Solving International Environmental Crimes: The International Environmental Military Base Reconstruction Act—A Problem, a Proposal, and a Solution

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Recommended Citation
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I. INTRODUCTION

Over the last thirty years international environmental law has entered the corpus of legitimate international law. There has been progress in treaty-based law, customary international law, and even domestic environmental legislation. Although the world has acknowledged the importance of environmental protections for the future of all species, much is still left unanswered. Currently, the international and U.S.-based domestic remedies for environmental damage on foreign U.S. military bases are grossly inadequate.

Since World War II, the United States has followed a military continuum that has disrupted or destroyed many international ecosystems. During World War I and World War II, the United States government created, occupied, and abandoned many overseas military bases; for example, the Philippines and Panama were used for training, industrial operations, and wars. These overseas military installations—some abandoned, some active—have become breeding grounds for environmental damage. After the U.S. military vacated the Subic Naval Station and Clark Air Base in the Philippines, Filipinos discovered a “horror story” including tons of toxic chemicals dumped on the ground and into the water, or buried in uncontrolled landfills.\(^1\)

Carcinogenic chemicals, mutagenic metals, and unexploded bombs saturate nearly three hundred closed and closing American

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2. Id. para. 2.
bases overseas. After the U.S. military moves out, natives often use many of the bases for housing, schools, and recreational activities. Reuse of the military base land seems beneficial, but the conditions on those lands pose dangerous threats to human health and the surrounding environments.

Over 7,000 families live on what was once Clark Air Field; their drinking water comes from shallow wells in contaminated groundwater. Rashes, still births, and gastroenteritis are frequent problems caused by toxic exposure. In Panama, twenty-one individuals have been killed by explosives, and concentrations of pollutants in water and soil are hazardously high. Most importantly, the governments of Panama and the Philippines are left to fend for themselves as the U.S. claims no responsibility for the clean-up of their prior military bases.

In this Comment, I consider the cause, nature, and effects of U.S. military base occupations. Using the Philippines and Panama as case studies, I will look at the forms of environmental damage left behind and the potential health hazards for natives. Part II of this Comment will give a brief description of international military agreements between the U.S., Panama, and the Philippines; I will explain why it is common to overlook these documents or oral agreements as they relate to environmental damage. Part III will discuss the specific pollution at military bases in the Philippines and Panama. Part IV will consider liability; specifically, this section will examine current American environmental liability regimes and international environmental liability regimes. Further, Part IV will espouse a draft statute as a potential solution to the problem. Part V will conclude and summarize the pertinent observations made in this Comment.

In the current U.S. War on Terrorism, the invasion and occupation of foreign territories poses future international environmental concerns. It is only a matter of time before U.S. military base occupation and its territories expand in foreign countries. As such, the environmental damage zones will also

4. Id. para. 5.
5. Id.
6. See generally id. paras. 2, 6.
7. Lindsay-Poland & Morgan, supra note 1, para. 6.
proliferate. Based on past and present examples, it would be most advantageous for the U.S. Congress to take action and address this problem directly before the environmental damage destroys any possibility of effectively recovering what has been lost.

II. BACKGROUND

Foreign U.S. military agreements are often vague, inconsistent treaties that evidence the unequal bargaining power between the developed U.S. superpower and smaller, developing countries. For example, in Panama, the U.S. entered into the Panama Canal Treaty of 1903 to establish “fortifications” in the canal area. This treaty led to a U.S. military occupation peak during World War II as over 68,000 men were placed on more than one hundred military installations. By 1977, the U.S. and Panama once again entered a military treaty (“the Panama Treaty”); this treaty stated that all the property and operations currently held by the U.S. military would revert to the Panamanian government by 2000.

The language of the second Panama Treaty was quite vague. The portion of the treaty that addressed implementation of its terms in a manner consistent with the natural environment of Panama stated the U.S. and Panama “shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.” This language proffers no definable environmental limitations or regulations. In fact, the treaty language is so overly broad that it is unlikely that it will effect any type of significant change.

The Panama Treaty further states that the U.S. shall be obligated to take “practicable steps” to reduce environmental

8. Lindsay-Poland & Morgan, supra note 1.
10. Wagner & Popovic, supra note 9, at 406-07.
12. Id. art. VI(1).
impact. The U.S. Department of Defense ("DOD"), however, has limited this obligation by stating that:

In determining what is practicable, service component commanders shall consider factors which include, but are not limited to: whether a hazard poses a known imminent and substantial danger to human life, health and safety; the cost of removing the hazard; the time required to remove the hazard; any adverse effects upon the environment from removing the hazard; and the technology available. 13

By limiting dangers to those of "imminent" threat, the U.S. military allows itself to focus only on immediate effects upon the environment. By disqualifying latent, long-term harms from their obligation, the U.S. exited quickly and left Panama to deal with any enduring environmental damage or health hazards on its own.

Further, cost has an enormous impact. Environmental remediation costs can be extremely expensive. 14 Various studies have estimated that clean-up of hazardous waste sites in the United States can cost at least $400 billion. 15 DOD remediation sites can cost over $10 billion. 16 To be sure, the Panama Treaty offers little to no practical enforcement power. Further, the DOD values its own judgment of the environmental conditions more than the judgments of the Panamanian people who are living in those conditions on a daily basis. 17

The tendency to draft away environmental rights also has significance in the Philippines. Since President George W. Bush declared the Global War on Terror in 2001, the Philippines and its President Gloria Macapagal-Arroyo have whole-heartedly supported the U.S. war. 18 The Philippines made local training

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16. Id.
17. See Lindsay-Poland & Morgan, supra note 1, para. 10.
facilities available to the U.S. military and designated all counter-terrorism preparations as “joint activities” with the Philippine Armed Forces. By calling these “joint” activities, the DOD effectively exempted their military actions from U.S. environmental laws. Because international environmental laws are also weak, the Philippines’ agreeable disposition towards the U.S. mission has inadvertently led to their relinquishment of environmental rights over their own lands. The U.S. should not be permitted to continue harming the environment without cost or punishment.

The “agreements” between the U.S. and foreign countries illuminate the power play that transpires between developing and developed countries. In order to cut to the core of this problem, it is best to look at the facts. It is only through a pure lens, devoid of political power and economic evaluation, that the true nature of the problem and a proper solution can be found.

