ISSA Proceedings 2002 – When Governments Collide: The Rhetoric Of Competing National Arguments And Public Space

As the Cold War (as we know it) drew to a close in the 1980's, the United States Department of Defense found itself deciding what to do with more than 55 hundred military bases, supply depots, and other facilities that it operated all over the United States and around the world (Wegman, 1994, p.866). This included 370 major and over a thousand minor bases located overseas. By the late 1980s, the Pentagon and Congress began investigating and determining the bases it no longer deemed necessary to national defense, and ultimately began implementing rounds of closures of both its domestic and overseas facilities. The estimated savings to the defense budget – $5.5 billion dollars per year once the rounds of closures were complete (Wegman, p. 867).

On the domestic side, the U.S. Departments of Energy and Defense determined and acknowledged that through years of environmental myopia, mismanagement, and, in some cases, flagrant disregard for environmental laws that not only were hundreds of these sites contaminated by hazardous and toxic wastes, but many were so badly contaminated that they could only be written off and abandoned**(i)**. In 1999, in a special investigative series on federal government pollution, the *Boston Globe* reported:

An estimated 50 million acres of land in the United States have been used as bombing and target ranges by the military. Cleaning up just five percent of the land would cost $15 billion, according to the Defense Science Board, a Pentagon advisory group.... Currently, the military is spending $51 million a year to clean up training ranges. The total Pentagon environmental budget is $3.5 billion per year (Armstrong, More costly).

The report goes on to state that the overall cost of cleaning up the worst polluted sites was expected to exceed $300 billion. Clearly, even the United States government with its access to vast resources is unable to allocate the necessary

funds to completely clean up the environmental mess it has created in its own country.

Even when funding is made available, environmental remediation is often hampered by the very requirements of the funding sources. Under CERCLA (the Comprehensive Environmental Response Compensation and Liability Act – better known as the environmental Superfund), for example, states have imposed more substantial remediation standards on the cleanup of former military facilities than the federal government. As a result, cleanup action has been bogged down by legal disputes over the level of remediation and definitions of risk assessment of what constitutes hazardous waste. Should an area earmarked for an industrial park, for example, be cleaned to the point where the soil is edible? Should private industries that develop former military baselands be held liable for unknown or as yet undiscovered environmental hazards?

Still, at least in the United States and its territories, the federal government can and has been pressured by state and local governments to add polluted sites to the EPA's National Priorities List. For those that have not been successful there is perhaps some small comfort in the federal government's acknowledgement of responsibility for the environmental mess even if remediation funding is not forthcoming.

But it is the larger, ongoing multinational debates over environmental damage at the U.S. military's overseas bases that are particularly significant in the wake of post September 11 global rhetoric on America's military response and responsibility. It would be irresponsible not to point out here that the U.S. military is not alone in leaving toxic and hazardous waste behind in lands it formerly occupied. The French, British, Canadians, Soviets, among others who have occupied and maintained overseas bases also share in the legacy. However, the U.S. is particularly noteworthy for its huge investment in overseas bases located in allied sovereign nations and non-U.S. territories.

Consider the extent and cost of environmental damage caused by military installations *in* the United States with its strict laws and regulations and environmental watchdog groups, and consider the level of confusion, inefficiency, and mismanagement in administering cleanup there. Now, consider what happens with U.S. *overseas* military facilities, particularly those in less developed countries. Picture the contamination of soil, groundwater, rivers, and coastal areas around former military bases with solvents, jet fuel, oils, pesticides,

PCBs**(ii)**, heavy metals, paint, adhesives, asbestos, and in some cases even unexploded live ordinance. While considering this litany of pollutants, it is also important to consider claims of benefits**(iii)** that long-term U.S. military presence has brought to many countries without the resources to establish a strong defensive military presence. Military bases provide employment opportunities for local residents. A military presence also means protection from other regimes and political stability. Stability and security often encourage foreign investment and tourism. Further, a military presence, especially the U.S. military, means the construction of airfields, roads, and telecommunications.

But what happens when the military leaves? What responsibility, if any, does the U.S. owe to its host countries? What responsibility do allies and host countries owe to the U.S. for years protection under a U.S. defense "umbrella?" What happens if the U.S. ever wants to come back and reoccupy those bases or set up new ones? These are complex questions, and popular interpretations and perceptions about how the Pentagon and federal government has conducted itself in base closure processes become even more volatile in the wake of the September 11 attacks and U.S. politics and military action in Afghanistan, the Middle East, and Eastern Europe. What is especially interesting from a rhetorical perspective is how the U.S. and the various host nations construct their positions and arguments concerning environmental responsibility.

