

II. Policy Seminars

Editors Note: The largest block of time at the Summit was devoted to educational seminars for participants. At these sessions individual experts on issues related to base cleanup made presentations and engaged in dialogue with participants. Except where noted, the following sections present edited versions of these presentations and the question and answer sessions.

U.S. Policy on Overseas Bases Cleanup

Status of the U.S. Overseas Bases Program: Governmental Perspective

By Colonel Mark Hamilton, Assistant to the Assistant Deputy Secretary of Defense for Overseas Installations

When I was in Mr. McCall's office in the Air Force, I started about six years ago, I worked on base cleanup and base closure on U.S. facilities for the Air Force, and so I oversaw that program from a policy perspective. Two years ago I came to DoD at the request of Mr. Gary Vest who I'm sure many of you know, of the [Office of the] Principal Deputy Undersecretary of Defense for Environmental Security and at that time he asked me to become the senior manager for his international activities program which included cleanup and compliance overseas. One of the things I feel very strong about and feel very proud about is that six years ago when I came to the building, one of the first things I worked on was the DoD overseas cleanup policy. Two years ago when I came to DoD, I had the pleasure of being able to complete that policy and actually getting it signed and put it into effect, and I feel like that was a major step forward for us in the Department of Defense. I expect that there will be other steps that we will take, but I believe that was a major step forward for us, to actually put down, in writing, a policy. My personal background on this is that I am a Ph.D. chemist and I have just a little over twenty years experience in the Air Force doing help and occupational medicine for Air Force pilots and Air Force families. I've seen the cleanup program, in the States at least, firsthand, and I know the sensitivities that are involved here, and over the last two years, being involved with many of the different issues from overseas, I know how sensitive it is overseas.

What I wanted to do was give you a little bit of background on our cleanup program overseas, because I think it is very complicated at this stage. We have two documents that really define our environmental program overseas. One of them is called the Overseas Environmental Baseline Guidance Document, and the other one is the Cleanup Instruction to which I just referred. The Overseas Environmental Baseline Guidance Document was published to address a shortfall for our facility commanders overseas and understanding how they would manage their armed base environmental programs. In general, we pay attention to local host country laws, but we are bound, as you know, by our status of forces agreements, and other international agreements that clearly define what it is that we're supposed to do, with regards to compliance overseas. As you also know, many of these agreements, if not all of them, were written a long time ago and they don't include specific environmental provisions so we're required to try to meet different host

nation laws by inference, precedent and other structures. So we published the Environmental Baseline Guidance Document to provide our commanders overseas with some sort of a major measuring stick to use to begin to develop environmental programs at our overseas facilities. We also allowed our executive agents in each of the countries where we have facilities to write final governing standards to the OEBGD, if you will, that would allow the application in a more direct fashion of any host country specific approaches that the executive agent and the overseas synch, the commander in chief, or the overseas command wanted to make in that particular country.

We have done this. We're in the first revision of the OEBGD, which should be out within a year, I would think within a few months, and with that being the case, I can tell you a little bit about what has happened since we did that in about 1992. Since that time, the Department of Defense



has begun to budget for its compliance and cleanup requirements overseas, as the best as they can understand it, relative to the OEBGD and the final governing standards. And the cleanup instruction. That program has grown from probably I think somewhere in the neighborhood of \$15 million to today we average about \$180 million dollars a year overseas in cleanup and compliance. Out of that number, about ten percent of it we count as cleanup. I think that the number for cleanup is actually higher. I'm suspicious that the number for overall environmental programs overseas is also higher, but what I think you need to understand is that we've only begun to measure these things in the last two years in the terms of dollar impact, and trying to bring to the overseas program the kind of focus and reporting that you're familiar with in the U.S. programs. And it's difficult.

You all are probably familiar with the fact that we have a defense environmental restoration program which is now at the service level, which formerly was at the DoD level, [where it] was very neat and clean. You turned in your budget, you got the money from Congress, you gave it to

services, and you executed the program, and the discussion was whether or not it was enough, whether or not each of the services got enough. It's different overseas. The Congress has not given us a separate environmental account for overseas. What they've done is said it's part of the operations and maintenance of our facilities, and therefore, it has to come out of the same pot of \$ that we use to fly our planes, in my case, Air Force, drive our tanks and ships, take care of our troops, fix their housing, and all these other sorts of things that come out of that account, so there's less visibility in that account than there is in the cleanup account. So a lot of times, people come to me and they may ask me, you know, how much are we spending at this base, or how much are we spending at that facility, and I can't tell you. Mostly because I don't know, because we're still trying to build those kinds of numbers into it so we understand exactly what the numbers are being spent, what we're buying for the money we get there, what the problems are we're trying to address.

Now, let me talk a little bit about the cleanup program and the cleanup instruction. The cleanup instruction was finally signed off and put into publication after, as you can imagine, a long and relatively laborious process of dealing with all of the issues. And frankly, I think, for good or bad, the number of the terms that we use and pay attention to most closely in that program have to do with the imminent, substantial, endangerment of human health and safety. Now who decides all of this? The rules of the game, as they are currently, is that the base commander and his medical professionals, in consultation with the executive agent for the joint synch in that area who decide whether or not a particular threat is substantial. How do they do that? Everybody does it differently. We haven't told them a specific procedure for doing this, and generally speaking, the health professionals will look at the toxicology, the type of contaminant, and the level that the contaminant is in and where it can actually connect to a receiver, you know, a source pathway receiver, the sorts of things to tell whether or not it represents a substantial threat. It's very difficult. There are obviously sensibilities. There are sensibilities in this room about that, I can understand that. But these are the rules as we currently have them.

Now, why do we do it this way. Why don't we just do it like we do with the cleanup program and establish a defense overseas environmental account, restoration account, put money into it, make it all happen? I am not here to tell you of anybody being a bad guy, but in this government, in this country, there are obviously three parts to any decision that the government makes like that. There's the executive branch part, which I represent, there's the legislative branch part, which is the Congress, and then there's the Judicial branch part, and they all have to have some say in what the decision is, and civics 101: as you know different parts of our government have different voices of different strengths in each of those areas. And so any defense overseas account, which we looked into when I was at the Air Force Academy nearly fifteen years ago, I went to Europe and did a study on whether or not we needed a defense environmental restoration account overseas. I did it as part of the Air Force. And at that time we found that there was no support for it. At this time, I find there is still no support for that.

So now what we've done in lieu of support, particularly the legislative branch for overseas environmental cleanup is we've gone ahead and defined a program that will at least provide us with a minimum standard and I'll emphasize that a minimum standard that we can use for our base commanders to understand what it is they have to do. It makes no sense at all for us to have a threat to either the people on our facilities or people adjacent to our facilities and not address it. If we know about it and do not address it, that's not correct, I mean that's not the right thing to

do. It also is difficult to say, well, where do you draw the line. Because some people say, well why don't you just apply CERCLA (Comprehensive Environmental Restoration Liabilities Act) overseas. From a procedural standpoint, having done so for a number of years, I'm not so sure I'm thrilled by that approach. The issues with the standards, one of the things that strikes me is, at least up front, that I don't think it would be fair to presume sovereignty on somebody else, and assume therefore that our standards would overcome their standards, and take precedence, and what not, so I think it has to be negotiated. The OABGD final government standards issue is part of that.