III. THE PROBLEM: A LOOK AT THE PHILIPPINES AND PANAMA

Over the last sixty years, the United States has left behind hundreds of thousands of acres of contaminated military lands throughout the developing world. These lands primarily consist of military bases that were once used for a number of military operations. Often industrial, these operations involved aircraft and warship operations, weapons, ordinance and equipment manufacture/maintenance, live fire practice, and extensive equipment training. Decades later, the environmental damage is overwhelming. Toxic and hazardous contamination of the air, soil, and water threaten human health, biodiversity, species habitat, and untold natural resources. To better understand the nature and extent of the damage, the Subic Bay and Clark Bases in the Philippines and the Arraijan Tank Farm and Fort Davis in Panama may be illustrative.

19. Id. at 2.
A. The Philippines

1. Subic Bay

After the United States granted the Philippines independence in 1946, the two countries signed the Military Base Agreement in 1947 regarding the use of military bases in the Philippines for ninety-nine years. Over many years, the U.S. military made extensive use of their rights to Philippine lands. The bases were considered vital to national security, military dominance, and anti-communist missions during the Cold War era. However, as the Cold War era came to a close and foreign military locations were of less importance to U.S. military interests, U.S. troops were less inclined to remain overseas. Thus, when the 1947 Military Bases Agreement expired in 1991, the U.S. government closed shop and left the Philippines. Only after U.S. troops left would Philippine natives come to realize the dangers those military occupations caused, both to their environment and their health.

Before U.S. military withdrawal, the U.S. Senate commissioned the General Accounting Office ("GAO") to visit, evaluate, and record any environmental damage on or around the Philippine military bases. While the GAO report found "significant environmental damage" at both Subic and Clark, damage so extensive as to "not be in compliance with U.S. environmental standards," the authors determined that without adequate and well-defined environmental liability regimes, the U.S. DOD was under no responsibility to remediate any of the damage found. The specific cases of environmental damage are shocking.

One such example was the Subic Bay Navy Facility's power plant. This plant was believed to contain and emit unknown polychlorinated biphenyl ("PCB") and other untreated pollutants

25. GAO REPORT, supra note 22, at 1-2.
26. Id. at 27.
27. Id.
into the air.\textsuperscript{28} Surprisingly, after finding these substances, the DOD did not investigate or test further.\textsuperscript{29} Instead, in various DOD reports, Naval environmental officials inattentively expressed that the air emissions would have failed U.S. Clean Air standards.\textsuperscript{30} The reports also mentioned that there was a lack of sanitary sewer systems and waste treatment facilities on the military bases.\textsuperscript{31} Unfortunately, the Subic Bay Navy Facility's sewage and waste was discharged into the natural waters of Subic Bay.\textsuperscript{32}

Thus, the Subic Bay facility was an environmental mess, overflowing with pollutants and foreign substances, lying in wait to those natives who would settle nearby.

2. Clark Air Base

A comprehensive study was also performed on the Clark Air Base. In 1993, scientists from the University of Maryland analyzed and studied soil and air samples from the Philippine Clark Base, and tested water located in and around the base site.\textsuperscript{33} The study found PCB, pesticides, and heavy metals in the water, air, and soil.\textsuperscript{34} After the University of Maryland Scientists' report, the Philippine government requested another study be done by a U.S. consulting firm called Weston International.\textsuperscript{35}

Weston International's findings were disconcerting. The study found that "[t]wenty-one sites had at least one pollutant that exceeded drinking water standards, including the heavy metals mercury and lead, pesticide dieldrin, and various solvent[s] including benzene and toluene."\textsuperscript{36} Soil samples were just as grim, reporting that "thirteen soil test sites confirmed unsafe levels of contaminants including PCB, pesticides aldrin, dieldrin and heptachlor, and petroleum hydrocarbons."\textsuperscript{37} Most of the toxins found at Clark have been shown to cause serious health problems.
Benzene has been linked to leukemia; mercury and lead can cause brain dysfunction, tremors, and speech problems; pesticides like DDT, aldrin, and dieldrin can cause nervous system disorders resulting in convulsions;\textsuperscript{38} and chlordane may lead to neuroblastoma, acute leukemia, aplastic anemia, and blood dyscrasias.\textsuperscript{39} When this evidence is considered alongside the fact that Subic Bay and Clark Air Base sites are extremely close to Filipino communities filled with children and elderly citizens, only then can the gravity of the current situation be realized.\textsuperscript{40}

B. Panama

Following the 1903 military agreement between the United States and Panama, the U.S. military occupied more than one hundred bases, with over 68,000 troops, for nearly one hundred years.\textsuperscript{41} Missions ranged from eliminating security threats and maintaining the Canal to engaging in active combat preparation and wide-ranging military practice. By 1977, it was time for a new Canal Treaty. Panama and the United States entered a new treaty in which the U.S. would return all land to Panama by 2000.\textsuperscript{43} Though there is language in this agreement discussing environmental damage, once the transfer of ownership occurred, the U.S. claimed it was no longer responsible for the damage. Similar to the legacy in the Philippines, the U.S. transferred all bases to Panama and only recently have the Panamanians come to realize the extent of damage to their environment and their future health.

\begin{footnotesize}
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1. Arraijan Tank Farm

The Arraijan Tank Farm, built in 1942, has been used to store Navy fuel oil, diesel fuel, and aviation gasoline.\(^4\) The farm consists of large underground storage systems of steel, buried about four to eight feet under the ground, which hold twenty-five to fifty thousand barrels of fuel.\(^5\) The system is structurally inadequate as discharged fuel can easily infect topsoil and reach soil impacted by run-off.

Run-off contamination can lead to fuel displacement in local rivers and water sources. The Installation Condition Report for Arraijan noted at least five spills made up of JP5 turbine jet fuel.\(^6\) Furthermore, a report conducted by AGRA Earth & Environmental showed that soil bordering and below the locations of these spills contained high levels of petroleum hydrocarbons (from 11,000 to 28,300 parts per million ("ppm")).\(^7\) Nearby wells showed petroleum hydrocarbon levels of 1,860 ppm at two feet sub-surface, and at 3,420 ppm at eight feet sub-surface.\(^8\) Along with the underground tanks, Arraijan also possesses "sludge pits" expected to contain such toxins as lead, toluene, xylene, benzene, and ethyl benzene.\(^9\) As mentioned, lead can lead to severe health problems such as leukemia, while toluene, xylene, benzene, and ethyl benzene are known to cause problems with the liver, kidneys, heart, lungs, and nervous system.\(^10\)

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47. Id. at 10.


