Republic of the Philippines
Supreme Court
Manila

EN BANC

RENE A.V. SAGUISAG, WIGBERTO E. TAÑADA, FRANCISCO "DODONG" NEMENZO, JR., SR. MARY JOHN MANANZAN, PACIFICO A. AGABIN, ESTEBAN "STEVE" SALONGA, H. HARRY L. ROQUE, JR., EVALYN G. URSUA, EDRE U. OLALIA, DR. CAROL PAGADUAN-ARAULLO, DR. ROLAND SIMBULAN, and TEDDY CASIÑO, Petitioners,	**G.R. No. 212426**
– versus –	
EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, JR., DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO ABAD, and ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, Respondents.	
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BAGONG ALYANSANG MAKABAYAN (BAYAN), REPRESENTED BY ITS SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI J. COLMENARES, and	**G.R. No. 212444**

CARLOS ZARATE, GABRIELA WOMEN'S PARTY-LIST REPRESENTATIVES LUZ ILAGAN AND EMERENCIANA DE JESUS, ACT TEACHERS PARTY-LIST REPRESENTATIVE ANTONIO L. TINIO, ANAKPAWIS PARTY-LIST REPRESENTATIVE FERNANDO HICAP, KABATAAN PARTY-LIST REPRESENTATIVE TERRY RIDON, MAKABAYANG KOALISYON NG MAMAMAYAN (MAKABAYAN), REPRESENTED BY SATURNINO OCAMPO, and LIZA MAZA, BIENVENIDO LUMBERA, JOEL C. LAMANGAN, RAFAEL MARIANO, SALVADOR FRANCE, ROGELIO M. SOLUTA, and CLEMENTE G. BAUTISTA,

Petitioners,

– versus –

DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, DEFENSE UNDERSECRETARY PIO LORENZO BATINO, AMBASSADOR LOURDES YPARRAGUIRRE, AMBASSADOR J. EDUARDO MALAYA, DEPARTMENT OF JUSTICE UNDERSECRETARY FRANCISCO BARAAN III, and DND ASSISTANT SECRETARY FOR STRATEGIC ASSESSMENTS RAYMUND JOSE QUILOP AS CHAIRPERSON AND MEMBERS, RESPECTIVELY, OF THE NEGOTIATING PANEL FOR THE PHILIPPINES ON EDCA,

Respondents.

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KILUSANG MAYO UNO, REPRESENTED BY ITS CHAIRPERSON, ELMER LABOG, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS NATIONAL PRESIDENT FERDINAND GAITE, NATIONAL FEDERATION OF LABOR UNIONS-KILUSANG MAYO UNO, REPRESENTED BY ITS NATIONAL PRESIDENT JOSELITO USTAREZ, NENITA GONZAGA, VIOLETA ESPIRITU, VIRGINIA FLORES, and ARMANDO TEODORO, JR., Petitioners-in-Intervention,	Present: SERENO, *CJ*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, PEREZ, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, JARDELEZA,* and CAGUIOA,* *JJ.*
RENE A.Q. SAGUISAG, JR., Petitioner-in-Intervention.	Promulgated: July 26, 2016

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RESOLUTION

SERENO, *CJ:*

The Motion for Reconsideration before us seeks to reverse the Decision of this Court in *Saguisag et. al., v. Executive Secretary* dated 12 January 2016.[1] The petitions in *Sasguisag, et. al.*[2] had questioned the constitutionality of the Enhanced Defense Cooperation Agreement (EDCA) between the Republic of the Philippines and the United States of America (U.S.). There, this Court ruled that the petitions be dismissed.[3]

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* No part.

[1] *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, Jr., et al./Bagong Alyansang Makabayan (Bayan), et al v. Department of National Defense Secretary Voltaire Gazmin, et al.*, G.R. No. 212426 & G.R. No. 212444, 12 January 2016 [hereinafter Decision].

