STATEMENT OF
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AND
MEMBER, COMPACT NEGOTIATIONS COMMITTEE
APPEARING ON BEHALF OF THE PRESIDENT OF THE
REPUBLIC OF THE MARSHALL ISLANDS
TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
INDO-PACIFIC TASK FORCE
July 18, 2023

Madame Chair, Mister Co-Chair, and Distinguished Members,

Thank you for giving the Marshall Islands (RMI) the opportunity to explain its position on the U.S. Executive branch's proposed Compact of Free Association Amendments Act of 2023. I appear on behalf of His Excellency David Kabua, President of the RMI. With me are our new Minister of Foreign Affairs and Trade, the Honorable Jack Ading, and our new Chief Compact Negotiator, the Honorable Phillip Muller.

First, let us make clear that the RMI regards the free association relationship with the U.S. as beneficial to both of our nations and not only wants to continue the relationship; we want to strengthen it. It is closer than the U.S. has with any other nations, other than the two other states with which it is freely associated.

Strengthening even the closest of relationships, however, sometimes requires difficult conversations. It always requires a willingness to seriously consider the perspective of one's partner.

Second, there should be no doubt that we appreciate the efforts of the U.S. Administration to work with us to negotiate a renewed Compact of Free Association.

Many issues were favorably addressed, under the signed Memorandum of Understanding (MOU) of January 11th 2023. A tremendous amount has been accomplished. We are grateful for the support and all of the financial and programmatic assistance that has been agreed to so far. But, while many matters have been resolved, but not all have been, including the Nuclear legacy's adjudicated awards.

Six plus months ago, the RMI was presented with a dilemma: The negotiations had progressed to provide some benefits, but not all of the requests that the RMI had made were adequately addressed. At the same time, the RMI faced a deadline for inclusion of the funding in President's Budget for the coming fiscal year.

The Memorandum of Understanding was signed without the consent of the President's Compact Negotiations Committee. The Government of the Marshall Islands was not satisfied with the MOU, including majority of the member of the Parliament.

This has led to a recent change in the Cabinet – a very unusual move so close to an election, which is in November – and our Chief Negotiator was replaced.

Since the MOU was signed, the Marshall Islands has repeatedly requested the Administration to further negotiate the MOU and amend it because of the complexity of the issues but has received unfavorable responses.

So, we are now coming to the U.S. Congress to request that the U.S. Legislative body direct the Administration to resume the negotiations.

Let me now turn to the major outstanding issue. Our President, His Excellency David Kabua, had said from the beginning that any new Compact would have to include a "dignified" solution for the Marshallese people, and I, wholeheartedly support that. This concerns claims arising from the nuclear weapons testing program, including its waste disposal, that the U.S. conducted while it administered the Marshall Islands as a trustee for the United Nations with full powers of government.

It is important that I explain the issue and, then, outline what a dignified solution would be from the Marshallese perspective.

Americans are an exceedingly decent and generous people. I am certain that most would be shocked and embarrassed if they were to learn about the history and legacy of the nuclear testing program while we were governed by the U.S.

In 1947, the United Nations appointed the U.S. as trustee for the Marshall Islands and other Pacific islands taken in World War II. It gave the U.S. the responsibility to protect us and promote our well-being.

Later in 1947, the U.N. Security Council was concerned about the people of Enewetak Atoll who were to be removed from their home islands for nuclear bomb tests. It was told by President Truman that, "The Enewetakese will be accorded all rights which are the normal constitutional rights of the citizens under the Constitution but will be dealt with as wards of the United States for whom this country has special responsibilities."

This was a promise that was never kept, as the people of Enewetak languished in impoverished exile for 33 years in the previously uninhabited atoll of Ujelang, the most remote atoll in the Marshall Islands. It was an abuse of America's role as trustee to pressure us to allow our homeland to be desecrated by massive nuclear explosions for 12 years, exposing us to deadly, horrific health and environmental hazards that we were never warned about—and that continue to affect us to this day.

