FOURTEENTH CONGRESS OF THE REPUBLIC)
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Third Regular Session)

9 SEP 14 P 3:34

SENATE

PS Res. No. 1356

Introduced by Senators Miriam Defensor Santiago, Rodolfo G. Biazon, Joker P. Arroyo, Richard J. Gordon, Gregorio B. Honasan II, Panfilo M. Lacson and Francis N. Pangilinan

RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT THE DEPARTMENT OF FOREIGN AFFAIRS SHOULD SEEK TO RENEGOTIATE THE VISITING FORCES AGREEMENT WITH THE UNITED STATES, AND IN CASE OF DENIAL, SHOULD GIVE NOTICE OF TERMINATION OF THE VFA

WHEREAS, the treaty-making power is shared by the President with the Senate, under the constitutional provision 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." (Article 7, Section 21);

WHEREAS, although the VFA calls itself a "**visiting**" agreement, it has been in force for some 10 years;

WHEREAS, the fatal flaw of the VFA is the failure to specify the period of stay of visiting forces, and the failure to define what are the "activities" that they can engage in while in Philippine national territory;

WHEREAS, as early as 2004, the pretense that US troops are intended only to train RP soldiers and to conduct joint military exercises, was belied in an article by the first commander of the Joint Special Operations Task Force Philippines, Col. David Maxwell, who wrote: "However, a correct reading of the Philippine Constitution reveals that it prohibits only the stationing of foreign forces in the Philippines. . . . The **Constitution does not prohibit combat operations** and provides an exception to this if there is a treaty in force and a treaty has been in

force between the two countries since 1951." ("Operation Enduring Freedom - Philippines: What Would Sun-Tzu Say?" US Army Combined Arms Center, *Military Review*, May-June 2004);

WHEREAS, on 18 June 2002, the same Col. Maxwell was also quoted by the *Los Angeles Times*, as saying that the Task Force was conducting operations "under the guise of an exercise." ("Rebels Shoot at US troops in the Philippines," by John Hendren);

WHEREAS, recently, on 21 August 2009, the *New York Times* reported: "Defense Secretary Robert M. Gates has decided to keep an elite 600-troop counterinsurgency operation deployed in the Philippines despite pressure to reassign its members to fulfill urgent needs elsewhere, like in Afghanistan or Iraq, according to Pentagon officials. . . . The high-level attention given to the future of the force, known as the Joint Special Operations Task Force Philippines;"

WHEREAS, in the same news story, Pentagon Press Secretary Geoff Morrell is quoted as saying: "While we have made real progress **against international terrorist groups there**, everyone believes they would ramp back up their attacks if we were to draw down," implying that the main purpose of the US troops is not to engage in joint military exercises, but to maintain the US global war on terror, which is nowhere mentioned in the VFA;

WHEREAS, in the 2009 case of *Nicolas v. Romulo*, the Supreme Court upheld the constitutionality of the VFA, on the ground that it has been "recognized as a treaty by the other contracting state," which is a requirement of the Philippine Constitution. (Article 18, Section 25);

WHEREAS, the RP Senate submits that the US has **NOT** recognized the VFA as a treaty, because the US Senate has never given its advice and consent to

the VFA; instead, the US President merely transmitted to the US Congress the VFA and all other executive agreements, to comply with the Case-Zablocki Act;

WHEREAS, this American law requires the US President through the Secretary of State, to transmit to the US Congress international agreements entered into by the US government, **which are not characterized as treaties**;

WHEREAS, the ruling in *Nicolas* that the US has recognized the VFA as a treaty, is contradicted by the language of the US law itself, which refers only to international agreements **which are not characterized as treaties**;

WHEREAS, in *Nicolas*, the Court adopted the theory that the VFA merely implements the RP-US Mutual Defense Treaty; but nowhere in the VFA (1998) is there any mention of the MDT (1951), both of which are separated in time by almost 50 years;

WHEREFORE, BE IT HEREBY RESOLVED, that it is the sense of the Senate that the Department of Foreign Affairs should seek to renegotiate the Visiting Forces Agreement with the United States, and in case of denial, should give notice of termination of the VFA.

Adopted,

per **MIRIAM DEFENSOR SANTIAGO**
Chair
Legislative Oversight on Visiting Forces Agreement

RODOLFO G. BIAZON
Co-Chair, LOVFA

with reservations on some provisions to be raised on the floor.

Renegotiation AFTER comprehensive performance audit of the VFA.

JOKER P. ARROYO

abrogate the VFA/other defense treaties

GREGORIO B. HONASAN II

PANFILO M. LACSON

abrogate!

FRANCIS N. PANGILINAN

RICHARD J. GORDON

with [illegible] to provisions relating to criminal jurisdiction and [illegible]. [illegible] the provision [illegible] of VFA [illegible] of the AFP [illegible] training equipment & materials