

Justin Tutty, for Basewatch, Darwin.

since 'marines to darwin' was announced, locals have raised serious concerns regarding the risk of sexual assault by visiting foreign servicemen. These concerns have been raised at every formal juncture, and have been grounded in recent local memory of significant instances.

rather than an artefact in its own right, this submission seeks to bring together relevant references to assist the inquiry.

Let's start with the book 'Darwin', by Tess Lea, which concludes with a dramatic telling of the gang rape of a couple of local teenagers in the 90s. This horrible crime is particularly significant because it highlights a flaw in the Status of Forces Agreement (Aus/USA SOFA) that allowed the offenders to evade accountability to Australian justice processes.

A clear community-based recommendation, sustained over the past 10 years, offers that the SOFA is outdated and should be formally reviewed in the very new context of new USA bases in Darwin, to close any loopholes and give all stakeholders greater certainty re shared expectations.

in addition to records of two media articles referring to the same period, please find attached a copy of BaseWatch's 2014 comment to the draft Force Posture Agreement; just one of many similar formal submissions or letters that prioritise the reality of increased risk of sexual assault.

here's a 2018 article, reporting on darwin from investigative journalists in sydney, which got little coverage in darwin:

<https://www.abc.net.au/news/2018-02-15/investigations-dropped-into-darwin-based-us-marines/9426678>

more recently, the same concerns were raised in an investigative report by SBS, which got no pick up by local outlets:

<https://www.sbs.com.au/news/us-marines-accused-of-sexually-assaulting-women-while-stationed-in-the-northern-territory>

important to note:

<https://www.military.com/daily-news/2018/07/27/family-seeks-25-million-marines-after-colonel-convicted-abuse.html>

which concludes:

"I lose sleep over the Australia stuff. Because I feel like this is a predator that could have been caught, that could have been stopped."

See attached details of a previous submission to KPMG

Attention: KPMG

Re: impact of Aus/USA joint force posture initiative

Please find below;

- our denouncement of this process
- notes on the identified topics
- other reflections

followed by appendices, including:

- BaseWatch response to the 2012 Noetic impact assessment of the first deployment
- BaseWatch response to the 2013 Deloitte assessment of the next deployment
- BaseWatch response to the 2014 JSCOT inquiry (conducted after the Joint Force Posture Agreement was signed)
- Citizens Initiated Assessment pamphlet (2016)

These are included for completeness, as we've largely been circling around the same set of concerns each time. In addressing the topics and the meetings presented by KPMG directly, this response borrows heavily from these previous communications where appropriate.

Please direct any further correspondence to:

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Who we are

BaseWatch is a local community group formed in response to the 2011 announcement that Darwin will play host to what president Obama described as 'an enduring presence' of USA Marines.

We formed around four distinct demographics:

- anti-war activists, connected through Darwin Residents Against War since the popular local organising against the illegal invasion of Iraq. Darwin had the largest rallies against the war (per-capita) in the country.
- sexual assault service providers and other community sector actors who could foresee risks for their stakeholders; and convinced us to immediately prioritise these local impacts;
- faith-based organisations and individuals, who are focussed on building useful peaceful relationships, and want to socialise visiting forces;
- current and ex- service people

We identified five main areas of concern:

- **social impacts:** including crime and jurisdiction, drawing from our experience here and the litany of abuse documented in relation to other USA bases in our region
- **regional stability** and keeping war from our door; forging useful independent relationships with our neighbours, discouraging two 'super powers' (China and USA) from shaping up for conflict when they should be attending to the needs of their people
- the perverse **endorsement of unacceptable militarism** and illegal weapons, including the USA's ballistic and nuclear WMD programs; and
- the risk that an increasing foreign military presence will contribute to **erosion of local democratic values** and diminish access to democratic processes
- **environmental impacts**, including invasion of sites of national and international significance and serious pollution of the air, land and water we depend on for a healthy future.

Previous reports

We criticised the previous (Noetic and Deloitte) processes for each only addressing the number of marines expected for the following year. We urged an immediate comprehensive assessment of the social impact of the full Air/Ground Task Force of 2500 USA Marines. The Noetic process was limited in the scope considered, but also the range of consultation. We heard from individuals outside BaseWatch that their attempts to engage with Noetic as concerned individual citizens were dismissed and denied. We approached the process with serious misgivings, but found the final report to be better than we expected, given the severe methodological limitations.

The Deloitte process the following year had a better process, with public meetings and broad engagement. We were not so impressed with the report, particularly the flippant suggestion, based on numerical modelling, that the Marines were more likely to be victims than perpetrators of sexual assault (as if this somehow alleviated any responsibility to manage the risk of crime by visitors). When Air Vice Marshall Hart visited Darwin in 2013, we were assured that there would be a further assessment of the full complement of 2500 Marines before a decision was made to support those numbers.

The following year, on 12 August 2014, the Force Posture Agreement was signed at the Australia-United States Ministerial Consultations, without any attempt at an impact assessment. This 25 year agreement has been entered into without any visible efforts to actively manage those risks which were identified by the previous, strictly limited, reports; and without the benefit of impact analysis of the anticipated number of 2500 marines targeting Darwin.

Noting that the previous 'assessments' had been mere issues-management processes, that had not contributed to decision making, we fully expected to never see any further formal consultation. Indeed, Australian defence analysts have been concerned that this 'bilateral' posture Agreement has not included Canberra in actions taken by the USDF on Australian soil. The Joint Agreement stipulates '*full knowledge and concurrence*' – especially by the governments of the US and Australia – not of the joint Defence Force chiefs acting without parliamentary endorsement (before the act):

<https://www.lowyinstitute.org/the-interpreter/us-signals-china-darwin-f-22s>.

As a democratic country, Australia also includes public consultation processes before signing vital international agreements. After the Joint Agreement had already been in force for a couple of years, we decided in 2016 to draft our own discussion paper, styled around impact assessment (see attachment 4). While lacking the expertise and resources to perform rigorous research, we still considered this style of discussion paper a useful tool for engaging our communities around the concerns we shared.

Our lack of financial and physical resources prevented the high level of public engagement enjoyed by government funded and resourced processes such as yours but we did get two clear messages from those who engaged with us at market stalls and in meetings with community groups around Darwin.

First, we noted that many of those who supported the Joint Force Posture did so not because they dismissed the concerns in our discussion paper, but in spite of them. Among those resigned to the new agreement, we encountered a common attitude of fear of our Asian neighbours. These respondents largely agreed with our concerns, but argued that we needed the USA to defend Australia.

Secondly, the feedback we received endorsed our pre-determined prioritisation of the unmanaged risk of crime, particularly assault, by visiting service personnel. Local people are particularly attuned to Darwin's previous experience of misbehaviour by visitors, and painfully aware of the lack of protection and support we can expect.

Process:

Clearly, from our engagement with formal process, and our determination to maintain local community conversations despite the apparent abandonment of Defence's commitment to conduct Social Impact Assessment of the full scope of the Initiative before it was signed into Agreement, local people are keenly interested in contributing to improved management of the risks posed by the new foreign war bases and the growing foreign military presence.

Unfortunately this process appears to fall short of offering an opportunity to do so.

Many of our members are familiar with the kind of impact assessment that occurs as a matter of course under other (planning and environmental) legislation. We do not recognise familiar features of those processes in what the Department of Defence are offering, via KPMG.

In fact, despite meeting with the consultants, we are still unsure just what the KPMG process is. We do not recognise any methodology used. Despite being labelled 'Social Impact Assessment', consultation was limited to inquiring about attitudes and perceptions, with no discussion paper or information offered – and in some cases, with disinformation. When discussion in the first public meeting turned to common concern of assault, the convenor of the meeting tried to tell us there'd been only one incident of assault by visitors, in spite of the record of local media, and the detail compiled by the previous reports. It is entirely inadequate to limit investigation of impacts to perceptions and understandings of those impacts. It is additionally corrupt research to salt those perceptions with disinformation, as we also identified in the previous Deloitte process.

BaseWatch want to contribute to identifying and actively managing real risks and impacts of the Force Posture Agreement. Unfortunately we believe that the relevant authorities, including NT Government and the Commonwealth Department of Defence, are opposed to this ambition. We find this year's process disappointingly consistent.

As we cautioned Noetic in 2012,

SIA may consider the balance of opinion, but should look well beyond this one measurement. The body of concerns almost certainly extends beyond the realm of public commentary to date. The validity, likelihood and severity of risks are not necessarily related to the popularity with which they are held.

We are still hoping there might be more to this than economic modelling and opinion surveys. It is not yet apparent that any other research is being conducted. It is not clear whether we will see a draft of the report to provide comment on. Neither is it clear whether, or how, this process might actually measure impact to date. For example, we would like a clear description of steps taken by the researchers to categorise departmental and other public-record incidents of alleged assault or similar inappropriate behaviour. This is not confidential information, but is out there in the public domain – in some cases – as is the propensity of investigations to be dropped without transparent due process.

We inquired as to who else the researchers were meeting, and were told that this was confidential. This is not an unusual question to ask: often, local participants may help provide context or endorsement for other voices already engaged, and suggest others which may have been overlooked. This was certainly our experience with the first (Noetic) process, and is routine during SIA as part of planning or environmental assessment. In our meeting, we proposed the example of sexual assault service providers (of which there are a number locally). It is unfortunate that the consultants did not feel empowered to confirm that they would meet with these key stakeholders. It is noteworthy they had no such qualms offering the information that they sought participation from the Environment Centre. This underscored our existing concerns that this fundamental risk is not being investigated seriously.

At this point, we still feel the community is owed a Social Impact Assessment that meets the standards and conforms to the methodology of other such processes which we have engaged with around other major developments (recent examples include SIA conducted as a part of wider consultations regarding the expansion of McArthur River Mine, the hydraulic fracturing moratorium and the post-mining future of Jabiru).

Topics:

A number of the proposed topics are better addressed by official measurements, and other experts.

Impacts on:

- Business and investment impacts
- Small business
- Access to housing, health and community facilities and services
- Access to education and other public services, including traffic congestion
- Employment and Training

are all measurable, and future expectations are better fielded by direct stakeholders and authorities. We have certain attitudes and expectations regarding these questions, but they are not particularly well based, and it is inappropriate for us to explore them when measurements and projections should be easily accessed. It is unfortunate that it appears KPMG may report on these details without sharing with the public.

Basewatch is obviously more concerned at the social impact and invasion of our environment than on its 'economic benefits'. However, the money to be spent on basing US military forces here - \$2-3 billion dollars over the next ten years, is likely understated. Former Defence Minister Payne said that the financial outlay will be split between the US and Australian governments but cited vague 'national security reasons' for not revealing who really pays the bill. Security analysts openly say that Australia will pay: <https://www.thesaturdaypaper.com.au/world/north-america/2018/08/25/cohens-admissions-implicate-trump/15351192006749#base-materials> .