49. Id. For purposes of the following discussion, 1 ppm is equivalent to 1 mg/l. Conversion Factors in Field Plot Work, PMEP, http://pmepe.cce.cornell.edu/facts-slides-self/facts/gen-peapp-conv-table.html (last visited Feb. 12, 2007).


2. Fort Davis

Fort Davis extends across 3,600 acres near the Atlantic entrance to the Panama Canal. While the Fort Davis report insists that there are no hazards to human life, health, and safety, portions of the report seem to contradict this assessment. Water considered to be “potable” has lead levels ranging from 5 to 87 parts per billion ("ppb"). Water tests at Fort Davis elementary school taps led to dismal results. A number of classrooms’ taps showed lead levels ranging from 4 to 44 ppb, and the nursery water showed lead readings as high as 49 ppb. Thus, the average lead level of all tested drinking water was in the 40 to 41 ppb range.

The U.S. government requires corrosion control treatment, source water treatment, lead service line replacement, and public education if lead levels exceed 0.015 mg/L. Some common problems associated with lead exposure are nervous and reproductive system complications, kidney problems, and difficulties with the production of red blood cells. Exposure may also lead to mental impairment and clinical anemia. Children are particularly vulnerable to the effects of lead: fetal or childhood exposure causes lower IQ scores, slowed growth, and hearing impairments. Thus, with the levels found at Fort Davis, severe health problems are likely to result if nothing is done to clear the contaminated land and water sources.

IV. U.S. LIABILITY

The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") is one of the most pervasive U.S. environmental liability regimes. The Congressional record shows that CERCLA was controversial well before its

52. FORT DAVIS REPORT, supra note 45, ¶ 2.
53. Id. ¶ 3(b)(2).
54. U.S. ARMY, ENVIRONMENTAL TECHNICAL INFORMATION FOR FT. DAVIS, PANAMA (July 7, 1995).
55. See generally 40 C.F.R. § 141.80(c)(1) (2005).
57. See AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, DEPT OF HEALTH AND HUMAN SERV., PUBLIC HEALTH STATEMENT FOR LEAD: CAS # 7439-92-1, § 1.5 (stating “[l]ead exposure may cause anemia [and] [a]lt high levels . . . severely damage the brain. . . . ”) [hereinafter ATSDR].
58. Id. § 1.6; HARTE ET AL., supra note 56, at 334.
passage in 1980. Dubbed a vaguely-drafted bill with ambiguous provisions and an often contradictory legislative history, CERCLA has been deemed a “last minute compromise.” As a result, many of CERCLA’s key provisions are obscure and unwieldy. But, with the knowledge at the time, and the myriad interests and concerns involved, it can be said that CERCLA was an excellent attempt to deal with an unidentified and misunderstood problem. The following analysis discusses CERCLA’s ability, or lack thereof, to address foreign military base contamination.

A. CERCLA

CERCLA was created in 1980 as a response to the “serious environmental and health risks posed by industrial pollution.” CERCLA acts as an enabling mechanism for the Environmental Protection Agency (“EPA”); it operates as a means to ensure that


61. Artesian Water Co. v. Government of New Castle County, 851 F.2d 643, 648 (3d Cir. 1988) (“CERCLA is not a paradigm of clarity or precision.”). Amidst the final House debates, Representatives identified over forty drafting errors in the bill that became CERCLA. See 126 CONG. REC. 31,975-76 (1980) (REMARKS OF REP. SNYDER); see also id. at 31,969-70 (REMARKING TWENTY-TWO SERIOUS PROBLEMS WITH THE BILL).


66.
people uphold the tenets of the National Environmental Protection Act ("NEPA"). In essence, it authorizes the EPA to conduct investigations of sites known, or possibly known, to contain hazardous substances, as well as ensure efficient and speedy clean-up of said sites, while ensuring that the parties responsible for the contamination bear the costs of the clean-up.

For the purposes of this Comment, those sections of CERCLA which discuss the notification requirements, investigation process, clean-up process, liability, cost allocation, contribution, and geographic scope are of primary importance. Due to the complexity and sheer size of this statute, this Comment will focus on a brief discussion of only these aforementioned portions. This Comment will also highlight cases which have interpreted and limited the contours of CERCLA.

When military bases close, environmental assessments are required by federal law. The DOD must perform an Environmental Baseline Survey ("EBS") which will evaluate the history of the base in order to note information on storage, release, treatment, disposal, and spillage of all hazardous substances used on the base.

Once the existence of a hazardous substance is found on a base, CERCLA's investigation provisions come in to play. CERCLA states: "Any person who is, or may be, affected by a release [of a hazardous material] may petition the President to conduct a preliminary assessment of the hazards to public health and the environment." The DOD then works under the EPA to assess the extent of the contamination, the severity of the hazardous substance, and whether the condition poses a "substantial risk" to the environment or human health. CERCLA states that this process will ensure that before military bases are returned to civilians, "all remedial action necessary to protect human health and the environment with respect to any

65. See id. § 9607(a).
68. 42 U.S.C. § 9605(d).
69. See id. § 9620.
A citizen may bring a suit under CERCLA in only limited circumstances. CERCLA enables one to bring a claim against anyone "alleged to be in violation of any standard, regulation, condition, requirement, or order" under CERCLA. Furthermore, citizens can also bring claims against the U.S. government for failing to enforce or adhere to their duties under CERCLA. Thus, anyone can bring a claim against another individual or the government, but only if that other is at least in part responsible for the contamination.

1. Contribution

The two primary liability theories under CERCLA fall under 42 U.S.C. sections 9607(a), direct liability, and 9613(f), contribution. Direct liability under section 9607(a) allows the government or an "innocent" party to recoup clean-up costs from potentially responsible persons ("PRPs"). The statute states that PRPs shall be "liable for . . . all costs of removal or remedial action incurred by the United States government or a State [and] any other necessary costs of response incurred by any other person." This claim is rarely established because once control of the site has passed hands, current owners/operators of facilities or vessels are considered to have accepted the hazardous substances and thus, themselves become PRPs. Accordingly, in order to successfully bring a claim under section 9607(a), an individual must effectively sue before taking over the plant and before title has changed, or, the plaintiff must be a completely innocent and uninvolved third party. Based on this interpretation, a suit for contribution liability under section 9613(f) is much more likely to survive than a suit for direct liability when a motion for summary judgment or a motion to dismiss for failure to state a claim has been lodged.

