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STATEMENT OF
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And

FORMER CHAIRMAN, GUAM WAR CLAIMS REVIEW COMMISSION

BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR
AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON H.R. 44, THE GUAM WORLD WAR II LOYALTY
RECOGNITION ACT, PRESENTED JULY 14, 2011

Before the U.S. House Committee on Armed Services – December 2, 2009

Chairman Fleming and Members of the Subcommittee, thank you for the opportunity to appear before you today to speak about the work of the Guam War Claims Review Commission.

My name is Mauricio Tamargo, and I was the chairman of the Foreign Claims Settlement Commission at the Department of Justice from 2002 to 2010, and I was also chairman of the Guam War Claims Review Commission (Review Commission) until June 9, 2004 when the Review Commission completed its work.

The Review Commission was an advisory body established by the Secretary of the Interior under the Guam War Claims Review Commission Act, Public Law 107-333, enacted in December 2002.

I had the honor of serving on the Review Commission with a very talented and knowledgeable group of individuals including the Vice Chairman of the Review Commission, the late Hon. Antonio Unpingco, former Speaker of the Guam Legislature, the Hon. Robert J. Lagomarsino, former Member of Congress from Ventura, California, the Hon. Benjamin J. Cruz, former Chief Justice of the Guam Supreme Court-now a Senator in the Guam legislature, and Mrs. Ruth Van Cleve, a former career senior executive in the Department of the Interior, and Mr. David Bradley, the Executive Director and the rest of the Review Commission staff.

The Review Commission was established to "determine whether there was parity of war claims paid to the residents of Guam under the Guam Meritorious Claims Act as compared with awards made to other similarly affected U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II" and to "advise on any additional compensation that may be necessary to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment" suffered from the Japanese occupation of the island during the war.

The island of Guam, was a U.S. territory when it was attacked by Japanese forces on December 8, 1941. Guam was attacked on the same day as the attack on Pearl Harbor occurred, but this attack happened on the other side of the International Date Line. Two days later, on December 10, 1941, the Japanese overran and occupied the island. What followed after that was a period of 32 months of cruel, brutal, and barbaric oppression of the people of Guam by the Japanese occupation forces. Great numbers of the islanders were beaten and whipped, and many of the women were raped. There were numerous beheadings and, in the last months of the occupation, nearly all of the islanders were subjected to forced labor and forced marches and herded into concentration areas, including the elderly and very young, causing them to suffer acutely from malnutrition, exposure, and disease.

The Review Commission found that after beginning the liberation of Guam on July 21, 1944, the United States forces declared Guam secure on August 10, 1944, and immediately began organizing the island as a base from which the U.S. intended to launch air and sea attacks in the direction of the Japan, the Japanese homeland. At the same time, the U.S. Navy devoted as much material and effort as it could spare to constructing shelter for the local citizens.

Housing and shelter was scarce on Guam not just because of the combat fighting between U.S. and Imperial Japanese forces but also because many residents were being displaced by the ever increasing build up of U.S. forces on the Island. The task of both acquiring all necessary land for U.S. military forces, and providing monetary relief and damages to the residents of Guam was undertaken by the Navy's "Land and Claims Unit", which later became the Navy's "Land and Claims Commission" when the Congress enacted legislation. As the first word in both organizations title implies, the Navy's priority was acquiring all the necessary land on the Island needed by the military-- not attending to the claims of the residents of the Islands. To a great extent this is understandable as the U.S. was still engaged in a very serious war effort.

The Review Commission's Report acknowledges the Navy's efforts on behalf of the residents of Guam as admirable. However, the Review Commission also noted that the two missions of the Land and Claims Commission were not aligned and in fact were at cross-purposes. Because, while the Navy was trying to inform the residents of Guam of their right to file a claim and trying to provide them with shelter and housing, the Navy was also displacing much of the population of Guam. Ultimately the Navy occupied seventy-five percent of the Island. Leaving a mere twenty-five percent for the population of Guam to inhabit.

With-in weeks after the termination of hostilities in Guam, the Congress enacted the Guam Meritorious Claims Act of 1945. In addition to providing authorizations, this Act directs the U.S. Navy to provide "immediate relief" to the people of Guam. This directive included providing monetary payments to the people of Guam.