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Funding. As I see the funding situation today, and have watched it for a number of years, I don't see any large scale shifts coming down the road in the funding stream. I do however know that all of our facilities overseas, particularly our active facilities are now in the process of trying to define what their cleanup and compliance requirements are. They have a requirement to fully implement the OABGD within the next three or four years, and since they've gotten cleanup instruction, they're in the middle of it. In Europe I think

they're farther along with it than anywhere else, they're in the middle of trying to define what the cleanup requirements are and start to budget those things. It's a complicated process. Because it requires us to go to the local governments, the host country governments and negotiate with them how we're going to deal with this. It requires us to deal with the issue of imminent substantial endangerment and make those kinds of determinations.

It requires , if you will, some sort of a survey of the base. I refuse to use the word Environmental Baseline survey, I mean survey, for what it says. Survey the base to see where your potential problems are, and then start to address that. Is that going to happen tomorrow? No it's not. Is that going to happen at \$180 million a year, I doubt it. My guess is that the numbers here are going to go up. How fast? I don't know, it depends a lot on how fast the folks overseas can come to some kind of resolution with the host country governments. We haven't provided any guides on that. So my expectation for the near term is to see a fairly steady rise in funding requirements for the cleanup program and the compliance program overseas. At the same time I anticipate OSD (Office of the Secretary of Defense), who I represent, will undoubtedly begin to give better definition, the little mechanisms we're putting in place now, better definition of what we're paying for and what the real requirements are. Those of you who have been through the U.S. cleanup program are well aware of how we've got lots of money and then really didn't know how to spend it properly. We wasted a great deal of resources of this country on things that we probably shouldn't have done. We're a lot wiser for that now. We can take those lessons into the overseas program, and hopefully, do better.

Now, that having been said, I know the requirements will grow as we define them. The question, as always, is how those requirements will be accepted or received as we get to our authorizers

and our authorization people on the Hill. Right now my understanding, my personal view-this is not a DOD view-is that as long as we link it to eminent, substantial endangerment and OEBG and FGS type of things (Overseas Baseline Environmental Guidance Document and the Federal Government Standards) that is language the Hill is well acquainted with and they are able to deal with those issues and able to discuss those funding requirements. In terms of more expansive programs I think we face a lot of issues, a lot of questions.

Now I want to move on from there to the closed facility program. Today we have one closed facility system that we are actually spending U.S. dollars on related to their cleanup. That is in Canada, and I worked some of that when I first started here in OSD. The Canadian settlement is very unique and I recommend that all of you take a close look at the language that accompanied that authorization. It defined eight findings, which lay down what I understand was a particular uniqueness that could not be duplicated anywhere else. It also put down language that immediately followed that authorization which said that anytime we need to go do an assessment or cleanup--a closed facility type of approach at the Department, before we can even negotiate it, we have to notify Congress.

Now what does that mean. Practically, it means they're very reluctant to pay these bills. It means that if I am going to go forward and try to provide them with a budget request and an authorization request to fund cleanup at a closed U.S. facility, then I think we would be faced with a very long and difficult discussion in Congress over whether or not it's the right thing to do. Why do they feel that way? From a moral perspective we need to do this work. I don't dispute that, but I'm also a bureaucrat and while I can be moral potentially when I'm sitting in front of a crowd like this, or in my home watching TV, I'm also a bureaucrat and I haven't been authorized yet to be moral as a bureaucrat. So frankly what I have to be faced with is that there's a discussion in this town which I think needs to continue on what's the right U.S. policy.

Now the current status of that is that we have we have international agreements. We have status of forces agreements with our military units overseas, all of which have the force for us of international law. So we look to that as the driver for requiring us to do any particular kind of cleanup relative to our closed or potentially-closing facilities. I can discuss that with you, but that basically is the kind of approach I've been required to take. Having said that, I think there are a couple of interesting things going on in the world, not just Canada, but in Panama, over the word "practicable." I don't deal with that discussion. In my office we are not directly engaged in that discussion. It's in a treaty. It's treaty discussion. It's legal discussion. I'm a chemist, not a lawyer. The outcome of that discussion will set a lot of precedents, and we find it interesting because from our view it will present a model for what will happen in the future with base closures that we may go through in the next 10 or 12 years -- re-negotiation of various SOFAs, that kind of thing.

A couple of other things we follow with interest, and then I'll let you guys ask me questions. For example, the current legislation of environmental laws that's going on in the EU. The European Union is beginning to take a deep interest in environmental compliance regulations. They don't have a military arm. Most of the EU countries tend to adopt these regulations once they're promulgated without a whole lot of comment. These types of approaches will ultimately lead to U.S. compliance requirements because they'll be folded into the final governing standards and then we'll go from there.

We're also seeing an upswing in enforcement in places like Italy, and we're beginning to deal with the German supplemental SOFA, where they have words in there which are interesting and I think negotiated from one perspective, and now being in one regime, they're now being applied in different regimes. So the Department faces many challenges in this area. I've seen tremendous changes in this program; I expect to see more. With that having been said, I'll be happy to take any of your questions. Thank you.

"The Canadian settlement is very unique and I recommend that all of you take a close look at the language that accompanied that authorization."

Question and Answer Period:

Question: When you go to Congress, how much of a moral advocate can you be? Or is it that is Congress is just counting votes on these kinds of things?

Answer: I provide information. By law I'm not allowed to lobby Congress. I'm not allowed to try to collect votes. I'm not really allowed to try to sway legislators to vote one way or the other. If they ask me questions, if their staffs ask me

questions, I provide them with answers. So from my perspective, as a colonel in the Air Force who can lose his job, I have to go forward and approach it even. I have to present both sides of the story. I have to answer their questions. If I don't do that, then I lose credibility and then whatever I say is worthless.

However, I think there are people in this Government who are political -- Secretary, President, those people who could go to Congress and say we need to do this. I think to the extent that they do that, that is part of the answer. I think there are other parts to the answer. I know from my experience with the Canadian settlement that the Canadians were very involved. The (Canadian) embassy can lobby Congress, and they did. And they forced down a line vote. No question about that.

But I'm not willing to sell our legislators short on the morality issue. I think they have a lot of pressures. I think they have to deal with a lot of different issues, such as funding of this country's requirements, like social security and other things. They have to balance it. As with any group of humans that big, there are going to be people all over the morality spectrum. But I find that in my discussions and from the kinds of questions I get from various Congressmen and their staffs, that they have a desire to know the issues. They're not really convinced that we have all the answers now on what is the right thing to do. So all I can do is provide them with answers to their questions. Sometimes I give them more than that in terms of information. It has to be very regimented. Otherwise I do break the law.

Question: If the Congress is not appropriating as much money as necessary to meet the needs, why not reduce the amount of contamination produced by current military activities?

Answer: Let me say one thing. Today Congress has not reduced any of the funds that we've requested for overseas environmental programs. They've given us all we have asked for. I think the concern I have is that we need to define more carefully what it is we need. Yes, we've had the OEBG (Overseas Environmental Baseline Guidance) documents for several years but the implication of that, or application of that, in the host country environment has not been easy. It's taken time. Germany leads all countries in terms of that application and the beginnings of identification [by] the Army of their requirements. Now I can't address personally what's going on in Grafenwoehr because I don't know all of the issues. What I can say is that they have a requirement, if they're going to build a facility of any type, to meet the environmental requirements in the OEBG and documented in the German final governing standards in addition to what it says in the SOFA. My expectation would be that they have to meet all those requirements. If they haven't, then I can look into that, but I can't address a specific issue like that because I'm not that familiar with it.

Question: What should we do?

Answer: What does the German military say about this? The connection between the U.S. military and a host country government in a technical way very often is the host country military in Germany. I know this to be true. What I understand is that in terms of getting permits and doing that sort of thing under the supplemental, the German military, the German MOD (Ministry of Defense) is deeply involved. If the German MOD is not forcing the issue at Grafenwoehr, then maybe they should.