The Gunner government conducted an Economic Summit in 2017 that included economic benefits and costs to the NT. While defence industry benefits were included in the final report, the costs were not revealed – although several people – including ex-defence personnel – gave clear examples of these.

Basewatch recognises that all forms of violent upheaval – whether through natural disasters or human-made conflicts – may benefit those at the top end of the business world or global market when clean-up is endorsed and (partially) carried out but it rarely benefits those at the bottom of the trickle-down effect.

re Population, demographic, sense of community:

Darwin is still a small town, and this number of visitors, even if they spend most of their time on the bases or at training grounds, will undoubtedly have an impact on the nature of our community.

It was notable, particularly in the second public meeting, that the growing foreign presence has invoked and emboldened certain attitudes regarding our large Asian population. The facilitators conveniently dismissed racist comments about Asians as inappropriate, however they might better be recognised as valuable evidence. Darwin has always enjoyed a rich, diverse multicultural community. Malays and Japanese were trading here before the first colonisers, and Chinese people, in particular, have had a strong representation since new Darwin was founded. We even celebrate a holiday marking the freeing of Chinese slaves who built the old railway. It is a regrettable risk that one of the narratives around the growing American military presence at USA war bases in our town is regarding conflict with China, which provokes unwelcome attitudes from some towards our significant Asian population.

We warned of the anticipated risk that the presence of USA bases would weaken local and domestic democratic institutions. We identified in 2012:

the popular interpretation that democracy was sidestepped in order to reach agreement between Australia and the USA. The Marines proposal was presented as a done-deal, with zero public information, let alone engagement. Locals are very much aware that the NT is often pushed around (ref. euthanasia, nuclear waste, the NTER intervention into remote communities), while at a national level Australia is seen to have a bad history of following the US into some questionable and regrettable

military decisions. These common understandings all contribute to a sense of inevitability that discourages popular engagement with what is at once an important, but sometimes seemingly unmanageable, range of issues.

This has been underscored by the Department's decision to abandon previous commitments to conduct a full Social Impact Assessment before proceeding with the Force Posture Agreement. This latest process, of asking us about our feelings after the decision for a 25-year agreement has already been made, is likewise consistently anti-democratic.

Our experience is that the growing foreign military presence has been accompanied by a strict refusal at all levels of government to take on even the most basic responsibilities. We've participated in all available formal processes and written to relevant politicians, all without seeing any evidence that our attempts to engage have had any influence on the lack of active management of identified risks. Local political representatives are virtually unresponsive on issues relating to the USA war bases and deployments, some even refusing to meet with constituents on this issue, and none offering much beyond a bland 'all the way' position. We have seen from the experience of the internal assessment of the Talisman Sabre war-games that well established standards of community engagement are sidestepped in relation to the activities of visiting forces.

Perhaps unsurprisingly, our local media has not played a useful role in allowing the public to understand and consider what is being done to our town. Media consumers elsewhere are better informed than locals. BaseWatch members who have struggled to get due attention to risks and incidents of assault by visiting service personnel were disgusted when the paper published an article encouraging locals to meet the Marines sexually. (*Cross-cultural relations 101, Craig Dunlop, NT News, 12th May 2018*)

BaseWatch has supported the sensible tactic of socialisation: of giving locals and Marines opportunities to get to know one another, and we've welcomed opportunities and instances of the visitors engaging with our communities. However some members have encountered concerns about the presence of Marines in schools.

Some parents are sensitive to the role of any militarism in school, believing that militarism should not be normalised through school, and recruiters should not have access to groom children. But when it comes to the Marines who have visited many Darwin primary and secondary schools, there is the added concern of child safety. The Marines do not have domestic working-with-children clearances, and the Status of Forces Agreement retains outdated provisions for individuals to enter the country unidentified, on Collective Movement Orders.

Locals are sensitive to the fact that the USMC draws from a different demographic, and tolerates personal histories, that are not so common among our highly professionalised ADF. We are aware of incidences of American military personnel who have committed very serious crimes against children. For example, in 1995 three Marines and a USA sailor were convicted of the abduction and rape of a 12 year old girl near a USA war base in our region, in Okinawa, Japan. More recently, in 2007 a USA Navy Sailor was arrested in Sydney and charged with grooming a child under 16 for sexual intercourse (notably, the USA requested jurisdiction, as provided for by the Status of Forces Agreement).

Australians entering NT schools need police clearance, in the form of an Ochre Card, as required by the Care and Protection of Children Act. If an individual enters a school without clearance, both they and the host principal have committed an offence. But in the case of the Marines, it appears that the NT Solicitor General has merely declared their presence lawful. We suggest that, while the intention of socialisation is welcome, Marines should look beyond schools for opportunities to get to know the locals.

re Indigenous culture:

BaseWatch has no active indigenous members. We have however engaged with both Larrakia and Tiwi Islander Traditional Owners. We have been told that they recognise a range of concerns arising from the growing foreign presence, but that these are well down the list of priorities for their representative organisations. Larrakia Traditional Owners have expressed strong ties to the ADF, that they expect will equip them well to address impacts as they arise. One meeting with members of the Tiwi Land Council communicated a realisation that they may not be well placed to negotiate over access to land.

We expect that KPMG will be consulting directly with representative bodies, and we hope to be able to discover that detail from their report.

re Community health and safety, including vehicle accidents:

The issues of crime, community safety and assault – particularly sexual assault – have been prioritised by BaseWatch. Our concern is that the growing presence burdens Darwin with an increased likelihood of these risks, and, furthermore, that there is no evidence that any responsible authorities at any level of government have taken any step to manage that risk.

Our fears are informed by, but not limited to, past experience in neighbouring regional bases. Darwin itself has a history of crime committed by visiting USA military. BaseWatch has compiled a list of known incidents of assaults by visiting USA servicemen this century. Prominent among these is the gang rape of two 15 year old girls in Darwin in 2000: two newspaper articles related to the incident are appended to our contribution to the JSCOT inquiry. The perspective of one of the girl's mother is told in Tess Lea's beautiful book 'Darwin'. This example is significant because the parents of one of the victims describe flaws in the SOFA that allowed the culprits to evade local justice.

In addition to those incidents since the deployments began that have been reported in local media (including a sailor accused of rape in 2013, a marine who assaulted a masseuse in 2015, and the recent violent attack in Brisbane by a marine who remains on active duty), we are aware of others that have only been unearthed through Freedom of Information.

Earlier this year, investigative journalists Dylan Welch and John Stewart from ABC reported that: *'a series of investigations into alleged sexual crimes committed by US marines in and around Darwin have been quietly dropped by Australian and American authorities.'*

The story touched on a range of scenarios where FoI revealed that complaints ranging from inappropriate behaviour to indecent assault appear to have been hushed up by the only authorities with

capacity to address this harm from the growing USA military presence. Most disturbing of these was reference to *'inappropriate behaviour'* in 2014 which was not investigated fully due to *'jurisdictional issues'*. This would appear to demonstrate that the existing aged treaty system is proving inadequate for managing the risks and impact of crimes committed by the visitors.

This report illustrates an approach by ADF that is at odds with effective active management of this real impact. Just as we found KPMG and Deloitte more interested in contributing to management of our feelings and perceptions than the real risks and impacts, so we also see these actions by ADFIS as being focused on managing issues and perceptions rather than risks and impacts.

Neither do we have any better indication of the approach of the USA military themselves. When the 2013 rape accusation was reported, the public learnt that the USA Staff Justice Advocate had made representations to the Federal Attorney General for the case to be dealt with under the USA military system. We appreciated that this request was denied, but we were shocked to be told by the Consulate that such a request will routinely be made as a matter of course in any such circumstance. This setting is entirely inappropriate. In fact, we contend that the provision in the SOFA for such a request to be made in any should be recognised as a loophole which could easily be tidied up in the course of a full public review. In the meantime, having been assured that the USA will routinely seek to pluck away any Marine charged with assault in Australia, we are left with no confidence in their intent to contribute to effective management of these risks.

Our interpretation was only reinforced by the circumstances of USMC Colonel Daniel Hunter Wilson, who in 2016 came to Darwin as liaison to the Marine Rotational Force. Wilson was sent back to the USA after only a few weeks, when his Australian counterparts called out a pattern of inappropriate behaviour, including unwanted advances, and sexualised behaviour. Within a few months, Wilson went on to commit sexual offences against 3 young sisters, and rape an adult neighbour. The mother of the six year old he was convicted of molesting is now suing the Marines, arguing that if they had taken Wilson's misbehaviour in Darwin seriously, her 3 daughters would not have been put in harms way. The website Military.com quotes the mother as saying she wants to make sure what happened in Darwin can't unfold again:

"I lose sleep over the Australia stuff, because I feel like this is a predator that could have been caught, that could have been stopped."

Clearly this recent outrageous example instils no confidence that the USA authorities will take sexual offences committed by Marines in Darwin seriously.

In the face of the unmet, unmanaged increased risk of crime, particularly sexual assault, BaseWatch have made simple recommendations of:

- social impact assessment (all so-called processes so far fall short);
- locally provided sexual assault prevention training; and
- a full public review of the status of forces agreement

re the impacts of legal arrangements:

We have raised concerns about the inadequacy of the outdated SOFA consistently through other processes, as well as through direct communication with NT MLAs including the Chief Minister and Defence Liaison Minister Michael Gunner; federal representatives including Luke Gosling; and the (former) federal attorney general George Brandis. Our concerns and recommendations have been met with responses that alternate between silence and feigned offence – each of which lead to the same stubborn inaction.

This feigned offence – an affected indignation at the implication of less than saintly behaviour by visiting service personnel – is a real insult to locals who have experienced or learnt of the real history of local incidents. But it also questions the ‘no greater friend’ cliché. If indeed we are such great allies, if we do really enjoy an enduring friendship, then surely that relationship can bear the weight of formally reviewing a treaty that is now 55 years old.

We refer the reader directly to the section titled ‘*Crime, Jurisdiction and the SoFA*’ from our contribution to the 2012 Noetic process. We consider it noteworthy that the consultants feigned ignorance of all this detail from the previous process.

The Aus/USA SOFA is a long dated instrument, that was devised long before this fundamental shift in our relationship, remains mired with proven flaws and inadequacy, and is not fit for today’s purposes. BaseWatch recognise review of the SOFA as an obvious, straightforward, achievable action that would give all stakeholders greater certainty of our shared expectations of the Initiative.

re **Noise and other environmental impacts:**

Jet noise has always been a concern for residents under the flight path, and particularly those right under the ‘pitch’. Late last century, it appeared that residents action groups had reached a compromise with the RAAF, regarding timing, and position of their noisiest manoeuvres. More recently, and certainly since the arrival of co-located USMC and USA Air Force, these residents groups report that agreements have been abandoned; that noise is worse than ever; and that exercises seem to run earlier, later, and sometimes consecutively. The growing presence of foreign fliers – including but not limited to Americans due to the Joint Force Posture Initiative – has seen the scope, scale and breadth of impact continue to increase.

