

**STATEMENT OF THE PEOPLES OF BIKINI, ENEWETAK,
RONGELAP AND UTRIK
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
July 15, 2003**

I. Introduction

Mr. Chairman, thank you for giving the peoples of the four atolls of Bikini, Enewetak, Rongelap and Utrik the opportunity to testify on House Joint Resolution (H.J.R.) 63, a bill to reauthorize the Compacts of Free Association with Micronesia and the Marshall Islands.

The most remarkable aspect of the testimony of Mr. Short, the U.S. Compact negotiator, is that a Congressman or legislative aide new to this area can read the entire statement and never realize that the United States conducted 67 atmospheric nuclear tests in the Marshall Islands between 1946 and 1958, that some of our people were irradiated by fallout and others moved from their islands, and that lingering radiation has forced thousands of us to remain exiles from our atolls nearly 60 years after the testing program began.

The nuclear legacy in the Marshall Islands remains the proverbial elephant at the garden party. It's there, everyone knows it, but no one talks about it. Not one word appears on this topic in the U.S. Government's statement. Indeed, this opportunity to submit testimony today before Congress constitutes a greater recognition to the peoples of the four atolls than that accorded by the executive branch, which, under both the Clinton and Bush Administrations, has not seen fit to include issues from the nuclear testing program in the Compact negotiations. The legacy of these tests, like radiation, still lingers in the islands after more than half a century and will not go away.

The silence of the Executive Branch on nuclear claims in its statement before this Committee is consistent with the refusal of the U.S. negotiators to address nuclear claims issues in the Compact renewal negotiations. What is not consistent is that after imposing a blackout on these issues in the negotiations, the U.S. Government is attempting in its legislative proposal to insert language that is prejudicial to the orderly implementation of the nuclear claims settlement still in effect under Section 177 of the Compact. The failure of the Administration to disclose this to the Committee in its testimony is surprising, to say the least, and seems to us to do a disservice both to the Congress and to the Compact renewal approval process.

II. Background on Nuclear Testing Program in the Marshall Islands

The saga of the U.S. nuclear testing program in the Marshall Islands has been recounted in great detail in dozens of government reports, Congressional hearings, histories and films. A brief summary is as follows: The people of Bikini were moved off

their atoll by the U.S. Navy in 1946 to facilitate Operation Crossroads, the world's fourth and fifth atomic bomb explosions. The people of Enewetak were moved off their islands the next year to prepare for a second series of atomic tests. In the 12-year period from 1946-1958, when the Marshall Islands was a United Nations Trust Territory administered by the United States, the United States conducted 67 atomic and hydrogen atmospheric bomb tests in islands, with a total yield of 108 megatons, which 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.

Radioactive fallout from one of those tests – the March 1, 1954 Bravo shot at Bikini – drifted in the wrong direction and irradiated the 236 inhabitants of Rongelap and Utrik Atolls as well as the crew of a Japanese fishing vessel. Bravo, the largest U.S. nuclear test in history with an explosive force equal to nearly 1,000 Hiroshima-type atomic bombs, 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.¹ President Eisenhower told a press conference in late March 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. . .”² Put another way, if Bravo had been detonated in Washington, DC, and the fallout pattern had headed in a northeast direction, the entire population from Washington to New York would have been killed, while near-lethal levels of fallout would stretch from New England to the Canadian border.³

The statistics 57 years after testing began:

- The Bikinians have been exiled from their homeland since 1946, except for a brief period after President Johnson announced in 1968 that Bikini was safe and the people could return. Many of the islanders returned and 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 the people were moved off immediately. What went wrong? An AEC blue-ribbon panel, in estimating the dose the returning Bikinians would receive, relied on an erroneous calculation by one of their scientists, which threw off their calculations by a factor of 100. “We just plain goofed,” the scientist told the press.⁴

¹ See, e.g., Peter Pringle and James Spigelman, The Nuclear Barons (Holt, Rinehart and Winston 1981) pp. 243-59.