Question: [Inaudible]

Answer: If I understand your question, you're really addressing permitting. You're saying that the U.S. Army should be asking permission of the German government to do whatever activity it is that you're specifying, cause I can't hear it real well. So you're talking about permitting. As I understand the supplemental, and I may be incorrect, and maybe we should carry on this subject separately, the permitting requirements under the SOFA flow through the German MOD, that they will provide the permits to the local "Regensburg" government and they will support that permit for a U.S. facility. The U.S. facility's requirement is to provide the permit to the German MOD to actually write the permit request. My understanding is that there is a connection between the U.S. military and the German MOD in terms of permitting activities from an environmental perspective in Germany. I could be mistaken, but that was my understanding. If there's something different, I would be happy to address it with you after the discussion, if you don't mind.

Question: Could you site the country where you paid for cleanup operations even in the absence of a specific provision for cleanup?

Answer: Canada.

Question: How much did you pay for Canada?

Answer: \$100 million

Question: How much did you pay for Philippines?

Answer: None, as far as I know after we closed the base.

“There have been other countries that have come to me and asked about cleanup settlements after the U.S. leaves. The rules are clear. We can’t do it.”

Question: Aren’t you contradicting the statement of sharing equipment and saying there is no liability?

Answer: I don’t think it contradicts that. From a legal perspective in the Philippines, we have at this point (and I’m going to say it straightforward and I know it’s controversial and I appreciate that): In the way the thing is working, when we leave the facility, in the absence of some agreement which specifically says we have activities to take, it’s over. Once the host country accepts the facility, regardless of when we actually negotiated that agreement, I’m finding that the agreement is what people hold on to. They say this is how it works. In the Philippines--as in many other countries, you’re not alone--the United States closed their facilities, left their facilities, the host country took those facilities and that was the end of it.

And then there have been other countries that have come to me and asked about cleanup settlements after the U.S. leaves. The rules are clear. We can’t do it. I have no authorization to spend any money there to begin with. The Congress mandated, in the Bermuda example, that no more money would be spent on Bermuda, period. That is their attitude in the Philippines, in the Seychelles, and in a number of other places where we’ve had facilities where we’ve left. I don’t know how to address that. I can appreciate what you’re saying, but from the bureaucratic perspective I have to take it from what I’m authorized to do and I have no authorization, in part because I don’t have what we consider to be clear legal mandates to go do anything that we can take to the Hill.

Question: Why did Canada get such a good deal? Why don’t same rules apply to nations of color?

Answer: That’s a good question. I’ve often asked myself that question, why Canada? I don’t think it had anything to do with whether or not they were a nation of color. I understand that that decision was made by Secretary Perry. It was made about five years ago. However he made that decision only he knows. I was not privy to that particular discussion.

Question: It seems like the United States is taking the same position so far as white countries and people of color countries. It is not fair that white countries are cleared up first. This needs to be addressed.

Question: What is the budget for overseas cleanup?

Answer: The total environmental budget for the entire DOD in the United States and overseas is about \$3.5 - 4 billion a year, out of which about \$180 million is being spent overseas. I think the actual number overseas is higher, but I don't think it's twice that. It's hard to pull some of these numbers out, but that gives you some idea of what the numbers look like.

Question: Did you say \$180 million for overseas?

Answer: That's correct.

Question: I don't understand how this could be. You know about some of the disasters overseas. You cannot begin to scratch the surface with what is happening overseas. Every year it gets worse. Every year the pollutants spread a little more. What does it take for the U.S. armed forces to understand that these overseas bases are a big problem, that you have yourselves a big political problem? I would like you to explain a little more about this, not in the moral sense, but in the rational sense.

Answer: Well, I can be very cynical. I don't know too many German citizens who vote. I think it's an issue like that. I mean, you're talking about why we're spending so much here, why we're not spending more over there. The other thing I told you--I tried to get across and I didn't do a very good job--was I don't believe that the \$180 million represents a funding-level stream forever. I mean I don't know what the right number is going to be. Maybe it's going to be only one or two million dollars more. It could be substantially more. I don't know. Because as we define the requirements and become more experienced with working with our host country hosts in defining how the requirements would be addressed, then I think we'll get the numbers. Years ago in the U.S. cleanup program, especially in base closure, they decided to give us money that we didn't have a requirement for on the basis that we could spend it over several years and it would all take care of itself. It didn't happen. I fought those battles in the building. We had lots of extra money, we weren't spending it, everybody was upset. In this case I think it is more important that we begin to identify what the requirements are, work out how that's going to be addressed by our host countries, and then put those requirements into the system and justify them and then defend them in Congress so that we can get the money. I don't see another way to do that. That's how it's always worked for me, and that's how it's going to work here.

They do ask me, when I go and talk to the staff, what I think the funding stream is going to be like. I tell them quite frankly that I don't know, because it's hard to define what the requirements are. We have not done all the work I believe we need to do in order to define those requirements, but I think the good news is that at least in most places, some more than others, I'll admit that, we are beginning to address it. So is that going to mean that tomorrow we'll have all the requirements nailed down? I don't think so, but my expectation is that by the next three or four years we should have it substantially decided what we need to do from a cleanup perspective.

Now, the other side of that to me, and more important, the compliance of the Overseas Environmental Baseline Guidance document approach, if we don't take care of the spills and the kind of things we do today, there will be cleanup requirements of tomorrow, so we have to balance the two numbers with each other. We have to justify them both in a different way and different language and all that. In the United States we're pretty good at doing that. In the

overseas environment we're still trying to define the terms with our legislators. I can't go any more direct than that. I hope that addressed your question.

Question: Has your office ever considered the environmental effects of the use of pesticides and herbicides used in the war on drugs on the rainforests?

Answer: The short answer is No. The question I have is are the stocks for those chemicals are going from the DOD? I don't know that they are. The second thing is how they are being sprayed. They may be being sprayed by DOD aircraft, but I'm not sure of that. So we have there is a U.S. Government issue which is really I would say looks like the Drug Enforcement Agency, EPA. It doesn't sound like the DOD to me.

"If we don't take care of the spills and the kind of things we do today, there will be cleanup requirements of tomorrow."

Question: You have an opinion on the effect of those chemicals being used?

Answer: Well, OK, as a chemist I think you need to use chemicals safely, you need to understand what you can use them for, what you can't use them for, how much you can use, and when. I don't think there are necessarily any chemicals that need to be banned because it happens to be toxic. I think the way it is used has to be controlled. That's my personal view. That's not a Department view.

Question: In terms of the treaties that are negotiated for U.S. use of host countries and whether or not environmental stipulations are put in place, whose obligation is it to educate and inform the host country of DOD's policies if those standards haven't been met? Where do the obligations lie in terms of educating and informing those countries of how DOD and the U.S. carry out those obligations? You were saying earlier if there are not cleanup obligations stated within those agreements, that once the U.S. leaves that country, there are no obligations, as in the case of the Philippines, for follow-up.

Answer: After the closure of the base, that's true there is no obligation.

Question: My question is where does the responsibility lie in terms of educating the host country on those policies?

