STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE OF NATURAL RESOURCES
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The decision of this Subcommittee to conduct a hearing on the legacy of the U.S. nuclear testing program in the Marshall Islands could not have been more timely. This is not merely because the 40th anniversary of the Bravo incident is just a few days away, or because the U.S. Government's nuclear science and technology program during the Cold War is a hot news item here in this country.

Rather, this hearing is necessary and appropriate at this time because the United States needs to renew, and in my own view expand, its commitment to understanding the effects of the nuclear testing program on the Marshallese people and their islands. It is in the U.S. interest to do so for two reasons.

First, the U.S. Government is going to need to respond to new information being developed about radiological conditions in the Marshall Islands. In order to respond in a way that is credible, appropriate and consistent with applicable U.S. law and treaties, the U.S. needs to have the most accurate and complete information available.

The second reason is that, by providing the people of the Marshall Islands and their government with all available information relating to the effects of radiological contamination on the health of people and the environment there, the U.S. may be able to make further contributions to mitigation of harm to individuals which can be attributed to the testing program.

It also is the right thing to do, and we owe it to the people concerned. My view in this regard is based in part on what I saw and heard during recent visits to Majuro, the capital of the Republic of the Marshall Islands. It is my observation that recent press accounts of experimental medicine in this country involving radiation, as well as reports on contamination of lands and waters near weapons production facilities, has stirred very deep feelings among the people of the Marshall Islands.

I do not presume to know precisely what all the attention to these issues means to the Marshallese, but there are a few observations I can share with you.

For example, it does not appear the Marshallese view the new scrutiny of U.S. Cold War nuclear programs merely as an occasion to express outrage or launch broadside condemnations of the U.S. for contaminating their people and islands. There will

be some of that, because outrage is not an irrational or abnormal human response to the stress associated with an insidious health threat such as that faced by these islanders.

However, generally it did not appear to me that many Marshallese see the value of increased press interest as being limited to coverage of pyrotechnic allegations of racist and genocidal intent on the part of the United States. Again, we will see that coverage, and anyone who knows the true story of how the Marshallese people were treated understands why the "guinea pig scenario" is compelling to many concerned people.

But instead of turning up the volume on these themes of suspicion and anger, I sensed among the individuals and officials to whom I spoke a more complicated array of emotions and ideas. There is, for example, a sense of sagaciousness among the Marshallese about dealing with the legal, political, economic and cultural impact of radiological damage. They also seem very serious about the question of whether the new scientific findings about radiation effects since the Section 177 claims settlement constitute changed circumstances under Article IX of the settlement.

The Marshallese have as much experience living with radioactive contamination and dealing with the risks of nuclear science and technology as any other population. Irrespective of what may or may not have been done in secret, that which was done openly in the Marshall Islands testing program, and the measures taken to deal with the consequences, certainly represents one of the most sustained efforts to manage radiation damage and on-going hazards ever experienced by a civilian population.

So the Marshallese understand the anxiety among communities in the U.S. as more is disclosed about radiation carried by the winds and waters, plants and animals, in our own country. In a sense, Marshallese leaders are seasoned veterans of the nuclear era, and have a more sophisticated understanding of the risks associated with nuclear science and technology than most Americans.

Forty years of experience managing the devastating effects of the nuclear testing program now is translating itself into a calm resolve to direct anger and fear into constructive problem-solving. For example, eight years of experience managing the implementation of one of the most comprehensive radiation claims settlements has given the Marshall Islands government unparalleled hands-on experience with nuclear claims administration.

Understanding risks, providing legal remedies, supporting individuals and communities in cultural and economic recovery, replacing distrust with confidence building cooperation -- these are skills which the Marshallese have acquired. It hasn't been all smooth sailing, but I suspect we could learn from their experience.

The Marshallese are in recovery from over forty years of being victims, and they have a mature attitude about what has happened to them. A critical transaction in their transition from disempowered victims to recovering victims taking control of their own futures was the nuclear claims settlement negotiated on a government-to-government basis between the Republic of the Marshall Islands and the United States in implementation of Section 177 of the Compact of Free Association (U.S. Public Law 99-239).

The principles underlying the Compact and most of its basic provisions, including Section 177 which authorized the nuclear claims settlement, were originally negotiated and initialed by representatives of the Carter administration and the new constitutional governments instituted by the people of the former Trust Territory of the Pacific Islands -- including the government of the Republic of the Marshall Islands. The Reagan administration negotiated the actual terms of the Section 177 settlement itself.