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70. Id. § 9620(h)(3)(A)(ii)(I).
71. Id. § 9659(a)(1).
72. Id. § 9659(a)(2).
73. Id. §§ 9607(a), 9613(f).
74. See id. § 9607(a).
75. Id. § 9607(a)(4).
76. See generally id. § 9607(a).
In order to sue for contribution, section 9613(f)(1) states: "[a]ny person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title." With what seems to be a contradiction to the prior sentiment, CERCLA ends section 9613 with a "savings clause" that states: "Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title." While initially the contribution clause and savings clause seem to conflict with one another, the courts have determined that the clauses actually work together.

CERCLA states that "[i]n resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate." Thus, once the court has determined that an adequate CERCLA claim exists, and that the PRP is in fact liable for a portion of the clean-up costs, the court has discretion to determine what percentage of the costs the defendant should bear.

Throughout the years, most CERCLA claims have been based on contribution claims and very few have dealt with extraterritoriality. During the contribution cases era, courts were split on the issue surrounding section 9613(f)(1) of CERCLA.

79. Id.
80. See e.g., E.I. Du Pont De Nemours & Co. v. United States, 297 F. Supp. 2d 740, 749-50 (D.N.J. 2003) (stating that "[t]he [savings] provision might allow a contribution action to be brought . . . if the . . . plaintiff has already been sued by the primary [contribution action] plaintiff under . . . some other . . . statute or common law cause of action," or if "granted by coordinate CERCLA provisions . . . or expressly granted by other statutes which incorporate by reference CERCLA Section 113").
82. Compare Johnson County Airport Comm’n v. Parsonitt Co., Inc., 916 F. Supp. 1090 (D. Kan. 1996) (holding that an airport commission, who was a potential responsible party, is not allowed to bring a CERCLA cost recovery action, however is entitled to seek contribution under CERCLA) and Ninth Ave. Remedial Group v. Allis Chalmers Corp., 974 F. Supp. 684, 691 (N.D. Ind. 1997) (stating "the [plaintiff] can bring a section [contribution] action even when no prior or pending section 106 or 107 civil actions have occurred") and Mathis v. Velsicol Chem. Corp., 786 F. Supp. 971 (N.D. Ga. 1991) (stating the "statute by its plain terms and meaning prevents Plaintiffs from maintaining a defense concerning the pendency of a civil action under CERCLA.") and Estes v. Scotsman Group, Inc., 16 F. Supp. 2d 983, 990 (C.D. Ill. 1998) (holding that "PRP can bring a section 113 action even when no prior or pending section 106 or 107 civil actions have occurred") with Deby, Inc. v. Cooper Indus., No. 99C2464, 2000 U.S. Dist. LEXIS 2677 (N.D. Ill. Feb.
Cases ranged from individuals suing companies, to companies suing the U.S. government, to individuals suing the U.S. government.\textsuperscript{83} In order to understand how CERCLA currently works, we must look at some of the landmark CERCLA decisions.

One such landmark case is \textit{Aviall Services, Inc. v. Cooper Industries, Inc.}\textsuperscript{84} Cooper was owner of an aircraft engine maintenance business that used petroleum and other hazardous substances to repair engines.\textsuperscript{85} In 1981, Cooper sold its business and facilities to Aviall, which later learned there was a substantial amount of contamination on its facilities.\textsuperscript{86} Aviall notified a state environmental commission and by 1984, Aviall decided, sparing no expense, to begin an environmental clean-up of his land.\textsuperscript{87} The Texas circuit court held that "a PRP seeking contribution from other PRPs under §[96]13(f)(1) must have a pending or adjudged §[96]06 administrative order or §[96]07(a) cost recovery action against it."\textsuperscript{88} Thus, it appeared \textit{Aviall} put to rest the inquiry in Texas, until that is, the U.S. Supreme Court became involved in the contribution dispute.\textsuperscript{89}

On rehearing en banc, the Texas circuit court held:

Section [96]13(f)(1) authorizes suits against PRPs in both its first and last sentence which states without qualification that ‘nothing’ in the section shall ‘diminish’ any person’s right to bring a contribution action in the absence of a section [96]06 or section [96]07(a) action.\textsuperscript{90}

In what has become a hotly debated case, the U.S. Supreme Court granted certiorari and reversed the Texas circuit court, remanding the case for further proceedings.\textsuperscript{91} Thus, the question of

\textsuperscript{29, 2000} (holding "[t]o receive 'actual compensation' . . . the party [seeking contribution] must have been found liable as a defendant in an earlier or pending action") and \textit{United States v. Compaction Sys. Corp.}, 88 F. Supp. 2d 339, 351 (D.N.J. 1999) (stating that "a certain form of common liability must exist in a contribution claim under CERCLA [and] parties that have entered a consent decree with the United States without admitting liability may maintain a . . . claim for contribution").

\textsuperscript{83} See John A. Mick Letter, \textit{supra} note 48.

\textsuperscript{84} \textit{Aviall Services, Inc. v. Cooper Indus., Inc. (Aviall I)}, 263 F.3d 134 (5th Cir. 2001).

\textsuperscript{85} \textit{Id.} at 136.

\textsuperscript{86} \textit{Id.}

\textsuperscript{87} \textit{Id.}

\textsuperscript{88} \textit{Id.} at 145.

\textsuperscript{89} \textit{Cooper Indus., Inc. v. Aviall Services, Inc. (Aviall III)}, 543 U.S. 157 (2004).

\textsuperscript{90} \textit{Aviall Services, Inc. v. Cooper Indus., Inc. (Aviall II)}, 312 F. 3d 677, 681 (5th Cir. 2002) (en banc) (emphasis added).

\textsuperscript{91} See \textit{Aviall III}, 543 U.S. at 171.
contribution has been answered by the Supreme Court and it can now be said that CERCLA only allows contribution actions to be brought by those who have already been sued under CERCLA by a PRP or the United States government. Because it is unlikely that the U.S. Attorney General will willingly, without pressure, sue the DOD for an infringement of CERCLA, the contribution scheme behind CERCLA affords little protection against foreign environmental injury, that is, assuming the statute applies to foreign territory. This assumption explains the later question posed to the courts: Does CERCLA apply to foreign lands?

2. Extraterritoriality

The geographic scope of CERCLA is quite unclear as the statute leaves much to interpretation. The statute is silent on the area it covers and it makes no mention of boundaries or limits when it refers to releases and sites. In order to clarify the scope of the statute, it is useful to look at the extraterritoriality principle announced in Foley Brothers, Inc. v. Filardo, called the Foley Doctrine. The Foley Doctrine states that congressional legislation is presumed to apply only within the territorial jurisdiction of the United States, unless, "language in the [relevant act] gives any indication of a congressional purpose to extend its coverage beyond places over which the United States has sovereignty."

