

Marshallese Downwinders and a Shared Nuclear Legacy of Global Proportions

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Abstract: The emerging and expanding fields of environmental law and international law provide greater transparency in revealing human right concerns in the Asia-Pacific region. This paper explores these human right concerns of the affected populations in the Marshall Islands which functioned as a nuclear testing ground between 1946 to 1958 when it served as a strategic Trust Territory administered by the United States. In 2014, the Marshall Islands sued the United States and the Asian nations of India, Pakistan, and North Korea for violating the 1968 nuclear non-proliferation treaty (NPT). The aggressive diplomatic pressure imposed by the Marshall Islands to major nuclear powers is not without reason. This paper provides and explores an underutilized historical perspective explaining the legal and humanitarian consequences of the nuclear testing period in the Marshall Islands and their limited adaptive capacity in addressing humanitarian obligations to its citizens despite not creating the situation. It explains the reasoning behind the aggressive political nature in Marshallese politics stemming from unhealed wounds that eventually led to Marshallese climate change ambassador Tony deBrum's (February 26, 1945 – August 22, 2017) sole decision to sue the United States and the Asian nations of India, Pakistan, and North Korea.

On the noon of the Nations Constitution, a proud founding father states to the United States delegation attending his inauguration that "The most difficult long-term problem, both for this government, and your administration, as well as for the future of the people of this country is meeting the impact of lingering effects of nuclear radiation in the Marshall Islands."¹Forty-One years later, the Marshall Islands continues to meet these impacts head on with the creation of its 'National Nuclear Commission.'² Burdened by the inevitable consequences of the infamous nuclear testing period in the Marshall Islands, the Marshall Islands Government has sought legal remedies to bring about the social injustices faced by Marshallese nuclear victims.³

Background

Once code named "Sand Niggers" by the U.S. Military, the Marshallese people have had a real history of grievances.⁴ Shortly after Japan's surrender having felt the atrocities of the atomic bombs, the nuclear cycle took a radical turn signifying official entry into the Cold War.⁵ America's arms race against the Soviet Union provided the perfect opportunity to continue nuclear weapons development in the Marshall Islands through a policy of nuclear deterrence.⁶ Although the UN Strategic Trust granted the U.S. several requirements in fostering the inhabitants of the Marshall Islands towards self-government and economic self-sufficiency including protecting their health and natural resources, military strategies took precedent despite the United States willingly signing the United Nations Charter Trusteeship agreement in 1947. This was a far cry from American exceptionalism and bordered around American realism. In the words of former Secretary of State Henry Kissinger who served as National Security Adviser, "There are only 90,000 people out there. Who gives a damn?"⁷

Petitioning

The nuclear testing period in the Marshall Islands did not go heavily unchallenged however. Described as a “peace and freedom loving people,”⁸ the Marshallese had been petitioning U.S. administrators and military officials for years, but Micronesia’s unique postwar status as a strategic trusteeship omitted them from U.S. and international legal remedies.⁹ As early as 1953, an original request to cease nuclear testing was presented by Marshallese Congress woman Dorothy Kabua, the first indigenous inhabitant of the Trust Territory to sit in a UN Trusteeship Meeting.¹⁰ Unfortunately, her request fell on deaf ears. A year later, her warning would come into fruition in 1954 during the infamous Bravo incident.¹¹ Weeks after the Bravo incident, a formal petition was lodged to the United Nations by Marshallese petitioners Dwight Heine and Atlan Anien and customary chieftains Kabua Kabua and Dorothy Kabua.¹² The petition sought to cease the nuclear testing program after fallout victims were identified in the Marshallese atolls of Utrik and Rongelap. Sadly, this petition was defeated by a UN Resolution.¹³ Another petition in 1956 presented by Marshallese petitioner Dwight Heine was also defeated at the expense of Dwight Heine being suspended from his job for presenting such a petition to the anger of US officials. Two UN resolutions in response to the Marshallese people’s formal petitions in 1954 and 1956, Trusteeship resolutions 1082 and 1493, remain the only time in which any UN organ ever explicitly authorized specific use of nuclear weapons and the Marshallese people have carried a burden which no other people should ever have to bear exclaims Marshallese UN Ambassador Amatlain E. Kabua.¹⁴ There was also a Petition from Representative Amata Kabua Concerning the Pacific Islands Trust Territory relating to human experimentation.¹⁵ Kabua reported that Americans had conducted human blood tests of the inhabitants of the region.¹⁶ When taken together with other reports to the Trusteeship Council and Security Council regarding the status of the healthcare system in the Trust Territory of the Pacific Islands, Dr. Wilson states that “the United States clearly understood that the nuclear tests had a negative impact on the physical well-being of the inhabitants.”¹⁷ Regardless, the tests continued and ended in 1958.¹⁸

Sadly, as Ruff puts it, “these largely secret operations were not subject to usual laws, accountability or standards of protection for people and the environment.”¹⁹ In fact, America practiced a policy of isolationism in Micronesia up to the 1960s where only nuclear scientists and anthropologists were allowed into the ethnographic zoo to keep strategic operations intact.²⁰ The United States did not allow anyone in or out without the express permission of the Admiral in Guam until 1968.²¹ In fact, there were no legitimate foreign investments in the Marshall Islands until 1978.²² According to Tony DeBrum, the entire future of the Marshall Islands was premised on the United States building these nuclear arsenals and testing them while keeping the world from knowing what they were actually doing.²³ To this day, Debrum states vividly that the Marshall Islands is still figuring out what they were exactly doing in the Marshall Islands.²⁴ In other words, a general lack of transparency on the part of the U.S. leaves a general witnessing of nuclear events untold revealing the justification of Marshall Islands’ nuclear activism through the lens of environmental law and international law.