Answer: I'd like to do something that may not be very elegant, but may be instructive. Let me ask you a different question. If the government of some country negotiated a treaty with the United States, not necessarily a military treaty, which in its codicil could be interpreted to have a significant advantage or significant difference in interpretation, and the government of the other country interpreted it in a particular way, what would be their obligation to tell us of their interpretation, without us asking about it? Here's what I see as being complicated. If this is the U.S., it's all pretty simple. The problem is that I want to apply how we do business in the U.S. overseas. As soon as I start to do that, I run into a bunch of international lawyers that tell me the international structure works this way and this is how it is when you negotiate a treaty, that kind of stuff. Frankly, from my perspective, as a human, it would seem to me the U.S. could define

what our interpretations are in the treaty without having to ask the host country for particular analyses. It doesn't work like that, I found.

Question: So you see no obligations on disclosure on the part of the U.S.?

Answer: See, I'm not a lawyer, but my understanding is that our obligations for disclosure are well defined under international law and that's how we play the game. When we negotiate a SOFA agreement, who does the negotiations? It's the State Department; it's not the DOD. So there's a difference, right there. You have to deal with those kinds of rules and I don't know that they're attractive to me either, but that's kind of the way it is. When we go outside of those rules, we usually get pounded back into place.

Question: Is it the case that the United States agreed to \$100 million for cleanup in Canada after Canada agreed to buy \$100 million worth of weapons from the United States?

A second question the whole process of risk assessment is very subjective process. Who makes decision on health risks and how are views of non-governmental organizations taken into account?

Answer: First question. I can't tell you whether Canada agreed to buy a hundred million dollars worth of weapons from the United States because using money through the Foreign Military Sales account does mean you buy things besides guns and tanks and things like that. There are things like medical supplies that I think you can buy through that account, so I can't address what promises were made or what's going to be purchased with that money at the level of about \$10 million a year. In terms of making a decision as to whether you have an imminent, substantial threat, let's understand the cleanup instructions. When I came to Washington six years ago, I always thought that whenever Congress passed a law or one of the agencies did a policy and wrote it up and put it out in publication, like in the DOD, everything was solved and it was all going to happen smoothly. In the six years I've been here I've discovered that the major policy instruction is usually the beginning, not the end. It's the end of a long process in deciding what the language is but nobody has sat down and figured out how we going to do this yet. It's just that everybody has figured out that we're going to go try it. I think that's where we are in the cleanup issue and in imminent, substantial endangerment. There is a requirement in the policy, in the cleanup instruction, for disclosure. I don't know how that works. We've had some people, some places, where they've asked us to disclose to the public. We've had a problem with that because of the sovereignty issues. So we typically try to disclose to the host government. That's how we see it, unless the host government goes ahead and tells us to disclose to the public. It's that kind of thing.

Again how do you decide what is imminent and substantial? I think we got to work through that. I think that to begin with, the DOD has to come up with its position on what it thinks is going on, but then I think there's going to be a disclosure ultimately where the host government is going to get to see it too. Then I think there's going to be a period of discussion, maybe heated discussion, on what you do about it. Right now we're in the middle of trying to work all those rules out. It's even more challenging because every single country where we're at has different rules. Our base commanders are the guys that are on the front lines on this one. It doesn't come back here. It shouldn't be coming back here ultimately for decision-making. It should be the base commander

and his group down there in the facility being the ones who have to decide with the local host countries or host military or right people on what has to happen, what needs to be done, and then he would take those requirements and turn them loose. It takes time; two years is not enough.

Question: We're looking for new solutions to old problems. We need new strategies to deal with the problems you have mentioned, problems of morality, problems of bureaucracy. The people of Vieques have solved these problems of continuous contamination because we will not allow the Navy or any other branch of the military to shoot another shot on Vieques. We would suggest that you work much faster on ameliorating the problems of contamination in Vieques and many other places. We were told this year by U.S. Navy officials that somebody mistakenly put onto a Harrier jet approximately 300 rounds of depleted uranium bullets and that that jet mistakenly fired those rounds into Vieques. Is this really possible that such grave errors could be made? In Vieques, Puerto Rico, will the military be responsibility for cleaning up Vieques?

Q: "We were told this year by U.S. Navy officials that a jet mistakenly fired 300 rounds of depleted uranium bullets into Vieques. Is this really possible that such grave errors could be made?"

Answer: What I find interesting about Vieques is that I'm not doing anything about Vieques because we don't see it as something that would fall into the overseas environment, at least not at my level. It may be being addressed by the Navy's overseas environmental people but it's not being addressed by me and my office up at DOD. So I can't address any of the questions about Vieques because I have no information.

Question: Well, then, as a pilot could you comment on how anyone could mistakenly put 300 rounds on a Harrier jet.

Answer: Let me ask you a question. How old are your kids?

Question: I have no children.

Answer: All right. I have a fourteen-year old who makes mistakes all the time. Pilots don't load their own airplanes. It's ground crewmen, many of whom are young. You're saying, "Is the military mistake-free"? I mean, one of the things I have a problem with is everybody is going to say that the military is mistake-free. I've been in the military for twenty years; I've made mistakes. I'm 46 years old; I made mistakes today. The answer to your question is, anything is possible. Has it happened before? Yes, it has happened before. Do we try to keep it from happening? Yes, we do.

Now, I have a suggestion. What would be the right punishment for the people who let this happen? Should we put them in jail for twenty years? Should we put them to death? Is that something we should do? Well, how do we do that? I understand the concern about mistakes. I want to be mistake-free, too, zero-error, zero-defect, but it doesn't happen. I don't know how to do that in a military environment. We have to go everywhere, do everything, we have kids that work seven days a week almost every week of the year eight hours to ten hours a day. Now I'm

getting on my horse as a military guy. We work hard. We make mistakes. I wish we didn't have to do it. I'm sure in the Vieques situation that the President, the Navy, and the people making this decision are going to do what's right for Vieques, the United States and Puerto Rico. That's the best I can do, but it hasn't come to me as an issue.

Question: What legislation should the American people be pushing for in order to allocate funds for environmental cleanup?

Answer: I have to say that I can't answer that question directly. It would be me giving you advice about what to do with Congress and that's not my job. I think that with regards to the legislative process you are all very bright people, very knowledgeable, and you all know what you need. I think you know what you want, and you need to go get it. I can't advise you on the legislative process because it's illegal for me to do that. I like your question, but I can't really answer it. I apologize.

Question: I know this isn't exactly the most friendly environment for you to be in, but I would like to ask you some direct questions. Is it the DOD's position that there is no limit to what DOD can do with foreign military bases?

Answer: Now, we wouldn't have an OEBG or a cleanup instruction if we felt that way.

Question: What legal obligations are there that limit what the United States Army or military force can do in a foreign military base?

Answer: The Status of Forces agreement defines the relationship between a military force in a facility overseas and what they can and can't do, and as you know, it covers a number of different things.

Question: Is it DOD's position that they are required to follow that nation's laws?

Answer: It has to do with a concept of sovereignty. From the environmental perspective what we did was we developed the Overseas Environmental Base Guidelines document, what was based predominantly on our understanding of good environmental practices as a rule. Then we allowed agencies, "executive agencies" as we called them in each of the countries overseas, to publish final governing standards to try to bring in some of the sense of the host country laws. In terms of being required to follow host country laws, I have to go back to the basic rules of the game for us, which is the SOFA. If the SOFA says to do that and we agree to that, then we'll do it. If the SOFA is silent or addresses it in a different way, we don't do it. We don't have a legal requirement to do it.

Question: Is it the DOD's position that it can basically do what it wants to do?

Answer: No, because we wouldn't have an Overseas Environmental Baseline Guidance document, final governing standards or cleanup instructions if we felt that way.

Question: Is it your position that in the absence of expressed language requiring the following of laws in a foreign country, the U.S. had no limit on what they could do environmentally in the host nation?

