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G.R. No. 212426 - 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*, v. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., DEPARTMENT OF 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*.

G.R. No. 212444 - BAGONG ALYANSANG MAKABAYAN (BAYAN), REPRESENTED BY ITS SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI J. COLMENARES AND 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, RENATO CONSTANTINO, JR., RAFAEL MARIANO, SALVADOR FRANCE, ROGELIO M. SOLUTA, and CLEMENTE G. BAUTISTA, *Petitioners*, v. DEPARTMENT OF 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

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**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.**

**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.,**

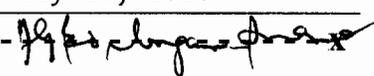
*Petitioners-in-Intervention*

**RENE A.Q. SAGUISAG, JR.,**

*Petitioner-in-Intervention*

Promulgated:

July 26, 2016

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**DISSENTING OPINION**

**LEONARDO-DE CASTRO, J.:**

I hereby reiterate my dissent. The implementation of the Enhanced Defense Cooperation Agreement (EDCA) without Senate concurrence will be in contravention of the clear and unequivocal mandatory provision of Section 25, Article XVIII of the Constitution.

Senate Resolution No. 105 dated November 10, 2015, stating the strong sense of the Senate that “[t]he RP-US Treaty requires Senate concurrence in order to be valid and effective,” is in accord with the aforesaid constitutional provision.

*LMC*

The majority opinion penned by the Honorable Chief Justice Maria Lourdes P. A. Sereno makes mention of the recent favorable ruling of the United Nations Permanent Court of Arbitration concerning the respective territorial claims of the Philippines and the People's Republic of China over portions of the West Philippine Sea. Thus, the majority stresses that the President of the Philippines need to equip himself with all resources within his power to command in order to defend our preferent rights over our exclusive economic zone. Chief Justice Sereno argues that there is no reason to declare the EDCA unconstitutional given that it "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 above assertions are, however, irrelevant in determining the issue of the constitutionality of treating the EDCA as a binding international agreement without Senate concurrence.

The wisdom and political reasons behind the EDCA are not in issue in this case, but rather the non-observance of the mandatory processes dictated by the Constitution regarding the allowance of foreign military bases, troops, or facilities in the Philippines. Section 25, Article XVIII of the Constitution dictates that agreements such as the EDCA must be submitted to the Senate for its concurrence and, if Congress so requires, to the Filipino people for ratification *via* a national referendum. These constitutionally ordained processes would save from constitutional infirmity the presence of foreign military bases, troops, or facilities in the Philippines.

Section 25, Article XVIII of the Constitution reads:

ARTICLE XVIII  
TRANSITORY PROVISIONS

SEC. 25. 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.

As held in *BAYAN (Bagong Alyansang Makabayan) v. Zamora*,<sup>1</sup> Section 25, Article XVIII covers three different situations: the presence within the Philippines of (a) **foreign military bases**, or (b) **foreign military troops**, or (c) **foreign military facilities**, such that a treaty that involves any of these three, standing alone, falls within the coverage of the said provision. The deliberations of the 1986 Constitutional Commission bear out this interpretation, to wit:

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<sup>1</sup> 396 Phil. 623, 653 (2000).

MR. MAAMBONG. I just want to address a question or two to Commissioner Bernas.

This formulation speaks of three things: foreign military bases, troops or facilities. My first question is: *If the country does enter into such kind of a treaty, must it cover the three-bases, troops or facilities or could the treaty entered into cover only one or two?*

FR. BERNAS. *Definitely, it can cover only one. Whether it covers only one or it covers three, the requirement will be the same.*

MR. MAAMBONG. *In other words, the Philippine government can enter into a treaty covering not bases but merely troops?*

FR. BERNAS. *Yes.*

MR. MAAMBONG. I cannot find any reason why the government can enter into a treaty covering only troops.

FR. BERNAS. Why not? Probably if we stretch our imagination a little bit more, we will find some. We just want to cover everything.<sup>2</sup> (Citation omitted.)

On March 14, 1947, the Philippines and the United States entered into a **Military Bases Agreement** (MBA) which granted to the United States government the right to *retain* the use of the bases listed in the Annexes of said agreement. The term of the MBA was set to expire in 1991 in accordance with the Ramos-Rusk Agreement.