Since the arrival of the Marines, we’ve tried to engage in environmental assessment processes for the biannual Talisman Sabre war-games. We have found that, instead of conforming to the same legal processes that all other entities in the NT would, Defence chooses instead to conduct internal processes which mimic the public processes under bilateral environmental law. We saw, in particular, that the most significant risk of TS15 – amphibious landing at two sites in Fog Bay – actually had zero public scrutiny. We were unable to witness the impact at Fog Bay – which undoubtedly would have disrupted the turtle nesting events that coincided with the war games. We did witness a minor oil spill at Lee Pt, where equipment for the Marines was brought in for permanent re-location.

We have witnessed twice now that Defence merely declares that the bilateral environmental agreement need not apply. This is directly at odds with their responsibilities under Australian law. We fear that this illustrates the approach to environmental risk of the Joint Posture Agreement.

Recently, local residents around Rapid Creek have been letter-boxed about a class action lawsuit regarding the cumulative legacy impact of PFAS/PFOS contamination from the RAAF Base. This has come a couple of years after signs appeared along the creek warning locals not to fish or collect bush tucker from the contaminated soils and waters of Rapid Creek – the main stream of Darwin’s suburbs. While this is (largely) a legacy impact, and not attributable to the Agreement, it has raised related concerns. It does appear that, with the US Air Force now also co-located there, we can now expect even less knowledge, foresight, confidence and certainty regarding the nature and scope of environmental risk presented by activities at that co-located base.

There is a well understood narrative that the per-fluoroalkyl impact from the airport is worse than it would have been if it were merely commercial, and not a co-located RAAF base. We are concerned that the addition of new risks from sources even less accountable to local people jeopardises the future of the highly significant springs, banks and elbow of Rapid Creek.

re **National security:**

BaseWatch maintains serious concerns that the Force Posture Initiative will negatively impact Australia’s capacity to develop and maintain effective relationships in our region. These concerns are well defined in the Citizens Initiated Assessment: we refer you there rather than repeating verbatim.

Former Foreign Minister Bob Carr is concerned that a build up of US troop and military weaponry in Darwin and Tindal could seriously affect our national security. With more USAF long-range bombers, transport aircraft, B52s and air-to-air refuellers operating between/from those locations, Australia looks like: *‘a continental US aircraft carrier... it would really lock us in, irreversibly, as part of the American empire’* <https://www.lowyinstitute.org/the-interpretor/why-bob-carrs-book-matters>

The Agreement states as a first priority that the initiative of basing thousands of US troops and heavy military equipment such as ballistic weapons on Australian soil is for humanitarian assistance and disaster relief. There has been no indication of this – even though several large-scale natural disasters have occurred during US force posturing here.

What we have already seen, in the case of patrols of the South China Sea, is the propensity for our much larger allies to strongly urge that we take a more active role in activities that could be interpreted as exacerbating tensions around the archipelagos – if not outright provoking China. For the past three years, our USA allies have been urging Australia to increase the already significant ‘freedom of navigation’ and flyover activities over and around the contested islands.

We understand that the presence of USA bases in the NT makes it virtually impossible for Australia to choose not to be dragged along into any future conflict the USA may stumble into. Even a war that has no strategic value to Australia; even a war that Australia’s people and parliament decide we want no part of; by virtue of being available with bases for deployment to and sanctuary from that conflict, Australia will inevitably find ourselves implicated and involved.

Much is made of the trope of USA bases making us a target. And perhaps it is foreseeable that in an all-out world war, that sees American forces deploying from bases in Australia, then perhaps these would become potential targets. Of far greater concern is the attractive soft-target posed by Marines and other USA service personnel on recreational leave in our city. Young unarmed personnel with their guard down in crowded settings are a much easier, and more likely, target than the bases.

other reflections:

Not included in KPMG's list of topics is that of **illegal weapons**. We remain dissatisfied with assurances about the status of illegal weapons which we still fear may be handled or stored at USA war bases in the NT as a result of the Agreement.

We have been repeatedly assured that Departmental policy disallows DU munitions. But this is a very weak level of assurance, and certainly does not give any confidence that these indiscriminate weapons will not be moved, stored and handled at USA war bases in the NT. Despite the indiscriminate nature of these munitions, which poison abandoned war-zones and pose harm to innocent civilians long after fighting has moved on, international law remains unsettled, moves for an international treaty have considerable ground to cover, and USA policy is currently in a state of flux. Given this weak position, it is particularly important that Australia sets clear expectations regarding DU munitions.

We have likewise been repeatedly assured that Australian law will prevail regarding weapons brought by American forces to their bases in the NT. But we are painfully aware that Australian law specifically allows for those forces to handle, transport and stockpile these illegal weapons in Australia. This explicit loophole was created before the Joint Force Posture Initiative was signed into Agreement. It is essential that these illegal weapons are expressively and explicitly denied on USA war bases in the NT.

Australia is not a nuclear weapons state, and Australians are leading international efforts towards a treaty to permanently ban all nuclear weapons. Yet the growing USA presence presents increased likelihood of visits by nuclear armed, powered or capable American machines. Locals are well aware that nuclear armed and powered ships and subs have visited Darwin Harbour in the past. Entanglement with a foreign power's nuclear posturing is entirely at odds with our domestic ambitions for a world free of nuclear weapons. We call for explicit assurances that the Force Posture Agreement precludes any tolerance of USA nuclear weapons of any variety.

We, along with Australian defence analysts, are concerned that aircraft, vehicles and vessels operated by or for United States Forces have unrestricted access to our aerial ports and sea ports to store, maintain, and remove United States Forces' pre-positioned war materials.

Article VII of the Agreement states: (point 2)

United States Forces shall not preposition specific equipment, supplies, or materiel when Australia has objected to such equipment, supplies, or materiel.

BaseWatch recommend Australia should immediately and specifically object to illegal weapons like cluster bombs; to depleted uranium munitions and armaments, and to nuclear WMDs.

As we wrote in response to the JSCOT inquiry;

We should take this opportunity to assure all stakeholders that basic expectations about unacceptable weapons are well defined and understood.

BaseWatch, while particularly focused on the local social impacts of the Marines, remain concerned at the **unbound scope** of the Agreement. We recognise that the Joint Force Posture Agreement leaves considerable room for expansion beyond what has been considered so far. This was demonstrated clearly when we heard from members of the Tiwi Land Council that they had sat in meetings with representatives from NT Government and USMC in discussions of potential use of the islands for refuelling and training – something well beyond the stated parameters.

While we understand that this TI configuration is now off the table, we also look to Nhulunbuy, where a commercial space port is now being promoted, contrary to the conclusions of an NT parliamentary inquiry last century. Noting the definition of the recently announced USA Space Force as drawing largely upon private and commercial capabilities, we might wonder what impact and influence the Joint Force Posture Agreement poses to the north-east of NT.

BaseWatch are available to explore any of these topics in more detail. We remain alert and hopeful of future opportunities to contribute to genuine management of risks and impacts of the Force Posture Initiative. We look forward to future opportunities to contribute to improved decision making.

Appendices

- BaseWatch response to the 2012 Noetic impact assessment of the first deployment
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comments in response to items raised in the Noetic Issues Paper**Comments regarding process**

BaseWatch are concerned that the process we're invited to participate in is one of Issue Management rather than Impact Assessment (SIA)

We have concerns regarding the transparency and independence of the process. Given that there is no public consultation, no publicity of the process, and that it is closed to all but handpicked 'stakeholders', we note that this process falls well short of the accessibility and transparency that we would see to be essential to a successful, comprehensive and robust Impact Assessment. Noting that the introductory issues paper makes conclusions ahead of any consultation, echoes PR lines we've already encountered, and frames issues in tendentious terms before dismissing or belittling them without reference or grounding, BaseWatch contends that the paper, and the process, are far from independent, but are from the outset salted by ADF's enthusiasm for the USMC base.

We find that the paper's substance and methodology gives far too much weight to publicity and popularity as a measurement of the validity and significance of potential impacts. We contend that a list of publicly available "perceptions" is vastly inadequate basis for SIA. Impact Assessment should not be based on popular opinion, or the squeakiest wheel, but should look more broadly for potential impacts, including to academia, other case studies and relevant international experience, as well as casting a wide net for public comment. SIA may consider the balance of opinion, but should look well beyond this one measurement. The body of concerns almost certainly extends beyond the realm of public commentary to date. The validity, likelihood and severity of risks are not necessarily related to the popularity with which they are held.

In fact, many people with strongly held views do not have incentive to vocalise their dissent, because of a lack of confidence in democratic institutions around these decisions. This is both a criticism of this process, and an impact that should be identified by SIA. Our conversations among the community (through holding information stalls, sharing newsletters and conducting community events) have revealed the popular interpretation that democracy was sidestepped in order to reach agreement between Australia and the USA. The Marines proposal was presented as a done-deal, with zero public information, let alone engagement. Locals are very much aware that the NT is often pushed around (ref. euthanasia, nuclear waste, the NTER intervention into remote communities), while at a national level Australia is seen to have a bad history of following the US into some questionable and regrettable military decisions. These common understandings all contribute to a sense of inevitability that discourages popular engagement with what is at once an important, but sometimes seemingly unmanageable, range of issues.

Other stakeholders with clear concerns are organisations without lobbying staff, capacity or functions. We've spoken to community organisations and government programs alike who, while recognizing a stake in the increased American militarisation of the NT, do not have capacity to engage. Other stakeholders do not exist, or have not been identified, or self selected – yet. This is a common theme in SIA - eg, for a new suburb; there may be no residents yet, however decisions made now about a new suburb may have significant impact on those as-yet unidentified stakeholders.

The best way to address these complexities is to cast the widest possible net; conducting far broader research than of mainstream media and official statements; and by advertising for public participation and holding public information events.

There are many models around the country for SIA, any of which would be superior to this process. Here in the NT, SIA is often carried out within the Environmental Assessment framework. Better models may be found in WA, where considerable work has been done in both government and academia on harmonisation of cultural, heritage, social and environmental impact assessment. BaseWatch recommends that a best practice approach to Impact Assessment should be built around risk analysis: we'd like to see a wide net cast, with broad research, to compile a risk matrix that estimates both likelihood and severity of proposed risks. This should then be addressed by proposals for monitoring, reporting, performance targets and triggers for actions or contingencies. No such elements are evident in the process before us, which merely lists issues, then argues their validity. Such an undisciplined and hap-hazard approach guarantees that significant risks will be overlooked or misjudged, while the lack of performance criteria jeopardise capacity for ongoing evaluation to contribute to good management of those risks.

