

Republic of the Philippines
Congress of the Philippines

Senate

Manila City

Fifteenth Congress

Third Regular Session



RESOLUTION NO. 100

RESOLUTION CONCURRING IN THE RATIFICATION
OF THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF THE
PHILIPPINES AND THE GOVERNMENT OF
AUSTRALIA CONCERNING THE STATUS OF
VISITING FORCES OF EACH STATE IN THE
TERRITORY OF THE OTHER STATE

WHEREAS, Article VII, Section 21 of the 1987 Philippine Constitution, states that, "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate";

WHEREAS, the Memorandum of Understanding (MOU) between the Government of the Republic of the Philippines and the Government of Australia on Cooperative Defense Activities was signed in 1995, providing for mutual access to defense facilities, joint training and military exercises,

access to training facilities and courses, exchange of information, and cooperation in defense science and technology, and defense industry;

WHEREAS, the Philippines and Australia have undertaken a number of defense-related activities over the years in consonance with the MOU between the Government of the Republic of the Philippines and the Government of Australia on Cooperative Defense Activities, contributing to confidence building, regular intelligence exchanges, and cooperation on various defense and security issues of mutual interest;

WHEREAS, with the view to further strengthening Philippine-Australia Defense Cooperation Activities, the Government of the Republic of the Philippines and the Government of Australia signed the Agreement between the Government of the Republic of the Philippines and the Government of Australia Concerning the Status of Visiting Forces of Each State in the Territory of the Other State (SOVFA) on 31 May 2007 in Canberra;

WHEREAS, the Agreement aims to provide for a comprehensive legal framework that will govern the status of Armed Forces of the Philippines and Australian Defense Forces personnel who will participate in education, training, combined exercises, and humanitarian activities in each other's territories as part of the Philippines' and Australia's broad and deep cooperation in the area of defense and security;

WHEREAS, the Agreement is not a basing arrangement, in consonance with the prohibition against foreign bases and permanent stationing of foreign troops under Article XVIII, Section 25 of the 1987 Philippine Constitution because it merely provides for temporary visits of Australian personnel in joint military training, exercise, humanitarian or other activities as may be approved by both Parties;

WHEREAS, the Agreement will not authorize either country to deploy troops or conduct operations in the other's

territory, but will establish the status of such forces when the parties arrange to send and/or receive forces as part of the two countries' defense cooperation activities;

WHEREAS, under the Agreement, the Visiting Force and its Civilian Component shall respect the law of the Receiving State and shall be governed by the provisions on the responsibilities and procedures between the visiting forces and the host government, including matters on legal jurisdiction over a member of the visiting force, environmental protection requirements, immigration procedures, and liability issues;

WHEREAS, the Agreement establishes the basis for jurisdiction and custody in instances where a visiting force personnel commits an offense while in the territory of the Receiving State. The latter shall have exclusive jurisdiction with respect to offenses punishable by the law of the Receiving State but not by the law of the Sending State. Where the offense is punishable by the law of the Sending State but not punishable under the law of the Receiving State, the Sending State shall have the right to exercise exclusive jurisdiction over persons subject to its Service Law;

WHEREAS, the Agreement provides that in case of concurrent jurisdiction, or where an offense is punishable under the laws of both the Receiving and Sending States, the Receiving State shall have the primary right to exercise jurisdiction, except in cases where the offenses were committed against the property or security of the Sending State or omission in the performance of official duty, in which case the Sending State shall exercise jurisdiction;

WHEREAS, the Agreement vests in the judicial authorities of the Receiving State the duty to resolve issues arising from a determination if an act or omission occurred in the performance of official duty;

WHEREAS, the Agreement consisting of 28 Articles covering: Definitions; Respect for Law; Size of Visiting Force; Entry and Departure; Combined Training, Exercises and Other Activities; Temporary Use of Areas, Facilities and Public Services; Movement of Forces, Vessels, Aircraft and Motor

Vehicles; Mortuary Affairs; Uniforms; Carriage of Arms; Security; Criminal Jurisdiction; Environmental Protection; Importation and Exportation; Security of Classified Information; Communications; Motor Vehicles; Driving Licenses and Laws; Local Purchases; Employment of Local Civilians; Personal Taxation; Claims; Exchange Control; Abuse of Privileges; Resolution of Disputes; Mechanism for Consultation; Rights and Obligations Upon Termination; Amendment; and Entry Into Force and Duration – provides the mechanisms for regulating the circumstances and conditions under which the Australian Visiting Force and its Civilian Component may be present in the Philippines;

WHEREAS, the Service Authorities of Australia shall cooperate with the Government of the Republic of the Philippines to prevent any abuse or misuse of the privileges granted in favor of, and to ensure proper discharge of the obligations imposed on, members of the Visiting Force or its Civilian Component. In particular, the Service Authorities of Australia shall ensure that the rights and obligations existing under this Agreement are brought to the notice of all members of the Visiting Force or its Civilian Component;

WHEREAS, a Joint Committee, composed of representatives from both Parties, shall be established to monitor the implementation of the provisions of the Agreement, and serve as a forum where consultations may be done in the first instance. The Joint Committee shall meet as required, upon request by either Party;