[2] Petition of *Saguisag et al.*, *rollo* (G.R. No. 212426, Vol. I), pp. 3-66; Petition of *Bayan et al.*, *rollo* (G.R. No. 212444, Vol. I), pp. 3-101.

[3] Decision, p. 116.

On 3 February 2016, petitioners in the Decision filed the instant Motion, asking for a reconsideration of the Decision in *Saguisag, et. al.,* questioning the ruling of the Court on both procedural and substantive grounds, *viz*:

> WHEREFORE, premises considered, petitioners respectfully pray that the Honorable Court RECONSIDER, REVERSE, AND SET - ASIDE its Decision dated January 12, 2016, and issue a new Decision GRANTING the instant consolidated petitions by declaring the Enhanced Defense Cooperation Agreement (EDCA) entered into by the respondents for the Philippine government, with the United States of America, UNCONSTITUTIONAL AND INVALID and to permanently enjoin its implementation.
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> Other forms of relief just and equitable under the premises are likewise prayed for.

At the outset, petitioners questioned the procedural findings of the Court despite acknowledging the fact that the Court had given them standing to sue.[4] Therefore this issue is now irrelevant and academic, and deserves no reconsideration.

As for the substantive grounds, petitioners claim this Court erred when it ruled that EDCA was not a treaty.[5] In connection to this, petitioners move that EDCA must be in the form of a treaty in order to comply with the constitutional restriction under Section 25, Article XVIII of the 1987 Constitution on foreign military bases, troops, and facilities.[6] Additionally, they reiterate their arguments on the issues of telecommunications, taxation, and nuclear weapons.[7]

We deny the Motion for Reconsideration.

Petitioners do not present new arguments to buttress their claims of error on the part of this Court. They have rehashed their prior arguments and made them responsive to the structure of the Decision in *Saguisag*, yet the points being made are the same.

However, certain claims made by petitioners must be addressed.

On verba legis interpretation

Petitioners assert that this Court contradicted itself when it interpreted the word "allowed in" to refer to the initial entry of foreign bases, troops, and facilities, based on the fact that the plain meaning of the provision in question referred to prohibiting the return of foreign bases, troops, and facilities except under a treaty concurred in by the Senate.[8]

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[4] Motion for Reconsideration, pp. 5-11.
[5] Id. at 17.
[6] Id. at 18-75.
[7] Id. at 75-81.
[8] Id. at20.

This argument fails to consider the function and application of the verba legis rule.

Firstly, *verba legis* is a mode of construing the provisions of law as they stand.[9] This takes into account the language of the law, which is in English, and therefore includes reference to the meaning of the words based on the actual use of the word in the language.

Secondly, by interpreting "allowed in" as referring to an initial entry, the Court has simply applied the plain meaning of the words in the particular provision.[10] Necessarily, once entry has been established by a subsisting treaty, latter instances of entry need not be embodied by a separate treaty. After all, the Constitution did not state that foreign military bases, troops, and facilities shall not subsist or exist in the Philippines.

Petitioners' own interpretation and application of the *verba legis* rule will in fact result in an absurdity, which legal construction strictly abhors.[11] If this Court accept the essence of their argument that every instance of entry by foreign bases, troops, and facilities must be set out in detail in a new treaty, then the resulting bureaucratic impossibility of negotiating a treaty for the entry of a head of State's or military officer's security detail, meetings of foreign military officials in the country, and indeed military exercises such as *Balikatan* will occupy much of, if not all of the official working time by various government agencies. This is precisely the reason why any valid mode of interpretation must take into account how the law is exercised and its goals effected.[12] *Ut res magis valeat quam pereat.*

The Constitution cannot be viewed solely as a list of prohibitions and limitations on governmental power, but rather as an instrument providing the process of structuring government in order that it may effectively serve the people.[13] It is not simply a set of rules, but an entire legal framework for Philippine society.