The principle further provides that "rules of the United States statutory law, whether prescribed by federal or state authority, apply only to conduct occurring within, or having effect within, the territory of the United States." Furthermore, courts assume that Congress legislates against the backdrop of the presumption against extraterritoriality and "is primarily concerned with

92. The DOD and the Attorney General are on the same side: both work for the U.S. government and both have similar political concerns. While both groups might acknowledge the concerns surrounding environmental damage on military bases, without a large push from political or social forces, it is unlikely that one governmental branch will willingly cause a legal confrontation with another branch. Thus, the contribution portions of CERCLA make its requirements minimally effective against the U.S. government, even for domestic environmental harms.

93. See generally 42 U.S.C. § 9605(d).
95. Id. at 285.
domestic conditions." Beyond this, the specifics of CERCLA's geographical scope have been left to the courts to decide.

The issue of CERCLA's scope was ignored by the courts until a few years ago. The aforementioned Foley Doctrine seems to suggest that when a statute is vague, the assumption should be that Congress legislates only for domestic issues of concern. Until the issue was determined by a court, however, there was a chance that someone would attempt to interpret CERCLA differently. In 2003, as an issue of first impression, the question of CERCLA's geographic scope was brought to the California Northern District Court.

Arc Ecology v. U.S. Department of the Air Force was a CERCLA suit brought by Filipino citizens who lived and/or traveled around former U.S. military base sites, and two private organizations, namely Arc Ecology and the Filipino-American Coalition. The plaintiffs sued the United States in hopes of compelling the U.S. military to conduct preliminary assessments of the environmental pollution – and engage in cost recovery programs on – former U.S. military bases in the Philippines. While the Court found the Filipino citizens had standing to sue, it held that CERCLA did not apply extraterritorially and, thus, no CERCLA suit was available for environmental damage in the Philippines. Arc Ecology reiterated the principle that "[c]ourts must assume that Congress legislates against the backdrop of an underlying presumption against extraterritoriality," and that said assumption cannot be overcome without a clear Congressional statement that the legislation should apply abroad. Thus, it was determined that CERCLA did not apply to properties located outside of United States territories.

In 2005, Arc Ecology was reargued before the United States Court of Appeals for the Ninth Circuit. Again, the plaintiff citizens and residents of the Philippines argued that CERCLA

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98. See id.
100. Id. at 1153-54.
101. Id. at 1159.
102. Id. at 1157-58.
applied extraterritorially to afford them relief.\textsuperscript{104} The appeals court agreed with the district court on similar grounds, finding that CERCLA does not provide extraterritorial application.\textsuperscript{105} The appeals court closely reviewed section 9605(d) of CERCLA and determined that the locations and geographic boundaries were vague,\textsuperscript{106} that the Foley doctrine applied to the case, and that the courts of the United States presume legislation only applies to acts within the United States.\textsuperscript{107} Thus, the Arc Ecology cases hold that CERCLA is not an extraterritorial document and its application is strictly limited to the territorial jurisdiction of the United States.\textsuperscript{108}

The decision to limit CERCLA's extraterritorial application illuminates the inherent bias within the statute. Numerous cost recovery and remediation claims fail under CERCLA (as well as other U.S. environmental legislation) because of the Foley Doctrine. Thus, it seems that while the U.S. military actively inhabits foreign territories, it is not legally forced to act environmentally responsible, except when it resides in U.S. territories.

Thus, plaintiffs relying upon a U.S. statute have a difficult time obtaining an adequate remedy without Congress' express intent for the statute to apply extraterritorially. At present, there are very few attempts to sue the U.S. government under CERCLA.\textsuperscript{109} CERCLA appears to stand for the principle that those who pollute should bear the costs of the pollution and the repair of the environment, a principle known as the Polluter Pays Principle. This holds true notwithstanding the acknowledgement, in CERCLA and by its Congressional drafters, that the Polluter

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  \item \textsuperscript{104} Id. at 1094.
  \item \textsuperscript{105} Id.
  \item \textsuperscript{106} Id. at 1096-97.
  \item \textsuperscript{107} See id. at 1097 (citing Foley Bros., 336 U.S. at 285).
  \item \textsuperscript{108} See e.g., Pakootas v. Teck Cominco Metals, Ltd., No. CV-04-256-AAM, 2004 U.S. Dist. LEXIS 23041, at *12-13 (E.D. Wash. 2004) (While this assumption is generally true, there have been a few cases which hold that CERCLA applies to territories outside of the U.S. One case in particular enumerated that CERCLA could be applied to contamination of a non-U.S. territory if a failure to apply CERCLA would result in adverse effects within the United States).
  \item \textsuperscript{109} While there may be lawsuits in the making, beyond Arc Ecology I & II, there are very few cases which exhibit an attempt to sue the U.S. government, in a U.S. court, for environmental damage in foreign lands. Furthermore, there are virtually zero cases in international courts, thus further suggesting the lack of adequate remedies for foreign countries faced with these environmental problems, both via domestic and international law.
\end{itemize}
Pays Principle should apply to all environmental contamination problems. Apparently, in practice CERCLA contradicts its own stated intentions.

B. International Environmental Principles

The number of international environmental declarations has exploded over the last thirty years. As more countries awaken to the seriousness of transboundary and global ecological threats, they are searching for answers from the international community. The existence of these declarations, however, has not entirely solved the problems associated with international environmental threats. Whether the problem is implementation, enforcement, or scope, the environmental damage that has occurred and continues to occur on military bases remains unaddressed and unanswered by international law. Before one can understand how international environmental principles fail, we must first explore and understand what it is the international laws attempt to do.  

1. Declaration-based Customary International Law

One of the most commonly applied principles of international environmental law can be found in the United Nations Stockholm Declaration of 1972 ("Stockholm Declaration"). The United Nations General Assembly stated that the "main purpose" of the Stockholm Conference was to "serve as a practical means to encourage, and to provide guidelines for, action by Governments and international organizations designed to protect and improve the human environment and to remedy and prevent its impairment, by means of international co-operation."  


111. Customary international environmental law can be defined as the law of nations or well-established, universally recognized norms of international law, where the nations of the world have demonstrated that the wrong is of mutual, and not merely several, concern, by means of express international accords. Filartiga v. Pena-Irala, 630 F.2d 876, 888 (2d Cir. 1980) (emphasis added).