² New York Times, March 25, 1954, pp. 1, 18.

³ Jonathan M. Weisgall, Operation Crossroads: The Atomic Tests at Bikini Atoll (Naval Institute Press 1994), pp. 304-05.

⁴ Los Angeles Times, July 23, 1978, p. 3.

- The people of Enewetak were exiled from the southern islands of their atoll for 33 years, and approximately half the population (the Enjebi people) still cannot return to their home islands in the northern part of Enewetak Atoll because those islands remain too radioactive 56 years after they were first moved.
- Today, a nuclear waste site containing over 110,000 cubic yards of radioactive contaminants, known as the Runit Dome, remains on Enewetak Atoll.
- At least four islands at Bikini and five at Enewetak were completely or partially vaporized during the testing program, and many others were heavily contaminated with radiation.
- Although they were 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 displayed all the classic symptoms of radiation poisoning – hair loss, skin lesions, and lowered white blood cell counts. All but two of the nineteen Rongelapese who were under ten years old at the time of Bravo developed abnormal thyroid nodules, and there has been one leukemia death.⁵ 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.
- The 236 inhabitants of Rongelap and Utrik have required regular medical care by U.S. doctors since the time of the Bravo shot.
- The people of Utrik were returned to their home atoll a mere three months after Bravo and were exposed to extremely high levels of residual fallout in the ensuing years. This unnecessary exposure led to many thyroid problems and other cancers.

No inkling of these facts is even suggested by the U.S. Government's testimony. As far as the U.S. negotiators are concerned, these events have been previously dealt with and are now relegated to the trash bin of history.

⁵ Edwin 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).

III. 1980s Court Cases and the Compact

In the 1980s, the peoples of the four atolls and other island groups brought lawsuits against the United States for property and other damages totaling more than \$5 billion. In the Bikini case, for example, in which more than 300 pleadings were filed in seven years, the trial judge denied the U.S. Government's motion to dismiss the case and set a trial date before the U.S. and Republic of the Marshall Islands (RMI) Governments signed the Compact and the subsidiary Section 177 Agreement, which established a \$150 Nuclear Fund, income from which was earmarked for the peoples of the four atolls and for other programs related to the legacy of the nuclear testing program "as a means to address past, present, and future consequences of the Nuclear Testing Program."⁶ In addition, approximately \$3 million annually of the income generated by the Nuclear Fund went to the Nuclear Claims Tribunal, which was established under the Agreement 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."⁷

The Section 177 Agreement also provides that it constitutes the full settlement of all claims, "past, present and future," of Marshall Islanders and their government against the United States arising out of the testing program, and another section provides that all such claims pending in U.S. courts are to be dismissed.⁸

Faced with these provisions, Judge Harkins of the U.S. Claims Court dismissed the nuclear cases after the Compact went into effect, but he emphasized that "in none of these cases has Congress abolished plaintiffs' rights. The Compact recognizes the United States obligations to compensate for damages from the nuclear testing program and the Section 177 Agreement establishes an alternative tribunal [the Nuclear Claims Tribunal] to provide such compensation."⁹ He repeated this point several more times: "Plaintiffs are not deprived of every forum. An alternative tribunal to provide compensation has been provided."¹⁰

In this regard, Judge Harkins recognized the obvious point that Congress cannot close the doors of U.S. courts for a constitutional taking claim. As the noted constitutional scholar Gerald Gunther wrote, "[A]ll agree that Congress cannot bar all remedies for enforcing federal constitutional rights."¹¹ Congress can, however, close the

⁶ Compact Section 177 Agreement, Article I, Section 2.

⁷ *Id.*, Article IV, Section 1(a).

⁸ *Id.*, Articles X and XII.

⁹ *Juda v. United States*, 13 Cl.Ct. 667, 688 (1987).

¹⁰ *Id.* at 689.

