

**SUBMISSION NO. 2**  
**TT on 8 May 2012**

**ATTENTION:** Committee Secretary, Joint Standing Committee on Treaties

**RE:** Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement between the Government of Australia and the Government of the United States of America to amend and extend the Agreement concerning Cooperation in Defense Logistics Support, done at Sydney on 4 November 1989 (Canberra, 9 December 2011)

G'day,

BaseWatch is a local community group formed in response to the announcement in November last year that a US Marine Corps base will be established in Darwin. We formed around a nucleus of long term local peace activists, social service stakeholders (particularly sexual assault service providers) and church members, to address concerns ranging from the immediate social impacts of the presence of marines, to the anticipated impact the broader increased USA military presence in Australia will have upon regional relationships and the imperative for disarmament.

With such a broad range of community interests and concerns, we've deliberately prioritised local social impacts, and in particular the risk of increased incidence of assault, including sexual assault. We recognise past incidences of sexual assault by US servicemen in our town (during Talisman Sabre, and unrelated R&R visits), including one incident where it has been suggested that deficiencies of the SOFA contributed to a total failure of perpetrators of gang rape facing any legal consequence.

With these priority concerns, we've elevated the demand for a full public review of the SOFA in the context of the new emerging USMC presence. In all of our attempts to seek information, and share concerns, regarding the base, we've been very deliberate about detailing our demanding a full public review of the almost 50 year old document which we believe has fallen short for Darwin in the past. Our inexpert analysis has identified concerns related to:

- 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; and
- potential custodial obstacles to local police developing charges against suspects subject to the agreement

We feel quite certain that these concerns are significant enough to warrant a full public review that, if nothing more, can at least give all parties greater confidence that this outdated instrument might be expected to perform better than it perhaps has in the past, at ensuring visiting personnel will be subject to Australian law in every case where it is appropriate.

So while the liability amendments do not appear to have implications for the Darwin Base, it is with some frustration that we see both governments tinkering at the edges of the Agreement to facilitate increased logistical cooperation.

BaseWatch are further concerned that this treaty may commit Australia to provide logistical support to a USMC base in Darwin, even in the case where that base is being used for deployment to a conflict zone, regardless of Australian policy towards that conflict. BaseWatch recognises this as a highly significant potential implication of the extension of the agreement in the context of new US bases in Australia, and can foresee circumstances in which this may not be in the national interest. Given the unbounded nature of the emerging USMC presence in the Top End, BaseWatch seek additional assurances that an extended CDLSA would not require ADF to provide support for any future USA war that Australia chose not to participate in.

Similar clarification is sought to address concerns held regarding the likelihood of visitation by nuclear capable ships in Darwin Harbour, and stationing of nuclear capable aircraft at Tindal airbase. Concerns are also held for the stockpiling of illegal munitions at the USMC base. BaseWatch are looking for certainty, in the context of the emerging Darwin presence of USA Marines, that Australia will not provide logistical support to nuclear capable war machines, will not tolerate the presence of illegal nuclear WMDs, and will not allow the presence or stockpiling of illegal indiscriminate weapons such as so-called 'depleted' uranium and cluster munitions. We're

unsatisfied with assurances that refer to past agreements; BaseWatch seek to have these shared expectations codified in any new treaties and agreements that may have bearing on the new increased American military presence that is taking place around us.

BaseWatch would appreciate any opportunity to expand upon these issues with the committee, and we look forward to participating in the full public review of the SOFA within the context of the USMC base.

best of luck with your important work,

Justin Tutty, Darwin  
member, BaseWatch

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**1. [Darwin girl raped by sailors: claim.](#) [Newspaper Clippings]**

Date: 30/10/2001 - Collection: Media - ID: media/pressclp/OSE56 - Source: NORTHERN TERRITORY NEWS - Author:HARDIE, Alan