While every host country has its own particular and unique set of issues and discourses in dealing with U.S. base closures, the closure of the Naval Air Station in Bermuda and the resulting arguments between the U.S. and Bermuda governments on the nature of their social and legal relationships to each other provides an interesting case study on civic discourse on an international level**(iv)**.

First, a brief historical context. With the future of Britain uncertain at the beginning of the Second World War, the British territory of Bermuda represented a security threat to the United States. Located only 700 miles (32 degrees 45 minutes North, 65 degrees 0 minutes West) from Cape Hatteras, North Carolina, with easy access to the entire Atlantic coast, the U.S. could not afford having the island fall into hostile hands. As part of a "Destroyers-for Bases" arrangement with Great Britain in September 1940, the U.S. was granted a 99-year lease (rent free) for the use of land in Bermuda for the establishment of military bases (Godet, 1991).

During the Second World War, the Bermuda station was used as an Army Air Force base for coastal defense and as an Atlantic patrol station, especially in

defense against German submarines. During the 1950s and the Korean conflict, Bermuda was also used as a Strategic Air Command refueling base, and in the 1960s a NASA tracking station was opened. The U.S. Navy took over the base in the late 1960s and continued to operate from the station for coastal defense, for rescue operations in the Atlantic, and for tracking Soviet submarines. In 1991, even as other U.S. bases around the world were being closed down, the U.S. Department of Defense and NATO invested millions of dollars in refurbishing the Bermuda base and building a new runway. During all this time, the U.S. government continued to maintain and operate a civilian air terminal at its own cost. To Bermuda, even though the Naval Air Station had outlived its use as a local defense for the United States, the lease on the land was still good and it was generally assumed that defense of the island would continue for another 50 years (Godet, 1991; Zuill, 1983).

Then on September 1, 1995, with 45 years remaining on its lease agreement, the United States officially closed its bases on Bermuda and departed with minimal fanfare. The closing of the U.S. Naval Air Station in Bermuda followed on the heels of a *Primetime Live* investigation by Sam Donaldson that portrayed the base as "a vacation playground for military brass at the expense of taxpayers" (ABC News).

For Bermudians, the return of the Naval Air Station baselands initially represented an enormous windfall of public land, coastline, and beaches, not to mention the airfield, base housing, and administrative facilities that had been built by the Americans. In fact, much of the land area, some 800 acres, had not existed prior to 1941 but had been filled in by Army Engineers who dredged the harbour for raw materials. But even before the U.S. flag was lowered for the last time, a "battle" was already being waged between the Bermuda government and the American government over who would be responsible for the massive environmental clean-up of 50 years of accumulated military waste that had been discovered.

The positions staked out by the two governments, landlord/tenant and beneficiary/caretaker, have resulted in some interesting wrangling as the parties often talk past each other rather than engaging each other in debate as there is no point of stasis. What follows is a synopsis of how the argument, or more accurately perhaps the refusal to argue, has taken place between two governments who have not defined starting grounds for debate.

What is particularly interesting about these negotiations are the positions that

each side has taken in relation to interpreting its civic, legal, and environmental responsibilities. The U.S. maintains a position of steward or caretaker of the land on the basis that it has made huge investments in American taxpayer money for over 50 years in building and maintaining both a military and civilian airport (that contributed to Bermuda's industry as a tourist destination) and the supporting infrastructure of roads, buildings, water reservoirs, and utilities that Bermuda, as a beneficiary, has inherited at little cost. However, the inheritance, or more accurately, the transference**(v)** is not free and clear.

There is no statutory policy for overseas base closures as there is for domestic base closures under CERCLA. The DoD follows an original Status of Forces Agreement (or SOFA) for each facility it established overseas, many of which state that the United States has no obligation for environmental cleanup once military operations have ceased. In some cases, such as with the Republic of South Korea, the host country is also under no obligation to compensate the United States for the value of facilities it leaves behind. In other cases where there is no SOFA the Department of Defense negotiates environmental remediation on a case-by-case basis. In keeping with a distinctly non-tenant like approach, during the first Bush administration, the Pentagon adopted a policy wherein host countries are held liable for the residual value of the bases. U.S. negotiators predict costs of environmental restoration to the host country and deduct that cost from the assessed current value of the properties it is transferring. This policy is known as "net zero" and its goal is to reduce environmental remediation costs when a military base is closed. Even when there is a SOFA provision, as is the case with Bermuda, net zero is often still implemented (Wegman, 1994, pp. 925-930).

