

INPUT FOR REPORT ON CHALLENGES TO HUMAN RIGHTS STEMMING FROM THE MARSHALL ISLANDS NUCLEAR LEGACY

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We understand the call for input on legacy of the nuclear testing in the Marshall Islands as essentially seeking the lessons that the Philippines can share on its experience with exposure to toxic and, possibly, nuclear waste generated by American military bases or brought in by the United States military into Philippine territory. While the experience of the Marshall Islands—as a territory battered by 67 nuclear weapons tests that indelibly changed Marshallese health conditions, way of life, natural resource access, traditional income sources, and environment—is solitarily tragic in global history, the Philippines shares a kindred heritage with the Marshall Islands that bears relevant parallels to their plight and quest for redress.

We feel that the Philippine lessons that bear most relevance are: (1) the Philippine experience with and shortcomings in addressing the toxic—and possibly nuclear—waste contamination in the environment of the former Subic Bay Naval Base and the Clark Air Base; and (2) developments in Philippine caselaw engaging with settled and developing international environmental law norms.¹

Like the Marshall Islands, the Philippines did not sever its military links with the U.S. after gaining independence. The Philippines hosted a sizeable American naval supply depot that maintained and served as home port for the U.S. Seventh Fleet, the Subic Bay Naval Depot, as well as Clark Air Base, whose original size dwarfed all American bases outside the continental U.S.² The presence of the bases

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The Manila Observatory, a pioneering scientific organization in Asia, has a history of monitoring atmospheric and seismic activity. Its policy and legal arm, the Klima Center, to which the authors belong, bridges science and society and provides, science-based policy and decision support, technical assistance, capacity-building to national and local government agencies, international partners in Southeast Asia, non-government organizations, the private sector, and other stakeholders.

¹ The second item is annexed to this input.

² Jorge Emmanuel, *Environmental Destruction Caused by U.S. Military Bases and the Serious Implications for the Philippines*, 6 WORLD BULLETIN 18, 40 (1990); Feodor Alexander Mediansky, *The U.S. Military Facilities in the Philippines*, 8 CONTEMPORARY SOUTHEAST ASIA 309-310 (1987)

was secured by the Philippine Independence Act³ and retained by the Military Bases Agreement.⁴

The Philippines shares the Marshall Islands' experience with American lack of candor in nuclear weapon-related conduct, although to a far less considerable degree. Subic and Clark were known to have received, serviced, and harbored nuclear-capable aircraft, ships, and a submarine.⁵ While the Americans maintained a policy of neither confirming nor denying the existence of nuclear weapons in those vessels, there was good reason to believe that the U.S. maintained nuclear weapons in the bases, and their presence were widely assumed by the public and press.⁶ Under the leaked "top-secret Nuclear Weapons Deployment Authorization", then U.S. President Reagan allowed 227 B-27 nuclear bombs to be deployed in the Philippines without informing or seeking the permission of the Philippine Government.⁷ Moreover, the country was among four sites where 1,700 tactical nuclear weapons were distributed.⁸ Rear Admiral La Rocque, director of the nongovernmental Center for Defense Information, testified before the U.S. Congress that Subic was "probably the major naval storage point for tactical nuclear weapons in the Western Pacific."⁹

The environment of Subic and Clark were not left unharmed by U.S. military activities. Emmanuel, an academic noted for his research in hazardous waste, concluded that environmentally destructive practices found in U.S. defense installations both stateside and overseas were likely, if not surely, carried out in Subic and Clark.¹⁰ He anticipated that pollutants including "fuels, oils, toxic organic solvents, caustic cleaners, strippers, degreases, ammunition and explosive

³ Pub. L. No. 73-127, 48 Stat. 456 (1934), section 5 *in rel.* section 10. This law is popularly known as the Tydings-McDuffie Act.

⁴ Agreement Between the Republic of the Philippines and the United States of America Concerning Military Bases, 14 March 1947, T.I.A.S. 1775, 43 U.N.T.S. 271, *as amended*.

⁵ Jorge Emmanuel, *Environmental Destruction Caused by U.S. Military Bases and the Serious Implications for the Philippines*, 6 WORLD BULLETIN 18, 37-41 (1990); Feodor Alexander Mediansky, *The U.S. Military Facilities in the Philippines*, 8 CONTEMPORARY SOUTHEAST ASIA 306, 313 (1987)

⁶ James P. Sterba, *America's Philippine Bases: Vital, or Just Convenient*, WALL STREET JOURNAL, FEBRUARY 20, 1986, at 28.

⁷ Jorge Emmanuel, *Environmental Destruction Caused by U.S. Military Bases and the Serious Implications for the Philippines*, 6 WORLD BULLETIN 18, 38-39 (1990); Merlin M. Magallona, *National Interest and Nuclear Weapons: Rejoinder to the Secretary of Justice Opinion*, 4 WORLD BULLETIN 53, 59-60 (1988).