The nuclear detonations in the Marshall Islands had an explosive yield equivalent to roughly 1.7 Hiroshima-sized bombs per day over the entire 12 years of testing. In terms of radioactive iodine alone, 6.3 billion curies of iodine-131 were released during the U.S. nuclear testing program—42 times greater than in all of the atmospheric testing in Nevada, 150 times greater than released by the Chernobyl breach, and 8,500 times greater than released from Atomic Energy Commission operations at Hanford, Washington.

Preparing for a 1954 test at Bikini Atoll—one that would result in the largest U.S. nuclear

detonation ever—U.S. military officials learned that a change in wind patterns threatened to bring fallout to inhabited Rongelap and Utrik atolls, including others that had not been evacuated. They went ahead with the test anyway without warning the islanders, who were blanketed in radioactive fallout and had no idea what it was or that it was dangerous.

Almost 70 percent of the children on Rongelap Atoll who were under 10 years old at the time of the blast eventually developed thyroid tumors. And many women from several atolls, Rongelap and Utrik for example, later gave birth to babies who resembled jellyfish and peeled grapes, incidents similar to mothers in Utah who were downwind from the Nevada test site. Some died at birth or after a few hours of life. Many other women had miscarriages.

Rongelap and Utrik were evacuated after the test, but two years later it was still "by far the most contaminated place on Earth," referring to Rongelap Atoll, according to Merrill Eisenbud, Director of the U.S. Atomic Energy Agency's Health and Safety Laboratory Eisenbud nonetheless suggested sending the people back home so they could be used as human guinea pigs. "It will be very interesting to get a measure of human uptake when people live in a contaminated environment," he wrote. "While it is true that these people do not live the way Westerners do, civilized people, it is nevertheless also true that these people are more like us than the mice." I am sad to say that the legacy of nuclear testing in the Marshall Islands is clearly one of racism as well as human and environmental destruction.

The people of Rongelap, Utrik and others from the Marshall Islands, did indeed become human guinea pigs under the secret radiation studies of their bodies, code named "Project 4.1." And these studies were done without their consent or knowledge.

The people of Bikini, Enewetak, Rongelap and Utrik were forced to leave their islands. And were exiled from their atolls and eventually returned home based on U.S. assurances that it was safe—only to find out years later that radiation levels were too high, and no local food could be consumed. Some of the Bikini islands were completely vaporized. Many others remain unsafe for human habitation today—and will be for as long as anyone can imagine. Today people of Bikini and Rongelap cannot return to their atolls due to high radiation contamination on their land, food, and environment.

The damage to our environment and our health caused by the U.S. nuclear testing program are not just a part of our history: They continue to plague us even today.

For example, the people of Enewetak have lived in the shadow of a massive nuclear waste dump for over four decades. That waste dump, known as Runit Dome, contains 110,000 cubic yards of radioactive waste gathered from around the atoll decades after the nuclear weapons tests. The waste includes tons of plutonium-239 with a radioactive half-life of 24,100 years. The U.S. Department of Energy admits that radioactive material is leaking from Runit Dome into Enewetak's lagoon, but we were told not to worry because the radioactive material already in the lagoon dwarfs the amount of radioactive material buried under Runit Dome. We need the U.S. to tell us: What are the health risks of living on the shores of a lagoon with a larger amount of radioactive material than the infamous Runit Dome nuclear waste dump?

After consulting with military veterans and civilians who participated in the radiological cleanup of Enewetak Atoll, we have recently learned of several troubling facts, including the following:

1. Some of the highly radioactive waste that was supposed to have been buried under Runit Dome was actually dumped into the lagoon.

2. One of the lagoon dump sites was just offshore from the island where the people have since resettled.

3. After Runit Dome was sealed, additional radioactive material was buried in concrete crypts that the Department of Energy appears to have been unaware of and is unable to vouch for their safety.

4. Over 300 pounds of highly toxic beryllium was buried on Enjebi Island in soil that may have been dug up later and dumped into the lagoon.

5. Over 130 tons of presumably contaminated soil was imported from the Nevada nuclear test site to Enewetak and spread on the land there.
6. Enewetak was used as a base for tests of chemical and biological warfare agents.

Have any of these hazards affected the health of Enewetak residents, and do any of them pose threats that persist today? The Marshall Islands does not have the capacity to answer these questions. The U.S. must answer these questions.