In this particular case, we find that EDCA did not go beyond the framework. The entry of US troops has long been authorized under a valid and subsisting treaty, which is the Visiting Forces Agreement (VFA).[14] Reading the VFA along with the longstanding Mutual Defense Treaty (MDT)[15] led this Court to the conclusion that an executive agreement such

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[9] *Republic v. Lacap*, G.R. No. 158253, 2 March 2007, 546 PHIL 87-101.
[10] Decision, p. 35.
[11] *Green v. Bock Laundry Machine Co.*, 490 U.S. 504 (109 S.Ct. 1981, 104 L.Ed.2d 557)
[12] *JMM Promotions & Management, Inc. v. National Labor Relations Commission*, G.R. No. 109835, 22 November 1993.
[13] *See* discussion of Justice George A. Malcolm in *Government of the Philippine Islands v. Springer*, G.R. No. 26979, 1 April 1927, 50 PHIL 259-348.
[14] Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines, Phil.-U.S., 10 February 1998, TIAS No. 12931 (entered into force 1 June 1999) [hereinafter VFA].
[15] Mutual Defense Treaty between the Republic of the Philippines and the United States of America, 30 August 1951, 177 UNTS 133 (entered into force 27 August 1952).

as the EDCA was well within the bounds of the obligations imposed by both treaties.

On strict construction of an exception

This Court agrees with petitioners' cited jurisprudence that exceptions are strictly construed.[16] However, their patent misunderstanding of the Decision and the confusion this creates behooves this Court to address this argument.

To be clear, the Court did not add an exception to Section 25 Article XVIII. The general rule is that foreign bases, troops, and facilities are not allowed in the Philippines.[17] The exception to this is authority granted to the foreign state in the form of a treaty duly concurred in by the Philippine Senate.[18]

It is in the operation of this exception that the Court exercised its power of review. The lengthy legal analysis resulted in a proper categorization of EDCA: an executive agreement authorized by treaty. This Court undeniably considered the arguments asserting that EDCA was, in fact, a treaty and not an executive agreement, but these arguments fell flat before the stronger legal position that EDCA merely implemented the VFA and MDT. As we stated in the Decision:

> x x x [I]t must already be clarified that the terms and details used by an implementing agreement need not be found in the mother treaty. They must be sourced from the authority derived from the treaty, but are not necessarily expressed word-for-word in the mother treaty.[19]

Hence, the argument that the Court added an exception to the law is erroneous and potentially misleading. The parties, both petitioners and respondents must therefore read the Decision carefully in order to fully comply with its disposition.

On EDCA as a treaty

The principal reason for the Motion for Reconsideration is evidently petitioners' disagreement with the Decision that EDCA implements the VFA and MDT. They reiterate their arguments that EDCA's provisions fall outside the allegedly limited scope of the VFA and MDT because it provides a wider arrangement than the VFA for military bases, troops, and facilities, and it allows the establishment of U.S. military bases.[20]

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[16] Motion for Reconsideration, p. 20.
[17] 1987 CONSTITUTION, Article 18, Sec. 25.
[18] Id.
[19] Decision, p. 55.
[20] Motion for Reconsideration, p. 30.

Specifically, petitioners cite the terms of the VFA referring to "joint exercises,"[21] such that arrangements involving the individual States-parties such as exclusive use of prepositioned materiel are not covered by the VFA. More emphatically, they state that prepositioning itself as an activity is not allowed under the VFA.[22]

Evidently, petitioners left out of their quote the portion of the Decision which cited the Senate report on the VFA. The full quote reads as follows:

> Siazon clarified that it is not the VFA by itself that determines what activities will be conducted between the armed forces of the U.S. and the Philippines. The VFA regulates and provides the legal framework for the presence, conduct and legal status of U.S. personnel while they are in the country for **visits, joint exercises and other related activities.**[23]

Quite clearly, the VFA contemplated activities beyond joint exercises, which this Court had already recognized and alluded to in *Lim v. Executive Secretary*,[24] even though the Court in that case was faced with a challenge to the Terms of Reference of a specific type of joint exercise, the *Balikatan Exercise.*