Early in the closure negotiations, the U.S., following its "net-zero" policy on overseas closures, valued the land and facilities it was returning to Bermuda at $140 million and demanded compensation. Bermuda refused to accept a position of beneficiary and instead claimed a position of landlord to the property, claiming that as a tenant or lessee, the U.S. was under no obligation to improve the leased territory and that it made temporary investments in the baselands for its own military purposes, not for local residential use**(vi)**, and is liable for its waste and for existing and future risks to Bermuda's fragile environmental structure and ecosystems. Now, to be fair, Bermuda, despite its popular image as a tourist destination with its picturesque homes, pink beaches, and quaint stores has environmental problems of its own making: Over development, traffic, wetlands

that have been turned into a municipal dump or filled in for industrialization (Hayward et al. 1982). So, while military waste is far from being a small problem, this is not a situation of the big, bad U.S. Navy messing up paradise – not that Bermuda officials have not played up to such an emotional appeal in the local news media and in appeals for remediation.

Immediately following notification that the base properties would be returned, Bermuda conducted an initial site inspection. Over the next 6 years it would spend more than $1.5 million on three separate environmental assessments. Minister of Management and Technology, Grant Gibbons, stated in the Bermuda House of Assembly in 1994:

The Bermuda Government is now in the process of preparing its position as landlord, to present to the United States Government. We have firm views about what condition our land should be in when it is returned to us, and there may well be costs involved for the Americans in that area… Taking back the lands will not result in Bermuda having to pay a United States bill of $140 million (*Journals of the House of Assembly of Bermuda*, p. 25).

Having claimed landlord/tenant status with the United States, the Bermuda Government assessed cleanup costs at $60 to $80 million. The assessments showed that leaks from the Navy's fuel storage tanks had created major free product plumes that are threatening Bermuda's groundwater supplies. The assessment also showed that sludge and raw sewage dumped into a coastal cave and more than 400 tons of friable asbestos are posing significant and imminent health risks to Bermuda's population (*Congressional Record*, 2000).

Dismissing Bermuda's cleanup assessment claims, Secretary of the U.S. navy, Richard Danzig stated:

The information you provided shows that some contamination is present, but the simple presence of contamination has never been the critical issue. Using generally accepted methods for assessing the risk to human health and considering all the available information, the contamination does not pose an unacceptable risk and certainly does not rise to a known imminent and substantial endangerment to human health and safety (Regan, 2000, pp 1-2).

The key terms here are "known," "imminent," and "human." Unless there is an obvious and imminent environmental health hazard to personnel while the base is active, there is little to no incentive to "know" about existing or potential conditions. After the territory has been "transferred" (note: not "returned") to the

host country, then the U.S. is no longer liable under SOFA because of the "no obligation" clause for any subsequent "discovery" of hazardous waste. It is a situation similar to this that allowed the U.S. to leave, what the *Boston Globe* (Armstrong, Toxic, 1999) called "A toxic legacy abroad," at its seriously contaminated Subic Bay and Clark bases in the Philippines. By contrast, the U.S. has made arrangements with other countries, notably Germany and Canada to assume at least partial responsibility for environmental remediation. Information on how and why such decisions are reached concerning which countries receive assistance and which don't has not been made public as yet. Thomas Sleeter, the Bermuda Government Environmental Engineer, pointed out that this was a particularly frustrating aspect of the negotiations and speculated that the amount of leverage a host country has is likely a key factor in determining remediation (Personal interview, January 3, 2002).

Bermuda continued to maintain that the U.S. has moral and political obligations for clean up, a position supported by the British Government. In a letter to the U.S. House of Representatives, Britain's ambassador to the United States, Christopher Meyer stated:

We believe that the reference in the 1941 Agreement to the "spirit of good neighborliness." As well as its character as a lease, imply a requirement that the lessee, the U.S., would return the leased areas in a good physical condition, in accordance with common law, Moreover, under customary international law, and the "polluter pays" principle to which the U.S. subscribes, States have a general obligation to ensure that their activities do no damage the other State's environment. We do not accept the U.S. Government's view that it is entitled to compensation for the residual value of the facilities which were left behind on closure. The 1941 Agreement makes no provision for this. Nor under common law is a lessor liable to his lessee for improvements voluntarily made by the lessee (*Congressional Record,* 2000).

Despite this the Department of Defense rejected such claims of common law and its status as a lessor ultimately made its position firm. In a letter to the Arthur Hodgson, Bermuda Environment Minister, Robert Pirie, Assistant Secretary of the Navy stated:

We must comply with the public law that closed the Naval Air station and with the Department of Defense policies, which respond to Congressional direction and funding realities. Our review of all the data shows that the contamination that remains in Bermuda does not meet the standards set by the Department of

Defense for remediation.… Also, Congress has made it clear that it is serious about recovery of residual value for the improvements that were left… Since the government of Bermuda has declined to enter into negotiations aimed at compensating the Government of the United States for its improvements, it is unlikely that Congress would look favourably on expenditures to remedy residual environmental problems (Regan, 2000, pp. 1-2).

