

Republic of the Philippines
Congress of the Philippines
Senate
Pasay City

Sixteenth Congress

Third Regular Session



RESOLUTION No. 105

RESOLUTION EXPRESSING THE STRONG SENSE
OF THE SENATE THAT ANY TREATY
RATIFIED BY THE PRESIDENT OF THE
PHILIPPINES SHOULD BE CONCURRED IN
BY THE SENATE, OTHERWISE THE TREATY
BECOMES INVALID AND INEFFECTIVE

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

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

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

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

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

WHEREAS, in stark contrast to the lone mention of the term "executive agreement," the Constitution provides categorically:

(a) "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 VII, Section 21);

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

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

WHEREAS, under the rules of constitutional and statutory construction, the two constitutional provisions on Senate concurrence are specific provisions, while the lone constitutional provision merely mentioning an "executive agreement" is a general provision, and therefore, the specific

provisions on Senate concurrence prevail over the general provision on "executive agreement";

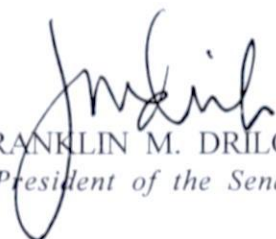
WHEREAS, the Senate is aware of and obeys the ruling of the Supreme Court in *Pimentel v. Office of the Executive Secretary*, 462 SCRA 622 (2005);

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

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


Be it further resolved, That this Resolution expressing the strong sense of the Senate be formally submitted to the Supreme Court through the Chief Justice.

Adopted,



FRANKLIN M. DRILON
President of the Senate

This Resolution was adopted by the Senate on November 10, 2015.



OSCAR G. YABES
Secretary of the Senate

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