One source petitioners used to make claims on the limitation of the VFA to joint exercises is the alleged Department of Foreign Affairs (DFA) Primer on the VFA, which they claim states that:

> Furthermore, the VFA does not involve access arrangements for United States armed forces or the pre-positioning in the country of U.S. armaments and war materials. The agreement is about personnel and not equipment or supplies.[25]

Unfortunately, the uniform resource locator link cited by petitioners is inaccessible. However, even if we grant its veracity, the text of the VFA itself belies such a claim. Article I of the VFA states that "[a]s used in this Agreement, "United States personnel" means United States military and civilian personnel temporarily in the Philippines in connection with activities approved by the Philippine Government."[26] These "activities" were, as stated in *Lim,* left to further implementing agreements. It is true that Article VII on Importation did not indicate pre-positioned materiel, since it referred to "United States Government equipment, materials, supplies, and other property imported into or acquired in the Philippines by or on behalf of the United States armed forces in connection with activities to which this agreement applies[.]"[27]

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[21] Id. at 34.
[22] Id. at 36.
[23] Decision, p. 66, *citing* Joint Report of the Committee on Foreign Relations and the Committee on National Defense and Security *reproduced in* SENATE OF THE PHILIPPINES, THE VISITING FORCES AGREEMENT: THE SENATE DECISION 206 (1999), at 205-206, 231.
[24] *Lim v. Executive Secretary*, 430 Phil. 555 (2002)
[25] Motion for Reconsideration, p. 35.
[26] VFA, supra note 14.
[27] Id.

Nonetheless, neither did the text of the VFA indicate "joint exercises" as the only activity, or even as one of those activities authorized by the treaty. In fact, the Court had previously noted that

> [n]ot much help can be had therefrom [VFA], unfortunately, since the terminology employed is itself the source of the problem. The VFA permits United States personnel to engage, on an impermanent basis, in "activities," the exact meaning of which was left undefined. The expression is ambiguous, permitting a wide scope of undertakings subject only to the approval of the Philippine government. The sole encumbrance placed on its definition is couched in the negative, in that United States personnel must "abstain from any activity inconsistent with the spirit of this agreement, and in particular, from any political activity." All other activities, in other words, are fair game.[28]

Moreover, even if the DFA Primer was accurate, properly cited, and offered as evidence, it is quite clear that the DFA's opinion on the VFA is not legally binding nor conclusive.[29] It is the exclusive duty of the Court to interpret with finality what the VFA can or cannot allow according to its provisions.[30]

In addition to this, petitioners detail their objections to EDCA in a similar way to their original petition, claiming that the VFA and MDT did not allow EDCA to contain the following provisions:

1. Agreed Locations
2. Rotational presence of personnel
3. U.S. contractors
4. Activities of U.S. contractors[31]

We ruled in *Saguisag, et. al.* that the EDCA is not a treaty despite the presence of these provisions. The very nature of EDCA, its provisions and subject matter, indubitably categorize it as an executive agreement – a class of agreement that is not covered by the Article XVIII Section 25 restriction – in painstaking detail.[32] To partially quote the Decision:

> Executive agreements may dispense with the requirement of Senate concurrence because of the legal mandate with which they are concluded. As culled from the afore-quoted deliberations of the Constitutional Commission, past Supreme Court Decisions, and works of noted scholars, executive agreements merely involve arrangements on the implementation of *existing* policies, rules, laws, or agreements. They are concluded (1) to adjust the details of a treaty; (2) pursuant to or upon

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[28] *Lim v. Executive Secretary*, supra note 24.

[29] "[A]n advisory opinion of an agency may be stricken down if it deviates from the provision of the statute," *Cemco Holdings, Inc. v. National Life Insurance Co. of the Philippines*, Inc., G.R. No. 171815, 7 August 2007, 556 PHIL 198-217.

[30] "All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc" 1987 CONSTITUTION, Article VIII, Sec. 4(2); "All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question." 1987 CONSTITUTION, Article VIII, Sec. 5(a).