Comments regarding issues raised in the paper

Crime, Jurisdiction and the SoFA.

The SoFA has been criticised as being an obstacle in instances of sexual assault during the infrequent but regular visits for joint training (Talisman Sabre). We refer Noetic to a couple of newspaper articles that directly reference sexual assault and rape committed by visiting US forces in Darwin, where evasion of local justice has been tied to shortcomings of the Status of Forces Agreement. To continually insist that this criticised outdated instrument has 'adequately provided' for these instances is disturbing to locals who remember such incidents in Darwin's recent past, and who recognise the anticipated USMC A/GTF as a development well beyond what the SoFA has been relied upon to manage here in Darwin in the past. Although we're told that other nations have different circumstances and different agreements, when we analyse those, we see in our SoFA similar deficiencies that have been identified as obstacles to appropriate justice in other jurisdictions.

Concerns we have regarding the agreement as it stands include:

- the unjustifiable individual anonymity provided by collective movement orders
- the risk, as evident in Okinawa, of creative interpretation of 'course of duty'
- the requirement for 'sympathetic consideration' by the Australian Attorney General of any request to give American processes priority even in those cases where the agreement recognises the primacy of Australian law
- custodial obstacles to local police developing charges against suspects subject to the agreement.

Please don't offer us ongoing monitoring of the application of the agreement: this is an entirely unsatisfactory response to what we believe are long held, well defined and solidly grounded dissatisfaction with the Agreement as it stands. We're telling you right now, the SoFA needs a review. A full, public parliamentary review under the processes provided for by the Joint Standing Committee on Treaties. We welcome repeated statements that echo community expectations that any offenses committed by visiting forces will be dealt with under Australian law, wherever that is appropriate. But shared expectations and ongoing monitoring in themselves offer no greater community confidence. This can only be achieved by a review of the Agreement in the context of the proposed new USMC presence.

Although there is no specific acknowledgment about concerns of sexual assault and rape, Paragraph 73 of the paper suggest that concerns about 'sexually inappropriate' behaviour (certainly an inappropriate term for rape) are based on *"stereotypes generated from stories emanating in the media relating to US military bases in other countries"*.

This is wrong on two counts. Firstly, we have encountered concerns surrounding sexual assault and rape based on local (Territory and national) experience. We encourage Noetic to explore court records. At this stage, we're happy to share a couple of illustrative newspaper articles that refer directly to events in Darwin which some locals have told us evaded appropriate Australian justice due to deficiencies in the SoFA. As to international evidence, our concerns are not based on media stereotypes, but our solidarity building with organisations in Okinawa and other host communities that have experience bearing the burden of USMC bases. We find it peculiar that the researchers have largely constrained themselves to mainstream media sources, but then go on to apparently belittle the quality of those selected sources. As a starting point, we recommend that if the researcher is interested in well founded and defined descriptions of the impacts and risks of bases overseas, a good starting point is the 'US military issues' link on the front page of the Okinawa Prefecture government website.

Illegal weapons - Nuclear weapons

BaseWatch welcome the assurance that marines will not use nuclear weapons, however our concerns go well beyond that question. Seeing the current arrangement in the context of anticipated increased movements of American navy vessels (as announced by the Minister in the context of Obama's visits, and referred by the final report of the Australian Defense Force Posture Review), and the anticipated basing of US Air Force jets and bombers at Tindal, we recognised revived concerns around the stationing of or visitation by nuclear armed, powered or capable American machines. We are well aware that nuclear armed and powered vessels have visited Darwin in the past – and we seek specific assurance in the context of the emerging new agreements that there will be no such visits in future.

While we do have particular concern regarding local capacity to respond to an accident or emergency involving nuclear materials on such vessels, there is another area of common concern. A significant majority of Australians have always fiercely opposed the folly of nuclear weapons. Australia is not a nuclear weapons state, and in fact seeks a leadership role in international efforts to rid the world of the scourge of these unique and unparalleled threats to life on earth. The paper, in paragraph 63, attempts to frame common concern as drawing upon opposition to nuclear power – which is indeed also strong and widely held across Australia. However, more relevant is Australian revulsion towards the very strategy of maintaining world destroying arsenals of nuclear weapons of mass destruction.

Nowhere is that wrong-headed strategy more prominent than in the American military. The USA are not just the only nation ever to use these weapons of mass destruction offensively: America is responsible for the most recent atomic test, continues to insist that nuclear weapons are an option in every theater, continues to develop new classes of conventional nuclear bombs and resists global efforts towards the elimination of these weapons. Australians recognise the risk that closer military cooperation between our two nations jeopardises Australian efforts towards total global elimination of nuclear WMDs. Particularly if we tolerate visits and basing of nuclear-capable American war machines, we risk being seen to enable and facilitate the entirely unacceptable strategic reliance upon these abhorrent weapons of mass destruction.

Other Illegal weapons – indiscriminate weapons (DU, cluster munitions)

One concern commonly encountered is that regarding the likelihood of American visitors bringing with them illegal weapons, such as Depleted Uranium armour and bullets, and cluster munitions. While the paper states that these will not be used, it does not address whether they may be stockpiled at a USMC or US Air Force base. We have been given assurances that Australian law will prevail, and illegal weapons will not be tolerated. However it is unclear whether the vehicles and machinery to be brought by the USMC to the NT will be DU plated. We are aware of allegations of the use of DU bullets at Shoal Water Bay – which the ADF have denied. Nonetheless, while the ADF inform us they do not use DU themselves, we are not aware of any prohibition against its use or stockpiling by visiting forces. Similarly, we have received assurances that cluster munitions cannot be brought to Australia – but our reading of section 72.42 of the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 is that loopholes remain that could allow the Americans to station these illegal armaments in Australia.

Particularly given the lack of certainty on these important questions, and the greater scope opened up by the increasing American military presence, BaseWatch seek specific assurances in writing, at the highest level, in the context of any and all new agreements around an increased American presence, that these illegal weapons will not be tolerated in any circumstances.

other comments

The paper makes repeated reference to “misunderstandings based on perceptions”. In so far as this may be valid, BaseWatch recommend that the best counter is comprehensive community engagement, transparency of any existing and future agreement between the two governments, and codification of our shared expectations within the context of the new American presence. We consider it grossly inadequate to dismiss valid concerns with the contrary statements by politicians and ADF. Many of these concerns are significant enough to necessitate specific written assurances that directly relate to the emerging new arrangements between the two governments, not 50 year old agreements or pre-existing policies, but new codified and accountable agreements that make specific assurances in direct relation to the new developments.

Purporting to address 'future intent', paragraph 39 of the paper tells us that

“the characteristics of the initiative are a short term addition of a small number of persons to an existing Barracks who will perform a particular task operating under a system of rules and procedures”

BaseWatch do not see it that way at all. We see a 2500-personnel strong Air/Ground Task Force as a major development. When Obama visited in 2011, he said “we’re here to stay” - and there's no sunset to the Marines base. Major General Krause has told us that existing facilities at Robertson Barracks will not accommodate those large numbers, and we have significant concerns regarding the system of rules and procedures as we understand them.

The paper (in paragraph 57) calls for 'further reflection and contextualisation' of the cultural desirability of growing numbers of US forces in and around Darwin. BaseWatch suggests that concerns about cultural desirability go to:

- current gender and class imbalance in Darwin;
- past experience of visiting troops on R&R and during Talisman Sabre; and
- experience from other USMC bases around the world

These are all only more valid considering the other social pressures currently closing in on our town. We do not see ourselves as a military town, nor a transient population – although these are features of Darwin. But in so far as domestic military culture and transient tradesmen do present social pressures, bringing in the particular unique challenges represented by USA service personnel should be recognised as adding to, rather than hiding among, existing pressures.

The paper attempts to reiterate that the stationing of Marines in the Top End every dry season does not amount to a US base. BaseWatch continue to insist that, irrespective of co-location and personnel rotation, we certainly do perceive the intent for an entire USMC AGTF to permanently locate their war machinery here as a permanent base. That is the way we understand it, and that's how we see it described elsewhere around the world. We can imagine why the implementation team would want to distance the local description from the general understanding of what USMC base is and does – given the burdens posed by some of these bases elsewhere around the world. BaseWatch will continue to address the emerging agreement between our governments as we see it: as a base.

Comments regarding other issues (not in the paper)

Other concerns include:

- while acknowledging (circuitously) concerns regarding 'sexually inappropriate' behaviour, the paper specifically fails to address the realities of RAPE and SEXUAL ASSAULT. We have reiterated calls from local service providers to ensure that the Sexual Assault Prevention Training received by the Marines meets national standards.
- a growing American military presence threatens Australia's social democratic values. This is a reality evident in the nature of this decision. As we need to make more decisions to accommodate for a growing American presence, we will find ourselves sacrificing further democratic rights and values.
- this is just one component of a greater move in the wrong direction, that we should discourage. Both at a territory level (with reference to US Airforce at Tindal) a national level (increased American presence in Queensland and Western Australia) and internationally (the two superpowers of China and the USA tooling up for conflict)
- An important dimension of concerns about the USA (and, by proxy, Australia) pivoting towards China is that all 3 of us should be redirecting the senseless waste of military expenditure to the real needs of our people. By allowing our American friends to continue to waste more funds on military expansion, we do a disservice to their people back home who are right now suffering considerable economic disadvantage and precarity.
- The potential for deployment of US personnel and drones to future wars from Australian bases.
- The paper addresses concerns that a closer relationship with the USA may antagonise other regional partners. This is valid, but incomplete: similarly, we risk antagonising and fueling the ideology of fringe extremist elements and tendencies in neighbouring nations.
- a closer relationship makes it harder for us to choose not to participate in the next objectionable American war of adventure and empire (particularly if weaponised drones of Cocos Islands, let alone a USMC base in the NT, are used for deployment to conflict)
- the likelihood of a Darwin USMC base acting as a buffer for damaged young men on their way home from the devastating experiences of serving in a modern war zone
- The paper acknowledges the risk of jeopardising opportunities for military cooperation with other nations: we're more concerned that a growing US military presence threatens to sabotage any other ways we have of relating to our regional neighbours and trading partners, such as trade, diplomacy, sport, arts (it's interesting the paper doesn't address trade at all, despite the prominence of this theme in much of the mainstream media commentary)
- While aircraft noise is a hot-button concern around Darwin, we're also tuned in to the likelihood of accidents, as experienced in Okinawa International University in 2004, and in Berrimah Radiators in 2000.

BaseWatch,
May, 2012

Letter to Deloitte, summarising face to face consultation, Feb 2013

From: **basewatch**<contact@basewatch.org>

Date: Tue, Feb 12, 2013 at 2:03 AM

Subject: Impact Assessment of US Marine Corps rotations in northern Australia.

G'day,

Thanks for your time last week. It was good to have an opportunity to hear about your work attempting to assess the risks and impacts posed by the emerging US military presence in northern Australia.