Answer: That is not my position.

“On the 31st of December, the Department of Defense is going to lose its ability to spend money [in Panama] because our authorization is going to disappear, along with our presence on these facilities”

Question: What is being done differently, if anything in Panama?

Answer: For me as I said in my opening remarks, I think the Panama situation is very interesting. From the aspect that we’re trying to decide how to deal with the language that is in that particular treaty. I don’t know personally how we’re going to deal with the issue once the 31st of December rolls around and what is going to happen practically. Maybe I need to point this out: what is practicably going to happen on the 31st of December [is that] the Department of Defense is going to lose its ability to spend money there because our authorization is going to disappear, along with our presence on these facilities. It gets back to: we all want to do the right thing. As a human I say that, and then I come in my uniform and I have to be authorized to do the right thing. It’s kind of in that situation. In the Panama case there are a number of efforts, some have been started by the Department of Defense, to find innovative ways to get past the 31st of

December and provide support for Panamanian needs. I don’t know how all those will be ultimately resolved. I do know that by the 31st of December by the way the things work, we will be excluded from executing anything down there in Panama of any substantive nature. That’s the best I can do.

Question: It appears that the Asian countries don’t have as strong agreements as the Western European countries do. Is that because the Asian countries are colored, and the European countries are not.

Answer: To tell you truth I don’t know. It has to do with the agreements that are being negotiated, what happens during those negotiations and the positions taken by the Filipino, Indonesian, and Japanese governments. I think that Japan may be a little bit different because of its status at the end of World War II. One of the other things that I am fairly well aware of is that I think in the main the European countries have instituted stronger environmental regulations and in a more accelerated timeframe than the Asian countries have in general and particularly in enforcement. So I’m not sure how all that will impact what goes on in different countries, but I do know, No. 1, that the Status of Forces Agreements are negotiated by the State Department. I don’t know how that works, but I do know that from the Department of Defense perspective we try to negotiate a deal as best we can that’s equitable for the foreign militaries. We listen, and we try to negotiate that. There are some things we can’t agree on. We all need to get over that. We try to negotiate a fair stance on these things. We try to come to some sort of consensus. I don’t

know why the Asian countries are different. It may have something to do with enforcement of environmental regulations. I don't know. In terms of application of DOD policy in Japan, my anticipation is that the application will be the same in Hokkaido as in Okinawa, and it would be related to what you're talking about. Whether you're talking about Overseas Environmental Baseline Guidelines kinds of things or cleanup, the rules should be the same.

Critical Analysis of U.S. Policy

Aimee Houghton, Center for Public Environmental Oversight, Washington DC

The majority of the work that we do at the Center for Public Environmental Oversight is focused on U.S. military environmental cleanup at facilities within the U.S. We have done work on those issues outside of the U.S. but for these purposes I thought that it would be helpful to talk about the differences in domestic and international policies. I am first going to discuss is the October 18th 1995 Environmental Remediation Policy of DOD activities overseas. How many of you are familiar with this document? I want to talk a little bit about when we discuss overseas policy what that means to DOD.

For example, DOD states that this policy applies to remediation of environmental contamination on DOD installations or facilities overseas, including DOD activities on host nation installations or facilities or caused by DOD operations including training but not including operations connected with actual or threatened hostilities peacekeeping missions or relief operations. So it is very narrowly defined as to what DOD policy is on their responsibility around environmental issues. My reading of this there is a lot of room for interpretation and a lot of discussion about how the DOD consults with their environmental executive agent, if any, to obtain legal determinations on the environmental requirements. It is clear that any discussion of moral obligation does not enter into this. This is very different from how the U.S. deals with internal U.S. policy to U.S. military facilities where they state that they do have an obligation to cleanup. In terms of installations or facilities that have been designated for return or that are already returned such remediation may be completed after return as long as it addresses environmental contamination caused by DOD operations and does not exceed a remediation scheme approved before return by the appropriate service component or defense agency in consultation with DOD. This is emphasized by the policy which states that after the return of an installation or facility, DOD shall not fund any environmental remediation beyond that authorized by binding international agreement or what is pursuant to an approved remediation scheme. So they are very clear about what they will and won't do.

“The whole issue of host nations, the Status of Force Agreements (SOFAs) and the treaties and the binding agreements that are in place there may be able to be shifted.”

There is a lot of language about who determines whether or not environmental problems pose imminent and substantial endangerment to health. Most often the person who makes the determination is the installation commander who has to choose between environmental compliance and military readiness and military mission. If the environmental authority lies in the same person who is determining readiness, military mission, there is a prioritization that takes place, and environment is not always up there on the prioritization. The decision as to whether a contaminated site poses an eminent and substantial endangerment shall be made by the in-theatre commander of the service with the appropriate medical, DOD medical authority and DOD environmental executive agent for the respective host nation. Now, my reading of this doesn't indicate that there is any consultation with the host country.

Now I want to talk a little bit about two directives that have come out of DOD. They deal with specifically, explosives safety management and munitions or unexploded ordinance (UXO) on ranges, so its definition is very narrow. The two directives were announced in August 1999, one is for dealing with ranges abroad and the other is for dealing with ranges inside the United States. These two directives came out of the National Munitions Policy dialogue. Now the reason that I mention this is that the munitions policy dialogue is not made up solely of DOD personnel. And the principles that ultimately made it into this directive were initiated by some of the citizen representatives on there. The Department of Defense's Operational and Environmental Executive Steering Committee for Munitions (OEESCM) took these principles and made them into directives that went into effect on August 17th. The principles in the directives and the principles are not only just for ranges within the United States, but also outside the United States. Now there are some substantial differences in terms of references to host countries and responsibilities in these directives, but in a lot of cases when you are talking about how DOD manages a range the directives for reporting are the same: whether or not they catalog the types of munitions fired, where they have been fired, the dud rate, those sorts of things that they can use to identify what the level of contamination is and where those things are.

Cleanup policy within the Department of Defense is beginning to shift. Military training and sustaining U.S. readiness is considered one of the military's core missions. DOD does not like any interference with that, whether it has to do with environmental issues, safety issues, health issues etc. They don't want anybody watching over their shoulders, so for them to have taken these principles that were initiated by non-DOD people and to put them into directives is quite substantial. What does this mean to the international community? In part it means there is a spillover effect on the active policy work that citizens are doing in the United States around military cleanup and it has a spillover effect to what's being applied outside the U.S.. The whole issue of host nations, the Status of Force Agreements (SOFAs) and the treaties and the binding agreements that are in place there may be able to be shifted. I think partnering or working with people in the U.S. who are working on these types of issues internally can strengthen those of you who are working for them externally. Because in reality, as representatives of a foreign nation you have no official standing in the U.S. in terms of Congressional representation or ability to influence the voting bloc but your ability to work with those people who are working for those same things in the U.S. can help strengthen your position.

Alan Ross, Host Nation Environmental Coalition, Washington DC

What we wanted to do was to give you a little background on the Host Nation Environmental Coalition, who we are, how it came to be and where we think we are capable of going. Polly and I are business partners, and that's the first thing we try to impress upon people as that we view this as a business proposition. We have a background in military/environmental issues, public policy and also association management but share a common outlook on host nation issues, and if there is one thing to know about us, it is that we are pragmatic and realistic and we take that approach to solving problems and don't believe that there is progress to be made in confrontation with DOD but that what we are trying to do is foster dialogue and communications and common solutions to common problems.