Effects

The lingering effects of the nuclear testing program is best explained through a general comparison dealing the detonated yields of explosives dropped in the Marshall Islands as compared to other nuclear explosions in relation to reparations established through American sponsored institutions. The obvious disparity is apparent with the Marshall Islands’ explosive

yield dwarfing other U.S. nuclear detonations particularly those discharged during WWII and in Nevada.²⁵ The total yield of the sixty-seven tests conducted in the Marshall Islands was 108 megatons.²⁶ This is the equivalent to the explosive force of over one hundred million tons of TNT and more than seventy-five times the total yield of the U.S. nuclear tests in Nevada.²⁷ According to the U.S. Centers for Disease Control and Prevention, approximately 6.3 billion curies of radioactive iodine-131 was released in the Marshall Islands.²⁸ In a striking comparison on U.S. soil, only 150 million curies of iodine-131 was released during the Nevada tests, 40 million curies during the Chernobyl accident, and 739,000 curies in Hanford during the Atomic Energy Commission Operations.²⁹ Despite the higher yields, U.S. sites have received as of 1998 a total of 115.7 billion in clean-up costs while the Marshall Islands was only afforded 0.34 billion as of 1999 despite a wider geographical area being affected. The total explosive power of the nuclear tests accounts for 80 percent of the yield of all atmospheric tests exploded by America.³⁰ To put this level of testing at Bikini and Enewetak in perspective, this is the same as 1.6 Hiroshima bombs being detonated every day for the 12 years of testing,” an angry surviving spouse of a nuclear victim named Giff Johnson exclaims.³¹ Even as one fully dissects the Bravo incident of 1954, the inequality is evident. Before the first Hiroshima-sized atomic tests at Bikini in 1946³², the American military evacuated Enewetak, Rongelap and Wotho residents as a safety precaution. Yet, during the Bravo test of March 1, 1954 which was predicted to be 250 times as strong as Hiroshima but was revealed to be 1000 times stronger, nobody was evacuated until after the fact of direct exposure.³³ This mere fact alone has fostered a sense of distrust towards America amongst nuclear victims who still hold on to the view that they were simply lab rats or guinea pigs for a lack of a better term. While the American personnel had the luxury of being aware of the fallout path and were thus evacuated a day later on March 2nd, the people of Ailinginae and Rongelap were evacuated two days later after being directly exposed to the showering radioactive white dust.³⁴ A day later on March 4th, the people of Utrik atoll were also evacuated.³⁵ Unfortunately, the people of Ailuk who suffered fallout mirroring that of Utrik atoll were not evacuated because it was deemed inconvenient to evacuate 400 people.³⁶ However, this is but a mere portion of the problem for one also needs to consider the subsequent events that followed after to get a holistic glimpse of the argument.

Resettlement Attempts

In 1957, the aforementioned Rongelap people were prematurely returned home to their atoll by the United States. A Brookhaven National Laboratory Report admitting to conducting human subject experimentation stated that “Even though the radioactive contamination of Rongelap island is considered perfectly safe for human habitation, the levels of activity are higher than those found in other inhabited locations in the world. The habitation of these people on the island will afford most valuable ecological radiation data on human beings.” Despite numerous appeals from the people of Rongelap to the United States government being its trusteeship administrator at the time to move out of Rongelap due to nuclear related illnesses, the Rongelapese were not taken out of the atoll. They were soon voluntarily evacuated by Greenpeace in 1985 because of evidence of excessive radiation levels unacceptable in other U.S. jurisdictions. Ruff explains that the “soil in Rongelap at that time contained about 430 times the amount of plutonium and other transuranic than the northern hemisphere average.”³⁷ The people of Bikini underwent a similar fate after President Lyndon B. Johnson publically announced America’s decision to resettle them in 1968.³⁸ Unlike the Rongelap people, the people of Bikini were not directly exposed to Bravo. After the Atomic Energy Commission released a public statement in 1969 stating that “There’s virtually no radiation left and we can find no discernible effect on either plant or animal life,” the people

of Bikini went back home not knowing the same fate that awaited them. By 1978 the people of Bikini were once again evacuated after ingesting high levels of strontium and radioactive cesium in the water and soil which was considered the highest in the world at the time.³⁹