As discussed when we met, we're disappointed to see little progress towards our goal of community participation in setting boundaries to the foreign military presence. To the best of our reckoning, the issues and concerns we outlined last year in the Noetic process have not been given any further attention since. The information sheet provided as a basis for your consultation sessions fails to demonstrate an appreciation of, let alone any progress in addressing, our key concerns. So I refer you to the contribution we made to the Noetic process, which I believe I already gave you.

I will take this opportunity though to underscore one element of our conversation, regarding crime, which goes to our concerns regarding sexual assault and the shortcomings of the Status of Forces Agreement.

As BaseWatch described to Noetic last year, and as we discussed last week, those of us who are most active in the group are motivated by big picture objections to the foreign military presence. In short, we are acting because we believe that closer ties with the US military, and in particular their presence in our region, makes us all less safe and secure, and jeopardises our vision for a peaceful future. But despite these motivations, we are very much aware of a responsibility to address likely local social impacts as a priority.

We are well aware, through our own personal, friendship and professional networks, of previous incidents of sexual assault committed by visiting servicemen, including incidents where the perpetrators evaded local justice. We are also becoming increasingly aware of the ongoing bad record of violent and sexual assaults that continue to be perpetrated by Marines on bases around the region. I think most of us have the expectation that the agreement between our two governments all but guarantees further such incidents in Darwin. We are also distinctly unconvinced that the SOFA and Visiting Forces Act offer sufficient guarantee that when visiting personnel do offend, they will be subject to Australian law in every appropriate circumstance.

I'm rehashing old ground here: this is a matter which we spelled out in detail when we first met Major General Michael Krause, and again when we participated in the Noetic process. Our concerns about the tangible risk of assault, descriptions of flaws we recognise in the SOFA, and our clear call for a public review of the Agreement through the parliamentary processes of the Joint Standing Committee on Treaties have been well communicated.

Yet the information sessions you held this month, and the information sheet provided by ADF, demonstrate neither appreciation nor recognition. We find the ADF's feigned ignorance of the local history, and broader national experience, of rape by visiting US personnel entirely unimpressive. The information sheet reports that Noetic found that initial rotations would be minimal or negligible - but fails to acknowledge that the same report gave a high risk rating to sexual assault. The paper makes the specious assertion that visiting forces will be subject to two laws. We know that the SOFA requires our Attorney General to give 'sympathetic consideration' to any request for a US court martial to take priority, irrespective of other provisions of the Agreement. We have described flaws that we would hope could be addressed in the course of a public review, yet these are not acknowledged. In particular, we are aware of one particular gang rape by visiting US sailors where the family of one of the victims has asserted that flaws in the SOFA allowed the perpetrators to evade justice. (I believe I have already shared related news media records with you).

BaseWatch remain keenly interested to see a review of the SOFA, and a commitment to sexual assault prevention training that meets the highest Australian standards, as a bare minimum effort to mitigate the anticipated increased risk. We're convinced that the ADF and Australian Government are actively ignoring this clearly defined risk. We do believe that, in addition to stitching up a couple of clear loopholes, a public review of the SOFA would send a clear message of elevated expectations to the visiting forces, and help nurture greater community confidence in the process by which they are coming here.

Looking beyond this priority concern, it is worth noting some general comments regarding process. We criticised last year's effort for being biased (we felt that Noetic were too close to Defence) and opaque. So we welcome and appreciate

that this year the government opened up to broader participation. We also recognise that the team from Deloitte did not seem so closely aligned with Defence. But some other basic criticism of last year's process has not been addressed.

In particular, it's frustrating to be told the scope of discussion is merely the 1100 Marines expected next year, when we all know that there are proposals for a larger number on the table, and in fact the full company of 2500 has already been announced. We are also very much aware that the Marines are the local face of a much more significant plan to grow the presence of USAF, American warships and drones in and around our region. We believe it is essential that the real risks of souring regional relationships, providing a target to terrorists and endorsing the wrongheaded failed strategies of geo-political brinkmanship be recognised in this significant context. To insist that a discussion of the local impact should ignore the broader push that the Marines presence is a part of, seems a deliberate tactic to discourage public engagement in these important decisions.

Last year's discussion paper was criticised as an issues list, with more detail and attention spent arguing against the concerns than exploring them. This year, we received a mere sheet, that didn't even go that far. Some of the content teetered between specious and misleading: such as the reference to Australian policy on illegal weapons (as we described clearly last year, Australian law would permit US forces to handle cluster munitions in Australia). Other details seem downright false: I'd like to meet whoever thinks the Marines are coming here to enhance our ability to provide humanitarian assistance and disaster relief. We were told at the public information session that the Ospreys have had a good record after some early problems, but we have seen media reports of accidents only last year. A few items of misinformation, a couple more that would be mislead the under-informed, consistent evasion of straight questions regarding illegal weapons and a general lack of detail of the likely eventual nature of the US presence make our mission seem hopeless. In this atmosphere, how can local people feel we have had a role in defining limits to the foreign military presence?

Last year, we thought we might make some quick progress, when over the course of a couple of meetings and a few public statements Major General Krause made some clear expressions of shared expectations. We were glad to find that we were on the same page on a number of issues, and we welcomed the Major General's enthusiastic endorsement of a number of the expectations that we were keen to set. Yet in that time, the Australian Government appears to have gone nowhere towards providing a mechanism or instrument for codifying and formalising our shared expectations. We are still stuck at the stage of a secret inter-governmental agreement, which the public is only really aware of by way of measured press releases and public statements. Not only are we denied a role in drawing boundaries around the foreign military presence, we are not even informed of the terms of the agreement. Without a mechanism or instrument for codifying both our expectations and the nature of the agreement, local people have no more stake in the planning for this major change than we did when the announcement was dumped on us in November 2011.

I look forward to seeing a draft of your report. Please let me know if you need any further clarification on the points made here,

best wishes,

- =

Justin Tutty
member, BaseWatch
0424-028-741

1 Nov 2014

Thanks for the opportunity to comment on the draft Force Posture Agreement.

[BaseWatch](#) is a local community group formed in response to the 2011 announcement that Darwin will play host to what president Obama described as an 'enduring presence' of USA Marines.

We formed around four distinct perspectives:

- anti-war activists, connected through Darwin Residents Against War since the popular local organising against the illegal invasion of Iraq - Darwin had the largest rallies (per-capita) in the country.
- sexual assault service providers and other community sector actors who could foresee likely impacts for their stakeholders; and convinced us to immediately prioritise these local impacts
- faith-based organisations and individuals, who are focussed on building useful peaceful relationships, and want to socialise visiting forces;
- current and ex- service people

and identified four areas of concern

- local social impacts. Including crime and jurisdiction, drawing from our experience here and the litany of abuse documented in relation to other USA bases in our region
- the big picture: regional stability and keeping war from our door; forging useful independent relationships with our neighbours, discouraging two 'super powers' (China and USA) from shaping up for conflict when they should be attending to the needs of their people
- the perverse endorsement of unacceptable military practices and illegal weapons, including the USA's nuclear WMD program; and
- the risk that an increasing foreign military presence will erode local democratic values and diminish access to democratic processes

We've participated in other formal public processes related to the growing foreign military buildup in and around Darwin. These include two labelled Social Impact Assessments, which we criticised for only addressing the number of marines expected for the following year. We urged for an immediate comprehensive assessment of the likely social impact of the full Air/Ground Task Force of 2500 USA Marines. We were told in 2013 that there would be a further assessment of the full complement of 2500 Marines before a decision was made to support those numbers. Now it appears that this has been abandoned in favour of advancing the Force Posture Agreement, which appears to lock in the presence for 25 years. This reinforces the perception that the previous SIAs were issues-management processes, not intended to inform decision making. It seems a long-term agreement has been drafted without the benefit of impact analysis of the anticipated number of 2500 marines targeting Darwin.

BaseWatch recommend that no final decision should be made about the number of Marines in Darwin, and the treaty should not be progressed, until the promised social impact assessment of the full scale and scope of the growing foreign military presence (including the growing USAF presence in Darwin) is completed.

Status of Forces

The National Interest Assessment tells us that:

The Agreement builds upon existing agreements and arrangements between Australia and the United States – including the Agreement between the Government of Australia and the Government of the United States of America Concerning the Status of United States Forces in Australia, and Protocol (“the SOFA”)

Yet the SOFA, on which the draft Agreement relies, is aged and flawed.

BaseWatch recommend that the Force Posture Agreement should not be progressed until a full public review of the SOFA has been conducted in the context of the planned increased foreign military presence.

This recommendation has been a priority of BaseWatch over the past three years.

We are well aware, through our own personal and professional networks, of previous incidents of sexual assault committed by visiting servicemen, including incidents where the perpetrators evaded local justice. We are also becoming increasingly aware of the ongoing bad record of violent and sexual assaults that continue to be perpetrated by Marines on bases around the region. We expect that the growing USA military presence all but guarantees further such incidents in Darwin. We are unconvinced that the SOFA and Visiting Forces Act offer sufficient guarantee that when visiting personnel do offend, they will be subject to Australian law in every appropriate circumstance.

The SOFA has been criticised as being an obstacle in instances of sexual assault during the infrequent but regular visits for joint training (Talisman Sabre). *Please find below records of newspaper articles that directly reference sexual assault and rape committed by visiting US forces in Darwin, where evasion of local justice has been tied to shortcomings of the Status of Forces Agreement.*

ADF and the Department have insisted that this outdated instrument has 'adequately provided' for such instances. This is disturbing to locals who remember such incidents in Darwin's recent past, and who recognise the anticipated USMC taskforce as a development well beyond what the SoFA has been relied upon to manage here in Darwin in the past.

We're told that other nations have different circumstances and different agreements. But when we analyse those, we see in our SOFA similar deficiencies that have been identified as obstacles to appropriate justice in other jurisdictions. We're also told that its a stereotype that hangs over from the past, but we note the incidents in Okinawa in 2012. Last month's murder of a Filipino woman in a Manila motel room, and the subsequent controversy over custody of the accused marine, shows that this issue is as real today as ever.

When charges of rape, deprivation of liberty and assault were laid against a visiting USA sailor last year, BaseWatch welcomed the Attorney General's denial of an application by the USA Staff Justice Advocate for the criminal offences to be dealt with in the American system. However we were shocked to be told by the Consulate that such a request will routinely be made as a matter of course in any such circumstance. We consider this to be entirely inappropriate. We believe this is

no more than a loophole in the SOFA which could easily be tidied up in the course of a full public review.

Concerns we have regarding the SOFA as it stands include:

- the unjustifiable anonymity provided by collective movement orders
- the likelihood of creative interpretation of 'course of duty'
- the requirement for 'sympathetic consideration' by the Australian Attorney General of any request to give American processes priority even in those cases where the agreement recognises the primacy of Australian law
- potential custodial obstacles to local police developing charges against suspects subject to the agreement.