Subsequently, on August 30, 1951, the Philippines and the United States entered into the **Mutual Defense Treaty** (MDT) in order to actualize their desire “to declare publicly and formally their sense of unity and their common determination to **defend themselves against external armed attack**”<sup>3</sup> and “further to strengthen their present efforts to **collective defense** for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific area.”<sup>4</sup> It is noteworthy that the MDT provides as follows:

Article IV. Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers **in accordance with its constitutional process.**

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<sup>2</sup> Id. at 650-654.

<sup>3</sup> Mutual Defense Treaty, Preamble, paragraph 3.

<sup>4</sup> Id., Preamble, paragraph 4.

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In 1986, in view of the impending expiration of the MBA in 1991, the members of the Constitutional Commission deliberated on the issue of the continued presence of foreign military bases in the country in this wise:

FR. BERNAS. My question is: Is it the position of the committee that the presence of foreign military bases in the country under any circumstances is a derogation of national sovereignty?

MR. AZCUNA. It is difficult to imagine a situation based on existing facts where it would not. However, in the abstract, it is possible that it would not be that much of a derogation. I have in mind, Madam President, the argument that has been presented. Is that the reason why there are U.S. bases in England, in Spain and in Turkey? And it is not being claimed that their sovereignty is being derogated. Our situation is different from theirs because we did not lease or rent these bases to the U.S. The U.S. retained them from us as a colonial power.

FR. BERNAS. So, the second sentence, Madam President, has specific reference to what obtains now.

MR. AZCUNA. Yes. It is really determined by the present situation.

FR. BERNAS. Does the first sentence tolerate a situation radically different from what obtains now? In other words, if we understand sovereignty as auto-limitation, as a people's power to give up certain goods in order to obtain something which may be more valuable, would it be possible under this first sentence for the nation to negotiate some kind of a treaty agreement that would not derogate against sovereignty?

MR. AZCUNA. Yes. For example, Madam President, if it is negotiated on a basis of true sovereign equality, such as a mutual ASEAN defense agreement wherein an ASEAN force is created and this ASEAN force is a foreign military force and may have a basis in the member ASEAN countries, this kind of a situation, I think, would not derogate from sovereignty.

MR. NOLLEDO. Madam President, may I be permitted to make a comment on that beautiful question. I think there will be **no derogation of sovereignty if the existence of the military bases as stated by Commissioner Azcuna is on the basis of a treaty** which was not only ratified by the appropriate body, like the Congress, but also by the people.

I would like also to refer to the situation in Turkey where the Turkish government has control over the bases in Turkey, where the jurisdiction of Turkey is not impaired in anyway, and Turkey retains the right to terminate the treaty under circumstances determined by the host government. I think under such circumstances, the existence of the military bases may not be considered a derogation of sovereignty, Madam President.

FR. BERNAS. Let me be concrete, Madam President, in our circumstances. **Suppose they were to have this situation where our government were to negotiate a treaty with the United States, and**

then the two executive departments in the ordinary course of negotiation come to an agreement. As our Constitution is taking shape now, if this is to be a treaty at all, it will have to be submitted to our Senate for its ratification. Suppose, therefore, that what was agreed upon between the United States and the executive department of the Philippines is submitted and ratified by the Senate, then it is further submitted to the people for its ratification and subsequently, we ask the United States: "Complete the process by accepting it as a treaty through ratification by your Senate as the United States Constitution requires," would such an arrangement be in derogation of sovereignty?

MR. NOLLEDO. Under the circumstances the Commissioner just mentioned, Madam President, on the basis of the provision of Section 1 that "sovereignty resides in the Filipino people," then we would not consider that a derogation of our sovereignty on the basis and expectation that there was a plebiscite.<sup>5</sup> (Emphasis supplied.)

Section 25, Article XVIII came into effect upon the expiration of the MBA in 1991. Thereafter, foreign military bases, troops, or facilities were no longer allowed in the Philippines, unless the three requirements set forth in Section 25, Article XVIII are met.