I spent time flying airplanes for the Navy and I had the opportunity to be a base commander. I was the commander of a base that was closed under the Base Realignment and Closure (BRAC)

law and it was a base that had significant environmental problems including industrial solvents, POL contamination, heavy metal, Unexploded Ordinance (UXO) and range issues--all the issues that most of you deal with on a regular basis. Working on this contamination issue was a real awakening for me, after spending the first 9/10ths of my career in the Navy essentially causing some of those problems to suddenly have to deal with them on the other end. Since I departed the Navy in 1993, I have been a defense Government Relations consultant here in Washington,--that is Washington polite talk for lobbyist.

The issue that brought the overseas cleanup disparity issue to our attention was the Canada settlement and that has been explained as a unique and one time only proposition between one sovereign nation and the U.S. government. We see this as the issue that host nations face vis-à-vis the U.S. government as something that combines issues that we believe are important. First we believe that the U.S. government has not only a legal obligation, but a moral obligation to the countries where it had bases. Second, we believe government, industry and the affected people have the ability to work together and solve these policy problems in a pragmatic and realistic way. As a coalition working together you will be able to create leverage with the U.S. government that you will never arrive at individually and singly.

We started our effort about a year and a half ago by talking to potential member countries, the embassies here in Washington and monitoring DOD and Congressional interest in the subject. Our initial efforts were *pro bono* in providing networking opportunities for the host nations and DOD and Congress. We stepped up our efforts in July 1999 holding a forum at the Army-Navy Club here in Washington and had representatives from 12 of the host nations as well as DOD industry representatives that developed a level of interest that will sustain. So why would a coalition be more effective? Well we can't represent the common interests of all the members. Each country has individual and specific issues with DOD, but you also have common issues, that I would submit you have more things in common than you do have individual issues. We see the coalition as a forum for developing consistent approaches to DOD that is important as you operate as a group, but it is also important that you have a consistent approach that DOD hears. There is also the ability and requirement to educate key U.S. interest groups and opinion makers. This is key, as there is no Senator from Panama or from the Philippines in the U.S. Congress that will push the issue. The challenges that the host governments face are many--they range from the very basic information and characterization of the contaminated sites to methodologies for cleanup for UXO redemption--and what we want to do is to bring industry into the picture so that host nations are made aware of the most recent and most effective technologies for cleanup and what options are available. We think that the coalition is a common way in Washington to bring issues to the Executive and Legislative branches of the government in a format that the U.S. government and the DOD are used to dealing with.

Polly Parks, Host Nation's Environmental Coalition, Washington DC

I've been a military environmental consultant since 1996 and my clients have included the military, industry, technical non-profits and governmental clients. Prior to that I was the director of the Legacy Program for Global Green USA which dealt with the United States and former Soviet Union environmental legacy problems. Prior to that I worked on sustainable development and U.S. foreign policy which included the Philippine bases cleanup for the Unitarian

Universalistic Service Committee in Cambridge, Massachusetts. Prior to that, I was involved for about 15 years in the commercial and non-profit publishing industry.

I'll try to be very quick on this, I wanted to elaborate a little bit on why the Host Nation Environmental Coalition was founded. It's important to realize that there is currently no law that governs U.S. environmental conduct at military facilities in other nations when the facilities are active or are closed. Instead of law, there is the Standard of Force Agreement or Department of Defense or Uniform Service policy instructions directions and guidance. This is in stark contrast with the situation domestically or with the U.S. territories. The passage of the Federal facilities compliance act in 1992 brought an end to what the military euphemistically referred to as "poor management practices." Nearly a decade later those poor management practices continue at U.S. facilities in host nations. This is not only problematic for host nations and their citizens--it is a problem for the U.S. military and our diplomatic personnel and American industry. The situation that host nations currently face is roughly analogous to that of the U.S. states and territories prior to the passage of the Federal Facilities Compliance Act in 1992. In other words, where legal action looms, this is a period when political resolution can prevail. In order for that to happen, three conditions must be met. One, there must be concerted action by Congress to direct the military to meet their obligations. Second there must be dedicated funding appropriated. Third, the parties involved which include the government, the U.S. military, and industry which will implement the cleanup must work with each other to develop an equitable process and approach. At this point, none of these conditions are met.

There are three main reasons why this state of affairs continues to exist, the first is that there is no law. The SOFA and treaty language is a political compact. Law that is backed by funding goes into our Appropriations and Authorizations Bill, without that the language doesn't mean anything. Both DOD policy directives and overarching policy standards have been developed by fiat. If there is any fleshing out of policies that is done, it is done by individuals who see the guidelines as a threshold rather than as a barrier. But the worst part of this policy by fiat is that there is no process by which the legitimate concerns and needs of host nations and their citizens,

"There is no process by which the legitimate concerns and needs of host nations and their citizens, installations and military commands or the U.S. environmental industry can be addressed."

installations and military commands or the U.S. environmental industry can be addressed. The second reason this situation exists is that there is no Congressional funding for anything related to host nation related military environmental matters anywhere within the federal budget. The one exception is the \$100 million *ex grate* payment to Canada for cleanup of a limited number of former U.S. sites in that nation which will be spread out over a 10 year period. The repercussions of this fiscal anomaly, and it is an anomaly, because it is done for the U.S. states and territories and the Commonwealth of Puerto Rico, is that neither DOD, the administration or Congress much less the host nation is able to track the where, what or how by which DOD is tackling military related

environmental issues in host nations. Congress sought to rectify that problem with language in 1997 that called for an annual report on program performance and cost.

I wanted to also speak a little bit about a new directive, 4715.12, that just came out because I think that it is important to realize that sometime little incremental steps can take place. It is very clear that DOD, does not have much to do with how policies gets implemented on the ground overseas, but this new directive on the ranges overseas is an important document. If this directive is funded and staffed by the military it is going to be a significant step forward from what is taking place thus far, though it is only focused on ranges. 4715.12 is a much more considerate document than current regulations for overseas cleanup instruction. First of all, it's a directive. Secondly, it is signed by the Deputy Secretary of Defense instead of an Assistant Secretary of Defense and it directs the DOD comptroller to outline financial management policy.

Barry Steinberg, Attorney, Kutak Rock, Washington DC

Kutak Rock is a law firm named after two men, Mr. Kutak and Mr. Rock. I come to this issue as a retired Army Colonel and I used to be the chief of the Army's environmental law division. I had responsibility amongst other things for environmental issues in the Southern part of Germany when I was stationed there for three years, from 1983-1986, and I have also served in the Far East at a number of different installations.

What I want to talk is the lack of legal enforceability for what you are calling for. There was a question asked at the last session of are there any constraints on what DOD can do on its overseas bases? If there are any I've not run into them quite frankly, and that has to do a lot with how we acquired authority and presence at those overseas bases in the first place. There are basically three ways that we acquired them. The first is by conquest. The bases that we presently occupy in the Federal Republic of Germany were bases we took over at the end of World War II, the same can be said for Japan. They are installations that were originally acquired as part of an occupying force at the end of the war. Subsequently there were negotiations for those bases I would suggest to you that anyone who thinks the United States and Japan sat down at the table as two equals and negotiated the rights to those bases in the mid-50's needs to go back and look at the relationship of those two governments at the time. The second way that we acquire bases is a true concept of negotiation. I would suggest for example that in Turkey some of the aviation support facilities are closer to a true negotiation but there we had a circumstance of a first world and a third world nation negotiating and sufficed to say, the perhaps the third world nations leadership may have benefited financially from the deals that they stuck so there were negotiations, but again not exactly of equals. The third way, which is a rather unusual one, has to do with reward for rebellion. I would suggest to you that the U.S. military presence in Panama is a prime example of a reward for a rebellion. Panama did not on its own decide to become an independent nation, it did that, split off from Columbia largely with the support, assistance and financial backing of the United States. So, when we go back though that history, if you wonder where do we come off acting like we do overseas, it's essentially a power play, and it's not any more complex than that.