We are promised that our government will monitor the application of the agreement. This is an entirely unsatisfactory response to what we believe are long held, well defined and solidly grounded dissatisfaction with the Agreement as it stands. We've been consistent in firmly recommending that the SoFA needs a full public review. In return, our defence force keeps offering statements that echo community expectations that any offences committed by visiting forces will be dealt with under Australian law, wherever that is appropriate. But shared expectations and ongoing monitoring in themselves offer no better grounds for confidence, which can best be achieved by a review of the Agreement in the context of the proposed new USMC presence.

Illegal weapons

Article VII of the draft Agreement says:

Australia shall provide a prompt objection with regard to such notice if any such materiel would be inconsistent with Australian law. United States Forces shall not preposition specific equipment, supplies, or materiel when Australia has objected to such equipment, supplies, or materiel.

so let's object, immediately and specifically, to illegal weapons like cluster bombs; to depleted uranium munitions and armaments, and to nuclear WMDs. Let us, in the context of this unprecedented development in our alliance, explicitly set clear limits on the role we see for these illegal weapons on Australian soil.

We have been told 'Australian law will apply' – but in the instance of cluster munitions, Australian law actually gives perverse exception to the banning of these illegal weapons if they are being stored or handled by foreign forces. We are told it's against ADF policy to use DU, but this is a very poor standard of assurance. We should take this opportunity to assure all stakeholders that basic expectations about unacceptable weapons are well defined and understood. We should seek explicit confirmation that nuclear powered and armed vessels will not be welcomed in our harbour, and that bases in Australia will not be implicated in the USA's nuclear WMD program.

BaseWatch recommend that the Agreement should not progress without priming the list of banned materials and equipment to reflect Australian laws, policies and expectations, including banning the presence of illegal cluster munitions, depleted uranium (armaments and munitions) and explicitly assuring all parties that nuclear weapons are not wanted.

Other

BaseWatch further recommends that the 'Agreed Facilities and Areas' should be defined to allow the public to be clear on what is being agreed, and to make it clear to all parties when this needs to be formally revisited.

We remain keen to participate in any further opportunities to contribute to better decision making around these issues.

With thanks,

Justin Tutty
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Oversexed and over here

By: Paul Toohey

The Weekend Australian, Edition 1 SAT 27 OCT 2001,

Page 023

There's a battle in our shipping ports between our US navy allies and the parents of star-struck young girls, writes Paul Toohey

THE 15-year-old Darwin girl knows the chances of seeing her attackers in court is, at best, a long shot. But she has persuaded herself to emerge from months of silence to tell police that she and her best friend, aged 16, were gang raped by US servicemen. She says they were both given chlamydia, along with careful instructions from the sailors that they ``wanted it''.

When her father has tried to talk to her about it, she tells him to ``get a life''. ``She's embarrassed -- I am her father,'' he says. As for the girl's mother: ``I'm doing everything in my power to recover my daughter.''

In the 50th anniversary year of the ANZUS alliance, the girl's parents and supporters claim there is a pattern of abuse emerging in Australian ports, of underage girls being targeted for rape, often gang rape, by US servicemen.

The girl's parents hope to see the sailors tried locally, partly as a wake-up call to other girls. But even if the sailors are charged, there is no guarantee of a trial on Australian soil. Under the long-standing Status of Forces Agreement (SOFA) between the US and Australia, which deals with criminal acts by servicemen on Australian soil, the federal attorney-general has discretion to decide whether crimes are heard by an Australian court or by court martial in the US.

A spokesman for Attorney-General Daryl Williams says Australia does not usually waive jurisdiction where there is an Australian victim, although this was not the case with US Staff Sergeant Herman Lee Brown. Brown, who raped and sodomised a 15-year-old Hobart girl, was court-martialled in San Diego this year and sentenced to 18 years' prison after the US used its SOFA option to request jurisdiction over the case.

In the past 12 months, there have been seven allegations or findings of sexual abuse by US servicemen in Australia (see box). Only one involved a lone serviceman.

Some residents are taking action. On a Friday night last month, about 30 people, mostly women, went to the Darwin wharf to protest against the arrival of several US warships. Some of the posters were predictable: ``Yankee go home.''. Others, less so: ``Leave our girls alone.''. The protesters were booed and jeered from the decks until wiser heads onboard ordered the men away from the contest.

``Some of [the sailors] later came by and asked us to take their photo with the Yankee Go Home posters. I think it's because some of them really do want to go home,' says Penny

Campton, one of the protesters. ``A lot of these sailors have three choices in American society: jail, gangs or the military.''

Another local woman, Carolyn McLennan, says she is concerned about an ever-increasing US military presence in Darwin.

``I'm supporting [the mother and daughter] because it's personal. I know them both,' ' she says. ``This is just about trying to protect children.''

The allegations of the Darwin girl have not been detailed before. On a September night last year, at about 10pm, four Darwin girls, all of similar age, were at a taxi rank about to go home -- where they should have been hours earlier. Two sailors approached, seeming friendly enough.

The girls agreed to go back for a drink to their hotel room in the city. When they arrived, there were a few other sailors in the room. The girls were given shots of a red vodka drink before another 700ml bottle of liquor was cracked. ``I kissed [sailor's name] because I thought he was cute,' ' says the 15-year-old in her statement to police.

``The others started stirring us up so we went into the bedroom. I consented going into the room with him.''

After that, she made out a silhouette standing over the bed. It became clear it wasn't just between her and him. The girl then saw her girlfriend, also in the room, circled by six men. ``[A] guy in front of her had her by the hair and she was moving her head as though she was trying to get away. All of the men were naked. I don't know where they came from.' ' None of the men wore condoms. Their talk became abusive and seemingly porn-scripted. The girls were ``bitches''.

Altogether, the two girls believed they were assaulted by seven or eight African-Americans. In most reported cases, here and abroad, the story is the same. Yet complainants regard this as almost more touchy than rape and are disinclined to comment lest the focus change to a racial rather than assault issue.

The girls clutched each other in bed, crying, leading to calls for a lesbian act. ``[Friend] and I were walking around the room trying to find our clothes and the guys were groping us and whenever I saw my shirt one of the guys would pick it up and throw it. They thought it was hilarious.''

They found their two other friends in the lounge, apparently unaware of what had happened. Then the sailors sat the girls down for some intimidating tuition. ``You wanted it, didn't you?' ' one of the sailors demanded. And, ``Did you get raped?' ' When the girls raised a meek initial protest, they were told: ``You're lying little whores, you wanted it.''

The 15-year-old girl has not been back to school since and it is unlikely she ever will. Her mother says she has attempted self-mutilation and suicide. It took three months for the mother to discover what was plaguing her daughter. By then, any DNA evidence was long gone.

NORTHERN Territory police claim they are definitely taking the allegations seriously, but have not yet sought crew lists from the ships, all apparently San Diego-based. Their only clue is the sailors' distinctive first names.

``I want to see these guys tried and held accountable under

Australian law and to serve time here just like anyone else,' says the mother. Others argue the SOFAs are working. Brown, they say, would never have received 18 years from an Australian court. But the girl's father says: ``Good, we should increase our own sentences to match the court martial penalties. I think they might be tried in an American court martial partly to keep a lid on this stuff.''

Those who discount the effect of a few sexual assaults by a foreign power should look at Japan's Okinawa incident to see how even one rape can alter the perception of the US from protector to aggressor. There, the 1995 abduction and rape of a 12-year-old girl by two marines and a sailor has led to demands that the key US base be closed or scaled down. Anger has intensified anew with the trial of US Air Force Staff Sergeant Timothy Woodland -- who has pleaded not guilty to raping a young Okinawa woman -- about to begin.

Is a pattern of sexual abuse emerging in Australia? ``I would think if my daughter were in that situation, I'd be very upset about it and I would think the same way,' says Colonel Rick Lester, defence attache at the US embassy in Canberra.

``It has been an emphasis item for all the commanders who come [to Australia]. I would also like to point out we had 100 ship visits in the last year. And a single ship like a carrier has 5500 18 to 25-year-olds on it. A lot of them will do multiple ports. I think you take a look at the numbers and they might say something, that it might not be as bad as it appears.''

Catherine Koerner, a sexual assault service co-ordinator in Rockhampton, swamped with US forces during the Tandem Thrust exercise this year, says her town is seeing ``young women, under the age of 16, being courted by marines''.

``They don't see what has happened to them as rape. I believe they're being targeted because they're starry-eyed about the US military.' Koerner claims there were at least two gang rapes during Tandem Thrust, although in both the girls withdrew their allegations.

``I worked with one of those young women and her report to me certainly wasn't baseless,' Koerner says. ``That was a gang rape [involving four men] and she was very brutally beaten. She was 17. She still had handprints where she'd been picked up [by] the shoulders and flung across the room.''

Koerner says her town was sold ``a lot of hot American glorification'', with positive local news stories about the business benefits of the big foreign presence.

``They did stuff like hire a nightclub in town for the US military only, and had free entry and free alcohol for local women. That sort of thing is outrageous. The Singaporeans are often here and they never do that.''

Loss of innocence

April: Twenty US personnel questioned and DNA-sampled in Darwin after an alleged rape in Exmouth. Allegations unsubstantiated.

May: Two gang-rape complaints against US servicemen during

the joint US-Australian operation Tandem Thrust. Both police complaints withdrawn.

May: US Staff Sergeant Herman Lee Brown convicted in San Diego for raping a 15-year-old in Hobart; two other marines convicted of lesser charges.

July: Two American sailors, Bennie Lee Carson and Billie Gene Easton, given suspended sentences after taking photos of a naked, unconscious 15-year-old girl they had plied with alcohol in Hobart.

August: US sailor Mark Anthony Campbell sentenced to 5 1/2 years' jail for raping a 13-year-old girl and indecently dealing with her 12-year-old friend in a Perth hotel.

Caption: Yankee go home: Campton and McLennan as they greet the USS Essex at Fort Hill Wharf in Darwin; social worker Koerner, below left, has recorded cases with a strong basis in fact
Pictures: Peter Eve (main) and Rhodes Watson
Accused: Carson, above left, and Easton, below left, with their lawyers

Keywords: Chronology

Column: Weekend Inquirer

Section: FEATURES

Darwin girl raped by sailors: claim

**Northern Territory News, Edition 1 - TUE 30 OCT 2001,
Page 003**

By: ALAN HARDIE

Police are investigating a 15-year-old Darwin girl's allegation that she was raped by up to eight American sailors.

The deeply traumatised girl, now 16, formally complained to police in August.

The assault allegedly happened in September last year, but the girl had been too upset to complain formally at the time, her mother said yesterday.

The girl's mother complained to police in December -- but police needed the girl to complain herself before they could begin investigations.

