

Howard M. Krawitz
Acting Deputy Assistant Secretary
for
East Asian and Pacific Affairs
U.S. Department of State

Testimony
before the Committee on Resources
and
the Committee on International Relations
Subcommittee on Asia and the Pacific
United States House of Representatives

Hearing on the "United States Nuclear Legacy in the Marshall Islands:
Consideration of Issues Relating to the Changed Circumstances Petition"

Wednesday, May 25th at 2:00 p.m.
Room 1324 Longworth House Office Building

Chairman Pombo, Chairman Leach, distinguished Members,
thank you very much for the chance to speak with you today about the important topic of the Government of the Republic of the Marshall Islands' Changed Circumstances Request and the Administration's report prepared at the request of the Congress.

I will start with a brief historical overview. The United States carried out sixty-seven underwater, surface and atmospheric nuclear tests on and near the Bikini and Enewetak atolls in the northern Marshall Islands between 1946 and 1958, while they were part of the Trust Territory of the Pacific Islands. The United States still deeply regrets the 1954 "Bravo" accident that harmed 253 downwind islanders. We remain concerned about the damage done to the people and environment of the Marshall Islands caused by the nuclear tests in the 1940's and 1950's.

The U.S. Government established programs for the people of the Marshall Islands to monitor and remediate the effects of those tests beginning in the 1950's, with additional programs created in the 1960's, 1970's and 1980's. We remain engaged in addressing these problems. The United States has spent more than \$531 million for health and environmental remediation specifically related to the nuclear testing program since the 1950's. That assistance is worth over \$837 million in 2003 dollars. Our colleagues in the Department of Energy continue to provide a superior level of health care service for those people directly affected by the nuclear tests, and have in fact provided health care to other populations as well for many years. The Administration's report in January outlines in great detail in an appendix the hundreds of millions of dollars the United States has spent in past and present U.S. remediation efforts.

In the 1980's, the United States and the Marshall Islands negotiated the Compact of Free Association, which went into effect on October 21, 1986 (PL 99-239 Stat. 1770). The Compact included a "full settlement of all claims, past, present and future" resulting from the U.S. nuclear testing program. This Section 177 Settlement Agreement provided \$150 million to the Marshall Islands to establish a Nuclear Claims Fund and an independent Nuclear Claims Tribunal to adjudicate all claims.

Article IX of the Section 177 Settlement Agreement, entitled "Changed Circumstances," is the only provision for the Government of the Republic of the Marshall Islands (RMI) to request the United States Congress to consider additional compensation for injuries resulting from the nuclear tests. In order to be the subject of such a request to Congress under Article IX, an injury:

- (1) must be loss or damage to property and person of the citizens of the Marshall Islands;
- (2) must result from the Nuclear Testing Program;
- (3) must arise or be discovered after the effective date of the Agreement (October 21, 1986);
- (4) must be injuries that were not and could not reasonably have been identified as of the effective date of the Agreement; and
- (5) such injuries must render the provisions of the Section 177 Settlement Agreement manifestly inadequate.

In Article IX, the Governments of the Marshall Islands and the United States also noted: "It is understood that this Article does not commit the Congress of the United States to authorize and appropriate funds."

In 2000, citing Article IX of the Section 177 Settlement Agreement, the Government of the Republic of the Marshall Islands submitted to the President of the Senate and the Speaker of the House of Representatives a request that certain claims totaling over \$3 billion be considered by the Congress for compensation. In March 2002, the Senate Energy and

Natural Resources Committee and the House Resources Committee formally asked the Administration to evaluate the RMI's request. Over the following months, the State Department convened a working group of U.S. Government departments and technical agencies that carefully and methodically reviewed the request and the existing scientific studies of the impact of nuclear testing in the Marshall Islands.

On January 4, 2005, the State Department submitted the Administration's evaluation to Chairman Domenici, Senator Bingaman, Chairman Pombo and Congressman Rahall. The RMI's submission to Congress did not meet the criteria of "changed circumstances" as required by Article IX of the Section 177 Settlement Agreement, and there is therefore no legal basis under the Settlement Agreement for considering additional payments. I am submitting a copy of the complete Administration report as an attachment to this testimony for the record.

Let me briefly address the major areas in which the RMI argues "changed circumstances." First, the RMI asserts that exposure to radioactive fallout significantly affected an area well beyond the northern atolls and islands. The vast majority of scientific evidence, however, documents that the elevated levels of radiation are limited to the most northerly atolls and islands, and that even many historically inhabited northern islands can be resettled under specific conditions. At the time of the Section 177 Settlement Agreement, the Marshall Islands acknowledged that, within the northern atolls, some islands would be less habitable than others and some would only have limited use. The Government of the Marshall Islands took the responsibility to control the use of areas in the Marshall Islands affected by nuclear tests.

Second, the RMI seeks comprehensive primary, secondary and tertiary health care systems to serve all the people of the Marshall Islands for fifty years. This argument draws an unsubstantiated link between current public health and medical problems in the Marshall Islands and the U.S. nuclear testing program. In fact, the United States has provided extensive medical care to the populations living on the atolls where testing occurred. The Section 177 Settlement Agreement provided \$2 million per year for 15 years from the Nuclear Claims Fund to provide medical care to the people of Bikini, Eniwetok, Rongelap and Utrik atolls. The estimated population of the four atolls in 1954 was approximately 500 people. That program currently serves 13,460 people, fully one-quarter of the national population. The Section 177 Settlement program was due to terminate in 2001. Congress has extended it until 2005.

In addition, starting in 1954, Congress mandated a special medical program for the members of the population of Rongelap and Utrik who were exposed to radiation resulting from the 1954 "Bravo" test (253 people). This program is run by the Department of Energy. Neither the Section 177 Settlement Agreement nor the larger Compact envisioned the United States providing comprehensive health care for all the people of the Marshall Islands indefinitely, and there is no basis under Article IX to request such a program.

Regarding three other categories – personal injury, loss of land use and hardship, and atoll rehabilitation – the RMI claims as "changed circumstances" the fact that the Nuclear Claims Fund has had a mixed earnings record and that the Nuclear Claims Tribunal, set up and run by the Marshall Islands, has chosen to award more funds than generated by the Nuclear Claims Fund. The Tribunal's decisions to set award amounts well above the amount of funds available in the Nuclear Claims Fund do not constitute "changed circumstances" under Article IX of the Section 177 Settlement Agreement.

The final broad category of RMI claims includes occupational safety, nuclear stewardship and education. The Governments of the Marshall Islands and the United States decided not to include those types of programs in the Section 177 Settlement Agreement. The lack of those programs and the desire to have such programs are not "changed circumstances" as defined in the Settlement Agreement.

I would like to close by underscoring an important point. The Administration's report evaluated the specific question of whether the Government of the Republic of the Marshall Islands' submission qualified as "changed circumstances" under Article IX of the Section 177 Settlement Agreement. The Administration's report does not describe the overall relationship between the United States and the Republic of the Marshall Islands. Shared history and common values make our friendship with the Marshall Islands one of the strongest in the world.

The history of the nuclear testing program and the settlement of claims arising from that program are but one facet of the unique and longstanding friendship our two nations enjoy, a relationship of mutual understanding and shared values that remains strong today. The Compact of Free Association of 1986 and the amendments that went into effect just last year link our two nations together for the foreseeable future and guarantee direct U.S. assistance to the RMI for twenty years. Under the amended Compact, our two nations have established a trust fund to provide an ongoing source of income for the RMI after Compact assistance ends to be used for the same purposes as current assistance. The amended Compact highlights health care as one of the two primary focus areas out of six sectors for assistance grants. For 2005, the Republic of the Marshall Islands and the United States have agreed to spend nearly \$16 million on health care using Compact funds, and we project similar amounts for each of the next several years. Hundreds of millions of dollars in Compact funds flowed to the RMI during the first eighteen years of free association (1986-2004), and over the next twenty years under the amended Compact, the United States is committed to spend over \$1.2 billion in direct assistance and trust fund contributions. The RMI

also remains eligible for a number of categorical and competitive public health grant programs administered by the U. S. Department of Health and Human Services in the same way as U.S. states and territories.

The Administration recognizes serious and continuing public health and medical challenges in the Marshall Islands and supports the Government's efforts to meet those challenges. The Republic of the Marshall Islands is a global partner and a valued friend, and the United States will, through the Compact and other means, remain engaged and committed to building a better future for the people of the Marshall Islands. We look forward to continuing to work together on a host of issues of mutual concern to both our nations.

Thank you very much for this opportunity.