Reparations

When the Marshall Islands was officially granted independence by the United States in 1986 through the Compact of Free Association, the political settlement payment was entirely one sided with key classified evidence being withheld from Marshallese negotiators.⁴⁰ No one knew the cost of clean-up and the lingering effects of radiation that would take toll on the environment where a subsistence community depends for food and water as the science of nuclear effects was fairly new.⁴¹ This is why a Nuclear Claims Tribunal through the Compact of Free Association was set up to address future claims that might arise. Yet, the implication is obvious. Withholding classified information was key in keeping the situation contained and the American colonial narrative maintained.⁴² Fortunately, Marshallese negotiators inserted a changed circumstance provision to the infamous 177 settlement which allows the Marshall Islands to petition U.S. Congress for additional funding if losses or damages were discovered after the effective date of the 177 agreement, these injuries could not have been reasonably identified at the effective date of the agreement, and such failures provide legal humanitarian basis to render the agreement manifestly inadequate. The U.S. Congressional record is clear in showcasing America's commitment towards international law particularly in upholding human rights as they crafted the Compact agreement. However, Senator Alan Cranston elaborated doubts on the agreement stating that the provisions established in the \$150 million trust fund denied 5,000 Marshallese, who had already filed claims, a day in court.⁴³ Senator James McClure, then Ranking Minority Member of the Committee on Energy and Natural Resources responded directly to these concerns stating vividly that:

Article IX of the subsidiary contains a changed circumstance clause which would allow the Marshallese to ask Congress for relief if circumstances develop which could not have been foreseen, such as newly identified claimants. As you indicated, there is a continuing moral and humanitarian obligation on the part of the United States to compensate any victims – past, present, or future of the nuclear testing program. For this reason, I fully expect that if new claims develop, Congress should and will provide any assistance required, absent compelling contradictory evidence... There is an enormous burden on Congress to state affirmatively that if future valid claims develop we will do everything possible to compensate adequately all newly-identified victims.

Nuclear Activism amidst American Hegemony

Unfortunately, a lack of sympathy is evident due to lack of transparency. The evidence is clear as one needs search only in an American textbook where the crimes of the Nazi Holocaust are readily exposed but Project 4.1—“Study of Response of Human 8 Beings Exposed to Significant Beta and Gamma Radiation due to Fallout from High Yield Weapons,” remains to be seen in most if not all American textbooks. It was with this reasoning of the issue being taken out of sight and out of mind coupled with the Marshall Islands' small island power status that created a general lack of transparency. American hegemony in the Indo-Pacific region is very real. It was not until 1994 that more documents were declassified by the U.S. revealing greater damage than was previously known to the Marshallese people. The recently declassified 1955 Atomic Energy Commission report showcased a significant number of atolls measured receiving radiation doses exceeding

internationally recognized standards deemed safe.⁴⁴ This new report offered a list of newly affected atolls that weren't included in the aforementioned 177 political settlement. When the Marshall Islands under then President Amata Kabua, alluded to do a feasibility study for storing nuclear waste just to draw attention to the issue in the mass media, the nuclear legacy resurfaced in the international scene with nuclear activism taking a firmer stance revealing America's nuclear legacy in a fuller narrative.⁴⁵

The year of 1996 was an important year for such activism as the Marshall Islands hosted for the very first time the Pacific Islands Forum on Majuro, Marshall Islands.⁴⁶ Previously, the Marshall Islands had encountered stiff opposition from the Pacific power that is Australia and a few others when it sought to insert the unresolved nuclear issue in the Pacific Island Forum Communiqué in 1995 in an effort to remedy past injustices.⁴⁷ Prime Minister Paul Keating and his Pacific Islands' Minister Gordon Bilney spoke out and lobbied against it.⁴⁸ In the end, after an exchange of sympathetic views and extensive consultations, the Pacific Islands Forum, under the leadership of Papua New Guinea's Prime Minister Sir Julius Chan, adopted the entire text for the very first time as originally submitted by then President Amata Kabua.⁴⁹ For the

sake of clarity, the entire text is given in full extensor below.

The Forum again reaffirmed the existence of a special responsibility toward those peoples of the former United Nations Trust Territory administered by the United States, the Marshall Islands, who had been adversely affected as a result of nuclear weapon tests conducted during the period of the Trusteeship. This responsibility included safe resettlement of displaced human populations and the restoration to economic productivity of affected areas.⁵⁰

This responsibility in the text given above was officially inserted on records in 1995, was echoed in the 1995 NPT Conference outcome documentation,⁵¹ and was again reintroduced in 1996 in light of President Amata Kabua's political tactic of causing a media frenzy when he alluded to do a feasibility study for nuclear waste to draw attention to a much neglected nuclear past.⁵² The plans were never approved despite numerous offers as perfectly stated by his former assistant Fred Pedro who refused to sign off on any documents relating to the feasibility study because President Kabua did not give him permission to. Unfortunately, President Amata Kabua passed that same year leaving an unresolved task for nuclear justice aside from this untold story relayed by his former assistant Fred J. Pedro who will be participating in the new Compact negotiations set for 2023.⁵³

