The Tribunal further declines the invitation to award attorneys fees for attorneys fees before the
24 Tribunal prior since its inception and prior to the amendment to the Nuclear Claims Tribunal Act by P.L.
25 1993-56, which removed the authority of the Tribunal to award attorneys fees.

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¹Present value of future rents (\$60,387,552) less present value of future Section 177 payments (\$13,385,644) as of January 1997.

1 Post-Judgment Interest

2 It seems clear that were this a determination of just compensation in a taking action against a
3 governmental body, post judgment interest would be awarded. However, as noted in the Tribunal's
4 DECISION AND ORDER of April 13, 2000, while principles of just compensation may be referenced
5 in determining what is necessary to make claimants whole, this is not an eminent domain proceeding.
6 "Neither the U.S. nor RMI government is a party to this action, and consequently certain elements in a
7 determination of just compensation are not present." (MEMORANDUM OF DECISION AND
8 ORDER, April 13, 2000, p. 3)

9 The Tribunal, in making its award of damages, has evaluated the harm suffered by claimants and
10 issued an award. The funds available for payment of that award are far short of the amount awarded.
11 Assuming the existing compensation framework, payment of award would be made over a period of
12 years from the annual proceeds of the Section 177 Fund. Even under the most optimistic of scenarios,
13 with the funds currently available, full payment of the award would take over 100 years. Unlike a just
14 compensation case where the award may be enforced against a governmental entity, the Tribunal has a
15 limited fund and an award of interest could arguably only dilute further the funds available for payment.

16 An award of interest in this case could be seen to work unfairly toward personal injury award
17 recipients to whom interest is not awarded. Because of the structure of the funding mechanism, the
18 Tribunal is forced to make pro rated payments of awards from the annual proceeds of the Fund. If post
19 judgment interest were to be a component of these payments, the administrative burden of constantly
20 recalculating unpaid awards would be significant.

21 Nonetheless, it is clear that whatever the value of the award, it will decline over time as inflation
22 takes its toll. In the absence of post judgment interest, claimants who receive property damage awards
23 at different times will be unequally treated in that the value of the later awards will be greater due to the
24 passage of time and effect of inflation. If funds were available to pay property awards upon their entry,
25 this would not be a problem. However, the longer it takes to make final payment, the less the actual
26 value of the award. The absence of post judgment interest would have the effect of penalizing
27 claimants who receive an award earlier than those who come later in the process. While it could be
28 argued that personal injury defendants may be unfairly treated if property claimants' awards include a
29 post judgment interest component, there are some significant differences between the personal injury

1 awards and property damage awards.

2 Property taken by the government without just compensation is subject to constitutional
3 remedies. Personal injuries by the government are not similarly protected. Recipients of personal injury
4 awards from the Tribunal have been the beneficiaries of a statutory presumption which relieves them of
5 the burden of proving their injury was caused in fact by exposure to radiation from the nuclear testing
6 program. The effect of this presumption is to be over inclusive, so that some of those receiving personal
7 injury awards have suffered from injuries which were not in fact caused by the testing program.
8 Property damage claimants, on the other hand, have met a heavier burden of proof in relating their
9 damage to the effects of the testing program. Arguably the absence of post judgment interest is the price
10 of the presumption.

11 The Defender of the Fund correctly notes that there is no specific statutory authority for
12 including post judgment interest in the award. However, the Nuclear Claims Tribunal Act provides:

13

14 In determining the proper award of compensation, the Tribunal or the Special Tribunal,
15 whichever is the decision maker, shall, in accordance with Section 2 of the Section 177
16 Agreement, take into account the validity of the claim, any prior compensation made as a
17 result of such claim and such other factors as it may deem appropriate.²
18

19 In the case of property damage claims, the Tribunal deems the inclusion of post judgment interest to be
20 appropriate in the following manner. It will be applied to the loss of use and restoration portions of the
21 award, but not the hardship portion of the award. The hardship damages, although arguably
22 consequences of the damage to property, are more in the nature of personal injuries and not subject to
23 the same considerations as those damages which are more closely related to a just compensation claim.
24 The possible inequities of post judgment interest between personal injury and property damage
25 claimants will be addressed through the payment schedule. The total loss of use damages for past and
26 future loss of use amount to \$244,000,000,³ while the total cost of restoration is \$107,810,000.⁴

³REVISED STIPULATION RE FUTURE LOSS OF USE, PRIOR COMPENSATION, AND INTEREST, filed July 21, 2000, Table 7A-2.