[31] Motion for Reconsideration, pp.38-47.

[32] Decision p. 39-113.

> confirmation by an act of the Legislature; or (3) in the exercise of the President's independent powers under the Constitution. The *raison d'être* of executive agreements hinges on *prior* constitutional or legislative authorizations.
>
> The special nature of an executive agreement is not just a domestic variation in international agreements. International practice has accepted the use of various forms and designations of international agreements, ranging from the traditional notion of a treaty – which connotes a formal, solemn instrument – to engagements concluded in modern, simplified forms that no longer necessitate ratification. An international agreement may take different forms: treaty, act, protocol, agreement, *concordat*, *compromis d'arbitrage*, convention, covenant, declaration, exchange of notes, statute, pact, charter, agreed minute, memorandum of agreement, *modus vivendi*, or some other form. Consequently, under international law, the distinction between a treaty and an international agreement or even an executive agreement is irrelevant for purposes of determining international rights and obligations.
>
> However, this principle does not mean that the domestic law distinguishing *treaties, international agreements,* and *executive agreements* is relegated to a mere variation in form, or that the constitutional requirement of Senate concurrence is demoted to an optional constitutional directive. There remain two very important features that distinguish *treaties* from *executive agreements* and translate them into terms of art in the domestic setting.
>
> *First*, **executive agreements must remain traceable to an express or implied authorization under the Constitution, statutes, or treaties**. The absence of these precedents puts the validity and effectivity of executive agreements under serious question for the main function of the Executive is to enforce the Constitution and the laws enacted by the Legislature, not to defeat or interfere in the performance of these rules. In turn, executive agreements cannot create new international obligations that are not expressly allowed or reasonably implied in the law they purport to implement.
>
> *Second*, treaties are, by their very nature, considered superior to executive agreements. Treaties are products of the acts of the Executive and the Senate unlike executive agreements, which are solely executive actions. Because of legislative participation through the Senate, a treaty is regarded as being on the same level as a statute. If there is an irreconcilable conflict, a later law or treaty takes precedence over one that is prior. An executive agreement is treated differently. Executive agreements that are inconsistent with either a law or a treaty are considered ineffective. Both types of international agreement are nevertheless subject to the supremacy of the Constitution.[33] (Emphasis supplied, citations omitted)

Subsequently, the Decision goes to great lengths to illustrate the source of EDCA's validity, in that as an executive agreement it fell within the parameters of the VFA and MDT, and seamlessly merged with the whole web of Philippine law. We need not restate the arguments here. It suffices to

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[33] Decision, pp. 45-47.

state that this Court remains unconvinced that EDCA deserves treaty status under the law.

On EDCA as basing agreement

Petitioners claim that the Decision did not consider the similarity of EDCA to the previous Military Bases Agreement (MBA) as grounds to declare it unconstitutional.[34]

Firstly, the Court has discussed this issue in length and there is no need to rehash the analysis leading towards the conclusion that EDCA is different from the MBA or any basing agreement for that matter.

Secondly, the new issues raised by petitioners are not weighty enough to overturn the legal distinction between EDCA and the MBA.

In disagreeing with the Court in respect of the MBA's jurisdictional provisions, petitioners cite an exchange of notes categorized as an "amendment" to the MBA, as if to say it operated as a new treaty and should be read into the MBA.[35]

This misleadingly equates an exchange of notes with an amendatory treaty. Diplomatic exchanges of notes are not treaties but rather formal communication tools on routine agreements, akin to private law contracts, for the executive branch.[36] This cannot truly amend or change the terms of the treaty,[37] but merely serve as private contracts between the executive branches of government. They cannot *ipso facto* amend treaty obligations between States, but may be treaty-authorized or treaty-implementing.[38]

Hence, it is correct to state that the MBA as the treaty did not give the Philippines jurisdiction over the bases because its provisions on U.S. jurisdiction were explicit. What the exchange of notes did provide was effectively a contractual waiver of the jurisdictional rights granted to the U.S. under the MBA, but did not amend the treaty itself.