⁸ *Id.*

⁹ Feodor Alexander Mediansky, *The U.S. Military Facilities in the Philippines*, 8 CONTEMPORARY SOUTHEAST ASIA 306, 313 (1987); Merlin M. Magallona, *et al.*, *R.P. Views: A Brief Guide to Philippine Views on the U.S. Bases* 1, 17 (1986).

¹⁰ Jorge Emmanuel, *Environmental Destruction Caused by U.S. Military Bases and the Serious Implications for the Philippines*, 6 WORLD BULLETIN 18-62 (1990).

contaminants, industrial wastes, heavy metals, unexploded ordnance, high-intensity electromagnetic fields, air pollution from combustion processes, and possibly nuclear contamination” would be found in the bases.¹¹ He traced the fuel pipeline and storage, the naval magazine, nuclear-armed vessels, and the ship repair facility as potential sources of toxic and nuclear pollutants.¹² Emmanuel also believed that the bases were dumping waste into the soil and sea, and that air pollutants were being emitted by power generation and industrial activities in the bases.¹³

When the U.S. was about to withdraw from the bases because of the Military Bases Agreement’s nonrenewal, the U.S. General Accounting Office¹⁴ reported to the U.S. Congress that Navy environmental officers found contaminated sites and facilities at the two bases that failed U.S. environmental standards.¹⁵

The GAO confirmed some of Emmanuel’s prognoses. Underground storage tanks in both bases had no leak detection equipment.¹⁶ Fuels and chemicals used in fire-fighting exercises were discharged into the soil and water table or poured into Subic Bay because the bases lacked drainage systems.¹⁷ Due to Subic and Clark’s lack of sewer systems and treatment facilities, the bases released untreated sewage and wastewater at the rate of 3.75 million gallons a day.¹⁸ Instead of handling lead and heavy metals as hazardous waste in accordance with U.S. environmental standards, Subic’s ship repair facility disposed of them by dumping them into the bay or a landfill.¹⁹

Given Emmanuel’s vindication on key areas, it is not improbable that nuclear contamination also occurred. However, a Philippine Nuclear Research Institute report concluded that Clark showed no elevated concentration of radionuclides.²⁰

While the nuclear concerns in the Philippines are not as unambiguous as the horrors suffered by the Marshallese, it is undeniable that the Philippines and the

¹¹ *Id.*, at 41-42.

¹² *Id.*, at 42.

¹³ *Id.*, at 42-43.

¹⁴ Now, the Government Accountability Office.

¹⁵ GENERAL ACCOUNTING OFFICE, GAO/NSAID-92-51, MILITARY BASE CLOSURES: U.S. FINANCIAL OBLIGATIONS IN THE PHILIPPINES 1, 27-29 (1992).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Emerenciana B. Duran *et al.*, *Radiological Surveillance Report: Clark Special Economic Zone*, 1999 PHILIPPINE TECHNICAL PROGRESS REPORT 45-49.

Marshall Islands both suffered serious environmental damage from the U.S. military's abuse of resources at their disposal under the Military Bases Agreement, as regards the Philippines, and United Nations Security Council Resolution 21,²¹ with respect to the Marshall Islands.

A report by the civil society organization Unitarian Universalist Service Committee, which went to both bases and reviewed U.S. Department of Defense documents on the environmental impacts of the American withdrawal, found a minimum of 14 known contaminated sites and exceeding a dozen potentially contaminated sites at Clark.²² The report's publication unsettled potential investors and prompted the Philippine authorities to commission an environmental baseline studies to assuage their concerns.²³ Although the Subic environmental baseline study generally found that no widespread significant toxic contamination in the 44 investigated sites were caused by U.S. naval activities, seven contaminated areas were recommended for remediation costing roughly PHP175 to PHP250 million. The Clark study identified 22 sites with contaminated ground water requiring remediation and seven sites with soil contamination exceeding the relevant criteria.²⁴ Twin reports commissioned by Arc Ecology, a nonprofit organization focused on pollution and contamination issues in former military installations, disputed the government-commissioned studies and determined that Subic environmental conditions were an "imminent and substantial endangerment to human health and the environment"²⁵ and that corrective actions in Clark spill sites and landfill sites were necessary.²⁶

Asis, head of the Bayanihan Foundation which concentrates on Filipino quality-of-life issues, noted adverse health effects caused by the environmental harms

²¹ SC Res. 21 (April 2, 1947).

²² Josine Ruth Mercado, *The Responsibility of the U.S. under International Law for the Legacy of Toxic Waste at the Former U.S. Bases in the Philippines* 1, 23-27, (December 2001) (LL.M. thesis, University of British Columbia) (on file at <https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/831/items/1.0077529>).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*; See also Clearwater Revival Company, Technical Review Report Environmental Baseline Survey Former United States Navy Installation Subic Bay, Philippines, June 30, 1998, <http://www.toxicspot.com/military/philippines/subic/>.