In undertaking its task, the Review Commission conducted research on the administration of the Guam Meritorious Claims Act by the Navy's Land and Claims Commission, and compared the claims program conducted pursuant to it with the following statutes, and the claims programs conducted pursuant thereto, after the war:

- The Philippines Rehabilitation Act of 1946
- The War Claims Act of 1948, including the 1952, 1954, 1956, and 1962 (Wake Island) amendments to the Act, and Title II of the Act, added in 1962
- The Micronesian Claims Act of 1971
- The Aleutian and Pribilof Islands Restitution Act (1988)

The Review Commission also conducted hearings on Guam, at which time we heard moving testimony from survivors of this terrible period in history. We then

held a legal experts' conference in Washington, D.C., where relevant legal issues and the history of Guam were discussed. Finally, the Review Commission submitted its Report to the Secretary of the Interior and to specified congressional committees summarizing our findings and recommendations.

The Review Commission found that the Navy's Land and Claims Commission, administered pursuant to the Guam Meritorious Claims Act of 1945, was significantly flawed and fell short on a number of important counts, when compared to the claims programs provided for residents of other U.S. territories. The most significant of the flaws in this program being the poor public notice given for the claims program on the war ravaged and chaotic Island and the short opportunity residents of Guam had to file claims.

The Review Commission also found, and I would like to make special mention, that the residents of Guam exhibited great courage and loyalty to the United State in the face of extreme hostility at a time when the outlook for the U.S. prevailing was far from assured. As demonstrated by the time when a number of the residents of Guam hid and protected an American sailor during the Japanese occupation. But for the assistance by the U.S. national residents of Guam, who knows how WW II would have ended?

The Subcommittee has asked me to address a number of specific questions regarding the work of the Review Commission. These questions are: why should U.S. taxpayers pay for these WW II reparations?; How are the awards under H.R.44 different from the amounts already received by 4,356 claimants under the Guam Program?; What is the justification for the different levels of compensation in H.R.44?

The Japanese cannot be held responsible for any further payment of reparations for World War II wrongs committed against Americans, including the World War II claims of the American residents of Guam, because the terms of the 1951 Treaty of Peace released the Japanese from such responsibility.

At the same time, notwithstanding that the actual funding to pay these Guam claims will come from taxpayer funds, it could be argued that the funds are, in some sense, traceable to the funds derived from the postwar liquidation of the Japanese and German assets frozen at the beginning of World War II. Those Japanese and German funds were lumped together and distributed by the Department of the Treasury, pursuant to the various War Claims Commission and Foreign Claims Settlement Commission claims programs. No distinction was

drawn between Japanese and German responsibility for any particular claim or set of claims. (This contrast with the funding of war claims against the Axis countries Hungary, Romania, and Bulgaria. Title III of the international Claims Settlement Act of 1949 mandated separate funds, derived from the respective countries' frozen assets, to cover claims against each of those countries.) Insofar as the Foreign Claims Settlement Commission is aware, it has not been possible to determine whether all of the proceeds from liquidation of the Japanese and German assets have in fact been expended. Therefore, in this case, it could be said that these Guam claims would be paid with Japanese funds.

With regards to the 4,356 claims received, although I don't recognize that number, the first thing I wish to point out is that while the Guam Program shows a total of 6,365 awards, only 318 of those were death claims and only 257 were injury claims, the rest were property claims. Again, this breakdown indicates where the Navy's priorities were, understandably with the war effort. The other point I wish to make with regard to this question is, as like all such war claims programs, there is no legal obligation to make these payments and, as I have said before, the payment of these awards are ex-gratia.

As to why the Review Commission recommended different categories of claims, the Review Commission found that due to the passage of years and the loss of relevant records, it is virtually impossible to differentiate among the many brutal injuries each resident of Guam suffered during the Japanese occupation. We also looked at other similar remedial claims programs to this recommended program and found that the most appropriate method for apportioning compensation for the resident's suffering would be to grant one single lump sum award covering each categories of harm, regardless of how many types of harm a person may have suffered. Each level of compensation is justified by the different, brutal, and very difficult hardship experienced by each of the residents of Guam during the occupation. Even the least severe level of compensation, the internment, caused significant illness and death due to exposure to the elements for weeks without shelter.

In conclusion, the five Commissioners who served on the Review Commission came from different points of view and backgrounds, as well as both political parties and yet we came to these findings and recommendations unanimously. I stand by those findings and recommendations and continue to believe strongly that they should be implemented. I would also like to say that those of us who came to the Review Commission from the Foreign Claims Settlement Commission were

pleased to have had the opportunity to use our familiarity and expertise regarding war claims issues to assist in the accomplishment of this important work.

Mr. Chairman, this concludes my statement. I will be happy to respond to any questions that you or the other Members of the Committee may have.