Petitioners reassert that EDCA provisions on operational control, access to Agreed Locations, various rights and authorities granted to the US "ensures, establishes, and replicates what MBA had provided."[39] However,

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[34] Motion for Reconsideration, p. 49.
[35] Id. at 49-50.
[36] "An 'exchange of notes' is a record of a routine agreement, that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval." Available at <https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml#exchange> (last viewed 8 April 2016).
[37] *Adolfo v. Court of First Instance of Zambales*, G.R. No. L-30650, 31 July 1970.
[38] *Bayan Muna v. Romulo*, 656 Phil.246 (2011).
[39] Motion for Reconsideration, p. 53.

as thoroughly and individually discussed in *Saguisag, et. al.*, the significant differences taken as a whole result in a very different instrument, such that EDCA has not re-introduced the military bases so contemplated under Article XVIII Section 25 of the Constitution.[40]

On policy matters

Petitioners have littered their motion with alleged facts on U.S. practices, ineffective provisions, or even absent provisions to bolster their position that EDCA is invalid.[41] In this way, petitioners essentially ask this Court to replace the prerogative of the political branches and rescind the EDCA because it not a good deal for the Philippines. Unfortunately, the Court's only concern is the legality of EDCA and not its wisdom or folly. Their remedy clearly belongs to the executive or legislative branches of government.

EPILOGUE

While this Motion for Reconsideration was pending resolution, the United Nations Permanent Court of Arbitration tribunal constituted under the Convention on the Law of the Sea (UNCLOS) in *Republic of the Philippines v. People's Republic of China* released its monumental decision on the afternoon of 12 July 2016.[42] The findings and declarations in this decision contextualizes the security requirements of the Philippines, as they indicate an alarming degree of international law violations committed against the Philippines' sovereign rights over its exclusive economic zone (EEZ).

Firstly, the tribunal found China's claimed nine-dash line, which included sovereign claims over most of the West Philippine, invalid under the UNCLOS for exceeding the limits of China's maritime zones granted under the convention.[43]

Secondly, the tribunal found that the maritime features within the West Philippine Sea/South China Sea that China had been using as basis to claim sovereign rights within the Philippines' EEZ were not entitled to independent maritime zones.[44]

Thirdly, the tribunal found that the actions of China within the EEZ of the Philippines, namely: forcing a Philippine vessel to cease-and-desist from

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[40] Decision, pp.75-113

[41] U.S. practice on contractors, dispute resolution, jurisdiction, taxation, nuclear weapons, and the U.S. stance on China are just some of these issues raised by petitioners at the policy level.

[42] *The Republic of the Philippines v. The People's Republic of China*, Case No. 2013-19 (Perm Ct. Arb.), award available at http://www.pcacases.com/pcadocs/PH-CN%20-%20160712%20-%20Award.pdf (last visited 22 July 2016).

[43] Id. at 111-112 (¶261-262).

[44] Id. at 174; 254 (¶626).

survey operations,[45] the promulgation of a fishing moratorium in 2012,[46] the failure to exercise due diligence in preventing Chinese fishing vessels from fishing in the Philippines' EEZ without complying with Philippine regulations,[47] the failure to prevent Chinese fishing vessels from harvesting endangered species,[48] the prevention of Filipino fishermen from fishing in traditional fishing grounds in Scarborough Shoal,[49] and the island-building operations in various reefs, all violate its obligations to respect the rights of the Philippines over its EEZ.[50]

Fourthly, the tribunal rejected Chinese claims of sovereignty over features within the Philippine's EEZ,[51] and found that its construction of installations and structures, and later on the creation of an artificial island, violated its international obligations.[52]

Fifthly, the tribunal found that the behaviour of Chinese law enforcement vessels breached safe navigation provisions of the UNCLOS in respect of near-collision instances within Scarborough Shoal.[53]