Several scientific reports that have come out over the years greatly concern our people. A peer reviewed report published in Social Medicine in 2014 by two medical doctors, Seiji Yamada and Matthew Akiyama, found that U.S. Government scientists had grossly underestimated excess cancer rates in the Marshall Islands due to the nuclear tests. The doctors' report also cited research that found that congenital anomalies, stillbirths, and miscarriages in the Marshall Islands increased after 1952, when the first U.S. nuclear test in the megaton range occurred, and that there was a strong correlation between the number of such events and the distance of residence from the nuclear test sites.

Also, a study was published by Columbia University scientists in 2022 in the Journal of Radiation Research and Applied Sciences that found that there are still higher-than-anticipated concentrations of strontium-90, a radioactive isotope that causes cancer and bone disease, in both Enewetak and Bikini Atolls.

The U.S. has not come close to properly compensating the Marshallese people for the damage caused by the U.S. nuclear testing program.

The Compact of Free Association, through its agreement under Section 177, in Article IV established a Nuclear Claims Tribunal to adjudicate and pay substantiated and warranted claims. But the Tribunal was only able to pay a small fraction of the damages it awarded before it ran out of funds. In current dollars, the total amount of unpaid damage awards issued by the tribunal is more than $3 billion.[1]

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[1] Present value of unpaid property awards = $3,134,200,000

Present value of unpaid personal injury awards = $31,199,000

Present value of all unpaid awards = $3,165,399,000

The amount of unpaid personal injury awards is $23,131,552. The Tribunal awarded $96,658,250 and made payments totaling $73,536,698. Cumulative payment levels ranged from 5% for awards made from November 2005 forward to 96% for awards made prior to October 1996. The Tribunal suspended payments in January 2009 due to lack of funds. (Source: Tribunal Annual Report to the Nitijela for the Calendar Years 2009) and
Present value = $31,199,000 calculated using average annual inflation rate of 2.02%

Former U.S. Attorney General Dick Thornburgh, reviewed the proceedings and procedures of the Nuclear Claims Tribunal in great detail, found that they were proper, and concluded that the amount provided by the U.S. for the claims was "manifestly inadequate." The Tribunal is just as much a part of the 177 Agreement in Article IV as the provisions stating that it is a "full" settlement in Article X. It is a "full" settlement--insofar as it is "just and adequate" The clear intent of the Compact is that full settlement is based on just and adequate compensation. One provision cannot be independent of the other. Finality of the "Espousal" clause (Article X) will be ensued when "Changed Circumstances" (Article IX) addresses the "just and adequate" compensation.

Although radiation in the Marshall Islands is 42 times higher than in the areas of the Nevada testing site, victims of the Nevada testing are compensated as they should be under the subsequently enacted U.S. Radiation Exposure Compensation Act – while most Marshallese victims have not received proper compensation and new claims are entirely unfunded. There are still some unpaid awards for personal injuries, and the awards for damage to property – really a taking of the property – are mostly unpaid, less than 1% of the property damages have been paid up to date.

The "full settlement" of nuclear claims agreed to by the Marshallese and the U.S. in 1986 was the result of a lopsided negotiation between a superpower and an impoverished island community. Besides holding an overwhelming advantage in bargaining power, the U.S. was the only party capable of assessing the risks that were being allocated from its own nuclear program. The U.S. clearly took advantage of this imbalance in power and information at a time when it was acting as the Marshall Islands' trustee and held a fiduciary responsibility, supposedly our protector and the guardian of our welfare.

The settlement for the Marshallese, many of whom are still exiled from their home islands nearly three-quarters of a century after the nuclear testing program began, is a tiny fraction of the billions of dollars that have been paid to compensate Americans living downwind—some several hundred miles downwind—of the Nevada Test Site. This disparity shows that the U.S. has fallen far short of the ideal of equity in our case.

Recognizing the uncertain state of knowledge about the nuclear testing's full effects, the Compact's congressional supporters specifically envisioned the provision of additional compensation when scientific advances showed the need, demonstrating a focus on the adequacy of settlement rather than its finality. During the debate over the original Compact, a number of members of the Senate raised the question of fairness of the subsidiary agreement under Section 177. Senator Alan Cranston elaborated on these doubts: "These provisions, which establish a $150 million trust fund from which all claims are to be paid – an amount which may not be adequate – deny to 5,000 Marshallese, who have already filed claims, their day in court.