²⁶ Clearwater Revival Company, Technical Review Report Soil and Water Baseline Study Report Former United States Air Force Installation Pampanga, Philippines, August 22, 1998, <http://www.toxicspot.com/military/philippines/clark.html>.

in Subic and Clark.²⁷ He reported that base workers were not only exposed to but were also not warned of the dangers associated with asbestos and heavy metal wastes.²⁸ Workers allegedly worked with contaminated fuels and samples from electric transformers without adequate protective equipment. A thirteen-year-old child sustained severe burns and an eight-year-old was killed by explosion of ordnance left behind.²⁹ Children in the environs of Clark suffered from a high prevalence of intellectual disabilities. Women were reported to be afflicted by gynecological issues.³⁰

Like Marshallese efforts for redress, Filipino attempts at attaining environmental remediation were stymied.

The U.S. disclaimed liability for the environmental harms caused reasoning that the Military Bases Agreement provided no clear environmental responsibilities on the U.S. and neither did it obligate the Americans to restore the bases to their original condition upon their return.³¹ In a letter to Philippine Senator Legarda, then U.S. Defense Deputy Undersecretary Goodman contended that the Philippines waived rights to remediation of environmental harms in the bases in exchange for the structures left by the U.S.³²

A suit filed by Arc Ecology and Filipino citizens against the U.S. Department of the Air Force and other defense agencies seeking enforcement of the U.S. Comprehensive Environmental Response, Compensation, and Liability Act in Subic

²⁷ Dale Asis, *Seeking Fairness and Justice: Toxic Wastes Left Behind at the Former US Military Installations in Clark and Subic, Philippines* 1, 8-10 (2011), <https://globaldale.files.wordpress.com/2011/11/toxic-wastes-left-behind-clark-subic-literature-review-final-revised-nov-12-2011-pdf.pdf> citing Benjamin Pimentel, *et al.*, *Toxic Sunset*, PHILIPPINE DAILY INQUIRER, November 23-25, 1992, at 113-119; *see also* David Armstrong, *A toxic legacy abroad*, BOSTON GLOBE, November 15, 1999, appendix V, at 1-6, https://www.dmzhawaii.org/wp-content/uploads/2008/12/Appendix-Boston%2520Globe-A_Toxic_Legacy.pdf.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*; *see also* O'lola Ann Zamora-Olib, *Inheritors of the Earth: The Human Face of U.S. Military Contamination at Clark Air Base, Pampanga, Philippines*, 14 KASAMA (2000), <https://cpcabrisbane.org/Kasama/2000/V14n3/Cleanup.htm>.

³¹ General Accounting Office, *Military Base Closures: U.S. Financial Obligations in the Philippines*, GAO/NSAID-92-51 1, 29 (1992); *Mercado*, at 90-91.

³² *Mercado*, at 91; *see also* Memorandum of Agreement Between the United States of America and the Philippines Supplementing and Amending the Agreement of March 14, 1947, as Amended, October 17, 1988, T.I.A.S. 11633.

and Clark was dismissed by a United States District Court because the statute did not have extraterritorial application.³³

The lack of State support for Filipino and international civil society efforts to bring the Clark and Subic ecological harms abets American impunity.³⁴ Limited remediation activities worth USD230,000 has been undertaken by the Blacksmith Institution, a non-profit organization that works on pollution remediation projects, funded by Philippine government and foreign non-government organizations without U.S. involvement or funding.³⁵

The onus falls on the Philippine government to echo the calls of concerned Filipinos, overseas supporters, and civil society organizations to press the U.S. to take responsibility for the ecological harms it wrought by its grossly negligent, if not abusively mismanaged, custody of the Subic and Clark military bases. In the same way, it should join hands with the Marshall Islands in ensuring that America cleans up its former colonial possessions and makes amends to those it doubtlessly harmed.

³³ *Arc Ecology v. United States Dep't of the Air Force*, 294 F. Supp. 2d 1152 (N.D. Cal. 2003), 2003 U.S. Dist. LEXIS 22005 *aff'd* 411 F.3d 1092 (9th Cir. 2005).

³⁴ *See e.g.*, U.N. Economic and Social Council, Written statement submitted by Dominicans for Justice and Peace, a non-governmental organization in special consultative status, U.N. Doc. No. E/CN.4/2005/NGO/30 (February 9, 2005).

³⁵ Pure Earth (formerly, Blacksmith Institution), *Philippines – Remediation of Clark and Subic Bay*, <https://www.pureearth.org/project/remediation-clark-subic-bay-philippines/>.