


SENATE
P. S. R. No. 1286

FILED BY: 

Introduced by Senator Miriam Defensor Santiago

RESOLUTION

DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE 2013 COMMISSION ON AUDIT (COA) REPORT THAT THE BUREAU OF TREASURY SIGNED TWO CONTRACTS WITH THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) AND UNLAWFULLY PAID MORE THAN ₱170 MILLION IN ADVANCE

WHEREAS, the Constitution, Article 2, Section 7 provides:

The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be the national sovereignty, territorial integrity, national interest, and the right to self-determination;

WHEREAS, the Constitution also provides in Article 2, Section 28: "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest";

WHEREAS, the Constitution further provides in Article 7, Section 21: "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";

WHEREAS, Presidential Decree No. 1445, otherwise known as the State Audit Code of the Philippines, states:

Except with the prior approval of the President, the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefore. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted;

1 WHEREAS, state auditors claimed in its 2013 report that the Bureau of Treasury entered
2 into two contracts with the United National Conference on Trade and Development (UNCTAD)
3 and paid them a total of ₱170,803,153.20 in advance;

4 WHEREAS, the Commission on Audit (COA) said in its recently released report for
5 2013 that the Bureau of Treasury made the payments to the UNCTAD through:

6 (1) A check worth ₱12,007,257.80 dated 17 March 2010 for a 12-
7 month project called Capacity Building in Debt Management in the
8 Philippines, the contract for which was signed on 21 December 2009; and

9 (2) A check worth ₱158,795,895.40 dated 23 March 2011 for a 36-
10 month project called Strengthening Debt Management in the Bureau of the
11 Treasury, the contract for which was signed on 10 December 2010;

12 WHEREAS, the payments allegedly had no presidential approval, thus, it violated P.D.
13 No. 1445, which prohibits advance payments for supplies and materials not yet delivered or
14 services not yet rendered;

15 WHEREAS, the COA also reportedly assailed the Bureau of Treasury's argument that
16 the 2009 and 2010 contracts with UNCTAD were exempted from the prohibition in P.D. No.
17 1445;

18 WHEREAS, the Bureau of Treasury allegedly cited the Implementing Rules and
19 Regulations (IRR) of Republic Act No. 9184, otherwise known as the "Government Procurement
20 Reform Act", Section 4.2, which states:

21 Any Treaty or International or Executive Agreement to which the
22 Government of the Philippines is a signatory affecting the subject matter of the
23 Act and this IRR shall be observed. In case of conflict between the terms of the
24 Treaty of International or Executive Agreement and this IRR, the former shall
25 prevail;

26 WHEREAS, the COA reportedly insisted that the IRR of R.A. No. 9184 cannot be used
27 as basis for exemption because the contracts with the UNCTAD are not treaties, or international
28 or executive agreements;

1 WHEREAS, Executive Order No. 459, s. 1997, Section 9 states that the Office of Legal
2 Affairs of the Department of Foreign Affairs determines whether an agreement is an executive
3 agreement or treaty;

4 WHEREAS, the distinction is important because while it is claimed that an executive
5 agreement needs only approval from the President, a treaty or an international agreement
6 requires concurrence by the Senate;

7 WHEREAS, the COA reportedly said that the 2009 and 2010 contracts with the
8 UNCTAD had not been ratified by the President, let alone concurred in by the Senate;

9 WHEREAS, the government should remain steadfast to its own laws to protect national
10 interest even as it negotiates with other states or international organizations;

11 WHEREAS, it is wanton for any government agency to claim that a contract it has signed
12 with another entity is a treaty, international, or executive agreement even if such contracts do not
13 satisfy the requirements of presidential ratification and Senate concurrence;

14 WHEREAS, Congress must not overlook the Bureau of Treasury's implicit assertion that
15 the 2009 and 2010 contracts are treaties, which threatens to dilute the foreign policy power the
16 Senate shares with the President;

17 WHEREFORE, BE IT HEREBY RESOLVED BY THE PHILIPPINE SENATE to direct
18 the proper Senate committee to conduct an inquiry, in aid of legislation, on the 2013
19 Commission on Audit (COA) report that the Bureau of Treasury signed two contracts with the
20 United Nations Conference on Trade and Development (UNCTAD) in 2013 and unlawfully paid
21 more than ₱170 million in advance.

Adopted,


MIRIAM DEFENSOR SANTIAGO

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