> Senator James McClure, then Ranking Member of the Energy and Natural Resources, responded to these concerns directly:

> As you . . . know Article IX of the subsidiary contains a changed circumstances 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.
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> . . . 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 any new claims develop, Congress should and will provide any assistance required, absent compelling contradictory evidence.

One of the senators who had raised the initial concerns, Senator Howard Metzenbaum, responded by noting "the record is clear if the need for further assistance arises, nothing in the Compact will discourage the Marshallese from seeking additional money and that the Senate shall give a sympathetic hearing to these appeals." Senator McClure remarked that "there is an enormous burden to state affirmatively that, if future valid claims develop, we will do everything possible to compensate adequately all newly identified victims."

The "full settlement" includes a supposed remedies in the event that the settlement proves to be manifestly inadequate. One is a "changed circumstances petition" under Article IX of the 177 Agreement. It states that the Marshall Islands can submit to the U.S. Congress for claims that (a) arise or are discovered after the 1986 effective date of the settlement and (b) could not reasonably have been identified as of that date.

The remedy, however, is illusory: it is merely a right to ask Congress for additional compensation, with no obligation by the U.S. to respond. The Marshall Islands already had the right. By restricting the circumstances under which the Marshall Islands can even ask Congress for additional compensation, the changed circumstances "remedy" actually takes away rights that the Marshall Islands previously had. And the so-called remedy of changed circumstances does not apply in cases where the claims reasonably could have been identified in 1986 even if they weren't, or in cases where the claims were known but their value was grossly underestimated (as occurred here).

The amount of unpaid property awards is as follows:

Enewetak: 2000 award of $385,894,500, less payments of $1,647,482.65 = $384,247,017
Present value - $587,751,000, calculated using an average inflation rate of 2.15%
Bikini: 2001 award of $561,035,321 less payments of $2,279,179.83 = 561,036,320.17
Present value - $834,582,000 calculated using an annual inflation rate of 2.12%
Utrik: 2006 award of $307,356,398.91 with no payments.
Present value - $401,592,000 calculated using an annual inflation rate of 1.93%
Rongelap: 2007 award of $1,031,468,700 (including April 2008 amendment adding $237,500) with no payments
Present Value - $1,310,275,000 calculated using an annual inflation rate of 1.86%

So, as between the superpower and the poor island community, it was the poor island community, with an extremely limited pool of expertise that was saddled with the risk that valid claims would be missed or underestimated. The U.S. was obviously in an enormously superior position to evaluate the risks arising from its own nuclear program. It was unconscionable to palm those risks off on the unsuspecting Marshallese.

We are both faced with this unresolved issue so many years later because of what occurred when the Compact was amended 20 years ago. Then, like now, the RMI said that the nuclear issue had to be addressed. The State Department Negotiator assured that it would be if the RMI submitted a Changed Circumstances Petition. After agreement was reached on the Compact Amendments, however, and the RMI submitted the Changed Circumstances Petition, the State Department dismissed it. The Congress, which was responsible for addressing the CCP, never did.I have already noted some changed circumstances. Here are a few others: Since the 177 Agreement was negotiated, we have learned that –

- There was significant fallout on at least 10 atolls.
- People of Rongelap and Utrik Atolls were used as guinea pigs in Project 4.1. The Project 4.1 The Study of Response of Human Beings Exposed to Significant Beta & Gamma Radiation Due to Fallout from High Yield Weapons by the U.S. Government.
- Radiation levels in the Marshall Islands are higher than what would be acceptable for human habitation in the U.S.
- Cancers increased substantially – the U.S. National Cancer Institute estimated 500 excess cancers.
- Grandchildren born on atolls other than the four recognized by the U.S. as having been adversely impacted by nuclear weapons detonations and waste have been born with defects – such as no limbs.

Another supposed remedy in the alleged full settlement embodied in the 177 Agreement is in its Article XIII. It commits the U.S. to engage in consultations with the RMI on matters covered by the Agreement if the RMI requests consultations. U.S. State Department officials have refused to do so, saying that there was a full and final settlement when consultations, like a Changed Circumstances Petition is a part of that settlement.