Now in the late 20th Century, we would all like to think that we behave better, and quite frankly if it didn't cost any money we would behave better, but all of these directives and policies and pronouncements and statements of goodwill all have a bottom line, they cost money. As you know we've got a major battle going on in this country in how we allocate our resources and no matter how you slice it, the money that goes to overseas bases represents an opportunity cost for something else that isn't going to happen. Within the Defense Department, it might be a weapons

system, within some other department of government it might be childhood inoculations. The point is that if good environmental compliance did not cost any money and it didn't interfere with the training missions and the national security objectives at the overseas bases we would have been doing it a long time ago. So, make no mistake about the fact that what you're really talking about is how do get the money to do these things. We can talk about moral persuasion, we could probably all sit down and agree on what is the right thing to do and we would come to that agreement very quickly. The problem is after we got there, where do you turn to make it happen? There is no court of competent international jurisdiction that can enforce any of the moral strictures that we would come up with.

Another issue to consider in an international enforcement scheme is that any international enforcement scheme is going to be applied uniformly and I would suggest to you that it does not just apply to ranges and just to military bases. What about conquests where when the conquest was over and you went home and you left the results of warfare in the battlefield? Are we going to enforce the United States incursion into Iraq in the same way that we will enforce the Italian incursion into Ethiopia? If we are going to set a standard we must recognize that it is a uniform standard.

Right now the focus is on the United States which certainly seems to have a lot money that it could spend on these problems, but let's be careful when we set the standards that are uniform. The biggest problem is the problem of enforcement, and I suggest to you just flat can't do that. Most of the requirements that are binding upon the United States with respect to its overseas military base presence are treaty driven. Now, we can argue about the fact that the treaties are not fair, that's not the issue. The point is that treaties by their very nature are between two separate, sovereign governments. So when you come to the United States and you want to talk to the U.S. Congress, the U.S. Congress can easily say well, if the State Department or the Defense Department asked me for this money, then I will consider it. But the real question is, where is your host country government? Where is your host country Defense Department equivalent? Or your Ministry of Foreign Affairs or State Department? They're the ones who need to be speaking up on this issue because they deal with the treaty relationships. I can complain all I want about how the United States adheres to its treaty obligations. But if the host nations involved are not coming to the United States government and pointing out violations of the treaty obligations not much can be done.

In some cases the host nation government is in bed with the United States government. They don't want to make too much trouble, they don't want to make waves, they are happy with the *status quo*, and I would suggest that if you are in a country that has anything like a democracy the best way to express your disfavor with that approach is through the voting process. Make it an election issue at home. If you are looking for recourse through the U.S. court system I would suggest to you that the United States has not waived its sovereign immunity to have a foreign citizen raise the issue of enforcing treaty rights between two sovereign governments. The U.S. government will only listen to countries that we have a national security interest in. For example, we need military aviation capability in Northern Italy. Italy is in a very good situation to say to the United States, if you won't cleanup your act on the environmental issues at Aviano Air force base we're not going to continue to let you use Aviano. If you want to make a difference with the Defense Department, you've got to get to the Defense Department on issues that directly affect them. Environmental issues, as well intended as many people are, are not a primary national

security mission. Defending the interests of the United States is the mission, and if you want to get to them, you have to talk about their ability to do that.

Arjun Makhijani, Institute for Energy and Environmental Research, Takoma Park, MD

I run a small non-profit that deals with environmental and security issues. I am from India and over the years wound up being in the middle of providing technical support to grassroots groups, community groups living near nuclear weapons production sites as well as soldiers who were involved with nuclear weapons testing because they had few technical resources and virtually no one to turn to when it came to interpretation of technical materials, groundwater contamination, air pollution, records of radiation doses and so forth. I never imagined coming from India that I might wind up, at least in one important area sitting at the junction of science and democracy, but it happened to be so. And we publish a newsletter called Science for Democratic Action in English and under Energy and Security in French and Chinese and Russian.

The reason I agreed to give this particular talk is that I think that you should know what the United States government does at home. And this might help you both to understand your own situation and to make alliance that might help you get over some of the very difficult legal problems that you confront. There are laws in the U.S. and I just wanted to tell you what happens here. First of all, the nuclear weapons complex cleanup is the largest cleanup program in human history. In the last 10 years under the title of Environmental Management and Waste Management, over \$50 billion have been spent. If you think that money is going to be the answer to your problems, you might consider that in my professional, technical opinion, very little has been accomplished with this \$50 billion. For example, the Savannah river is contaminated with tritium, which is a radioactive material that crosses the placenta in the form of water, yet the United States government has not yet carefully investigated, nor any other government. They have not yet investigated the affect of tritium on miscarriages. They have not investigated the affect of radioactive and toxic materials in combination, even though typically these materials are present in combination. I published a study called “Containing the Cold War Mess” in 1997, according to which the greatest environmental management program is in a serious mess and has no proper direction and the wrong priorities, moreover, technical incompetence, and I use these words advisedly as an engineer and a scientist, technical incompetence is rife inside the Department of Energy.

“Why do these atrocities occur? One reason is that the people who make weapons don’t want to cleanup.”

Why do these atrocities occur? One reason is that the people who make weapons don’t want to cleanup. They don’t like environmental management, they don’t think it’s their job, they do not seem to be able to implement cleanup technologies. For instance, in January 1998, after sixteen years and internal and external warnings including from myself, the Department had to write off a \$500 million project that was key to cleaning up one of the largest nuclear weapons production sites in South

Carolina. Its not for lack of power, they have the power, they have the money, but they don’t really want to do this job. It may surprise you to know that by law, the Atomic Energy Act of 1954, the United States is required to protect the health of its people. However, the United States government has admitted that it did not respect these laws because the people didn’t have the

power with respect to the National Security establishment. So I would ask you to think very carefully what is it that is going to provide you with a sufficient level of power in this game to be able to enforce your interests. I don't know, maybe the Department of Defense is a lot better than the Department of Energy.

I have a couple of practical suggestions for you. I think that to hold your own government accountable and the United States government accountable, you must, and you undoubtedly do this as activists, but the necessary amount of information you need and the contacts that you need is maybe somewhat vaster than you realize. There are many people in the United States in similar positions to yours who don't feel very empowered even though they have the right to vote. I might suggest that you might talk to them more regularly because the world you live in is not a world apart from people I know in Kentucky and Washington State and Tennessee and South Carolina. They don't feel that they have very much say with respect to the U.S. government, even though plenty of money is being allocated, all of this money is going into the pockets of contractors and the results that are being delivered to the American public are minimal. Sometimes, even worse cleanup problems exist at the end of cleanup than at the beginning.

I think the treaties question is a political question. You have been told that treaties cannot be enforced in courts of law. The United States was built on the back of regarding treaties with opportunism. However, today, the United States opportunism with respect to treaties is a matter of security for its own people. In respect to nuclear treaties, the United States is currently treating a great number of treaties with contempt. Its obligations to the United Nations, its role with respect to the Security Council, its obligations with respect to the Non-Proliferation Treaty, Kyoto Protocol, and the Comprehensive Test Ban Treaty. All of these things are creating very, very severe dangers for the people in the United States and across the globe.