¹¹ Gunther, "Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate," 36 *Stan.L.Rev.* 895, 921 n. 113 (1984).

doors of U.S. courts if it provides for an alternative method of compensation, but the exercise of this power, as noted by the U.S. Supreme Court, is subject to the overriding requirement that when property is taken for public use “there must be at the time of taking ‘reasonable, certain and adequate provision for obtaining compensation.’”¹²

For example, the plaintiff in Dames & Moore v. Reagan contended that the suspension of its pending claims against Iran under the agreement for the release of the U.S. hostages was an uncompensated taking. It also argued that the alternative forum provided by that agreement, the U.S.-Iran Claims Tribunal, would not provide “reasonable, certain and adequate provision for obtaining compensation,” because some claims might not be paid in full or not even be adjudicated. The Supreme Court found that the U.S.-Iran Tribunal was an adequate alternative forum and therefore upheld the agreement, noting, however, that the Claims Court remained open under the Tucker Act “to the extent petitioner believes it has suffered an unconstitutional taking by the suspension of the claims.”¹³

Judge Harkins agreed with this standard, but he found that the “settlement procedure, as effectuated through the Section 177 Agreement, provides a ‘reasonable’ and ‘certain’ means for obtaining compensation.” However, he was not so sure about whether the procedure would provide adequate funding: “Whether the compensation in the alternative procedures . . . is adequate is dependent upon the amount and type of compensation that ultimately is provided through these procedures.” In essence, he imposed an “exhaustion of remedies” test for the claimants: Because the Nuclear Claims Tribunal was not yet in existence, he held that “[w]hether 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.”¹⁴

On appeal, the U.S. Court of Appeals for the Federal Circuit reached a similar conclusion: “Congress intended the alternative procedure [the Nuclear Claims Tribunal] to be utilized, and we are unpersuaded that judicial intervention is appropriate at this time on the mere speculation that the alternative remedy may prove to be inadequate.”¹⁵

Fifteen years have passed since that court’s decision, and history has shown that the peoples of the four atolls were right: The Nuclear Claims Tribunal has “run its course” and is not capable of providing adequate compensation. After lengthy trials, it awarded \$386 million the people of Enewetak for loss of use, restoration, and hardship, and \$563

¹² Blanchette v. Connecticut General Insurance Corp., 419 U.S. 102, 124-25 (1974), quoting Cherokee Nation v. Southern Kansas Railroad Co., 135 U.S. 641, 659 (1890).

¹³ 453 U.S. 654, 689 (1981).

¹⁴ Juda v. United States, *supra*, 13 Cl.Ct. at 689.

¹⁵ People of Enewetak, Rongelap and other Marshall Islands Atolls v. United States, 864 F.2d 134, 136 (Ct. App. Fed. Cir. 1988).

million to the people of Bikini, but it has paid out less than one-half of one percent of these awards. The Tribunal, which has also paid out nearly \$67 million in personal injury awards, has less than \$10 million on hand, and it has yet to issue awards in the just-concluded cases brought by the peoples of Rongelap and Utrik. These circumstances are different from those in the Dames & Moore case, where the alternative system of relief – the U.S.-Iran Claims Tribunal – was appropriate because it was “capable of providing meaningful relief.”¹⁶ Here, the remedy was simply not adequate.

Everyone involved in the political status talks in the 1970s and 1980s knows that the \$150 million payment under Section 177 was just that – a political payment to help redress the nuclear legacy. No one at that time knew the full costs of cleanup, much less the extent of radiological illnesses and damage or the value of past takings of land. That is precisely why the Nuclear Claims Tribunal was established. Its role has been to assess the extent of damage and injury from the U.S. testing program.

IV. Bona Fides of the Nuclear Claims Tribunal

Before discussing a possible Congressional solution to this dilemma, it may be useful to address head-on two contentious questions: First, was the Nuclear Claims Tribunal process valid or did the “home field” advantage result in skewed and inflated awards? Second, how should Congress deal with what some describe as the “sticker shock” of these awards?

