

SENATE
P. S. R. No. _____

Introduced by Senators Miriam Defensor Santiago, Sonny M. Angara,
Pia S. Cayetano, Joseph Victor G. Ejercito, Jinggoy Ejercito Estrada,
Teofisto L. Guingona III, Manuel "Lito" M. Lapid, Ferdinand R. Marcos Jr.,
Sergio R. Osmeña III, Aquilino L. Pimentel III, Ralph G. Recto,
Ramon B. Revilla Jr., Cynthia A. Villar, and _____

RESOLUTION

1
2 EXPRESSING THE STRONG SENSE OF THE SENATE THAT ANY TREATY
3 RATIFIED BY THE PRESIDENT OF THE PHILIPPINES SHOULD BE
4 CONCURRED IN BY THE SENATE, OTHERWISE THE TREATY BECOMES
5 INVALID AND INEFFECTIVE

6 WHEREAS, the treaty known as RP-US EDCA (Enhanced Defense
7 Cooperation Agreement) is at present subject of Supreme Court proceedings on the
8 question of whether this treaty is valid and effective, considering that the Senate
9 has not concurred with the treaty;

10 WHEREAS, the Office of the President argues that the document is not a
11 treaty but is instead an executive agreement that allegedly does not require Senate
12 concurrence;

13 WHEREAS, the only constitutional ground for the position taken by the
14 Executive is the **mere** inclusion of the term "executive agreement" in the
15 Constitution which provides: "All cases involving the constitutionality of an....
16 executive agreement...." (Article 8, Section 4, para. 2) as one of items included in
17 the list of cases which the Supreme Court has power to decide;

18 WHEREAS, there is no other provision in the Constitution concerning a so-
19 called executive agreement, and there is no mention at all of its definition, its
20 requirements, the role of the Senate, or any other characteristic of, or protocol for,
21 any such so-called "executive agreement";

22 WHEREAS, "executive agreement" is a term wandering alone in the
23 Constitution, bereft of provenance and an unidentified constitutional mystery;

1 WHEREAS, in stark contrast to the lone mention of the term “executive
2 agreement,” the Constitution provides categorically:

3 a. “No treaty or international agreement shall be valid and effective unless
4 concurred in by at least two-thirds of all the Members of the Senate.”
5 (Article 7, Section 21)

6 b. “After the expiration in 1991 of the Agreement between the Republic of
7 the Philippines and the United States of America concerning Military
8 Bases, foreign military bases, troops, or facilities shall not be allowed in
9 the Philippines except under a treaty duly concurred in by the Senate and,
10 when the Congress so requires, ratified by a majority of the votes cast by
11 the people in a national referendum held for that purpose, and recognized
12 as a treaty by the other contracting State.” (Article 18, Section 25);

13 WHEREAS, on the one hand, the Constitution is clear and categorical that
14 Senate concurrence is absolutely necessary for the validity and effectivity of any
15 treaty, particularly any treaty that promotes for foreign military bases, troops, and
16 facilities, such as the EDCA;

17 WHEREAS, under the rules of constitutional and statutory construction, the
18 two constitutional provisions on Senate concurrence are specific provisions; while
19 the lone constitutional provision merely mentioning an “executive agreement” is a
20 general provision; and therefore the specific provisions on Senate concurrence
21 prevail over the general provision on “executive agreement”;

22 WHEREAS, the Senate is aware of and obeys the ruling of the Supreme
23 Court in *Pimentel v. Office of the Executive Secretary*, 462 SCRA 622 (2005);

24 WHEREAS, the ruling cited above does not apply to the EDCA case,
25 because the Senate makes no attempt to force the President of the Philippines to
26 submit the EDCA treaty for concurrence by the Senate; by this resolution, the
27 Senate merely takes a definitive stand on the non-negotiable power of the Senate to
28 decide whether a treaty will be valid and effective, depending on Senate
29 concurrence;

30 WHEREFORE, be it hereby resolved by the Senate that the RP-US EDCA
31 treaty requires Senate concurrence, in order to be valid and effective;

32 Be it further resolved that this resolution expressing the strong sense of the
33 Senate be formally submitted to the Supreme Court through the Chief Justice.

34 Adopted,


MIRIAM DEFENSOR SANTIAGO
Chair
Committee on Foreign Relations

*upo prejudice to any future
vote to approve ERDA*


SONNY M. ANGARA


PIA S. CAYETANO

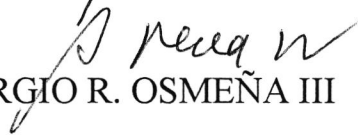

JOSEPH VICTOR G. EJERCITO


JINGGOY EJERCITO ESTRADA


TEOFISTO L. GUINGONA III


MANUEL "MITO" M. LAPID



FERDINAND R. MARCOS JR.


SERGIO R. OSMEÑA III


AQUILINO L. PIMENTEL III


RALPH G. RECTO


RAMON B. REVILLA JR.


CYNTHIA A. VILLAR