While this would appear to be the end of the discussion, there was one final card that Bermuda had left to play. The final catch in the base closure was that the 99-year lease allowed provision for the U.S. to reoccupy its former baselands should military need arise. In the meanwhile, Bermuda has already cleaned up much of the hazardous waste and began to restore and develop the area for residential and commercial use. The former officers' mess has been converted into a nightclub/restaurant. Military family residences have been renovated for Bermuda government low-income housing. The only McDonalds restaurant to have ever been built on Bermuda**(vii)** is now the Runway Restaurant. The Military Police station at the main entrance to the base is now the Double Dip ice cream parlor. However, in the aftermath of the September 11 attack of the World Trade Center, and the subsequent "war of terrorism," the permanence of Bermuda's new investments in the land became more questionable. But under the original lease agreement, the U.S. military was also responsible for the upkeep and maintenance of a small, rusting, outdated, swing bridge, the Longbird Bridge, connecting the base area with the rest of the island. Maintaining or replacing the bridge would be extremely costly over the next 40 years. Ultimately dropping its landlord/tenant claim, the Bermuda Senate passed legislation this March which terminated the U.S. lease on the former baselands and released the U.S. from its responsibility for the Longbird Bridge for a one time payment of $11 million**(viii)**.
Although the Cold War is over there appears to be no end to the questions of blame and responsibility on environmental remediation. On the Senate floor on September 24 last year during the proceedings and debates on the 2002 National Defense Authorization Act Senator Kay Hutchison of Texas stated, "We probably will have more overseas bases. But are they going to be in the same places that they are now? Maybe not. Maybe we will have to build new bases in other sites" (*Congressional Record*, 2001).
In light of September 11 one must wonder how much damage the U.S. military has done not only to the environment in its former baselands, but to the goodwill of those people and countries who will be taking their past relationships with the

U.S. into account as they consider new agreements.

NOTES

i. Such area is termed “National Sacrifice Zones.”

ii. The official Website for the U.S. Environmental Protection Agency defines PCBs as follows:

PCBs are mixtures of synthetic organic chemicals with the same basic chemical structure and similar physical properties ranging from oily liquids to waxy solids. Due to their non-flammability, chemical stability, high boiling point and electrical insulating properties, PCBs were used in hundreds of industrial and commercial applications including electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics and rubber products; in pigments, dyes and carbonless copy paper and many other applications. More than 1.5 billion pounds of PCBs were manufactured in the United States prior to cessation of production in 1977.

Concern over the toxicity and persistence in the environment of Polychlorinated Biphenyls (PCBs) led Congress in 1976 to enact §6(e) of the Toxic Substances Control Act (TSCA) that included among other things, prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Thus, TSCA legislated true “cradle to grave” (i.e., from manufacture to disposal) management of PCBs in the United States. (United States Environmental Protection Agency)

iii. The term “benefit” is clearly open to debate and interpretation, but for the purpose of this paper, it is being used to illustrate an ideal general assumption concerning beneficent military presence in overseas bases.

iv. Much of the data gathered from the following case analysis comes from first-hand observations at the former baselands in Bermuda. The presentation at the 2002 ISSA Conference was supplemented with photographic slides and other graphic materials collected during two field research visits to Bermuda in January and April of 2002.

v. In official U.S. documents outlining policy on the return of former U.S. baselands to host countries and territories, the specific term used is “transference.” The term is conspicuous in its implied neutrality in the midst of discourse on responsibility and remediation for environmental damage and impact on the lives and cultures of local residents.

vi. As a self-contained infrastructure, the U.S. base on Bermuda had its own power, water supply, telecommunications, sewage, and other systems independent of the Bermuda residential infrastructure. Roads, buildings,

reservoirs, and other structures were built according to military code and require demolition or extensive renovation.

vii. This is significant in that Bermuda law prohibits fast food restaurant chains. With the closure of the U.S. Naval Air Station, the only chain restaurant in Bermuda is a Kentucky Fried Chicken outlet that opened in Hamilton, Bermuda's capital, in 1970 before fast food prohibitions were put into effect.

viii. The $11 million agreement between the U.S. and Bermuda, referred to generally as "the baselands deal" has generated a firestorm of controversy on the island. The Bermuda government staunchly defends the deal while the opposition leader referred to it as "a terrible treaty" (Baselands deal, 2002). Former Bermuda government premier, Sir John Swan stated, "What was the formula that was used to determine the $11 million figure? We haven't been told. Judas did better than we did for selling out Jesus Christ when you factor in the relative value of silver in the first century AD" (Judas, 2002). What is notably reduced in the discussion preceding and following the baselands deal are specific concerns for the environmental damage that were so prevalent in earlier debates.

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