The Stockholm Conference was one of the most successful and widely attended United Nations conferences ever held. Principle 21 of the Stockholm Declaration is extremely well-known in the international environmental world. Principle 21 articulates that "[s]tates have . . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." Principle 21 gave life to a new international environmental norm; it demanded that all countries safeguard the environment of not only their own nation, but that of all nations. Applied here, Principle 21 admonishes the environmental damage in the Philippines and Panama as a violation of the Stockholm Declaration. Thus, under the Stockholm Declaration, the U.S. would be held responsible for both the environmental damage and its consequences.

Another common international environmental principle comes from the Rio Declaration, created at the 1992 Rio Conference on Environment and Development. The Rio Declaration is considered one of the most fundamental and influential international environmental documents ever created. It is referred to as an "instrument of international jurisprudence [that] articulates policies and prescriptions directed at the achievement of worldwide sustainable development." Principle 1 of the Rio Declaration states that "[h]uman beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."

While the Rio Declaration links a clean and healthy environment with development and the protection of human health, many have criticized the document as too soft. Because it

120. Sumudu Atapattu, The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law, 16 TUL. ENVTL. L.J. 65, 78 (2002).
has been viewed as soft law, the Rio Declaration has had little power as customary international environmental law. The Rio Declaration is the product of overwhelmingly diplomatic concerns commonly found in international declarations. Due to the diverse nature of international meetings and the dissimilar concerns expressed by nations, declarations with concrete principles and real-world implications are often few and far between. In order to keep all parties content, declarations are often vague, overly broad, and indiscernible. This vagueness makes the Rio and Stockholm Declarations difficult to apply in U.S. courts.

In *Flores v. Southern Peru Copper Corporation* ("Flores I"), a 2003 Alien Tort Claims Act ("ATCA") case, plaintiffs attempted to apply principles from the Stockholm and Rio Declarations in a U.S. court. "Flores I" involved Peruvian plaintiffs who claimed a Southern Peru Copper Corporation had caused extensive pollution in the areas in which they lived. The plaintiffs faulted the copper corporation for their own, or the decedents', life-threatening lung disease. "Flores I" found that the plaintiffs had not "demonstrated that high levels of environmental pollution within a nation's borders, causing harm to human life, health, and development, violate well-established, universally recognized norms of international law," and thus, failed to state a claim under the ATCA.

A number of reasons were given in *Flores I* as to why the Stockholm and Rio Declarations were insufficient bases of customary international environmental law. The plaintiffs Stockholm and Rio Declaration-based claims were rejected because they "did not set forth any specific proscriptions, but rather referred only in a general sense to the responsibility of nations," and because the "documents spoke in terms of rights,

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122. *Flores v. S. Peru Copper Corp.* (Flores II), 414 F.3d 233, 263 (2d Cir.2003).
123. The ATCA allows foreign nationals to bring cases resounding in tort to district courts of the United States. The ATCA states that: "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States," 28 U.S.C. § 1350 (2000).
125. *Id.* at 511-12.
126. *Id.*
127. *Id.* at 519.
128. *Id.* at 525.
but they did not identify any prohibited conduct that was relevant to the case.”

Thus, *Flores I* held that the Rio and Stockholm Declarations’ failure to clearly state the prohibited conduct made the principles impossible to apply in a U.S. court of law.

When brought up on appeal, the *Flores I* decision was reaffirmed and the case dismissed for failure to state a claim upon which relief could be granted. The appellate court in *Flores II* listed a few more reasons for their decision. With regard to the Rio and Stockholm Declarations, *Flores II* found the principles were “boundless” and “indeterminate.”

The *Flores II* court further explained that the Stockholm and Rio Declarations “express[ed] virtuous goals understandably expressed at a level of abstraction needed to secure the adherence of States that disagree on many of the particulars regarding how actually to achieve them.”

In this way, *Flores II* held that the Stockholm and Rio Declarations only stated “abstract rights and liberties devoid of articulable or discernable standards and regulations.” Thus, generally U.S. courts find that the Stockholm and Rio Declarations’ principles are entirely too vague and limitless to be applied as customary international environmental law.

As was evidenced in the *Flores* cases, U.S. courts have found that, “as a practical matter, it is impossible for courts to discern or apply in any rigorous, systematic, or legal manner international pronouncements that promote amorphous, general principles.”

Sadly, while declarations are a primary method for creating customary international environmental law, they are not ironclad and often pose many problems regarding enforceability.

A large problem with enforcing declarations is their lack of coherence and diplomatic language. Declarations often, in hopes of keeping the largest number of states happy, fail to make clear and concrete demands. Instead, they produce broad, general ideas shared by the international community, without any method with

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129. *Id.* at 519; *see also* Amlon Metals, Inc. v. FMC Corp., 775 F.Supp. 668, 671 (S.D.N.Y. 1991).
130. *Flores II*, 414 F.3d at 266.
131. *Id.* at 255.
132. *Id.*
133. *Id.* (citing Beanal v. Freeport-McMoran, Inc., 197 F.3d 167 (5th Cir. 1999)).
134. *Id.* at 252.
which to ensure adherence or punish noncompliance. But, one scholar has contradicted this notion by suggesting that:

[International agreements] convey clear signals regarding the policy content and underpinnings of authority of the normative concepts involved, as well as the willingness of the international community to ensure their effectiveness, and as such must be deemed capable of creating rights and obligations both for [...] states and [...] organizations.

While this view is admirable, the reality behind most international declarations, conventions, accords, and some treaties, is quite the opposite. Many international agreements are seen as starting off points, views reminiscent of a global agreement, intended to spur further understanding and concrete principles.136

At first glance, the outlook for international environmental cooperation seems dismal. Solving environmental problems would require a demanding collective effort. The needed international commitments would be costly to implement, and incentives to defect would be high.137 Yet, nearly every international environmental agreement lacks a formal mechanism for rigorous