We also know a tremendous amount more related to poisonous remains of U.S. weapons testing at Enewetak:

- The rising sea is causing radioactive waste to leak into the lagoon and the Pacific because cost cutting built the concrete dome over a bomb crater with a sand base.
- A Lawrence Livermore Laboratory scientist told the RMI that 99% of the deadly plutonium is not under the dome.

And with all of this, the U.S. State Department says that the Government of the Marshall Islands is responsible for the deficient dome.

The U.S. Government sent a group to Majuro consisting of representatives from the State and Interior Departments in October 2019, in what was characterized as a “listening tour” in order to better understand the priorities and needs of the Marshallese people and our government as both governments prepared for these negotiations. What they heard was a resounding and

unequivocal demand for nuclear justice and to address the unresolved issues from the U.S. nuclear testing program in the Marshall Islands that had been neglected for so long. I made it clear that nuclear injustice must be addressed this time around.

And that is still the primary issue for our people today, and why we are unable to wholeheartedly concur with the MOU as a complete resolution of major issues confronting our people and nation.

The MOU favorably responds to many of our concerns with increased economic assistance and reasonable assurance that U.S. economic assistance will not erode as along as the U.S. enjoys security and defense rights granted to it in the Compact. For example, the additional provision of veterans' benefits made applicable to citizens of the freely associated states who served in the United States military and have chosen to return our islands is also most welcome. We request, however, that the legislation incorporate the provisions of S. 1913, which provides for other veterans' benefits. There is much in the MOU and proposed Compact legislation that we fervently support.

So, what would a "dignified" settlement of nuclear claims look like? We believe that any settlement of nuclear claims would have to be guided by the following principles:

1. Damages that have been or can be proven should be fully compensated. This can be accomplished by a larger contribution to the Compact Trust Fund.

2. The contribution can also cover the costs of adjudicating claims that the Tribunal did not process because of a lack of funds and damages in the cases of atolls other than the four that the U.S. has acknowledged were adversely impacted, the "Midrange Atolls."

3. Marshallese victims of the nuclear testing program should receive the same level of compensation and remedial action from the U.S. Government that American victims have received or are entitled to receive.

4. The risk of what is currently known and unknown should be borne by the party that caused the damage, not the party upon which the damage was inflicted.

We also respectfully suggest the following.

- The legislation should direct the U.S. Executive branch to provide the Congress with substantive points seriously and fully addressing every claim that the RMI may make in a Changed Circumstances Petition.

- The legislation should also direct the U.S. Executive branch to report if the RMI requests consultations under the 177 Agreement's Article XIII, then report regularly on the status of the consultations, and, finally, on the conclusion of the consultations.

- The legislation should continue the authorization for *ex gratia* assistance to the Four Atolls that the U.S. recognizes were adversely affected by the nuclear testing and waste continued in both the laws approving the Compact and the Amended Compact.

With regard to other issues:

The U.S. has been able to precision-target its missiles from thousands of miles away because of the testing done at our Kwajalein Atoll, facilities described by the U.S. Joint Chiefs of Staff as "the world's premiere range for testing intercontinental ballistic missiles" and, now, space operations support.

To enable these tests, the people of Lib Island, about 30 nautical miles from Kwajalein, were forcibly displaced from their island. When they were allowed to return, they found their homeland irrevocably altered. Until now Lib Islanders experience intergenerational impacts of displacement and unknown levels of contamination. A recent request for all pertinent documents regarding Lib was denied in full, citing classified status.

Senators, Lib Islanders deserve access to all information related to their island in order to make informed decisions for their homeland and community, and Lib Islanders deserve fair and just compensation for their role in the "success" of your missile testing program.

The annual financial assistance that the MOU would provide would be adjusted two percent a year for inflation. We hope that U.S. inflation can be brought down to two percent, but the assistance should be adjusted for actual inflation, as in the case of many U.S. programs with inflation adjustments.

The rising sea is an existential threat to the RMI, which has no elevation higher than two meters. It is also a national security issue for the U.S. because the most critical national security benefit that we provide – letting the U.S. deny access to forces of other nations to an area the size of Alaska, California, and Florida combined in the ocean and the air as well as on land – is based on our Exclusive Economic Zone.