WHEREAS, nothing in this Resolution or in the Agreement shall be construed as authorizing the President of the Philippines, alone, to bind the Philippines to any amendment of any provision of the SOVFA;

WHEREAS, Article 28 of the Agreement provides that it shall enter into force on the date of the later written notification by the Parties, through diplomatic channels, that they have completed their respective domestic and constitutional requirements for its entry into force;

WHEREAS, in accordance with Article 28 of the Agreement, the Philippine Government reserves the right to

terminate the Agreement unilaterally once it is deemed that the Agreement no longer serves national interest;

WHEREAS, the President of the Philippines ratified the Agreement between the Government of the Republic of the Philippines and the Government of Australia Concerning the Status of Visiting Forces of Each State in the Territory of the Other State on 23 December 2010 and has accordingly submitted it to the Senate for concurrence in accordance with the Constitution;

WHEREAS, in the hearings conducted by the Senate Committee on Foreign Relations on 21 May 2012 and 28 May 2012, the following government agencies endorsed the concurrence in the ratification of the Agreement between the Government of the Republic of the Philippines and the Government of Australia Concerning the Status of Visiting Forces of Each State in the Territory of the Other State:

1. Department of Foreign Affairs (DFA);
2. Department of Justice (DOJ);
3. Department of National Defense (DND); and
4. Armed Forces of the Philippines (AFP).

WHEREAS, the Agreement is seen to contribute to the maintenance of regional and maritime security as this will enable the Philippines and Australia to further deepen cooperation activities in addressing maritime security challenges, counter-terrorism training, mutual naval training assistance, and in promoting inter-operability of the navies of both countries: Now, therefore, be it

Resolved, That the Senate of the Philippines concur, as it hereby concurs, in the ratification of the Agreement between the Government of the Republic of the Philippines and the Government of Australia Concerning the Status of Visiting Forces of Each State in the Territory of the Other State;

Resolved, further, That the Senate, by resolution, create a Legislative Oversight Committee to monitor and oversee the implementation of the SOVFA immediately after concurrence by the Senate;

Resolved, furthermore, That the Senate urge the President of the Philippines to:

(a) Expand the mandate of the existing Presidential Commission on the Visiting Forces Agreement (VFACom) to include within its mandate, the monitoring and coordination of pertinent activities in relation to this Agreement with Australia, by amending the appropriate executive issuance creating it. The VFACom will coordinate the preparation of the implementing rules and regulations with respect to this Agreement, as well as review its implementation. Annual reports shall be submitted to the President and the Legislative Oversight Committee, including recommendations, guided by its findings as to whether or not the Agreement/s continue/s to serve national interest;

(b) Issue a Memorandum Order –

(1) directing the Department of Environment and Natural Resources (DENR) to closely monitor the activities of the Australian Visiting Force and its Civilian Component, for the duration of all SOVFA activities in the Philippines, toward ensuring that these activities do not violate any of the environmental laws and ordinances of the Philippines. Toward this end, it shall ensure that the Visiting Force and its Civilian Component are well-informed of the Philippine environmental laws and regulations, and to enforce the duties and obligations of parties to this Agreement with respect to environmental protection, including the clean-up and restoration of any local site or body of water that may be affected by the exercises/activities under this Agreement;

(2) directing the Bureau of Customs (BOC) to regulate and monitor the disposition of military vehicles, equipment and other provisions, whether of commercial or military value, in consonance with the provisions of the SOVFA, in order to ensure the inviolability of our Tariff and Customs laws;

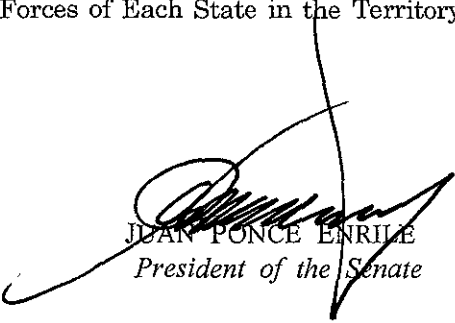
(3) directing the Department of Justice (DOJ) to draw appropriate guidelines that will prevent conflicts on jurisdictional issues and uphold the primacy of Philippine jurisdiction in specific cases, in accordance with the provisions of the SOVFA;

(4) directing the Department of National Defense (DND) to maximize the benefits of the Agreement in its efforts to enhance its capability to fight terrorism and promote maritime security, consistent with the objectives of the National Coast Watch System, and to improve disaster risk reduction and management. As part of the Armed Forces of the Philippines' (AFP) modernization program, and in relation thereto, the DND shall formulate a clear, long-term national defense and security strategy that would also reflect a list of equipment, armaments, hardware and other necessary provisions for the AFP; and

(5) directing the Department of Health (DOH) to coordinate and work with the VFACom in monitoring the impacts of this Agreement in relation to public health.


Resolved, finally, That the sense of the Senate, as expressed in this Resolution, be given controlling effect in the formulation of the implementing rules and regulations on the Agreement between the Government of the Republic of the Philippines and the Government of Australia Concerning the Status of Visiting Forces of Each State in the Territory of the Other State.

Adopted,



JUAN PONCE ENRILE
President of the Senate

This Resolution was adopted by the Senate on July 24, 2012.



EMMA LIRIO-REYES
Secretary of the Senate