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SENATE RECEIVED BY
P. S. Res. No. 315

Introduced by Senator M.A. Madrigal

RESOLUTION

DIRECTING THE COMMITTEE OF THE WHOLE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PROPRIETY OF THE AGREEMENTS ENTERED INTO BY THE ADMINISTRATION OF PRESIDENT GLORIA MACAPAGAL-ARROYO ALLOWING CHINA TO EXPLORE THE GAS AND OIL DEPOSITS IN SPRATLY ISLANDS, WHICH AGREEMENTS SEEM TO BE A PRECONDITION TO THE BILATERAL LOAN AGREEMENTS GRANTED BY CHINA TO THE PHILIPPINES TO FINANCE THE GOVERNMENT'S OVERPRICED AND ANOMALOUS PROJECTS SUCH AS THE ZTE/NBN AND NORTHRAIL PROJECTS

WHEREAS the Spratly Islands, consisting of over 148 islets situated off the coast of Palawan, are strategically important because they comprise one of the busiest shipping lanes in the world and are known for their rich fishing grounds and undetermined oil and natural gas deposits;

WHEREAS the Spratly Islands are being claimed by seven countries, namely, the Philippines, China, Malaysia, Vietnam, Brunei, Indonesia and Taiwan;

WHEREAS the Republic of the Philippines claims territorial sovereignty over the Spratly Islands based on international laws on geographical jurisdiction as well as *res nullius*;

WHEREAS the 1982 United Nations Convention on the Law of the Sea (UNCLOS) states that a coastal state can claim 200 nautical miles of jurisdiction beyond its land boundaries, and the Philippines' legal claim is based on the fact that the Spratly Islands lie within the country's archipelagic baselines, the only claimant that can make such a statement;

WHEREAS Spratly Islands is *res nullius* as there was no effective sovereignty over the islands until the 1930s when France and then Japan acquired the islands. When Japan renounced its sovereignty over the islands in the San Francisco Peace Treaty in 1951, there was a relinquishment of the right to the islands without any special beneficiary, making the islands *res nullius* and available for annexation. On 15 May 1956, Filipino businessman Tomas Cloma annexed the islands and proclaimed the founding of the Kapuluan ng Kalayaan, internationally known as Spratly Islands. Cloma claimed 53

features spread throughout the eastern South China Sea including Spratly Islands proper as well as the largest island of Itu Aba, Pag-asa and other islands;

WHEREAS rival claims on Spratly intensified with the discovery in 1968 of oil deposits in the region within the islands. The Geology and Mineral Resources Ministry of the People's Republic of China (PRC) has estimated that the Spratly area holds oil and natural gas reserves of 17.7 billion tons, as compared to the 13 billion tons held by Kuwait, placing it as the fourth largest reserve bed in the world. On 11 March 1976, the first major Philippine oil discovery occurred off the coast of Palawan, within the Spratly Islands area, and these oil fields now account for 15% of all petroleum consumed in the Philippines;

WHEREAS after several military conflicts between the Philippines and China and between China and other country-claimants of Spratly Islands, and the subsequent discovery of Chinese permanent military structures in Spratly Islands, the United Nations intervened and urged the Chinese government to sign an ASEAN-brokered agreement, entitled, "Declaration of the Conduct of Parties in the South China Sea" in November 2002. This became the code of conduct whereby a nation would inform the others of any movement, military or otherwise, within the disputed territory and that there would be no further construction on the islands;

WHEREAS on 1 September 2004, the Philippines and China, without informing other countries, signed the "Agreement for Seismic Undertaking for Certain Areas in the South China Sea By and Between China National Offshore Oil Corporation and Philippine National Oil Company," wherein the Philippines and China would jointly explore the Spratly Islands for oil and gas deposits;

WHEREAS Vietnam immediately voiced concern, declaring that the agreement, concluded without consultation, was not in keeping with the spirit of the 2002 ASEAN declaration on the Conduct of Parties. Vietnam "requested" Beijing and Manila to disclose what they had agreed and called on other ASEAN members to join Vietnam in "strictly implementing" the declaration;

WHEREAS after what Hanoi National University law lecturer Nguyen Hong Thao called "six months of Vietnamese active struggle, supported by other countries," state-owned PetroVietnam joined the China-Philippine pact. On 14 March 2005, China, Vietnam and the Philippines signed the "Joint Marine Seismic Undertaking Agreement" for the exploration of the Spratly Islands for gas and oil deposits;