⁴This includes the \$91,710,000 awarded in the April 13, 2000 DECISION, and the \$16,100,000 from the Tribunal's May 5, 2000 ORDER, amending the April 13 DECISION.

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ORDER

1. The REVISED STIPULATION is accepted and the Tribunal's April 13, 2000 DECISION is AMENDED to reflect future loss of use damages of \$47,001,908 rather than \$50,154,811 and the addition of prejudgment interest in the amount of \$47,681,122.

2. Claimants' MOTION for attorneys fees is DENIED.

3. Claimants' MOTION for post judgment interest is GRANTED as follows: interest in the amount of 7% per year is awarded on the loss of use damages of \$244,000,000 and on restoration damages of \$107,810,000.

Dated this 3rd day of August, 2000.

/s/Oscar de Brum

Oscar de Brum
CHAIRMAN

/s/Gregory J. Danz

Gregory J. Danz
MEMBER

/s/James Plasman

James Plasman
MEMBER

8-Point Conceptual Proposal
MUORA Extension for Kwajalein Atoll

Presented to the U.S. Chief Negotiator
4th Round, RMI-U.S. Compact Negotiations
August 29, 2002
Honolulu, Hawaii

The following is a proposal to the U.S. Chief Negotiator for consideration to provide the United States extended access to Kwajalein Atoll; provide adequate compensation to landowners; ensure economic stability; and improve living standards for all residents of Ebeye and surrounding atoll communities.

This proposal was prepared in consultation with and concurrence of the Kwajalein landowners and is the official position of the RMI government to establish a basis for further discussions with the United States government (USG) with respect to the extension of the MUORA.

The following are the components of the proposal:

1. MUORA Term

In response to the USG offer to extend the MUORA from 2016 to 2023, with an option to extend for an additional 20 years, the RMI agrees with such an extension however would propose that the MUORA extension be on a continuous term until 2043. In addition, the RMI proposes a 10-year option exercisable at least 7 years (2036) prior to 2043.

2. Kwajalein Landowner Compensation

It is proposed that the current compensation base payment of \$7.1 million be increased to \$11.9 million. The increase takes into account the cumulative full inflation adjustment with the base year of 1981, and population change. Taking these two factors into account, the 2004 adjusted payment is proposed at \$19.1 million to be fully indexed annually.

The Kwajalein landowners, per an agreement to be prepared with the RMI government, pledge to review, and if warranted, to take steps to ensure the equitable distribution of the compensation payments.

3. Kwajalein Landowner Trust Fund

The Kwajalein landowners, per an agreement to be prepared with the RMI government, will establish a Kwajalein Landowner Trust Fund. The purpose of the fund will be to provide income to landowners after the United States' use of Kwajalein Atoll ends. The Fund will be capitalized from such funding sources as agreed to between the RMI government and Kwajalein landowners.

4. Kwajalein Impact

The current \$1.9 million is extended per the term of the MUORA to be inflation adjusted per Title Two. These funds will be used for landowner-related development programs,

such as housing improvements and scholarship programs. The funds will be administered in accordance with a strategic plan to be prepared by the Kwajalein Atoll Development Authority and the RMI government and reported on per the Compact's Fiscal Procedures Agreement (FPA).

5. Ebeye Special Needs and an Environmental Relief Fund

The RMI considers as responsive the USG's interest in agreeing to provide \$4.1 million, inflation adjusted, for the people of Ebeye and surrounding atoll communities for the MUORA term. As indicated, these funds will be administered by the RMI government and fulfill Title Two requirements (including the FPA) and be used for education, health and other social service needs, and infrastructure development. This provision of Title Two grant assistance will continue so long as the MUORA remains in effect.

It is also requested that the USG provide an additional \$1.7 million annually for environmental assessment and monitoring purposes. While some of the funding will be used to provide environmental-related management services undertaken by the RMI's Environmental Protection Agency in Kwajalein, a majority of the funding will be set-aside in an Environmental Relief Fund to be used as a "sinking fund" to support environmental protection and relief for the atoll area. It is requested that the annual amount also be inflation adjusted per Title Two. The fund will be accessed based on criteria established by the RMI government and Kwajalein landowners.

6. Tax Provisions

In accordance with its national priorities and constitutional processes, the RMI proposes to increase taxes and implement such other measures related to the United States use of Kwajalein Atoll. The tax revenues, estimated at \$14 million annually, will be earmarked to improve the long-term welfare, including the use of a trust fund, and living standards of the communities affected by the military use of Kwajalein Atoll.