The girl is said to have been at a Darwin taxi rank, about to go home at 2am one day last year, with three other girls.

She told police in a statement the group was approached by two American sailors.

They agreed to go back to the sailors' hotel room in the city, where she and another girl were allegedly assaulted.

A police spokeswoman said yesterday: ``We are continuing to make inquiries into these reports.

``But it has not yet reached a stage where diplomatic representations need to be made to US authorities.

``Police are taking the complaint seriously -- any report of sexual assault is treated seriously.''

The girl's mother fears a legal arrangement existing between Australia and the US means her daughter's attackers will probably never stand trial in this country.

She referred to a Status of Forces Agreement between Australia and America.

Under the agreement, the federal Attorney-General has discretion to decide whether crimes are heard by an Australian court or by court martial in the US.

The girl's mother said: ``I believe this agreement ensures those American sailors will never stand trial in Darwin.''

She said she had given police the names of five American ships visiting Darwin at the time of her daughter's assault.

And she stated: ``The sailors who attacked my daughter have distinctive first names.

``If the police obtained a list of the crew, I believe those people could be traced fairly easily.''

Section: NEWS

**Type: Navy
Rape NT**

MARINES IN DARWIN

an 'enduring presence', accompanied by USAF at RAAF Base Darwin, USA Navy visiting Tiwi Islands, war games, and more

Citizens Initiated Assessment

to address the anticipated deployment of a 2500-personnel Marine Air-Ground Taskforce, and the full scope of the largest ever peacetime foreign military build-up in the NT



Weathering the build-up

Darwin is the only Australian capital city to enjoy truly tropical weather. Unlike the standard four seasons of Europe, visitors to Darwin will recognise two main seasons: the Wet and the Dry. The local Larrakia calendar describes seven seasons, marked not just by rainfall but other various natural indicators in the landscape.

But there's one particular season all locals recognise: from September to November, that pre-monsoonal period of uncomfortable humidity, when clouds gather but rarely break: *Dalirrgang*, the Build-up.

Build-up tests both individuals and relationships. Some people who love living in Darwin make a point of vacating for a couple of months each year, just to avoid the build-up. A few newcomers leave before they have to endure a second. Some long-term locals throw in the towel after years of stoicism, declaring it's harder with age. The fishing's good, but it's a rare breed who claim to enjoy a long build-up.

Now Darwin faces a different build-up: the growing presence of a foreign military.

What began as a couple of hundred hand-picked members of the USA Marine Corps in an ambassadorial role has grown ten-fold in number, and expanded in scope to include not only the USA Airforce (USAF) accompaniment originally alluded to, but also a USA naval port at Melville island, with authoritative rumours of American bombers, sea basing and more. Local leaders admit they are not clear where the evolving new relationship may lead.

It is hoped, then, that the framework of this Citizens Initiated Assessment may contribute to enabling local community members and stakeholder organisations to better consider the likely impacts of an as-yet unbounded, growing foreign military presence. The local group BaseWatch, with the support of the national Independent Peaceful Australia Network, convene this process in the hope that the people of Darwin can stake out a role in defining and monitoring boundaries to the new build-up.



President Obama announces plans for what he called 'an enduring presence' - Darwin, 2011



Rationale

This 2015 Citizens Initiated Assessment seeks to address the unfilled commitment for revisiting impact assessment of the growing foreign military presence in and around Darwin.

Previous assessments conducted by Noetic in 2012, then Deloitte in 2013, were strictly limited to considering social impacts of the following year's anticipated intermediate tranche of USA Marines.

As such, each process deliberately relegated assessment of the full 2500 member Air Ground Task Force, which the public were told would be addressed by subsequent assessments. Neither of these preliminary assessments considered further elements of the growing foreign military presence, which have since become impossible to ignore.

During the course of the 2013 assessment process, the public were assured there would be a further assessment of the full complement of 2500 Marines before a decision was made to support those numbers.

However, in late 2014, without any further engagement, the joint Force Posture Agreement was signed, locking in those numbers for 25 years. With the full quota of USA Marines now committed, and a number of significant new dimensions to the growing presence now evident, it would appear that the previous commitment for a more comprehensive government-led assessment has been abandoned.

It now seems both necessary and timely for a citizens initiated process to fill that gap.

This discussion paper has been prepared by BaseWatch, a small community organisation that formed in response to the 2011 announcement that a permanent rotational presence of USA marines would be co-located at Robertson Barracks in Darwin.

We formed from a range of community perspectives, including: anti-war activists, sexual assault service providers; other community sector interests; faith-based organisations and individuals; current and ex- servicemen; and residents' action groups that have previously addressed impacts of activities at RAAF Base Darwin.

From this broad base, BaseWatch encompasses different perspectives and priorities on the issues this significant change presents. Rather than pursuing a firm agenda, the group aims to be a focal point for community participation in decision making around what is a very significant change to our town. We've held a few public meetings, engaged fully in relevant government processes, and attempted to lobby decision makers with our priority concerns.

BaseWatch recognises this Citizens Initiated Assessment as core business.

With this discussion paper as a starting point, we now seek to explore a wider range of community responses to the growing foreign military presence. We are actively engaging with those other community sector organisations that were already a part of the previous assessments – and a few more we feel should have been. We're holding stalls and meetings to reach out to individuals around Darwin. And we're providing a range of opportunities for community members to contribute to a collective evaluation of anticipated risks and impacts.

For more copies of this discussion paper, to arrange a meeting, or to submit a response, please email: contact@ntbases.info or call 0424-028-741



Marines in Darwin - a growing presence

On Remembrance Day, 11th November, 2011, news leaked of an imminent joint announcement by the Prime Minister of Australia and the President of the United States of America for enhanced Australia-USA defence cooperation. One element of this 'enhanced cooperation' is a rotational USA Marine Corps presence in the NT.

Prime Minister Julia Gillard and USA President Barack Obama also announced closer cooperation between the Royal Australian Air Force and the US Air Force that will result in increased rotations of USAF aircraft through northern Australia.

In April 2012 the first company of around 200 US Marine Corps personnel arrived in Darwin.

ADF commissioned a preliminary assessment of the initial deployment. The interim report compiled by consultants Noetic identified *"an almost unanimous view that a social impact assessment encompassing the full 2,500 personnel rotational deployments should be commenced as soon as possible."*

Their final report recommended it was:

“ *...especially important to continue to engage broadly should the Australian and United States Governments agree to larger rotations of US Marines in the NT in the future.* ”

During the initial deployment, Major General Krause, in his role as ADF's head of implementation of the joint posture review, made some welcome expressions of shared expectations around a range of issues raised by the local community.

But now, with the deployment of the full 2500 personnel Air Ground Taskforce already agreed and imminent, the Australian Government have neither continued to engage the local community, nor gone anywhere towards formalising those shared expectations.

*"Without a mechanism or instrument for codifying both the nature of the agreement, and our expectations of it, local people have no more stake in the planning for this major change than we did when the announcement was made in November 2011."*¹

For many people in Darwin, our knowledge of the scope and detail of the growing USA military presence comes from what little is shared in mainstream media.

What information should be made public, and what detail is appropriate to remain fluid, or even secret?

How can locals best participate in decision making and engagement with the USA military presence?

In 2013, consultants from Deloitte conducted an intermediary social impact assessment, scoped to address not the announced full company of 2500, but only the 1100 Marines expected the following year. When Defence failed to provide a discussion paper in time for scheduled consultation, the Deloitte consultants hastily compiled a single page issues paper, falling well short of the standard set by the prior Noetic process.

Later that year, Darwin hosted large numbers of USA troops on R&R following the biennial Talisman Sabre war rehearsals.

A significant milestone was reached in 2014, when 1100 Marines arrived, with hardware and equipment that would be permanently located at Robertson Barracks and RAAF base Darwin.



With this permanent infrastructure in place, the NT experienced a larger than ever share of the Talisman Sabre joint exercises in 2015, including unprecedented amphibious landings on public beaches - including a coastal reserve with conservation status.

The people of Darwin are pretty relaxed in general, and the visiting forces find they're coming to a community that bears a lot of goodwill. American visitors will recognise greater cultural similarities here than in other host communities around our region, and the people of Darwin are very much aware of our shared WWII military history.

Over the past four years, we've already seen the Marines explore a range of opportunities for positive engagement with the local community. Most stakeholders agree that socialisation of the visiting forces is an essential strategy for risk management.

What options should the visiting forces prioritise in order to better understand this host community?



A USA Marine helping plant a community food garden, during the initial 2012 'diplomatic mission' rotation.

The economic equation

In 2013, A USA Senate Committee addressed a preliminary cost estimate of \$US1.6 billion for establishing 'an enduring presence' in Darwin.²

ADF announcements have referred to 'cost sharing' of 'dual use' infrastructure, on a 'no loss, no gain' basis. Yet it remains unclear not only how much of the reported \$US1.6B will be covered by Australia, but also what economic return Australia will see.

The 2012 Noetic process placed great emphasis on maximisation of economic benefits, and produced a stand-alone economic impact report.

While finding there'd be a "*small and positive increase in economic activity*", Noetic also identified moderate risk from "*unrealistic expectations*" finding "*very limited opportunity for benefit to local business*" of the initial deployments.

The 2013 Deloitte process included an Economic Assessment that suggested that years' rotation would contribute "*an additional \$5.6 million to the Northern Territory Gross State Product in 2011-12 dollars*" to the benefit of the retail trade, transport, recreational and other business service sectors.

Looking towards long-term rotations, the economic impact assessment identified "*increased expenditure into the Northern Territory economy .. unlikely to create any significant ongoing change in the economy*" noting that the NT's economy is overwhelmed by the unprecedented impacts of the massive Inpex LNG project.

Nonetheless, Deloitte predicted "*future deployments ...might require construction of accommodation which could help buffer the economy.*"

More recently, a joint industry / government business mission visited Guam to learn how host communities can leverage business opportunities arising from the presence of foreign bases.

What opportunities will the USA military rotations present for local industry?

Early concerns about Darwin's tight housing market were quickly dispelled - most visitors will live on-base at Robertson Barracks. However a range of public and social service providers have been keen to point out they're already stretched, and that any additional load demands careful consideration.

What relevant capacity constraints may exist within the local economy?

Crime and Jurisdiction

Genuine concerns about the risks of crime committed by USA forces in Darwin are informed both by local experience,^{3,4} and ongoing incidents in other host communities in our region.^{5,6}

This local experience and regional knowledge has led some to question whether the legal arrangements supporting the USA build-up are adequate to ensure that USA military personnel and activities will be subject to Australian law, policy and procedures wherever appropriate.

Noetic's final report found "*moderate risk of incidents of sexual assault due to the USMC (Marine Corps) presence*" (assessed as 'unlikely', however with major consequence) while the Deloitte assessment reported 5% best estimated probability of one sexual assault occurring during rotations of 1100 personnel.