I think the Institute for Policy Studies and all of the other groups here can certainly help make some alliances to battle for justice. There are also many environmental groups and groups who work on security related issues that should be involved. If we can play a role in my institute, we would be happy to help you. I am very appreciative that I was invited to give this talk, Thank you very much.

Question and Answer Period

Question: [inaudible]

Alan Ross: First of all Vieques is part of the United States. And because of that, all of the environmental laws that are passed that apply to the United States, apply to Vieques. So, what I said about the lack of enforceability for foreign bases, that does not apply to Vieques. In Vieques there is recourse against the United States government for what is going on there. If the President of the United States as the Commander-in Chief of our Armed Forces wants to order the Secretary of the Navy and the Chief of Naval operations to stop military operations in Vieques, he is empowered to do that. He can get on the phone today and order the Navy to stop its activities in Vieques that would be a legal and enforceable order with criminal consequences for a failure to obey it. He has not given that order, quite frankly, I don't believe that he will give that order because he doesn't want to offend the National Security establishment.

Now, there are other issues with respect to Vieques as a military installation as such within the United States. I think that it is very important to recognize that while you may well be successful in getting the military operations to stop in Vieques, that does not mean you are going to get a clean base back, that is a very, very different issue. It will take, I will guess at least 20 years to characterize, fund and begin the cleanup down there. I will not see Vieques cleaned in my lifetime and I doubt that you will either and that assumes that all military operations were to stop today. So, when we talk about Vieques it is important to recognize that is not an overseas installation, it is subject to U.S. domestic law and the President of the United States can give an order that says stop doing that. It is more significant that he has not done so than anything else because he has that power.

Polly Parks: The other thing with what Barry is talking about is that Puerto Rico is covered by a Federal Facilities Compliance Act and it does get dedicated funding. It will be a big problem for Puerto Rico if Vieques closes out without dedicated funding to cleanup that base. If that happens you cannot expect that the Navy or anybody else who has used that base will clean it up.

Aimee Houghton: I cannot emphasize Polly's point enough about having funds obligated for this cleanup and that is central, not only having funds obligated for this cleanup, but knowing what it is that you want to get out of this cleanup. You will need enforceable milestones and dispute resolution to be detailed--stuff that is going to take a considerable time to get done.

Polly Parks: What takes time, is I think, is getting your country to take up this issue. I think that actually there is a methodology in place and that is one of the reasons that we started doing what we are doing. But, I think that the big block on this is that citizens and governments in host nations don't really have a sense of what this process is, so when they sit down to talk to the United States bilaterally, they don't know what dollars to throw out there. For example, the cost to do the cleanup in the United States, which is for more bases than the United States has overseas, is about \$25 billion dollars for over 1,000 active military facilities over a 20 year time period. It is going to cost money to cleanup these bases, but that is not the biggest problem, the biggest problem is getting your government to raise it as a consistent issue with a consistent path on how to resolve it.

Question: Not wanting to beat a dead horse, in terms of your typical conversation about Vieques we are all in this thinking that something is going to happen. If this is the case, and Polly argues that there are methods for cleanup how can we expect the military to honestly participate in cleanup activities? The Navy has lied for 50 years, what will change now?

Polly Parks: Well, I'm not going to deny that the Navy lies, the Army lies, the Air Force lies, the Marine Corps lies, the State Department lies, but sometimes it's also bad record keeping. Sometimes it's that their information is dispersed over places. I feel personally that Vieques has had a situation that is similar to many host nations in that the relationship began at the turn of this century when the United States was expanding overseas.

Question: I understand that but, in terms of this being a U.S. territory whereby environmental laws that apply federally exist the military has lied to the people of Vieques. They say

environmental restoration advisory councils exist when they do not exist and that no contamination exists when there is contamination.

Polly Parks: I think that the government of Puerto Rico is saying that they agree with you which is why they have gone to the table with the Navy over this issue.

Question: Ok, I understand that, but you make this picture that there is this access to the Department of Defense, when in fact there is no access.

Polly Parks: I agree with you, that is why I think that the main things that need to be done are outside the Department of Defense. Getting funding for these cleanups has to do with Congress, it does not have to do with the Department of Defense.

Arjun Makhijani: It has been pointed out that the situation in Puerto Rico in terms of laws is similar to here, and the situation you describe is a common experience of the people that I work with in that it is really not possible to get the spirit of the laws enforced. So, how we remediate the political and policy situations is really a much bigger political problem than getting the law enforced in a court. I think that the Puerto Rican part of the environmental movement, especially as it is covered by the laws of the United States, might join up with the rest of the people who are covered by the laws of the United States who are having similar frustration.

In response to various comments that have come up about government not telling the truth, there is one thing about the U.S. government that is an outstanding government compared to other superpowers. It is the most open superpower in human history. So, I recommend two things, we use the Freedom of Information Act and other documentary sources of information such as the National Security Archives of the George Washington University. So please do use the strong points of openness in the United States because there is a lot of room to find out things that work.

“If you want to accomplish something in the U.S. government that has money attached to it, you have to influence the Congress.”

Question: [inaudible]

Alan Ross: I’d address myself to two of the questions that were essentially the same, they were comments, and that is, the role of Non-Governmental Organizations (NGOs) and the Host Nation Environmental Coalition or citizens groups and I said at the outset that we are pragmatic, realistic people and that if you want to accomplish something in the U.S. government that has money attached to it, you have to influence the Congress. Coalitions of international citizen’s groups are not going to influence the U.S. Congress. Perhaps coalitions of governments which have things that the U.S. government wants and needs, will have an influence in the

Congress. So our approach to this has been that there certainly is a role for NGO’s and citizen’s groups to play in the forums and so on that we will be presenting.

Polly Parks: I think that our work has nothing to do with whether we think there should be an international citizen’s group, working on these issues. In fact that is probably a very excellent idea, but while some of the host nations are quite willing to have NGO’s in their own countries

participate and influence their government on issues others aren't. What we are trying to do is to pull together a coalition, maybe similar to OPEC, where you pull together the people who have some weight on this issue to leverage what they can. We don't see it as contradictory to citizen's movements, its just another way to approach this issue.

Question: My point was that we heard in the country reports that the different groups talking to their host nations are not necessarily representing their own interests, so I wanted to start by asking if the Host Nations Environmental Coalition has an equal place for citizen's groups?

Polly Parks: The Coalition is made up of governments, it is not made up of citizen group. That's why its called the Host Nations Coalition. We do not see that as something as being in opposition to a coalition of international citizen groups, hopefully there is a lot of room to work with each other on all these issues.

Barry Steinberg: I want to address the legal standing issue. If citizens go to your judicial system and get enforcement against your government to enforce a treaty, that is a matter of you country's law. What I am suggesting is that you would not be able to come to the United States as a foreign citizen and bring the action in a U.S. court. Now, even if I wanted to bring an action in the U.S. court, the hurdle that I would have to get over is the justiciability, which is a technical term meaning, does the court have jurisdiction to issue the order. The Judicial branch is very reluctant to tell the Executive branch what it has to do in a matter involving foreign relations. So I would suggest that you would not be able to come into U.S. courts with any success, and if I were to bring the same case it would be extraordinary for a court to order the President to do something specific pertaining to the foreign relations of the United States.

Aimee Houghton: I wanted to address the question about how we do U.S. policy in relation to internal bases. It comes out of the Department of Defense which comes out of national policy dialogues that people participate in. During the policy development stage, it is critical that there be a mechanism for public involvement and public input into that process so that when you get a policy or a directive, and before it is put out in the Federal Register for comment, there has been meaningful public comment.