As to the first question, an independent investigation of the Nuclear Claims Tribunal conducted by former U.S. Attorney General Dick Thornburgh (“Thornburgh Report”) concluded in January 2003 that:

- The Nuclear Claims Tribunal fulfilled the basic functions contemplated by the U.S. Congress under the Compact.
- Tribunal personnel were qualified to perform their functions and have had access to the resources they needed.
- The Tribunal has conducted its business in an orderly manner, following rules and procedures that closely resemble those used by legal systems in the United States.
- 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

¹⁶ Dames & Moore, 453 U.S. at 687.

proceedings in the United States.¹⁷

- The Tribunal relied heavily on U.S. legal authorities in reaching its decisions on damages issues.
- Although the Marshall Islands parliament, the Nitijela, occasionally sought to influence the Tribunal's work, particularly in expanding the range of persons eligible to receive personal injury awards, "any such interference had not more than a modest impact on the total dollar amount of the Tribunal's awards."¹⁸

V. Nuclear Claims Tribunal Awards for Loss of Use and Restoration of Lands

As to the amount of the Tribunal's awards, we wish to bring the following points to the attention of this Committee:

- The people of Bikini presented cleanup options that ranged as high as \$1 billion, involving the scraping of all the radioactive soil off the atoll and replacing it with non-radioactive soil. The restoration option selected by the Tribunal – scraping the soil only in the living area of Bikini Island and treating the rest with potassium-rich fertilizer to block the uptake of radioactive material – is exactly the cleanup method recommended by the U.S. Department of Energy's environmental contractor, Lawrence Livermore National Laboratory, and the cost was set at just over \$250 million.
- These cleanup costs must be considered in the context of the cost of the tests themselves. The Defense Department costs alone just for the two shots of Operation Crossroads were \$1.3 billion in 1996 dollars, and total Defense Department costs for all shots in the Marshall Islands exceeded \$4.3 billion.¹⁹ (All dollar amounts in this paragraph are in 1996 dollars.) Civilian costs are harder to calculate, but some numbers are known. For example, in transferring its materials, facilities and properties to the new AEC in 1946, the Manhattan Project spent \$3.1 billion to manufacture nine new atomic bombs and continue research into thermonuclear weapons.²⁰ The AEC spent over

¹⁷ Dick 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.

¹⁸ Id.

¹⁹ Stephen I. Schwartz, ed., *Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons Since 1940* (Brookings Institution Press 1998), pp. 101-03.

²⁰ Id. at 61-62.

\$3.5 billion from July 1, 1946 through June 30, 1947,²¹ and from 1948-1958, the AEC spent approximately \$106 billion on production research, development, and testing of nuclear weapons.²²

- 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. Just the first two tests at Bikini led to a greater emphasis on atomic warfare than on more expensive conventional weapons and troops.²³ As the AEC told Congress: “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.”²⁴
- Congress clearly knew that the \$150 million trust fund under the Section 177 Agreement was a political number arrived at to settle the Claims Court lawsuits, because it also left the door open for other funding programs for the four atolls in the Compact. The Compact Section 177 Agreement limits the Nuclear Fund to \$150 million and states that it constitutes the full settlement of all claims arising out of the nuclear testing program, but after passage of this language Congress continued to fund various programs. For example:
 - Section 103(h)(2) of the Compact of Free Association Act (Pub. L. 99-239) (the “Act”) established the Enewetak Food and Agriculture Program, which Congress has funded for 17 years at an annual amount of between \$1.1 and \$1.7 million because it recognized the challenge of providing food to the Enewetak people. That program involves soil rehabilitation and revegetation of the land with traditional food bearing crops, importation of food, and the operation of a vessel to bring the food and agricultural materials to Enewetak.
 - Section 103 (i) of the Act authorized funding for the radiological cleanup of Rongelap Island, and Congress subsequently appropriated \$40 million for a Rongelap resettlement trust fund.
 - Article VI of the Section 177 Agreement provides that the United States “reaffirms its commitment to provide funds for the resettlement of Bikini Atoll . . . at a time which cannot now be determined,” and

²¹ Id. at 63.