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136. See generally, Rio Declaration, supra note 117. The language used in the Rio Declaration suggested courses of action, as opposed to prescribing what should constitute appropriate behavior. Use of the word “should,” as opposed to “shall” seems to indicate that the declaration was neither intended to be binding upon states, nor particularly assertive.
137. Truly solving most international environmental problems would require substantial and costly interventions in the economy that would affect competitiveness of firms and give firms and governments an incentive to skirt their obligations. For example, stabilizing the atmospheric concentration of greenhouse gases, necessary to stop global warming, could cost trillions of dollars if required over the next several decades. There is little precedent revealing how international agreements work when the stakes are so high. However, the imperfect record of compliance with trade agreements suggests that high stakes lead to incentives to defect. See ROBERT E. HUDEC, ENFORCING INTERNATIONAL TRADE LAW: THE EVOLUTION OF THE MODERN GATT LEGAL SYSTEM 362 (1993). Furthermore, the long history of suspicions about noncompliance with arms control agreements illustrates the concern that governments have about noncompliance. For a review of the compliance literature, see J.H. Ausubel & D.G. Victor, Verification of International Environmental Agreements, 17 ANN. REV. ENERGY & ENV’T 1 (1992). For more theoretical treatments of the issues, which lead to the conclusion that incentives to defect are strong when stakes are high and reciprocal enforcement is not available (which is often true when managing public goods like environmental quality), see George W. Downs et al., Is the Good News about Compliance Good News about Cooperation?, 50 INT’L ORG. 379 (1996).
monitoring of compliance. In fact, only two of the major multilateral environmental agreements have functioning and active compliance mechanisms. Of those documents that do have such provisions, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Montreal Protocol, the powers available to the procedure are minimal, mainly a source of exhortation.

International agreements, regardless of their unclear or wide principles, should nonetheless be accepted as assertions of customary international law by the international community. In fact, these pronouncements create privileges and responsibilities that those signing the declaration intend to uphold. U.S. courts, however, have interpreted international documents and agreements in a dramatically different way, impugning the inchoate rights and duties by refusing to apply them in their courtrooms.


140. See EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL AGREEMENTS, supra note 138.

141. See Handl, supra note 135, at 660 n.134.

142. See, e.g., Flores II, 414 F.3d at 254-55, 258 (holding that “right to life” and “right to health” are insufficiently definite to constitute rules of customary international law or to prohibit international pollution).
While declarations give the international community written international environmental principles, in many instances the effectiveness of declarations is diminutive. Particularly in the area of environmental damage on foreign soil, declarations have afforded little or no remedy to complaining parties. With the process of meeting, agreeing, signing, and allowing adequate time and consideration to be given to the broad and varying interests involved, the diplomatic approach in drafting international environmental declarations has fallen far short of what it desires to accomplish.

2. Other Principles of Customary International Law

A familiar and functional international environmental principle is known as the Polluter Pays Principle ("PPP"). This principle is said to have been officially recognized by the international community when it was included in the Rio Declaration. The PPP can be found at Principle 16 of Rio, where it states that:

National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution.

Generally, Principle 16 creates the theory that, when environmental damage occurs, those responsible for the damage should be responsible for the remediation costs and clean-up. The PPP has been widely accepted as a valid customary international environmental law and has been applied in a number of both international and U.S. documents. CERCLA happens to be one of the documents which pronounces the principle, and in

143. See generally Beanal v. Reepor-McMoran, Inc., 197 F.3d 161, 167 (5th Cir. 1999) (stating international documents with no “articulable or discernable standards and regulations to identify practices that constitute international environmental abuses or torts” are an insufficient basis for such a claim based on international law).

144. See Rio Declaration, supra note 117, prin. 16.


146. Rio Declaration, supra note 117, prin. 16.

147. Id.

fact, CERCLA imposes liability on the polluter for the clean-up and remediation costs of sites contaminated by hazardous wastes.\textsuperscript{149} Thus, CERCLA advances the PPP and the idea that the U.S. military and government should pay for the remediation of prior and presently contaminated military sites. The way in which CERCLA has been interpreted in U.S. courts, however, makes the realization of this principle close to impossible.

As applied to the Philippines and Panama, the PPP supports the argument that because the U.S. is the party responsible for creating environmental hazards in and around military bases, it has the obligation to compensate the governments and the individuals directly injured by said hazards.\textsuperscript{150} The international community recognizes a general right to a clean and safe environment, undaunted by other nations' actions within their own or other countries.\textsuperscript{151} Furthermore, the international community embraces the PPP as valid customary international law and has begun to codify the principle in a number of international documents.\textsuperscript{152} Yet, the Philippines and Panama are left with no remedy. We must ask why the picture never materializes when it seems the pieces to the puzzle are all laid out.

\section*{C. Problems With Existing Regimes}

The problems the international community faces are grim. On one hand, it seems the world agrees that the protection of the environment is an international concern which reaches to the depths of human rights and the sustainable development of the human race and the world.\textsuperscript{153} Yet, reality demonstrates that nations are quick to blame environmental degradation on anyone and


\textsuperscript{150} See generally Military Mess, supra note 33; GAO REPORT, supra note 22, at 27-30.

\textsuperscript{151} See Rio Declaration, supra note 117, princl. 2.

\textsuperscript{152} See generally Basel Convention, supra note 148; Rio Declaration, supra note 117, princl. 16; 42 U.S.C. §§ 9601-9675.

\textsuperscript{153} See Wagner & Popovic, supra note 9, at 480 (stating that "[t]he link between environmental problems and human rights has given rise to an increasingly well defined and well-recognized body of 'environmental human rights[ ] principles'").
everyone but themselves and shirk responsibility for their own destructive practices. As policymakers and legal scholars agree, something must be done to give some teeth to the existing international and domestic legal frameworks.\textsuperscript{154} Out of the chaos, there appear to be three primary weaknesses in the current international environmental and domestic environmental regimes: (1) the heavy hand of the Foley Doctrine, (2) the difficulty of overcoming contribution requirements, and (3) international declaration weakness. These weaknesses make the current legal climate afforded to foreign military sites inadequate. Some change is necessary.

\textbf{D. An Adequate Solution}

Providing mere illustrations of the environmental issues found at abandoned military bases suffices to raise awareness, but this Comment seeks to provide an aptly designed solution to the problem. Upon the foregoing discussion of CERCLA jurisprudence and international treaty law, it seems apparent that neither current customary and declaration-based international environmental law, nor current U.S. domestic environmental law can adequately address this problem. Nonetheless, domestic law should be the first step to address this complex and severe international issue.

In the current political climate, the invasion and occupation of foreign territories and expansion of military bases within those territories is overwhelming. Based on the past and present, it would seem most advantageous to the international community if the U.S. Congress creates a statutory addendum to CERCLA. What follows is a sample document evidencing what the new legislation would require:

\textbf{THE INTERNATIONAL ENVIRONMENTAL MILITARY BASE RECONSTRUCTION ACT: A model law for introduction to the United States Legislature}\textsuperscript{155}

\textsuperscript{154} See generally Rio Declaration, supra note 117, princ. 13 (declaring that"[s]tates shall cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage . . . "). See generally Wagner & Popovic, supra note 9, at 499-505 (discussing the potential legal remedies for Panamanians affected by U.S. military activities).