Finally, the tribunal found that since the arbitration was initiated in 2013, China has aggravated the dispute by building a large artificial island on a low-tide elevation located in the EEZ of the Philippines aggravated the Parties' dispute concerning the protection and preservation of the marine environment at Mischief Reef by inflicting permanent, irreparable harm to the coral reef habitat of that feature, extended the dispute concerning the protection and preservation of the marine environment by commencing large-scale island-building and construction works at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef, aggravated the dispute concerning the status of maritime features in the Spratly Islands and their capacity to generate entitlements to maritime zones by permanently destroying evidence of the natural condition of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef. [54]

Taken as a whole, the arbitral tribunal has painted a harrowing picture of a major world power unlawfully imposing its might against the Philippines, There are clear indications that these violations of the Philippines' sovereign rights over its EEZ are continuing. The Philippine state is constitutionally-bound to defend its sovereignty, and must thus prepare militarily.

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[45] Id. at 282 (¶708).
[46] Id. at 284 (¶712) .
[47] Id. at 296 (¶753).
[48] Id. at 397 (¶992).
[49] Id. at 318 (¶814).
[50] Id. at 397 (¶993).
[51] Id. at 403 (¶1006).
[52] Id. at 414-415 (¶1036-1037); 415 (¶1043).
[53] Id. at 435 (¶1109).
[54] Id. at 464 (¶1181).

No less than the 1987 Constitution demands that the "State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens."[55]

No less than the 1987 Constitution states that the principal role of the military under the President as commander-in-chief shall be as protector of the people and the State to secure the sovereignty of the State and the integrity of the national territory.[56]

To recall, the Philippines and the U.S. entered into the MDT in 1951[57] with two things in mind, first, it allowed for mutual assistance in maintaining and developing their individual and collective capacities to resist an armed attack;[58] and second, it provided for their mutual self-defense in the event of an armed attack against the territory of either party.[59] The treaty was premised on their recognition that an armed attack on either of them would equally be a threat to the security of the other.[60]

The EDCA embodies this very purpose. It puts into greater effect a treaty entered into more than 50 years ago in order to safeguard the sovereignty of the Philippines, and cement the military friendship of the U.S. and Philippines that has thrived for decades through multiple presidents and multiple treaties. While it is a fact that our country is now independent, and that the 1987 Constitution requires Senate consent for foreign military bases, troops, and facilities, the EDCA as envisioned by the executive and as formulated falls within the legal regime of the MDT and the VFA.

In the context of recent developments, the President is bound to defend the EEZ of the Philippines and ensure its vast maritime wealth for the exclusive enjoyment of Filipinos. In this light, he is obligated to equip himself with all resources within his power to command. With the MDT and VFA as a blueprint and guide, EDCA strengthens the Armed Forces of the Philippines and through them, the President's ability to respond to any potential military crisis with sufficient haste and greater strength.

The Republic of Indonesia is strengthening its military presence and defences in the South China Sea.[61] Vietnam has lent its voice in support of

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[55] 1987 CONSTITUTION, Article XII, Sec. 2.
[56] 1987 CONSTITUTION, Article II, Sec. 3.
[57] Mutual Defense Treaty between the Republic of the Philippines and the United States of America, 30 Aug. 1951, 177 UNTS 133 (entered into force 27 Aug. 1952).
[58] 1951 MDT, Art. II.
[59] 1951 MDT, Arts. IV-V.
[60] COLONEL PATERNO C. PADUA, REPUBLIC OF THE PHILIPPINES UNITED STATES DEFENSE COOPERATION: OPPORTUNITIES AND CHALLENGES, A FILIPINO PERSPECTIVE 6 (2010).
[61] "Indonesia Will Defend South China Sea Territory With F-16 Fighter Jets" available at <http://www.bloomberg.com/news/articles/2016-03-31/indonesia-to-deploy-f-16s-to-guard-its-south-china-sea-territory> (last visited 22 July 2016). ; *See* also "Indonesia looks to boost defenses around Natuna Islands in South China Sea" available at <http://www.japantimes.co.jp/news/2015/12/16/asia-pacific/politics-diplomacy-asia-pacific/indonesia-looks-boost-defenses-around-natuna-islands-south-china-sea/#.V5GJrNJ97IV> (last visited 22 July 2016).