²² Id. at 65-75.

²³ See, e.g., Weisgall, Operation Crossroads, *supra* n. 3 at 279-87.

²⁴ U.S. Atomic Energy Commission, Thirteenth Semiannual Report of the Atomic Energy Commission (1953), p. 18.

Section 103 (l) of the Act declares that “it is the policy of the United States . . . that because the United States . . . rendered Bikini Atoll unsafe for habitation . . . , the United States will fulfill its responsibility for restoring Bikini Atoll to habitability. . . .” After the Compact went into effect, Congress appropriated an additional \$90 million for the radiological cleanup of Bikini Atoll. See Pub. L. No. 100-446.

- The \$150 million trust fund established under the Section 177 Agreement was provided to cover payment of claims for injuries, damages and losses known in 1986, based on information available at that time. However, recognizing that additional compensation might be required, U.S. negotiators and Congress agreed to an extraordinary statutory right for the RMI to present additional claims directly to Congress based on injuries, damages and losses discovered or determined subsequent to 1986. Article IX of the Agreement, entitled “Changed Circumstances,” provides that if property or personal injury losses resulting from the Nuclear Testing Program are discovered after the effective date of the Agreement, “were not and could not reasonably have been identified as of the effective date” of the Agreement, and “if such injuries render the provisions of this Agreement manifestly inadequate,” the RMI Government may submit a request directly to Congress to provide for such injuries. The RMI submitted such a petition to Congress in 2000 and again in 2001, and sixteen months ago the top leadership in the Senate Energy Committee and House Resources Committee asked the Bush Administration to review and report back on the petition.
- The Department of Energy’s Environmental Management Program Budget, which is earmarked 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. Five years ago, that cleanup program was estimated to cost nearly \$147 billion.²⁵ 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.²⁶
- Since 1991 the U.S. Government, through DOE’s Environmental Management Program, has spent more than \$10 billion at the Hanford, Washington nuclear weapons site without removing one teaspoonful of

²⁵ Accelerating Cleanup: Paths to Closure (U.S. Department of Energy, Office of Environmental Management) (June 1998) at 2, 5.

²⁶ Id. at 8. See also Environmental Management: Program Budget Totals (FY 1998 - FY 2000) and Environmental Management’s FY 2000 Congressional Budget Request.

contaminated soil.²⁷ That is what DOE has spent on studying the problem. The Bikini and Enewetak cleanup numbers sound big, but they look like a bargain compared to what the United States spends on its own sites - sites that were exposed to a tiny percentage of the radiation that was unleashed in the Marshall Islands.

- The U.S. Government has already approved compensation claims of more than \$562 million under the Downwinders' Act by people injured as a result of nuclear tests in Nevada that were nearly 100 times smaller in magnitude than the tests conducted in the Marshall Islands.²⁸
- As the Thornburgh Report noted, “[I]t is our judgment that the \$150 million trust fund initially established in 1986 [under the Compact] is manifestly inadequate to fairly compensate the inhabitants of the Marshall Islands for the damages they suffered as a result of the dozens of U.S. nuclear tests that took place in their homeland.”²⁹

VI. Proposed Legislative Solution

The RMI and leaders of Bikini, Enewetak, Rongelap and Utrik have requested an amendment to the Compact of Free Association that grants narrowly defined jurisdiction to the U.S. Court of Appeals for the Federal Circuit to review the judgments of the Nuclear Claims Tribunal and to order the United States to pay these judgments (after deducting the compensation already received by the claimants from the Nuclear Claims Tribunal) unless it finds, after a hearing, that a particular judgment “is manifestly erroneous as to law or fact, or manifestly excessive.” The provision also makes the U.S. Government party to the case, thus giving it standing to oppose partially or entirely the awards adjudicated by the Nuclear Claims Tribunal.³⁰

²⁷ Environmental Management: Progress & Plans of the Environmental Management Program (November 1996) (DOE/EM-0317) at 120.