\textsuperscript{155} The following draft statute is largely based on The Seventh Generation Act: a model law for introduction in state legislatures. The statute is a non-binding suggestive document written and drafted for the International Law Center for Human, Economic &
1. Short title.
This Act shall be known as the Military Base Reconstruction Act.

2. Purpose.
The Legislature is concerned that the U.S. military occupations on foreign lands threaten the environmental resources that will be needed to sustain future generations in those countries and abroad. The Legislature acknowledges that environmental damage is accustomed to many forms of military operations and thus, in many instances, is unavoidable. It finds that such costs of remediation, abatement and repair should fall on the polluter and not the polluted. Also cognizant of the changing international world we live in and the growing trend of U.S. military occupations resting on foreign lands, and further considering the current international war-filled times we live in, and the expanding borders of Nations amidst an international war on terror, the Legislature finds this Act both necessary and timely for the military future we face. Conscious of the impact environmental pollution has upon present and future nations, mindful of its legal responsibility as ultimate trustee of all natural resources, acknowledging that a healthy environment is a fundamental human right under international law and the law of this Nation, and acting under its police power to suppress nuisances and protect the health, safety and welfare of its citizens, the Legislature adopts this Act to slow the destruction of vital natural resources.

This Act shall apply both domestically and abroad, in all Nations, equally. Further, access to U.S. courts shall be available to all Nations involved with military bases, both polluter and polluted, with fairness and justice. Standing, forum non conveniens, alienage, and locus quo detrimentum shall not impact the ability to bring suits for recovery in the United States court. The principle against extraterritoriality shall not apply and the Legislature expressly grants this Act extraterritorial application.

4. Liability.

Environmental Defense. While the statute focuses upon a potential state law for the general protection of the environment, its core themes, and structure transfer well to the military base context. Both form and content have been used from the Seventh Generation Act in creating the Military Base Reconstruction Act. Robert Benson, The Seventh Generation Act: A Model Law Allowing Law Suits For Damage to Natural Resources Needed to Sustain Future Generations, International Law Center for Human, Economic & Environmental Defense 6-7 (Summer 1997) (on file with author).
(a) Every State, Nation, government entity, corporation, partnership or sole proprietorship working for said State, Nation or government entity shall be liable for unsafe damages it causes after the effective date of this Act through injury, destruction, or loss of vital natural resources.
(b) As used in this section: "unsafe damages" means damages that are likely to harm the health and wellness of individuals, destroy natural resources, reduce natural flora and fauna, and contamination of any vital natural resources. "Vital natural resources" are biological diversity, topsoil, water, and the atmosphere. "Biological diversity" means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems. "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

5. Enforcement.
The U.S. attorney general and prosecutors of any county, city or state in the United States or other Nations may bring suit in a federal court of competent jurisdiction to enforce this Act. Any person resident in the polluted Nation may notify the attorney general and appropriate local prosecutors of an alleged violation of the Act. If none of those officers files suit within ninety days after receiving notice, then that person may file suit on behalf of the public as a private attorney general in either their National court or a federal court of the United States. A private attorney general who substantially prevails shall be entitled to attorneys' fees and court costs. Any damages recovered by the attorney general, prosecutors, or a private attorney general shall be directed by the court wholly to fund restoration, replacement, or mitigation of damage to vital natural resources and the public health in said foreign lands.

6. Calculation of damages.
(a) The court shall set damages in an amount adequate to restore or replace the resources injured, destroyed or lost. If restoration or replacement is infeasible, or is grossly disproportionate in cost to the value of the resources injured, destroyed or lost, then the court in its sound discretion shall set damages by another generally accepted method that best advances the purposes of this Act. In every case, however, the court shall value resources by their existence and use values.
(b) As used in this section: "existence values" are those values inherent in the mere presence of biological resources; their
existence adds to the richness of our own lives and the planet and has value without consideration of its usefulness to mankind. “Use values” are those values which serve mankind; water purification and flood control, soil maintenance, decomposition, and disposal of wastes are examples of use values.

7. Preemption.

This Act neither preempts nor is modified by existing laws. It supplements them. Compliance with this Act does not relieve any duty arising from those laws. Compliance with those laws raises no defense to violations of this Act.

8. Effective date.

This Act takes effect one year after the date of its enactment.

V. CONCLUSION

Over the last thirty years international environmental law has made incredible leaps in the corpus of legitimate international law. Strides have been made in declaration-based law, customary international law, and even domestic environmental legislation. While the world continues to acknowledge the value of vital biological resources for the future of all species, much remains to be done.

Currently, the treaty-based international and U.S.-based domestic remedies for environmental damage on U.S. military bases in foreign countries are inadequate and the U.S. is just the country to act first, take charge, and lead by example.

In this Comment I have considered the cause, nature, and effects of U.S. military base occupations. Using the Philippines and Panama as case studies, I have sought to analyze U.S. military occupations in these countries and the nature of the environmental damage left behind. After highlighting the real-world problem, I then considered the legal problems, such as inadequate remedies and insufficient restoration. While considering liability, I have uncovered the various loopholes through which the U.S. leaps to shirk its environmental responsibilities.

Both American environmental liability regimes and international environmental liability regimes have attempted to offer appropriate remedies for the clean-up of U.S. military bases, but these regimes have been stymied in the U.S. courts. Finally, in drafting a model statute, I have hoped to spur discussion, suggest a solution, and spur change in this complex and vital area of the law. Such a statute would positively impact our planet and strengthen
our already weakened relationship with the international community.

Civil liability in the form of a federal statute would open the door to the U.S. legal system, both to non-governmental organizations and other private parties who desire to protect the international environment in a way not currently afforded in international law. Further, international law can assume new significance and vitality if used in conjunction with civil liability. A statute such as the Military Base Reconstruction Act can be a valuable complement to existing customary international law. Because domestic compliance and enforcement mechanisms are more sophisticated and effective than those created by international agreements, the Military Base Reconstruction Act can combine both the enforcement power of a statute and the goals commonly found in international environmental documents. Finally, Nations can often move more quickly and effectively than international institutions; such actions may enable those wronged by U.S. military occupations to finally receive their long overdue remedy, as justice and the law so requires.

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* 2007 J.D. Candidate, Loyola Law School – Los Angeles. I would like to dedicate this Comment to my fiancé Sean for his constant support and intellectual encouragement. “And when love speaks, the voice of all the gods makes heaven drowsy with the harmony.” – William Shakespeare.