



SENATE

P.S. RESOLUTION NO. 892

Introduced by:

Senators Francis N. Pangilinan, Pia Cayetano, Francis Escudero,
M.A. Madrigal, Panfilo Lacson, Joker P. Arroyo

***A RESOLUTION EXPRESSING THE SENSE OF THE SENATE
THAT THE PRESIDENT OF THE PHILIPPINES SHOULD RE-VISIT THE
PROVISIONS OF THE VISITING FORCES AGREEMENT (VFA) AND
ACCORDINGLY EXERCISE THE RIGHT TO TERMINATE THE VFA
CONSIDERING THAT SUPERVENING EVENTS HAVE RENDERED THE
PROVISIONS OF THE VFA AS CONTRARY TO THE 1987 PHILIPPINE
CONSTITUTION***

WHEREAS, the Visiting Forces Agreement (“VFA”) between the Government of the Republic of the Philippines and the Government of the United States of America regarding the Treatment of the United States Armed Forces Visiting the Philippines, was signed in Manila on 10 February 1998;

WHEREAS, on 04 December 2006, the Makati City Regional Trial Court found Lance Corporal Daniel Smith guilty for raping a 22 year old girl in Subic last 01 November 2005;

WHEREAS, Smith’s lawyers submitted to the court a written agreement between the US and the Philippine governments to return Smith to the custody of the US pending the resolution of his appeal. The court denied the request of the US government to transfer Smith under its custody;

WHEREAS, on 15 December 2006, the Office of Solicitor General filed before the Court of Appeals a petition asking the Court to render a new decision upholding the authority of the US Embassy to take custody of Smith until the termination of judicial proceedings;

WHEREAS, in an urgent manifestation and motion, the OSG cited an agreement between the Foreign Affairs Secretary Alberto Romulo and US Ambassador to the Philippines Kristie Kenny that in accordance with the VFA signed between the two nations, Lance Corporal Daniel J. Smith should be returned to US military custody at the US Embassy in Manila. The Court of Appeals held that the issue on Smith’s custody has been rendered moot since he was transferred to the US Embassy on 29 December 2006;

WHEREAS, the Supreme Court on 11 February 2009 ruled that Smith be placed under the custody of Philippine authorities. The Romulo-Kenney Agreements of December 19 and 22, which are agreements on the detention of the accused in the US Embassy are not in accord with the VFA itself because such detention is not by the

Philippine authorities. While the two governments are negotiating, the status quo shall be maintained until further orders by the Supreme Court;

WHEREAS, on the contrary, the US Supreme Court issued a ruling on 25 March 2008 in the case of *Medellin vs. Texas*, saying that a treaty, even if ratified by the United States Senate, is not enforceable as domestic federal law in the United States unless the US enacts the implementing legislation, or the treaty by its terms is self-executory and ratified by the US Senate as such;

WHEREAS, under the US ruling, the VFA is not enforceable in the United States because the US Congress has not enacted any law implementing it and because the VFA is not self-executory on its terms. The US Senate has not even ratified the VFA while the Philippine Senate ratified it and thus, the VFA is enforceable as domestic law in the Philippines;

WHEREAS, Section 25 of Article XVIII of the 1987 Philippine Constitution disallows foreign military bases, troops, or facilities in the country, unless the following conditions are sufficiently met, *viz*: (a) it must be under a treaty; (b) the treaty must be duly concurred in by the Senate and, when so required by congress, ratified by a majority of the votes cast by the people in a national referendum; and (c) recognized as a treaty by the other contracting state;

WHEREAS, following the principle laid down in the case of *Medellin vs. Texas*, the VFA is not enforceable as local law in the United States but enforceable as local law in the Philippines. Perforce, this clearly violates our constitutional provision on the presence of foreign military bases, troops or facilities in the country since one of the conditions is lacking, to wit: to recognize it as a treaty by the other contracting state. Further, as the Supreme Court held, the VFA must be equally binding on the Philippines and the foreign sovereign state involved.

WHEREAS, Article IX of the Agreement provides that it shall enter into force on the date on which the Parties have notified each other in writing, through diplomatic channels, that they have completed their constitutional requirements for its entry into force. It shall remain in force until the expiration of 180 days from the date on which either Party gives the other Party written notice to terminate the Agreement.

WHEREAS, in accordance with Article IX of the VFA, the Philippine government reserved the right to terminate the agreement unilaterally once it no longer redounds to our national interest.

NOW, THEREFORE, be it resolved, as it is hereby resolved, to express the sense of the Senate to that Philippine sovereignty should be respected by other states and should in no way be put in jeopardy by any treaty or agreements previously entered by the Philippine Government;

RESOLVED FURTHER, that the Senate of the Philippines calls on the President of the Philippines to re-visit the provisions of the VFA and accordingly exercise our right to terminate the Agreement considering that supervening events have rendered the VFA as unconstitutional.

ADOPTED,