²⁸ Thornburgh Report, supra n. 17 at 3

²⁹ Id.

³⁰ The text of the amendment is as follows:

Section 103(g) of United States Public Law 99-239 (99 Stat. 1775) is amended by adding a new paragraph (3) as follows:

“Judgments of the Nuclear Claims Tribunal established pursuant to Article IV of the Section 177 Agreement with respect to claims for loss or damage to property or person that have not been fully paid or otherwise satisfied may be presented for review and certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of Article X, XI, and XII of the Section 177 Agreement or

The peoples of the four atolls and the RMI Government urge the Congress to give careful consideration to this proposal for following reasons:

1. This proposal would resolve major components of the “changed circumstances” petition.

As noted above (p. 9), the Section 177 Agreement’s changed circumstances provision (Article IX) states that the RMI Government may petition Congress if it believes developments since the settlement was approved render the assistance and compensation provided “manifestly inadequate.” There is no precise definition of what exactly constitutes a “changed circumstance,” but by adopting this proposal the U.S. Congress can make the major part of the changed circumstances petition end up where it started – in the courts, which, on a daily basis, deal with factual and legal issues concerning damage claims.

2. This proposal would help to resolve the outstanding legal flaw in the Compact 177 scheme.

As explained above (pp. 4-6), the Section 177 Agreement provided the peoples of the four atolls with a \$150 million Nuclear Fund, now nearly exhausted, which is far less than the value of their claims. The liability of the U.S. Government for damages resulting from the nuclear testing program has never been an issue. Indeed, Section 177(a) of the Compact specifically states that the “Government of the United States accepts responsibility for compensation owing to the citizens of the Marshall Islands . . . for loss or damage to property and person . . . resulting from the nuclear testing program. . . .” The only question was how to resolve those claims and how much compensation to provide.

For the U.S. and Marshall Islands Governments, the Section 177 process served its purpose by establishing a process to resolve the value of the Marshall Islanders’ claims, a process that has now lasted more than 15 years. The results of that process have

28 U.S.C. 1502, for the limited purposes set forth in this paragraph only, and which court’s decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall review such judgments, certify them and order payment thereof pursuant to 28 U.S.C. 1304, unless such court finds, after a hearing, that any such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases, the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment. In ordering payment, the Court shall take into account any prior compensation made by the Nuclear Claims Tribunal as a result of such judgment. In any such certification proceeding the Government of the United States shall stand in the place of the Defender of the Fund and shall be a party to and may oppose certification or payment of judgments of the Nuclear Claims Tribunal.”

demonstrated that the \$150 million provided by the Section 177 Agreement is inadequate to meet the U.S. Government's "accept[ance]," in Section 177, of its "responsibility for compensation owing to the citizens of the Marshall Islands" In order to implement this pledge and to fulfill the purpose of Section 177, Congress should restore federal court jurisdiction to complete the compensation process to determine whether the Nuclear Claims Tribunal's awards are adequate and, if so, to order payment.

3. This proposal treats the nuclear legacy claims in the same manner as other pre-Trusteeship termination claims.

Under Section 174 of the Compact, the United States waives sovereign immunity for all claims arising from its previous actions as Administering Authority of the Trust Territory, other than those claims settled by the Section 177 Agreement. The four-atoll proposal closely tracks the language of Section 174 (c) and does nothing more than provide the identical treatment to the nuclear cases filed in the U.S. Claims Court in the 1980s, which were then singled out for special treatment (espousal and dismissal of claims) under the Section 177 Agreement. There is no legitimate reason to treat the nuclear cases differently from other claims arising out of the U.S. Government's role as Administrator of the Trust Territory, now that the Nuclear Claims Tribunal process has run its course. Unless Congress itself is prepared to determine the level of funding that must be provided to resolve the nuclear legacy claims, restoring to the federal courts the same jurisdiction they have over other claims from the Trusteeship era is morally and legally the only solution.