On February 10, 1998, the Philippines and the United States entered into the Visiting Forces Agreement (VFA). The scope and purpose of the VFA can be gleaned from its Preamble, which reads in part:

Reaffirming their obligations under the **Mutual Defense Treaty** of August 30, 1951;

Noting that **from time to time** elements of the United States armed forces may **visit** the Republic of the Philippines[.] (Emphasis supplied).

Like the MBA, the VFA, which reaffirmed the parties' obligations under the MDT, was still submitted to and was concurred in by the Philippine Senate on May 27, 1999.<sup>6</sup>

Thereafter, on April 28, 2014, the Governments of the Philippines and the United States entered into the assailed EDCA.

### The EDCA

Under the EDCA, the Philippines shall provide the United States forces access and use of portions of Philippine territory called "Agreed Locations" without any obligation on its part to pay any rent or similar costs.<sup>7</sup> Therein, the United States may undertake the following types of

<sup>5</sup> IV RECORD OF THE CONSTITUTIONAL COMMISSION, pp. 661-662.

<sup>6</sup> Senate Resolution No. 18; *BAYAN (Bagong Alyansang Makabayan) v. Zamora*, supra note 1 at 654-655.

<sup>7</sup> Enhanced Defense Cooperation Agreement, Article III(3).

activities: security cooperation exercises; joint and combined training activities; humanitarian and disaster relief activities; and such other activities that as may be agreed upon by the Parties.”<sup>8</sup> Article III(1) of the EDCA further states in detail the activities that the United States may conduct inside the Agreed Locations:

1. With consideration of the views of the Parties, the Philippines hereby authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircrafts operated by or for United States forces may conduct the following activities with respect to Agreed Locations: **training; transit; support and related activities; refueling of aircraft; bunkering of vessels; temporary maintenance of vehicles, vessels, and aircraft; temporary accommodation of personnel; communications; prepositioning of equipment, supplies, and materiel; deploying forces and materiel; and such other activities as the Parties may agree.** (Emphasis supplied.)

The United States is granted operational control of Agreed Locations to do construction activities, make alterations or improvements of the Agreed Locations.<sup>9</sup> Permanent buildings constructed by the United States forces become the property of the Philippines, once constructed, but shall be used by the United States forces until no longer required.<sup>10</sup> The United States forces are authorized to exercise all rights and authorities within the Agreed Locations that are necessary for their operational control or defense, including taking appropriate measures to protect United States forces and United States contractors.<sup>11</sup>

The United States is further authorized to preposition and store defense equipment, supplies, and materiel (“prepositioned materiel”), including but not limited to, humanitarian assistance and disaster relief equipment, supplies and material, at Agreed Locations.<sup>12</sup>

Considering the presence of United States armed forces: military personnel, vehicles, vessels, and aircrafts and other defensive equipment, supplies, and materiel in the Philippines, for obvious military purposes and with the obvious intention of assigning or stationing them within the Agreed Locations, **said Agreed Locations are clearly overseas military bases of the United States with the Philippines as its host country.**

In fact, the provisions of the EDCA bear striking similarities with the provisions of the MBA:

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<sup>8</sup> Id., Article I(3).  
<sup>9</sup> Id., Article III(4).  
<sup>10</sup> Id., Article V(4).  
<sup>11</sup> Id., Article VI(3).  
<sup>12</sup> Id., Article IV(1).