Should visiting forces be required to undergo nationally accredited sexual assault prevention courses?

Local advocates report that crimes, including sexual assault, have evaded local justice in the past due to flaws in the Status of Forces Agreement⁷ – the overarching treaty instrument that is relied upon to define the jurisdictional status of visiting USA servicemen.

One such flaw is the requirement for Australia's Federal Attorney General to give 'sympathetic consideration' to a request from the USA to take carriage over prosecution for any crime against Australian law.

The Deloitte report assured the public that:

“*If a Marine were to commit a heinous crime, the United States would consider its interests best served by not requesting a waiver from Australian officials.*”

However this hope was dispelled that same year, when a visiting sailor was charged with rape, assault and deprivation of liberty.

The USA Staff Justice Advocate (SJA) made precisely such a request for USA military jurisdiction over the charges. Australians may take some comfort from the fact that our Attorney General, upon giving his sympathetic consideration, decided to decline in this instance. But subsequent statements by the USA SJA that this kind of request will always be made "*as a matter of course*" show that this flaw in the treaty system may again be exploited.

Is the bilateral treaty system adequate for meeting community concerns regarding crime and jurisdiction?

The Aus-USA Status of Forces Agreement (SOFA) is a single sheet bilateral treaty, drafted over 50 years ago. Experienced advocates have identified flaws, including the unjustifiable provision for waiver, ambiguity about custody and collective movement orders that bypass individual identification.

In 2012, the Federal minister assured the public that he had personally reviewed the treaty and concluded it fit for purpose. In 2014, a summary parliamentary process quickly reviewed the overarching legislation to allow visiting forces to bring their personal left-hand-drive vehicles.

While ours is a better agreement than the USA maintains with some other host communities in the region, it was designed long before this century's 'enduring presence' was ever conceived. It is suggested that public review would close unintended loopholes and give all stakeholders greater certainty over stated shared objectives.

Could the SOFA benefit from a full public review in the context of the unprecedented USA military presence?



Environmental impact

Noetic's assessment of the initial deployment assured the public that any impacts would be constrained to existing training facilities, and barely increase existing operational impact. The Environment Centre of the NT recommended a Strategic Environmental Assessment of the joint posture initiative, warning that the full complement of 2500 marines would necessarily pose significantly greater impact.

However in 2015, we saw how a bigger contingent of Marines in Darwin, this time with the hardware they'd left behind the year before, contributed to the largest ever NT component of the biennial Talisman Sabre war rehearsals. This brought the significant development of amphibious landings of USA craft on public beaches of Darwin harbour. The landings prompted concerns for recently sighted pseudorca in Fog Bay, and the sensitive turtle nesting events potentially disrupted at both the Fog Bay beaches and Lee Point beach in Darwin (which suffered a minor fuel spill during the operations).⁸

Although these activities were subject to environmental assessment, the process was an internal military assessment that, while mimicking some details of Federal and Territory laws and procedures, fell short of the standards of the Commonwealth EPBC Act.

Should foreign military activities in the NT be subject to the same laws and processes that would apply to any comparable action by any other proponent?



Cleaning up after amphibious landing at Lee Point

Suburban Noise

There is a history of constructive engagement of local resident action groups with the RAAF regarding the noise impacts of air exercises. The previous assessments didn't consider the USAF component of the build-up, so while they explored perceived safety issues with the USMC heavy lift aircraft, those assessments did not address the range of concerns that may be related to increased activity at RAAF Base Darwin due to the co-located rotational presence of the USA Air Force.

The current ANEF (noise exposure forecast) for the airport in Darwin is dated 2010 – prior to the joint posture initiative announcement.

What steps are required to ensure that any increased USAF presence in the middle of Darwin respects the ongoing relationship between the RAAF Base and local residents?

Illegal weapons

Concerns about illegal USA weapons (weapons which are illegal in Australia, even for ADF, yet which are still used by the USA military) have been met with assurances that relevant Australian laws and policies will apply.

But Australian policy has long tolerated the USA's 'neither confirm nor deny' approach to nuclear ship visits, and Australian laws to ratify the international convention banning cluster munitions explicitly permit those illegal weapons in the custody of visiting forces.

Should Australia seek tighter assurances that the visiting forces will respect our position on indiscriminate weapons and weapons of mass destruction?



Not just Marines

In addition to the USMC rotational presence, the 2011 announcements also identified plans for *“enhanced aircraft cooperation activities with the US Air Force (USAF) in northern Australia.”* Early discussions described that this would initially take form around the RAAF base in the middle of the suburbs of Darwin, but would move to Tindal near Katherine after a major upgrade and expansion of those facilities.

The Deloitte report acknowledged that a small number of personnel in command and control, liaison, maintenance and support roles could be posted to Australia for a period longer than six months. Yet most formal public information thus far has focused on the Marines.

What limits are understood, or expected of the growing foreign military presence?

Airforce

In 2013, four-star General Herbert Carlisle told Foreign Policy magazine that the USA was working towards air force rotations, initially at RAAF Base Darwin but potentially moving down to Tindal. The General said the USA would send *“fighters, tankers, and at some point in the future, maybe bombers on a rotational basis”* to Darwin.^{9, 10.}

In May 2015, USA Assistant Defence Secretary David Shear made an announcement (that was soon retracted) to a Congressional hearing that the United States would soon be basing B-1 Lancer bombers and surveillance aircraft in Australia.^{11.}

As yet, no details of the growing USAF presence, and the timeline for permanent rotation of USAF assets and personnel through the NT, have been shared with the public. Yet ramping exercises out of RAAF Base Darwin have seen renewed calls from Resident Action Groups for reinstatement of noise monitoring.

What impacts does increased USAF activity pose to suburbs surrounding RAAF Base Darwin?

Navy

In 2013, 3-star admiral Scott Swift, the commander of the USA Pacific fleet, described anticipated increased ship movements around Darwin.^{12.}

Despite this being announced in the USA press, no detail has been shared by the Australian Government with the public of Darwin. Planning obviously proceeded regardless, as evidenced by revelations in the Senate Finances Committee^{13.} that the Tiwi Islands’ controversial Port Melville will be used by the USA Navy for refuelling and stockpiling.

The 2012 Noetic report assured the public that: *“The use of Indigenous land by USMC is regulated by current ADF arrangements, and therefore there is unlikely to be any additional effects or changes arising directly out of the USMC enduring rotational presence in the NT”* and recommended that:

“any decisions regarding future expansions of the initiative be undertaken in a more transparent and consultative way.”

Recent revelations about USA military plans on the Tiwi Islands^{14.} would suggest this recommendation has been abandoned, along with previous assurances about USA military use of Aboriginal Land.

The big picture

While most local people are probably more concerned about immediate local impacts of the presence of a growing foreign force in and around our town, this same development does present risks and impacts well beyond our town.

How does the United States Alliance position Australia’s defence and foreign policy over coming decades?

Darwin has long had a strong constituency for peace. When almost a million Australians demonstrated against the illegal invasion of Iraq, Darwin hosted the highest per-capita turnout. Our proximity to Indonesia and Melanesia, and our culturally diverse population, ensure that people in Darwin have a keen interest in the nurturing of useful relationships with those neighbours.



What impact will the Joint Posture initiatives have on Australia's regional relationships, and broader regional perceptions?

Despite repeated assertions that the USA military pivot is based on a desire to offer the region greater capacity for humanitarian assistance and disaster response, many observers offer an alternative analysis; that of 'containing China'.

USA Assistant Defence Secretary's 2015 statements specifically rationalised a growing USAF presence in Darwin as countering China's "*destabilising effect*" in the South China Sea.^{15, 16.}

So too, 4-star General Carlisle's 2013 comments to Foreign Policy magazine (mentioned earlier) explicitly referenced 'containment' as the reason for rotating USAF jets and bombers in Darwin.

Australian Department of Defense secretary Dennis Richardson repeated the words of the US administration about freedom of navigation and echoed concern about "*the unprecedented pace and scale of China's land-reclamation in the South China Sea.*"^{17.}

China responded with the measured warning that: "*any defence co-operation between countries should not harm the interest of the third country.*"^{18.}

The military strategy white paper released by the Chinese government a few weeks later indirectly referenced the growing USA military presence in our region as a risk.^{19.}

Unnamed Defence sources countered with leaks of discussion within "*senior military circles*" regarding Australian air force and naval personnel taking part in "*freedom of navigation missions.*"^{20, 21.}

Not just China

But China isn't the only regional neighbour we might want to build a more nuanced relationship with than may be directed by a growing USA military presence. Closer to home, we have neighbours such as Timor Leste, Indonesia, West Papua and Papua New Guinea, where Australia's ambitions and interests may differ from those of our American friends.

In recent years, strong geopolitical formations, including the Pacific Islands Forum, Melanesian Spearhead Group and Pacific Islands Association of Non-governmental Organisations, have blossomed in our region. These developments demonstrate a new era of leadership on regional policy, from socio-economic development to human rights, that we'd be foolish to ignore. Now more than ever, Australians might want to carefully consider what role we want to play in our region.

What risks does the USA military presence pose to our capacity to pursue independent foreign policy?

One concern raised in both of the previous assessments is that an 'enduring presence' of the USA military in the NT will make it more difficult for Australia to choose not to participate in possible future conflicts.

It remains unclear whether the bases in Australia could be used by the USA for deployment to some such future conflict that Australia decided we wanted no part of. This was the experience of the Germans, who did not join the illegal invasion of Iraq, yet saw USA bases on their soil used for deployment to that war.

What safeguards can be applied to ensure that Australia is not drawn into any non-strategic future conflict?

Pictured: Port Melville, constructed without approvals on the Tiwi Islands, has been subject of '*partial briefing*' regarding potential USA Navy utilisation.



Participating in the Assessment

We know the questions here don't tell the full story - they don't even tell one side of the story. But we have included many of the themes from previous assessment processes, to provide a starting point for something more useful.

Now that we've begun the discussion, there are a number of ways you or your organisation can participate and contribute to developing this community initiated process.

1. in writing

written responses will be collected from
PO Box 41330, Casuarina, 0811

2. online

you can read this document, answer the questions and contribute your thoughts online, at www.ntbases.info
or via email, to contact@ntbases.info

3. in person

The authors of this discussion paper are keen to meet with any local community members or stakeholder organisations to discuss these issues further, or to take oral submissions.

Project Timeline

Our aim is to report upon the findings of this assessment by April 2016. However this process will be flexible to the needs of both our community volunteers and key participants we've identified. In that time we'll be conducting information stalls, holding public meetings and reaching out to identified stakeholders. If we get your contact details in the course of the project, we'll get a copy of our final report to you too.

For more details

To request further copies of this document, or for any other matter, please email contact@ntbases.info
or call 0424-028-741

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