WHEREAS the agreements between the Philippines and China, described as a "stunning about-face by Manila" which kicked up an international fuss in 1995 when the Chinese moved onto the submerged Mischief Reef on the same underlying "historic claim" to the area, did not only anger the ASEAN and other country-claimants that were dealing with China as a bloc on the South China Sea issue but have weakened the legal claim of the Philippines over the Spratlys as these effectively recognize the claims of China and Vietnam over the disputed islands;

WHEREAS the agreements between the Philippines and China have been described as a *“sell-out on the part of the Philippines”* because it made controversial concessions in agreeing to the area for study – a vast swathe of ocean off Palawan in the southern Philippines that thrusts into the Spratlys and abuts Malampaya, a Philippine-producing gas field;

WHEREAS this designated zone, about one-sixth of the entire area and closest to the Philippine coastline, is *outside* the claims by China and Vietnam. It includes parts of the Philippine continental shelf that are *not* even claimed by China and Vietnam, thus giving a certain legitimacy to China's legally spurious so-called historic claim to most of the South China Sea;

WHEREAS China's decision in December 2007 to create an administrative center on Hainan to manage the Spratlys, Paracels and another archipelago, though symbolic, has been regarded as particularly provocative by Hanoi. The Vietnamese authorities facilitated demonstrations outside the Chinese diplomatic missions in both Hanoi and Ho Chi Minh City to make known their displeasure;

WHEREAS the agreements between the Philippines and China for the joint exploration of gas and oil deposits in Spratly Islands are patently unconstitutional;

WHEREAS then Department of Justice Undersecretary Merceditas Gutierrez even had to consult former Senator Franklin Drilon to express concern on the legality of allowing China to explore Spratly Islands for gas and oil deposits as this would be violative of the Philippines Constitution;

WHEREAS the Philippine Constitution expressly provides that:

Art. I. NATIONAL TERRITORY

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

Art. XII. NATIONAL ECONOMY AND PATRIMONY

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish- workers in rivers, lakes, bays, and lagoons.

WHEREAS it may be contemplated that what made President Gloria Macapagal-Arroyo proceed with the agreements that likely violate our Constitution, potentially undermine regional stability and possibly grant China unbridled exploration of the natural resources of Spratly Islands and parity rights to its oil reserves may be the loans of gargantuan amounts freely granted by China to her administration;

WHEREAS in January 2007, the Philippines and China signed 32 agreements for projects relative to agriculture, irrigation, railways, airports, piers, highways, bridges, telecommunications, housing and economic zones. These projects are to be funded by the Official Development Assistance (ODA) fund, mainly coming from several loans granted and to be granted by China. The National Broadband Network, Cyber Education and Northrail projects were among the projects to be funded by these loan agreements *from China*;

WHEREAS it must be noted that in 1975 until 2000, China had not given the Philippines any loan bilateral agreement. It was only in 2001, during the time of President Gloria Macapagal-Arroyo that China started to provide loans to RP;

WHEREAS from 1975 to 1989, there were only 9 China-RP bilateral agreements and from 1990 to 2000, only 13 China-RP bilateral agreements; however, *from 2001 to 2007, during the time of President Gloria Macapagal-Arroyo, the number of China-RP bilateral agreements ballooned to 67 – 57 of which were signed after 31 August 2003 or after talks were opened relative to China's oil and gas exploration of Spratly Islands*;

WHEREAS it must be stressed that Chinese loans do *not* have the cumbersome requirements that loans from the US, Japan, the European Union and big multilateral lenders have. Requirements for documentation, bidding, transparency and other details were deleted. These conditions have made it very easy for certain public officials to commit graft that have resulted in anomalous and overpriced projects such as the ZTE/NBN and Northrail projects;

WHEREAS it appears that it does not matter whether the loans are small or big; or whether the projects funded by the loans were being pursued or not; or whether government officials commit bribery or not; what appears more important is that China will be paid with interest and, most importantly, that China will be able to explore the Spratly Islands' natural gas and oil deposits;

WHEREAS these controversial agreements with China for joint exploration of Spratly Islands are clearly unconstitutional and have been made at the expense of ASEAN political solidarity;

WHEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, to direct the Committee of the Whole on the propriety of the agreements entered into by the administration of President Gloria Macapagal-Arroyo allowing China to explore the gas and oil deposits in Spratly Islands, which agreements seem to be a precondition to the bilateral loan agreements granted by China to the Philippines to finance the government's overpriced and anomalous projects such as the ZTE/NBN and Northrail projects.

Adopted,


M. A. MADRIGAL