4. This proposal resolves a potentially difficult political dilemma for both the executive and legislative branches of the U.S. Government.

The Office of Compact Negotiations has opted to exclude nuclear legacy issues from the current negotiations. However, these issues will still be on the table if the current negotiations are concluded without addressing them; they will not go away. Congress is understandably reluctant to delve into this type of issue, given the need for a detailed review of scientific, medical and legal questions that it is simply ill-equipped to handle. It lacks the expertise and may be unwilling to tackle the issue, and the executive branch has indicated that it is unwilling to address the matter at this time. This proposal solves those problems. The Section 177 Agreement imposed a political settlement on a legal matter. This proposal returns the resolution of the nuclear legacy where it belongs – in the courts.

5. This proposal contains an alternative source of funding for the nuclear legacy issues.

By providing for U.S. Court of Appeals for the Federal Circuit review, any award upheld by that court would be paid from the Claims Court Judgment Fund established for awards against the United States and appropriated under 28 U.S.C. §1304. ("Necessary

amounts are appropriated to pay final judgments, awards, compromise settlements, and interests and costs specified in the judgments or otherwise authorized by law”) Although the funds would still come from the U.S. Treasury, this proposal creates a separate source of funding to pay these judgments, rather than looking to a specific Congressional appropriation, which is difficult to accomplish under any circumstances.

6. This proposal provides for adequate executive branch involvement in resolution of the final awards.

Some in the executive branch have questioned the validity of the Nuclear Claims Tribunal process, suggesting that the Tribunal tilted its views towards the RMI nuclear victims and acted like a “kangaroo court.” (See p. 6, above.) By providing that the U.S. Government stands in the place of the Defender of the Fund in any certification proceeding, this proposal will protect the role of the U.S. Government by ensuring that the Justice Department can appear to oppose payment or offer modifications to any proposed award. In addition, any new awards would be discounted by amounts already paid under the Compact.

7. This proposal is consistent with certain Compact language.

This proposal is consistent with the view of the executive and legislative branches at the time the Compact was concluded, which was that more funding might be needed to resolve issues relating to the nuclear legacy. See p. 8-9, above, for three examples of post-Compact funding for Rongelap, Enewetak and Bikini. This proposal is consistent with the spirit of the existing Compact by recognizing that the funds provided by the Section 177 Agreement were never designed to provide total compensation owing to the peoples of the four atolls.

VII. Unilateral Changes to Compact Act

The peoples of the four atolls are in agreement with the position of the RMI Government, as stated at pp. 8-9 of Foreign Minister Gerald M. Zackios’ written testimony, concerning the Administration’s unilateral changes to the amended Compact Act, especially with respect to Section 103(e)(3). As noted above at page 1, if the U.S. negotiators claimed a lack of authority to negotiate nuclear legacy provisions in the Compact negotiations, where did they come up with the authority to propose unilateral changes to existing provisions involving that nuclear legacy? Congress’ original language should continue to govern on the language of the Section 177 Agreement.

VIII. Future Steps

The peoples of the four atolls have long sought a seat at the table in the Compact negotiations, but we were never granted one. We also understand that H.J.R. 63 contains

many other important provisions that govern all aspects of the future political, military, and economic relationship between the RMI and the United States. Our first choice would be to amend H.J.R. 63 to insert the provision discussed at p. 10, above. If that is not politically feasible due to time constraints in implementing the Compact, we request that this Committee (a) make clear in its legislative history of H.J.R. 63 that it intends to deal with the nuclear legacy issues outlined in the testimony and (b) commence that process by committing to hold a hearing on these matters as soon as feasible after passage of H.J.R. 63.

Again, we appreciate your willingness to consider our views, and we and our legal representatives are available at any time to work with you and your staff.

Thank you.