Having served as counsel and Department of Defense Adviser to the NSC negotiating team and during Congressional hearings on the Compact, I am pleased to provide testimony today and answer questions you may have about the history and nature of the Section 177 Agreement. The points I can make which perhaps will be most useful to the Subcommittee are as follows:

1. The United States had "settled" personal injury and land claims arising from the nuclear testing program previously by making payments and executing releases with the peoples concerned, but new illnesses in the claimant communities and upward revisions in dose assessments at some islands rendered these arrangements ineffective. There was an active debate within the NSC system as to whether the nuclear claims should be part of the political status negotiations at all for the very reason that the record of attempts to quantify damages and limit liability through settlements and compensation had failed due to what one senior official called "a dismal record of miscalculation" by the U.S. with respect to assessments and predictions on contamination and health effects, respectively. Opponents of a comprehensive settlement argued for ad hoc measures funded from appropriations to be sought as the need might arise. The counter argument was that the need for resources to meet the needs of the victims was chronic and no political status agreement would be politically viable in the Marshall Islands which did not address the nuclear claims in a comprehensive way.

2. It was determined that ad hoc measures and limited settlements were part of the problem rather than a solution, and that a more comprehensive approach was required to resolve outstanding legal claims in existence at that time, and to satisfy the political demand for a serious program of compensation and assistance to the affected peoples. The Section 177 Agreement provided $150 million to be invested and managed for the benefit of the affected people. In the entire thirty years prior to the Section 177 agreement the total amount of funding and ad hoc measures to

compensate the affected people was less than $50 million. Although the settlement was controversial and less than satisfactory to all concerned, the amount of funding in the Section 177 Agreement proved sufficient to overcome claimant community political opposition to the Compact. Indeed, in the U.N. plebiscite the approval rate for the Compact and the Section 177 Agreement was higher among the entire class of those who had nuclear test claims filed in the federal courts than it was among the general population in the Marshall Islands. The Bikini people voted against the Compact, but later agreed to a settlement providing $90 million in addition to the more than $100 million in grants and assistance they had received under the Compact and other U.S. programs for their benefit. The Rongelap people also voted against the settlement, but that community is still awaiting the additional funding required to provide for their resettlement. Having made this observation, it probably is incumbent upon me to note here that I am acting as counsel and a registered agent for Rongelap in its quest for resettlement assistance. Rongelap resettlement was not addressed in the Section 177 negotiations in which I was involved while serving as a federal official.

3. The concepts underlying the Section 177 Agreement included empowerment of the affected people by providing each of the communities concerned with its own resource base so that each such community could begin to recover its identity and control its own future to a greater extent. Ending virtually total claimant community dependence on the Department of Interior and DOE, as well as other federal programs, was an objective of the settlement as well. The settlement also was structured to settle legal claims and cut off U.S. liability in the federal courts for damages arising from the nuclear testing program. However, it was recognized that the settlement should not completely close the books on U.S. responsibilities with respect to the nuclear claims. This was due to the history of AEC and DOE difficulty in defining health risks and island rehabilitation requirements. The result was Article IX of the settlement agreement.

4. Read carefully, Article IX constitutes U.S. recognition of the appropriateness of a request from the government of the Marshall Islands to the U.S. Congress for additional compensation and assistance if new information emerges in light of which the terms of the settlement appear manifestly inadequate. The underlying theory of Article IX is that the Section 177 Agreement was a good deal for both sides since it significantly increased U.S. compensation to the people concerned but also closed the federal courthouse door to further claims. However, everyone recognized that the state of knowledge about radiological conditions in the islands was not adequate to justify final termination of access to further U.S. assistance or compensation.

5. As new information emerges about the effects of the testing program, it should not surprise anyone that the affected communities and their national government are considering an Article IX request. It should not be viewed as clever, opportunistic or devious for the Marshallese parties to proceed under Article IX. It was fully contemplated and intended that this would be the case if credible evidence

came to light to indicate that the definition of affected people was too limited in scope, or that there were injuries and damage that reasonably could not be viewed as fully and fairly compensated by the agreement.

6. The U.S. got what it bargained for in the Section 177 Agreement because Article IX is essentially a commitment to ensure that a request from the Marshalls will be accepted and considered. While the U.S. obligation is primarily of a moral nature rather than a matter of legal compulsion, the use of a treaty provision to give a foreign government direct access to the U.S. Congress strengthens the case that a changed circumstances request for further measures to address test related problems was allowed and perhaps even anticipated based upon the history of changed circumstances and on-going efforts to improve our understanding of the effects of the testing program.

I hope the preceding discussion is helpful to the Subcommittee as it considers the options available to it in addressing issues that may arise from the disclosure of all existing information and the discovery of any new information concering the effects of the nuclear testing program in the Marshall Islands.