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<p align="center"><b>Military Bases Agreement (March 14, 1947)</b></p>	<p align="center"><b>Enhanced Defense Cooperation Agreement (April 28, 2014)</b></p>
<p>Article III: DESCRIPTION OF RIGHTS</p> <p>1. It is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, <b>operation and defense thereof or appropriate for the control thereof</b> and all the rights, power and authority within the limits of territorial waters and air space adjacent to, or in the vicinity of, the bases which are necessary to provide access to them, or appropriate for their control.</p>	<p>Article III: AGREED LOCATIONS</p> <p>4. The Philippines hereby grants the United States, through bilateral security mechanisms, such as the MDB and SEB, <b>operational control</b> of Agreed Locations for construction activities and authority to undertake such activities on, and <b>make alterations and improvements</b> to, Agreed Locations. x x x.</p> <p>Article VI: SECURITY</p> <p>3. United States forces are authorized to exercise <b>all rights and authorities</b> within Agreed Locations that are <b>necessary for their operational control or defense</b> x x x.</p>
<p>Article III: DESCRIPTION OF RIGHTS</p> <p>2. Such rights, power and authority shall include, <i>inter alia</i>, the right, power and authority:</p> <p>(a) to <b>construct</b> (including dredging and filling), operate, maintain, utilize, occupy, garrison and control the bases;</p> <p>(b) to <b>improve</b> and deepen the harbors, channels, entrances and anchorages, and to <b>construct or maintain</b> necessary roads and bridges affording access to the bases;</p>	<p>Article III: AGREED LOCATIONS</p> <p>4. The Philippines hereby grants the United States, through bilateral security mechanisms, such as the MDB and SEB, <b>operational control</b> of Agreed Locations <b>for construction activities</b> and authority to undertake such activities on, and <b>make alterations and improvements</b> to, Agreed Locations. x x x.</p>
<p>Article III: DESCRIPTION OF RIGHTS</p> <p>2. Such rights, power and authority shall include, <i>inter alia</i>, the right, power and authority :</p> <p align="center">x x x x</p> <p>(c) to <b>control (including the right to prohibit)</b> in so far as may be required for the efficient operation and safety of the bases, and within the limits of military necessity, anchorages,</p>	<p>Article III: AGREED LOCATIONS</p> <p>5. The Philippine Designated Authority and its authorized representative shall have access to the entire area of the Agreed Locations. Such access shall be provided promptly <b>consistent with operational safety and security requirements in accordance with agreed procedures developed by the Parties.</b></p> <p>Article IV: EQUIPMENT, SUPPLIES, AND MATERIEL</p>

<p>moorings, landings, takeoffs, movements and operation of ships and waterborne craft, aircraft and other vehicles on water, in the air or on land comprising or in the vicinity of the bases;</p>	<p>4. United States forces and United States contractors shall have <b>unimpeded access</b> to Agreed Locations for all matters relating to the <b>prepositioning and storage of defense equipment, supplies, and materiel, including delivery, management, inspection, use, maintenance, and removal</b> of such equipment, supplies and materiel.</p>
<p>Article III: DESCRIPTION OF RIGHTS</p> <p>2. Such rights, power and authority shall include, <i>inter alia</i>, the right, power and authority:</p> <p>x x x x</p> <p>(e) to construct, <b>install, maintain, and employ</b> on any base any type of <b>facilities, weapons, substance, device, vessel or vehicle</b> on or under the ground, in the air or on or under the water that may be requisite or appropriate, including meteorological systems, aerial and water navigation lights, radio and radar apparatus and electronic devices, of any desired power, type of emission and frequency.</p>	<p>Article III: AGREED LOCATIONS</p> <p>1. With consideration of the views of the Parties, the Philippines hereby authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircraft operated by and for United States forces <b>may conduct the following activities with respect to Agreed Locations:</b> training; transit; support and related activities; <b>refueling of aircraft; bunkering of vessels;</b> temporary maintenance of vehicles, vessels, and aircraft; temporary accommodation of personnel; communications; <b>prepositioning of equipment, supplies, and materiel; <u>deploying forces and materiel</u>;</b> and such other activities as the Parties may agree.</p> <p>Article IV: EQUIPMENT, SUPPLIES, AND MATERIEL</p> <p>1. The Philippines hereby authorizes the United States forces, x x x to <b>preposition and store defense equipment, supplies, and materiel (“prepositioned materiel”)</b> x x x.</p> <p>x x x x</p> <p>3. <b>The prepositioned materiel of the United States forces shall be for the exclusive use of the United States forces,</b> and full title to all such equipment, supplies, and materiel remains with the United States. United States forces shall have <b>control over</b> the access to and disposition of <b>such prepositioned materiel</b> and shall have the unencumbered right to remove such prepositioned materiel at any time from the territory of the Philippines. (Emphases supplied.)</p>

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The provisions of the EDCA indubitably show that it is **an international agreement that allows the presence in the Philippines of foreign military bases, troops, or facilities**, and thus require that the three requisites under Section 25, Article XVIII be complied with. The EDCA must be submitted to the Senate for concurrence; otherwise, the same is rendered ineffective.