Another Legal Petition: Changed Circumstances Petition

Another attempt at legal remediation came in 2000 when the Nuclear Claims Tribunal though the Marshall Islands Parliament presented its Changed Circumstance Petition to U.S. Congress stating that new facts in light of new knowledge rendering the original agreement manifestly inadequate.⁵⁴ This included environmental damages unforeseen showcasing greater radioactivity in Enewetak where it is stated by Dr. Gerard that outside of the Runit Dome is just as radioactive as inside it.⁵⁵ It should be fairly noted that unforeseen circumstances could also be in the form of ingestion given subsistence dependency on crops and fish. If the person were to consume only foods grown in the islands for their entire lifetime, then the initial annual radiation dose would be higher given bioaccumulation consideration and standards. This request for additional compensation to make due for unforeseen circumstances also fell on deaf years and still sits with U.S. Congress awaiting formal action.⁵⁶ The United States of America through the Bush Administration claims that it has already dispensed 5 billion dollars and that 50 plus years of money is enough. Five billion dollars is surely a lot of money but if you tear apart that 5 billion dollars, it includes all of the

cost of human subject experimentation and costs of a whole host of things that don't compensate in a just way to the Marshall Islands according to Dr. Barbara Rose Johnston.⁵⁷ This right of self-determination exercised by the United States has greatly devalued international obligations to human rights pushing instead to placing price tags on indigenous Marshallese victims recording them as less than others. The systemic human measurements of U.S. Foreign Policy on Marshallese people has set an existing precedent of inhumane treatment largely ignored due to it being institutionalized under the existing global hierarchy. In response to inaction, a United Nations special rapporteur visited the Marshall Islands in 2012 to do a formal evaluation on continuing human rights obligations on the part of the United States. The special rapporteur noted that his 2012 visit was the first by a United Nations official in almost 65 years.⁵⁸ The United Nations Special Rapporteur expressed particular concern about the radioactive dump site on Runit Islands in Enewetak, Marshall Islands stating vividly that there was concrete evidence on lack of structural integrity. This nuclear waste storage facility (e.g. Runit Dome) is where the U.S. "dumped 35 Olympic swimming pools' worth of atomic soil and debris created by its Cold War nuclear weapons testing program," as the L.A. Times bluntly puts.⁵⁹ In keeping with its elements of secrecy to avoid transparency, "The United States did not tell the Marshallese that in 1958, it shipped 130 tons of soil from its atomic testing grounds in Nevada to the Marshall Islands," the L.A. Times adds.⁶⁰ This is in light of the fact that Under title One, Article VI of the Compact of Free Association between the Republic of the Marshall Islands and the United States, the United States Government is obligated to apply environmental standards to its activities that are substantively similar to U.S. environmental statutes.⁶¹ Section 161 of that same Compact requires the United States government to develop judicially reviewable standards and procedures to regulate its activities. In short, the Compact requires the United States, in cooperation with the Marshall Islands, to develop and apply to its activities a set of standards and procedures that will provide environmental protections that are appropriate to the particular environments of the RMI cognizant of the special political relationship between the United States and the Marshallese people. It basically states that the United States government must apply the National Environmental Policy Act (NEPA) to its activities as if the Marshall Islands were the United States of America. Today, the Runit Dome is 'leaching as predicted'⁶² amidst the effects of sea level rise.⁶³ According to Ruff, "The United States has generally ignored the land mark recommendations of the United Nations Special Rapporteur."⁶⁴ However, given the historical role of the United Nations in designating the Marshall Islands as a strategic Trust Territory, there is still a moral and humanitarian obligation for the international community, through the United Nations, to assist in the care, fair compensation and effective clean-up owed to the environment, health, and well-being of the Marshallese people, he adds.⁶⁵ This remains to be done. Inaction through effective remediation by the U.S. is but one of the most pressing concerns for the nuclear community of the Marshall Islands.

Climate Change

The new changing circumstance in the form of climate change is an equally pressing one to consider. Flooding in Kili, where the people of Bikini were resettled by U.S. military personnel, is becoming more and more frequent at every King Tide. This repeated ocean water flooding over the past years has pushed the Bikini Council to request U.S. government assistance to relocate the population that has lived in exile since the commencement of the U.S nuclear testing program. As of 2015, the Bikini Council formally approved two resolution requesting the U.S. Department of Interior to allow the Resettlement Trust Fund for the people of Bikini, established in 1892 by U.S. public law, to be used for relocation

outside of the Marshall Islands. A formal request was given to Esther Kiaaina, the Assistant Secretary of the Interior for Insular Areas, by former Bikini Mayor Nishma Jamore. Nishma Jamore explains this decision stating that "In the future, we may have no option but to relocate. We are preparing for the future. Climate change is real. We are feeling and experiencing it." Former Bikini Council Woman Lani Kramer adds further frustration to the situation. "The Americans said 'we will always take care of you as the children of America' and we believe that if promises are made, they will be kept," says Lani Kramer. After 70 plus years, there has yet to be any action to get the people off this small island, she adds.⁶⁶ Low lying atolls and islands in the Marshall Islands remain the most vulnerable to climate change impacts making it increasingly difficult for nuclear victims. With fragile ecosystems and massive coral bleaching due to temperature increases, a loss of livelihood becomes inevitable as the exacerbation of climate change impacts goes unchecked. The Human Rights Office of the High Commissioner has indicated that "climate change impacts severely limits the range of human rights by people throughout the world, including the rights to life, water and sanitation, food, health, housing, self-determination, culture and development."⁶⁷ As Pacific islanders, climate change poses the greatest threat to the existence of Marshallese nuclear victims given their natural ties to their land and waters. By not formally addressing these various changing circumstances, including the formal Changed Circumstance Petition submitted to U.S. Congress in the year 2000, human rights violations continue to plague a large number of Marshallese, especially the nuclear victims who sacrificed immensely to the American military cause having paid the ultimate price for peace and security.⁶⁸ While the political settlement for American downwinders called RECA was replenished, the Marshallese variant in the form of the Nuclear Claims Tribunal has yet to be replenished. The explosive yields in the Marshall Islands was 75 times higher than in Nevada and the release of radioactive iodine-131 was more than 40 times higher.⁶⁹ Despite the higher yield, the inequality is apparent with Marshallese nuclear victims receiving, on average, less compensation than their American counterparts. A 2002 study concluded the obvious disparity and inequality between American downwinders as compared to Marshallese nuclear victims. The study concluded that on every atoll of the Marshall Islands, the average external radiation dose from U.S. nuclear testing surpassed the average level for Americans living in the six counties nearest the Nevada test as can be seen above. Over \$1 billion has been granted to date by the Downwinders' Act on behalf of 24, 266 individuals as compared to only \$72.9 million dollars for 60,000 Marshallese nuclear victims.⁷⁰ Despite their best efforts, the existing failure on U.S. Congress' part to provide for these injuries has officially rendered the original 177 Agreement manifestly inadequate. This apparent inequality brings back past experiences into the fore, particularly that of the Bravo victims of Rongelap who were also denied legal remedy in the 1960s where 80 Rongelapese were paid a mere 950,000 as opposed to the 20 Japanese Lucky Dragon Fishermen who received \$2 Million in the 1950s. The only solid evidence of sympathy came in 2006 by the U.S. House of Representatives. In 2006, the U.S. House of Representatives unanimously voted to "commend the people of the Republic of the Marshall Islands for the contributions and sacrifices they made to the United States nuclear testing program."⁷¹ However, words and action are two different things. Due to the apparent failure to date on U.S. Congress to deliver just compensation, this commendation rings hollow. Additionally, former President Barack Obama's contribution to the climate change fight revealing his formal stance on the issue by linking it with security concerns and allaying the fears of the Marshallese nuclear victims is no different in light of the current circumstances of the Trump administration.

Troubling Times

Despite the Paris Agreement becoming international law on November 4, 2016, the reality that is President Donald Trump and his administration have taken progress backwards by repealing many of President Barrack Obama's environmental initiatives. President Trump's administration has proposed budgetary cuts to many of the institutions that provide relief to the nuclear community of the Marshall Islands. This includes budget cuts to the Department of Energy and Department of Interior that handle many of the programs for the affected populations mentioned. 68 It doesn't help that President Trump and his administration are climate change deniers having pulled the United States from the Paris Agreement despite the overwhelming evidence of climate change impacts presented even in U.S. military installations in the Marshall Islands even observed at the Ronald Reagan Test Site located in Kwajalein, Marshall Islands.

Current State

The scarred population seeking redress from the U.S. government have been extremely active in the international scene. Grass root movements represented through the nonprofit organizations REACH-MI and Jo-JiKum and student activism through MISA4thePacific are coming into fruition despite a depressing reality. Pope Francis has also called for greater environmental concern thereby allaying the collective fears of Marshallese nuclear victims suffering from the current state of sea level rise on top of unaddressed outstanding nuclear issues. Yet, President Trump's current stance in delaying action for climate change by cutting EPA regulations calls into questioning the recent humanitarian and environmental progress achieved thus far leaving Marshallese nuclear victims in a state of quandary as to what the future may hold.

Conclusion: The Argument, The Position, The Case

To Conclude, the apparent current circumstances of Marshallese nuclear victims reveal the justified aggressive political stance of the Marshall Islands in attaining some modicum of justice for its victims. The history of the Marshallese people and their nuclear victims speaks for itself in relaying this reality. Although expanding environmental laws and international laws have provided greater transparency and avenues to address human rights concerns, words and actions are but two different things. The fearless decision to seek disarmament by suing the nuclear powers of the Indo Pacific region, including its hegemon being the U.S., reveals this startling reality that the Marshall Islands is desperate to achieve justice for its people in the name of human rights. Furthermore, the ongoing international discourse established by bilateral and multilateral frameworks reveals on record that these efforts are not completely futile as an increasing conscience has taken root. If anything, although the current state of affairs reveals a depressing reality for Marshallese nuclear victims awaiting just reparations, the international community has provided greater remedy in telling and re-telling their stories. With this in mind, human rights are thus permanently woven and embedded to the ongoing discourses defining international law and environmental law. It is these expanding and emerging discourses depicting the situation of Marshallese people that provide greater understanding of the human consequences surrounding nuclear weapons development as well as unsustainable development for both are intricately connected through the lens of the environment. Although the nuclear lawsuit initiated by the Marshallese government failed to deliver promising results as it lost in both the International Court of Justice and in the U.S. Ninth Circuit Court, it nonetheless created an avenue of transparency by re-stirring the pot creating multiple discourses surrounding the issue of international law, environmental law, and the human rights that come with it. The recent Treaty on the Prohibition of Nuclear Weapons, recently passed on July 2017, reveals on records that the fight for nuclear justice remains a desperate attempt for the Marshall Islands Government and

its people as Article 7 of that same treaty reminds global audiences of user state responsibilities to former test regions. The right of human dignity has been etched clearly in international humanitarian law revealing the importance of equal treatment of all humans as the ideal poster child image for human rights. However, the reality of existing precedents on indigenous populations in the Marshall Islands is to the contrary.

The unique situation of the Marshall Islands reveals in all honesty a depressing historical reality coming into fruition with greater transparency in the international scene. With outstanding human rights claims, one should pay no surprise as to why the Marshall Islands has been aggressive in the international scene in climate change and nuclear disarmament. Additionally, one should pay no surprise that the Marshall Islands leads the discussion in nuclear disarmament and climate change action given the current state of affairs of its nuclear victims.⁷² The right of self-determination exercised by the United States has greatly devalued international obligations to human rights pushing instead to placing price tags on indigenous Marshallese victims recording them as less than others. The systemic human measurements of U.S. Foreign Policy on Marshallese people has set an existing precedent of inhumane treatment largely ignored due to it being institutionalized under the existing global hierarchy. Despite the best efforts of the Marshall Islands Government in presenting its Changed Circumstance Petition to U.S. Congress in 2000 and those of the United Nations in presenting its Special Rapporteur Report in 2012 solidifying lack of U.S Congress's response to that Changed Circumstance Petition, institutionalized discrimination within the current international machinery continues unabated posing the question as to whether self-determination should have its limits. Although the right of self-determination is promised by the United Nations Charter to the United States being its biggest financial contributor, it has come at the cost of infringing on the human rights of the Marshallese people. This includes their right to be self-determining people themselves if afforded adequate health care to enjoy the right to life as rightfully promised in the Universal Declaration of Human Rights. In this light, U.S. Congress sympathy is thus shown to have diluted greatly in not honoring human rights commitments etched in their bilateral treaties of Free Association with the Marshall Islands Government notwithstanding the fact that their governments were founded upon respect for human rights and fundamental freedoms for all.⁷³ Still, international treaties such as the recent Treaty on the Prohibition of Nuclear Weapons have provided an avenue for open dialogue revealing that the Marshall Islands is still living up to its commitment, given its existing capacity, in ensuring that the voiceless nuclear victims are heard with its recently established National Nuclear Commission.⁷⁴ Ironically, these once brave 'sea navigators'⁷⁵ are now bravely navigating the anxieties of the United States' New World Order kindly reminding the world that America is more than its politics.

This apparent structural violence existing within the international machinery forces the Marshall Islands to entertain available avenues, often unconventional means, to draw light to its story despite the 'colonial narrative impeding on its ability to adapt to current circumstances'.⁷⁶ The only legal hope currently sought as an option other than existing avenues seems to be the costly and timely option of a Congressional Reference Case according to the National Strategic Action Plan of the National Nuclear Commission which could prove difficult during President Trump's reign given his insensitive remarks of resuming nuclear testing, a slap in the face to Marshallese nuclear survivors.⁷⁷

References

- ¹ Amata Kabua, "Formal Address of RMI President on Constitution Day" Speech at Court House, Majuro, Marshall Islands, March 1, 1979.
<http://www.pacificdigitallibrary.org/cgi-bin/pdl?e=d-000off-pdl--00-2--0--010-TE--4-----0-11--10en-50---20-about-may+1%2c+1979+inauguration--00-3-1-00bySR-0-0-000utfZz-8-00&a=d&cl=search&d=HASH01b3d73be08790dd2ba72bbc.13>
- ² See *National Nuclear Commission Act*:
https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0034/NationalNuclearCommissionAct2017_1.pdf
- ³ Desmond Narain Doulatram. "EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY." *Journal of Humanities and Cultural Studies R&D* 3, no.2 (2018): 1-90.
- ⁴ Amata Kabua (First President of the Marshall Islands) in discussion with Ambassador Amatlain E. Kabua, 13 July 1996.
- ⁵ Tsuyoshi Hasegawa, "The Atomic Bombs and the Soviet Invasion: What Drove Japan's Decision to Surrender," *The Asia-Pacific Journal: Japan Focus* 5, no. 8 (2007): 1-30.
- ⁶ Hilda C. Heine and Julianne M. Walsh, *Etto nan Raan Kein: A Marshall Islands History*, (Honolulu: Bess Press, 2012), 289.
- ⁷ Tilman A. Ruff, "The humanitarian impact and implications of nuclear test explosions in the Pacific region," *International Review Of The Red Cross* 97, no. 899 (2015): 777.
- ⁸ Dorothy Kabua, "Micronesian Representative Addresses Trusteeship Council," *Department of State Bulletin* 29 no. 732 (1953): 151.
- ⁹ Sheri Englund, "Historian Chronicles Islanders' Fight for Environmental Justice," *Cornell Chronicle*, last modified April 12, 2017,
<http://news.cornell.edu/stories/2017/04/historian-chronicles-islanders-fight-environmental-justice>
- ¹⁰ Hilda C. Heine and Julianne M. Walsh, *Etto nan Raan Kein*, 305.
- ¹¹ Desmond Narain Doulatram, "A MARSHALLESE TALE OF MODERNITY IN THE PACIFIC RIM: BRIDGING THE MODERN AND THE TRADITIONAL." *Journal of Humanities and Cultural Studies R&D* 3, no.3 (2018): 1-66.
- ¹² Nic Maclellan. "The survivors - Lemeyo Abon and Rinok Riklon." In *Grappling with the Bomb: Britain's Pacific H-Bomb Tests* edited by Nic Maclellan, (Canberra: Australian National University Press, 2017), 44.
- ¹³ Hilda Heine, "Formal Address of RMI President on Nuclear Victims Remembrance

Day” Speech at Delap Park, Majuro, Marshall Islands, March 1, 2016.

¹⁴ Amatlain E. Kabua. “Official Statement of Marshall Islands UN Permanent Representative on vote of Draft Treaty on the prohibition of nuclear weapons.” Speech at United Nations conference to negotiate a legally-binding instrument to prohibit nuclear weapons, New York, New York, July 5 2017.

¹⁵ Petition from Representative Amata Kabua Concerning the Pacific Islands, T.PET.10/30/Add.1, 3 November 1959. In United Nations Trusteeship Council, Petitions, T/PET.10/1- T/PET.10/150, June, 1950-June, 1979.

¹⁶ Aaron Steven Wilson. “WEST OF THE WEST?”: THE TERRITORY OF HAWAI’I, THE AMERICAN WEST, AND AMERICAN COLONIALISM IN THE TWENTIETH CENTURY.” (PhD diss., University of Nebraska-Lincoln, 2008), 180.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Tilman A. Ruff, “The humanitarian impact and implications of nuclear test explosions in the Pacific region,” *International Review Of The Red Cross* 97, no. 899 (2015): 777.

²⁰ Carl L. Heine, *Micronesia at the Crossroads: A Reappraisal of the Micronesian Political Dilemma*, (Canberra: Australia National University Press, 1974), 20-21.

²¹ Tony Debrum. “Acting Locally and Globally to Pressure the Capitals: What the US owes the Marshall Islands.” St. John’s University. New York City, NY. 20 September 2014. Statement of Guest Speaker Minister Tony Debrum.
<https://www.youtube.com/watch?v=aPPyQPfFTBs&t=3s>

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Harvard Law Student Advocates for Human Rights, *Keeping the Promise: An Evaluation of Continuing U.S. Obligations Arising out of the U.S. Nuclear Testing Program in the Marshall Islands*, (Cambridge: Harvard Law School Student Advocates for Human Rights, 2006), 4.

²⁶ Ibid

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Giff Johnson, *Nuclear Past: Unclear Future*, (Micronitor: Majuro, Republic of the Marshall Islands, 2009), 4.

³¹ Ibid.

³² While many claim that the nuclear issue started in 1946 when the Bikinians were duped into believing the “Good for Mankind” argument, late Paramount Chieftain Imata J. Kabua and former First Lady Emlain S. Kabua state that the mistake began when the real paramount Chief of Bikini Jeimata Kabua was denied his agency and his legitimate right of Bikini extending further by being denied the right to resettle the Bikinian population into more fruitful lands to provide for their sustenance via a subsistence lifestyle. Journal records of Dorothy Kabua, the wife of Jeimata’s son Lejolan Kabua showcase the Americans going against Jeimata’s wishes to resettle the population in the Kabinmeto area triangle of Wotho, Ujae, and Lae in favor of Rongerik something that Jeimata Kabua knew nothing about. As a result, the Bikinians nearly died of starvation in Rongerik atoll where the land was insufficient to provide for their sustenance. In fact, one elderly lady died as a result of this premature settlement in Rongerik atoll. According to Rongelap activist Abacca Anjain Maddison and United Nations Ambassador Amatalain Elizabeth Kabua, this is the classic divide and conquer strategy that America is known for. This was finally settled in the Bikini Act, however, the damage had already been done with a clear separation of ties between the Bikinian people and their original chief. It is also stated in High Court archives that Lejolan Kabua and Dorothy Kabua believed that American advisors amplified the separation of ties between Jeimata Kabua and the Bikinians.

See *Bikini Atoll Act of 1994*

http://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1994/1994-0086/CustomaryLawBikiniAtollAct1994_1.pdf

³³ Giff Johnson, *Nuclear Past: Unclear Future*, 4.

³⁴ Harvard Law Student Advocates for Human Rights, *Keeping the Promise: An Evaluation of Continuing U.S. Obligations Arising out of the U.S. Nuclear Testing Program in the Marshall Islands*, 4.

³⁵ Ibid, 4-5.

³⁶ Giff Johnson, *Nuclear Past: Unclear Future*, 3-4.

³⁷ Tilman A. Ruff, “The Humanitarian Impact and Implications of Nuclear Test explosions in the Pacific Region,” 796.

³⁸ Desmond Narain Doulatram. “EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY,” 1-90.

³⁹ Ibid.

⁴⁰ Ibid

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ There has been recorded political action addressing this particularly through Bill S.1756. A substitute version of Bill S.1756 would have expanded the healthcare program with an increase in funding to include atolls not recognized in the original 177 settlement such as Ailuk, Mejit, Likiep, Wotje, Wotho, and Ujelang atoll but this Bill was never introduced and the original bill died in the 110th Congress in December of 2008. Another Bill in 2010, Bill S.2941 that was nearly identical to Bill S.1756 also died in the 11th Congress in December of 2010. Another Bill, Bill S.342, was introduced in February 2011 to provide \$4.5 annually to ten atolls previously mentioned in Bill S.1756 and Bill S.2941. It was officially referred to the Committee on Energy and Natural Resources but no further action was taken.