the settlement of disputes by peaceful means[62] but still strongly asserts its sovereignty over the Paracel islands against China.[63] The international community has given its voice in support of the tribunal's decision in the UNCLOS arbitration.[64]

Despite all this, China has rejected the ruling.[65] Its ships have continued to drive off Filipino fishermen from areas within the Philippines' EEZ.[66] Its military officials have promised to continue its artificial island-building in the contested areas despite the ruling against these activities.[67]

In this light, the Philippines must continue to ensure its ability to prevent any military aggression that violates its sovereign rights. Whether the threat is internal or external is a matter for the proper authorities to decide. President Rodrigo Roa Duterte has declared, in his inaugural speech, that the threats pervading society are many: corruption, crime, drugs, and the breakdown of law and order.[68] He has stated that the Republic of the Philippines will honor treaties and international obligations.[69] He has also openly supported EDCA's continuation.[70]

Thus, we find no reason for EDCA to be declared unconstitutional. It fully conforms to the Philippines' legal regime through the MDT and VFA. It also fully conforms to the government's continued policy to enhance our military capability in the face of various military and humanitarian issues that may arise. This Motion for Reconsideration has not raised any additional legal arguments that warrant revisiting the Decision.

WHEREFORE, we hereby **DENY** the Motion for Reconsideration.

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[62] "World leaders react to South China Sea ruling" available at <http://www.philstar.com/headlines/2016/07/13/1602416/world-leaders-react-south-china-sea-ruling> (last visited 22 July 2016).

[63] "Why is the South China Sea contentious?" available at <http://www.bbc.com/news/world-asia-pacific-13748349> (last visited 22 July 2016).

[64] "World leaders react to South China Sea ruling" available at <http://www.philstar.com/headlines/2016/07/13/1602416/world-leaders-react-south-china-sea-ruling> (last visited 22 July 2016).

[65] "Beijing rejects tribunal's ruling in South China Sea case" available at <https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china> (last visited 22 July 2016); "China 'does not accept or recognize' tribunal's South China Sea ruling" available at <http://cnnphilippines.com/world/2016/07/12/china-reaction-tribunal-ruling.html> (last visited 22 July 2016).

[66] "Filipino fishermen still barred from Scarborough Shoal" available at <http://cnnphilippines.com/news/2016/07/15/scarborough-shoal-filipino-fishermen-chinese-coast-guard.html1> (last visited 22 July 2016).

[67] "PLAN's Wu to CNO Richardson: Beijing Won't Stop South China Sea Island Building" available at <https://news.usni.org/2016/07/18/plans-wu-cno-richardson-beijing-wont-stop-south-china-sea-island-building> (last visited 22 July 2016).

[68] Inaugural address of President Rodrigo Roa Duterte, 30 June 2016, available at <http://www.gov.ph/2016/06/30/inaugural-address-of-president-rodrigo-roa-duterte-june-30-2016/> (last visited 22 July 2016).

[69] Inaugural address of President Rodrigo Roa Duterte, 30 June 2016, available at <http://www.gov.ph/2016/06/30/inaugural-address-of-president-rodrigo-roa-duterte-june-30-2016/> (last visited 22 July 2016).

[70] "Duterte in favor of continuing EDCA" available at <http://www.philstar.com/headlines/2016/05/26/1587112/duterte-favor-continuing-edca> (last visited 22 July 2016).

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice

WE CONCUR:

I reiterate my separate Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

Please see Dissenting Opinion:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See: Dissenting Opinion

ARTURO D. BRION
Associate Justice

I join the opinion of J. Carpio

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

Please see Dissenting Opinion

See dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice
(No Part)

(No Part)

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice