

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,

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