In *BAYAN v. Zamora*,<sup>13</sup> the Court rejected the argument that Section 25, Article XVIII does not apply to mere transient agreements such as the VFA, holding that:

[I]t is specious to argue that Section 25, Article XVIII is inapplicable to mere transient agreements for the reason that there is no permanent placing of structure for the establishment of a military base. On this score, **the Constitution makes no distinction between “transient” and “permanent.” Certainly, we find nothing in Section 25, Article XVIII that requires *foreign troops or facilities to be stationed or placed permanently in the Philippines.*** (Emphasis supplied.)

The VFA, which allows only the **temporary visits** of the United States forces in the Philippines as it was extensively pointed out by the respondents in the above-cited *BAYAN* case, was considered by the Court to require Senate concurrence, notwithstanding its avowed purpose of implementing the MDT. With more reason, therefore, that the practically **permanent stay** of United States bases, troops and facilities in the Philippines for the duration of the EDCA requires the same Senate concurrence.

The Court discussed in *BAYAN* that:

Section 25, Article XVIII 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.

There is no dispute as to the presence of the first two requisites in the case of the VFA. The concurrence handed by the Senate through Resolution No. 18 is in accordance with the provisions of the Constitution, whether under the general requirement in Section 21, Article VII, or the specific mandate mentioned in Section 25, Article XVIII, the provision in the latter article requiring ratification by a majority of the votes cast in a national referendum being unnecessary since Congress has not required it.

As to the matter of voting, *Section 21, Article VII* particularly requires that a treaty or international agreement, to be valid and effective, must be *concurred in by at least two-thirds of all the members of the*

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Supra note 1 at 653.

*Senate.* On the other hand, *Section 25, Article XVIII* simply provides that the treaty be “*duly concurred in by the Senate.*”

Applying the foregoing constitutional provisions, a two-thirds vote of all the members of the Senate is clearly required so that the concurrence contemplated by law may be validly obtained and deemed present. While it is true that Section 25, Article XVIII requires, among other things, that the treaty — the VFA, in the instant case — be “duly concurred in by the Senate,” it is very true however that said provision must be related and viewed in light of the clear mandate embodied in Section 21, Article VII, which in more specific terms, requires that the concurrence of a treaty, or international agreement, be made by a two-thirds vote of all the members of the Senate. Indeed, Section 25, Article XVIII must not be treated in isolation to Section 21, Article, VII.

As noted, the “concurrence requirement” under Section 25, Article XVIII must be construed in relation to the provisions of Section 21, Article VII. In a more particular language, the concurrence of the Senate contemplated under Section 25, Article XVIII means that at least two-thirds of all the members of the Senate favorably vote to concur with the treaty — the VFA in the instant case.<sup>14</sup>

The *ponencia*, however, still insists that the EDCA is an executive agreement that merely implements the MDT and the VFA such that it was well within the bounds of the obligations imposed by the said treaties. Hence, the EDCA need not comply with the requirements under Section 25, Article XVIII.

I reiterate my disagreement to this position. The EDCA goes far beyond the terms of the MDT and the VFA.

The EDCA is an entirely new agreement as it creates new obligations on the part of the Philippines and confers unprecedented rights and concessions in favor of the United States.

With respect to the MDT, said treaty did not contain any provision regarding the presence in Philippine territory – whether permanent or temporary – of foreign military bases, troops, or facilities. There is nothing in the MDT that makes any reference or cites any connection to the basing agreement which was then already expressly covered by a prior treaty, the MBA.

Thus, the presence of foreign military bases, troops, or facilities provided under the EDCA cannot be traced to the MDT.

Moreover, Article IV of the MDT states that the individual parties to the treaty “recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that

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<sup>14</sup> Id. at 654-655.

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**it would act to meet the common dangers in accordance with its constitutional process.”<sup>15</sup>** Therefore, the MDT expressly recognizes the need for each party to comply with their respective constitutional processes in carrying out their obligations under the MDT.