⁴⁵ Desmond Narain Doulatram. "EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY," 1-90.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ 1995 NPT/CONF.1995/MC.III/1

⁵² Desmond Narain Doulatram. "EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY," 1-90.

⁵³ There is also a Nuclear Steering Committee in the Compact Negotiation Team <https://www.facebook.com/PresidentOfficeRMI/posts/2607918549481207>

⁵⁴ Desmond Narain Doulatram. "EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE

GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY,” 1-90.

⁵⁵ Mark Willacy, “A Poison in our Island,” *ABC NEWS*, 3 May 2019, <https://www.abc.net.au/news/2017-11-27/the-dome-runit-island-nuclear-test-leaking-due-to-climate-change/9161442?nw=0>

⁵⁶ Desmond Narain Doulatram. “EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY,” 1-90.

⁵⁷ Dr. Barbara Rose Johnston, ““We are all downwind: The environmental health history and continuing consequences of nuclear militarism in the Marshall Islands” Public lecture by Center for Political Ecology environmental anthropologist Barbara Rose Johnston. Recorded in Majuro, RMI, March 2, 2017 as part of the Marshall Islands Nuclear Legacies Conference: Charting a Path Towards Justice. Video editing by Brian Cowden. *Center for Political Ecology*. <https://www.youtube.com/watch?v=LewmoMFh3l8&t=127s>

⁵⁸ The UN Special Rapporteur concluded that, “The Nuclear testing resulted in both immediate and continuing effects of the human rights of the Marshallese...radiation from the testing resulted in fatalities and in acute and long-term health complications. The effects of radiation have been exacerbated by near-irreversible environmental contamination, leading to the loss of livelihoods and lands...many people continue to experience indefinite displacement.”

⁵⁹Susanna Rust, “U.S. won’t clean up Marshall Islands nuclear waste dome but wants it free of anti-U.S. graffiti,” *Los Angeles Times*, November 14, 2019. <https://www.latimes.com/environment/story/2019-11-14/marshall-islands-runit-nuclear-waste-dome-site-graffiti?fbclid=IwAR33PLvzVHumjETnvx3IZktjMLyMRLeWSq3OPGmKmba1SSTntgjeCkFHm6c>.

⁶⁰Susanna Rust, “How the U.S. betrayed the Marshall Islands, kindling the next nuclear disaster,” *Los Angeles Times*, November 10, 2019, <https://www.latimes.com/projects/marshall-islands-nuclear-testing-sea-level-rise/>

⁶¹ Desmond Narain Doulatram. “EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY,” 1-90.

⁶² Amata Kabua, “Interview: President Amata Kabua,” *Pacific Magazine*, March-April 1983.

⁶³ Recently, the House Committee on Armed Services introduced H.R.2500 in June 2019 which included a requirement for the Secretary of Energy to produce a detailed report

on the status of the Runit Dome 180 days after the enactment of said act entitled “National Authorization Act for Fiscal Year 2020.”

⁶⁴ Tilman A. Ruff, “The humanitarian impact and implications of nuclear test explosions in the Pacific region,” 798.

⁶⁵ Ibid.

⁶⁶ Desmond Narain Doulatram. “EVIDENCE OF INCONSIDERATION AND INEQUALITY TOWARDS A PACIFIC ISLAND STATE SERVING U.S. MILITARY INTERESTS IN THE ASIA PACIFIC REGION: MARSHALL ISLANDS PROVIDE GREATER TRANSPRENCY THROUGH A MORAL ANGLE DESPITE AMERICAN HEGEMONY,” 1-90.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² “World Court rejects Marshall Islands suit seeking nuclear disarmament,” *Reuters*, last modified 16 October 2016, <http://www.reuters.com/article/us-nuclear-marshallislands-court-idUSKCN1250U0>.

⁷³ See *Compact of Free Association Preamble*

⁷⁴ See *National Nuclear Commission Facebook Page*: https://www.facebook.com/pg/RMINNC/about/?ref=page_internal

⁷⁵ Lejolan Kabua and Amata Kabua, “Marshall Islands,” In *Micronesian Navigation, Island Empires and Traditional Concepts of Ownership of the Sea* by Masao Nakayam and Frederick L. Ramp. (Saipan, Mariana Islands: Congress of Micronesia, Trust Territory of the Pacific Islands, 1974), 84-85.

⁷⁶ Autumn Skye Bordner, “Climate Migration & Self Determination,” *Columbia Human Rights Law Review* 51, no. 1 (2019): 183-252.

⁷⁷ Lilly Adams, “Resuming Nuclear Testing a Slap in the Face to Survivors,” *Union of Concerned Scientists*, 26 May 2020, <https://allthingsnuclear.org/guest-commentary/resuming-nuclear-testing-a-slap-in-the-face-to-survivors?fbclid=IwAR2Gj2UyonQNghgX-zXD7sbJq1v-uN3tNiu4OU3gpcxmTvWfF2Yw4GX3kl>