7. Early Termination

In case of early termination of the MUORA by the USG, an early termination payment clause will be exercised in 2033 in an amount representing the NPV of 10 years of Kwajalein landowner compensation payments, Kwajalein Impact and Title Two Ebeye Special Needs. In addition, compensation will be provided for resettlement and repatriation.

8. SOFA

With the extended term of the MUORA, the RMI will seek to amend the SOFA to authorize the subcontracting of certain functions or activities to Marshallese owned small businesses to promote private sector development for the Marshallese communities at Kwajalein. In addition, the RMI would propose the establishment of a Joint Labor Relations Board in the SOFA or MUORA to address issues concerning Marshallese workers at Kwajalein including wages, terms and conditions of employment, training and advancement opportunities, complaints, and the relationship of the Marshallese employees with other employees on the work force.

BIKINI DECISION SUMMARY

This claim is a class action for and on behalf of the People of Bikini for damage to property resulting from the U.S. Nuclear Testing Program brought pursuant to § 123 of the Nuclear Claims Tribunal Act of 1987, as amended.

Bikini Atoll is located in the northwestern Marshall Islands and was used by the Government of the United States as a testing site for nuclear weapons from 1946 to 1958. The People of Bikini were removed from Bikini Atoll on March 7, 1946. Subsequently 23 atomic and hydrogen bombs were detonated there over the course of the next 12 years changing the atoll's topography and leaving it in a highly contaminated condition from residual radioactivity.

Damages arising from the results of those tests have been awarded to the People of Bikini in three general categories: loss of use; costs to restore; and consequential damages for hardship suffered by the Bikinians resulting from their removal.

The Bikinians have not had use of their atoll since March 7, 1946, and this loss of use will continue on into the future until the necessary remediation takes place to restore full use and habitability. Despite this long period of time, it was never the intention of the United States or any governmental authority to permanently preclude the Bikinians from returning to their home atoll. Rather, the use of Bikini as a nuclear testing site has always been considered "temporary" by all parties. Accordingly, the Tribunal finds that these facts support a "temporary taking" under applicable case law. Expert appraisal witnesses provided reports and gave testimony on the fair market rental value of the land for the period of denied use. After setting off prior compensation paid to the People of Bikini, the Tribunal has determined that the value for loss of use both past and into the future is \$278,000,000.

Radiological conditions at Bikini today remain in excess of radiation protection standards established by the U.S. Environmental Protection Authority applied to severely contaminated sites in the United States. Thus, radiological clean up remains necessary so that Bikini can support human habitation again with access to and use of the atoll's resources. The Tribunal received detailed written reports and heard expert testimony with respect to various remediation strategies to accomplish the required clean up. Over 20 different strategies were considered ranging in cost from \$217.7 million to \$1.419.6 billion. From this list, four strategies were identified which would best accomplish the required clean up in a cost effective manner. These four remediation strategies were evaluated utilizing U.S. EPA clean-up criteria and further assessed and balanced in view of Tribunal concerns, which resulted in the final selection of a remediation strategy consisting of potassium treatment and soil removal with the waste utilized for construction of a causeway. After deducting prior compensation received by the People of Bikini, the Tribunal has determined that the net award for restoration costs is \$251,500,000.

The People of Bikini have also suffered many hardships through their years in exile from Bikini Atoll. These hardships, consisting of severe food shortages and hunger, disease, loss of culture and other types of pain and discomfort, were more severe at certain times than at other times. The period of relocation to Rongerik Atoll from 1946 to 1947 was the most severe with the Bikini community suffering from starvation. The period of habitation in Kili up to 1982 also presented severe hardships to the People of Bikini with frequent food shortages and no available lagoon resources. Consequently, the Tribunal has devised a scheme of compensation based on the level of hardship during those two periods on the Bikini community. The total compensation per individual for the periods specified is consistent with the parameters and compensation paid by the Tribunal under its personal injury compensation program and with the award made to the People of Enewetak. The Tribunal has awarded the People of Bikini \$33,814,500 for consequential damages resulting from the Nuclear Testing Program.

The Tribunal has determined that the total net amount of compensation due to claimants in this case for the categories of damages described above is \$563,315,500.

[NOTE: The material submitted for the record by Mr. Plasman is not reprinted here but is available in committee records. The 1955 Breslin Cassidy report can be accessed on the Internet by going to: http://worf.eh.doe.gov/data/ihp1c/0411_a.pdf (accessed on 11/7/07).]