If the MDT were to be implemented through the EDCA as the *ponencia* suggests, Philippines must adhere to the mandate of Section 25, Article XVIII.

In relation to the VFA, the EDCA transcends in scope and substance the provisions of the said treaty. The VFA is confined to the “visit” to the Republic of the Philippines “from time to time of elements of the United States armed forces” and for that purpose the parties to the VFA saw the “desirability of defining the treatment of United States personnel visiting the Republic of the Philippines.”<sup>16</sup>

In particular, the VFA defines the treatment of “United States personnel” temporarily in the Philippines in connection with the activities approved by the Philippine government<sup>17</sup> as follows:

- 1) The admission of United States personnel and their departure from Philippines in connection with activities covered by the agreement, and the grant of exemption to United States personnel from passport and visa regulations upon entering and departing from the Philippines;<sup>18</sup>
- 2) The validity of the driver’s license or permit issued by the United States, thus giving United States personnel the authority to operate military or official vehicles within the Philippines;<sup>19</sup>
- 3) The rights of the Philippines and the United States in matters of criminal jurisdiction over United States personnel who commit offenses within the Philippine territory and punishable under Philippine laws;<sup>20</sup>
- 4) The importation and exportation of equipment, materials, supplies and other property, by United States personnel free from Philippine duties, taxes and similar charges;<sup>21</sup>
- 5) The movement of United States aircrafts, vessels and vehicles within Philippine territory;<sup>22</sup> and
- 6) The duration and termination of the agreement.<sup>23</sup>

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<sup>15</sup> Mutual Defense Treaty, Article IV, first paragraph.

<sup>16</sup> Visiting Forces Agreement, Third and Fifth preambulatory clauses.

<sup>17</sup> Id., Article I.

<sup>18</sup> Id., Article III.

<sup>19</sup> Id., Article IV.

<sup>20</sup> Id., Article V.

<sup>21</sup> Id., Article VII.

<sup>22</sup> Id., Article VIII.

<sup>23</sup> Id., Article IX.

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In contrast, the EDCA specifically deals with the following matters, which go beyond the contemplation of temporary visits of United States personnel under the VFA:

- 1) The authority of the United States forces to access facilities and areas, termed as “Agreed Locations,” and the activities that may be allowed therein;<sup>24</sup>
- 2) The grant to the United States of operational control of Agreed Locations to do construction activities and make alterations or improvements thereon;<sup>25</sup>
- 3) The conditional access to the Agreed Locations of the Philippine Designated Authority and its authorized representative;<sup>26</sup>
- 4) The storage and prepositioning of defense equipment, supplies and materiel, as well as the unimpeded access granted to the United States contractors to the Agreed Locations in matters regarding the prepositioning, storage, delivery, management, inspection, use, maintenance and removal of the defense equipment, supplies, and materiel; and the prohibition that the preposition materiel shall not include nuclear weapons;<sup>27</sup>
- 5) a) The ownership of the Agreed Locations by the Philippines, b) the ownership of the equipment, materiel, supplies, relocatable structures and other moveable property imported or acquired by the United States, c) the ownership and use of the buildings, non-relocatable structures, and assemblies affixed to the land inside the Agreed Locations;<sup>28</sup>
- 6) The cooperation between the parties in taking measures to ensure protection, safety and security of United States forces, contractors and information in Philippine territory; the primary responsibility of the Philippines to secure the Agreed Locations, and the right of the United States to exercise all rights and authorities within the Agreed Locations that are necessary for their operational control or defense;<sup>29</sup>
- 7) The use of water, electricity and other public utilities;<sup>30</sup>
- 8) The use of the radio spectrum in connection with the operation of a telecommunications system by the United States;<sup>31</sup>
- 9) The authority granted to the of the United States to contract for any materiel, supplies, equipment, and services (including

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<sup>24</sup> Enhanced Defense Cooperation Agreement, Article II.

<sup>25</sup> Id., Article III(4).

<sup>26</sup> Id., Article III(5).

<sup>27</sup> Id., Article IV.

<sup>28</sup> Id., Article V.

<sup>29</sup> Id., Article VI.

<sup>30</sup> Id., Article VII(1).