We would also ask consideration of improved trade provisions, especially with respect to tuna products sourced in the Marshall Islands to encourage U.S. investment.

Finally, I want to note that our government is deeply concerned about revelations regarding the Bikini Resettlement Fund – which is totally unrelated to the Compact Trust Fund and other Compact funds. Our Government was not consulted. It was a decision by the U.S. Department of the Interior. We did not support the "rescript" under which the Interior Department gave up its role in ensuring proper spending. We are as interested as you in learning the facts of the situation.

We are acting in the interim. President Kabua is working to name a receiver for the Fund.

We are also establishing development authorities for each of the Four Atolls for which trust funds were established with U.S. grants. The authorities will be governed by boards that include the RMI's career civil servant Chief Secretary and members appointed by the president of the RMI. The development authority laws as adopted by the Parliament, requires that the development authorities report to the together to the Cabinet and Parliament annually.

Regarding the proposals that the U.S. has made, we are particularly pleased to see the continuation

of essential U.S. programs in the draft Compact Amendments Act, the extension of additional programs, and the restoration of U.S. programs that were available to our citizens residing in the United States prior to 1996. We further request that our citizens living in the United States be accorded the same rights and eligibility status to all the federal programs just as the U.S. citizens.

We do not want to hold up this important legislation for the Marshall Islands, but we will need some additional measures to allow our people and parliament to move forward and fully support our efforts.

During this period of concluding the negotiations, which we want to be as expeditious as possible, we request that the Marshall Islands be granted financial and programs assistance at the current levels. It is crucial that there be a smooth economic transition from the second Compact funding period to the third, without economic harm.

Madame Chair, As a part of my statement, I am attaching a letter from the Pacific Islands Forum on addressing issues regarding the legacy of U.S. nuclear bomb testing and waste disposal dated just eight days ago.

Additionally, I want to note a recommendation from the 2008-2009 Report of the Cancer Panel of the President of the United States, published by the U.S. Department of Health and Human Services, National Cancer Institute. It recommends to the Congress and the President of the United States: "The U.S. Government should honor and make payments according to the judgment of the Marshall Islands Tribunal." Further, the United Nation's Human Rights Council on September 3, 2012. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (Marshall Islands Mission): "The nuclear testing resulted in both immediate and continuing effects of the human rights of the Marshallese"

Calin Georgescu, the Special Rapporteur made the following recommendations for the Government and relevant State actors of the United States of America;

1. Continue to provide the Marshall Islands with assistance (financial, technical, and otherwise) in order assist it to develop its health infrastructure and capacity further and to reduce the need for off-island referrals…"

2. Consider adopting a presumptive approach to groups currently excluded from the special programmes of the United States of America created to assist survivors of nuclear testing, whereby individual exposed to nuclear fallout would be presumed to be eligible."

3. Consider issuing a presidential acknowledgment and apology to victims, in accordance with the conclusion of the Advisory Committee on Human Radiation Experiments that the one of the greatest forms of harm from past experiments and intentional releases may be the legacy of distrust they created, and that, in such instances, the Government of the United State should deliver a personal and individualized apology."

4. Guarantee the right to effective remedy for the Marshallese people, including by providing full funding for the Nuclear Claims Tribunal to award adequate compensation for the past and future claims, and exploring other forms of reparation, where appropriate, such as restitution, rehabilitation and measures of satisfaction (for example public apologies, public memorials and guarantees of non-reparation); and consider the establishment of a truth and reconciliation mechanism or similar alternative justice mechanisms."

Finally, I am submitting with my statement the proposal that the Marshall Islands made to the U.S. negotiator July 1, 2022, which includes some of our requests that were not addressed and which we hope that you will consider.

Americans are a great and good people. But every rule has an exception. The U.S. nuclear testing program in the Marshall Islands is one episode in your history where you have fallen short of our ideals.

It is not, however, too late to come to a fair and just resolution to this issue. The people of the Marshall Islands have sacrificed a great deal, wittingly or not, to help you win the Cold War and protect your freedom. We hope that you will not take our sacrifices for granted.

Thank you.