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REPUBLIC OF THE PHILIPPINES)
First Regular Session)



Senate

Office of the Secretary

SENATE
P.S. Resolution No 306

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Introduced by **SENATOR IMEE R. MARCOS**

RESOLUTION
EXPRESSING THE SENSE OF THE SENATE THAT THE VALIDITY AND
IMPLEMENTATION OF THE VISITING FORCES AGREEMENT BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF AMERICA
SHOULD BE URGENTLY REVIEWED

WHEREAS, Article VII, Section 21 of the 1987 Constitution states that, "*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 XVIII, Section 25 further states that, "*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***";

WHEREAS, on 10 February 1998, the Visiting Forces Agreement (VFA) between the Republic of the Philippines and the United States of America was signed by Domingo Siazon, Jr. (Secretary of the Department of Foreign Affairs) and U.S. Ambassador Thomas Hubbard and subsequently, the VFA was concurrently ratified by the Philippine Senate through a Resolution which was adopted on 27 May 1999;

WHEREAS, the Supreme Court in *Nicolas v. Romulo* (G.R. No. 175888, 11 February 2009) upheld the constitutionality of the VFA despite then-Chief Justice

Puno's dissent because the VFA fell short of the requirement set by Section 25, Article XVIII of the 1987 Constitution stating that allowing the presence of foreign military troops in the Philippines must be "*recognized as a treaty by the other contracting state.*" Moreover, the Supreme Court of the United States held that while an international treaty may constitute an international commitment, it is not binding domestic law unless U.S. Congress has enacted statutes implementing it or unless the treaty itself is "*self-executing*";

WHEREAS, then-Senator Miriam Defensor-Santiago in 2016 assailed the validity and constitutionality of the VFA by stating, "*the Constitution is clear that if an agreement pertains to foreign military bases, troops, or facilities, it must be (1) in the form of a treaty, (2) concurred in by the Senate, and (3) recognized as a treaty by the other contracting state.*" Sen. Santiago said the VFA failed to comply with the third requirement since the United States did not consider it as a treaty;

WHEREAS, the Philippines acquired jurisdiction, under Article V of the VFA, over U.S. Serviceman Daniel Smith who was charged with rape, and to date U.S. Marine Joseph Scott Pemberton, convicted for the killing of Jennifer Laude, remains in Philippine custody in Camp Aguinaldo under the VFA's grant of criminal jurisdiction over errant American military men;

WHEREAS, Philippine President Rodrigo Duterte issued a statement on the possible termination of the VFA, "*I'm warning you, this is the first time. Pag hindi ninyo ginawa ang correction diyan (If you do not correct that), one, I will terminate the bases' Visiting Forces Agreement*". The President also instructed the Department of Justice to submit a memorandum on the possible effects if the VFA would be cancelled;

WHEREAS, since the VFA was ratified by the Philippine Senate in 1999, it is proper that the Senate also conduct a review of its twenty-year-old (20-year-old) implementation, to assess the Agreement's present effectiveness and purpose;

NOW, THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED,
expressing the sense of the Senate that the validity and implementation of the Visiting
Forces Agreement between the Republic of the Philippines and the United States of
America should be urgently reviewed.

Adopted,


IMEE R. MARCOS