<sup>31</sup> Id., Article VII(2).

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construction) to be furnished or undertaken inside Philippine territory;<sup>32</sup>

- 10) The protection of the environment and human health and safety, and the observance of Philippine laws on environment and health, and the prohibition against the intentional release of hazardous waste by the United States and the containment of thereof in case a spill occurs;<sup>33</sup>
- 11) The need to execute implementing arrangements to address details concerning the presence of United States forces at the Agreed Locations and the functional relations between the United States forces and the AFP with respect to the Agreed Locations;<sup>34</sup> and
- 12) The resolution of disputes arising from the EDCA through consultation between the parties.<sup>35</sup>

Clearly, the provisions of the EDCA cannot be justified as mere implementation of the VFA.

The EDCA permits the construction of permanent buildings and the improvement of existing ones in the Agreed Locations, which are to be used indefinitely during the agreed ten (10) year period, which is renewable automatically unless terminated by either party by giving one (1) year's written notice through diplomatic channels of its intention to terminate the agreement. This further evinces the permanence of the envisaged stay of United States forces and contractors. This is a far cry from the temporary visits of United States military forces contemplated in the VFA.

The EDCA allows United States forces and United States contractors to stay in the Agreed Locations to undertake military activities within the duration of the EDCA, as above mentioned.

The *ponencia*, however, interpreted the phrase "allowed in" in Section 25, Article XVIII as referring to "initial entry," explaining that the entry of the United States bases, troops and facilities under the EDCA is already allowed in view of the "initial entry" of United States troops under the VFA.

Said position glaringly ignores the fact that the entry of visiting **foreign military troops** must be in accordance with the limited purpose of the VFA and the character and terms by which the presence of such troops is allowed. The VFA is restricted to "temporary visits" of United States military and civilian personnel to our country. The EDCA cannot include purposes, which are alien or not germane to the purposes of the VFA. The VFA and the EDCA have distinct and separate purposes. The presence or establishment of **foreign military bases** or **foreign military facilities**, apart

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<sup>32</sup> Id., Article VIII.

<sup>33</sup> Id., Article IX.

<sup>34</sup> Id., Article X.

<sup>35</sup> Id., Article XI.

from the presence of **foreign military troops** in the country, is treated separately under Section 25, Article XVIII. In other words, the allowance of the temporary presence of United States military troops under the VFA cannot by any stretch of the imagination include permission to establish United States military *bases* or *facilities* or the indefinite maintenance of United States troops in the so-called **Agreed Locations** under the EDCA. The more onerous obligations of the Philippines and the far-reaching privileges accorded the United States under the EDCA cannot be justified as nor deemed to be mere implementing arrangements of the VFA.

The settled rule is that the plain, clear and unambiguous language of the Constitution should be construed as such and should not be given a construction that changes its meaning.<sup>36</sup> As held in *Chavez v. Judicial and Bar Council*<sup>37</sup>:

The language used in the Constitution must be taken to have been deliberately chosen for a definite purpose. Every word employed in the Constitution must be interpreted to exude its deliberate intent which must be maintained inviolate against disobedience and defiance. What the Constitution clearly says, according to its text, compels acceptance and bars modification even by the branch tasked to interpret it.

With due respect, the Honorable Chief Justice Maria Lourdes P. A. Sereno's theory of "initial entry" mentioned above ventured into a construction of the provisions of Section 25, Article XVIII of the Constitution which is patently contrary to the plain language and meaning of the said constitutional provision.

All told, the EDCA cannot be treated as a mere implementing agreement of the VFA and the MDT. As the EDCA is an entirely new international agreement that allows the presence of foreign military bases, troops and facilities in the Philippines, the three requisites under Section 25, Article XVIII of the Constitution must be strictly complied with. Unless the EDCA is submitted to the Senate for its concurrence, its implementation will run afoul of the clear constitutional mandate of Section 25, Article XVIII of the Constitution.

Accordingly, I vote to grant the motions for reconsideration.

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

<sup>36</sup> *Soriano III v. Lista*, 447 Phil. 566, 570 (2003).

<sup>37</sup> 709 Phil. 478, 487-488 (2013).