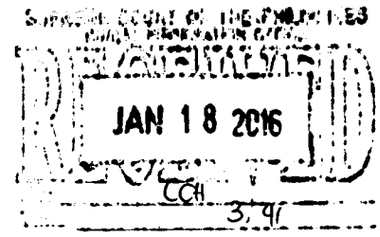
Republic of the Philippines
Supreme Court
Manila



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.	
x - x	
BAGONG ALYANSANG MAKABAYAN (BAYAN), REPRESENTED BY ITS SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES	**G.R. No. 212444**

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, 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.

x - x

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.

Present:

SERENO, *CJ,*
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA,* *JJ.*

Promulgated:

January 12, 2016

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DECISION

SERENO, *CJ:*

The petitions[1] before this Court question the constitutionality of the Enhanced Defense Cooperation Agreement (EDCA) between the Republic of the Philippines and the United States of America (U.S.). Petitioners allege that respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction when they entered into EDCA with the U.S.,[2] claiming

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* No part.

[1] 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.

[2] Petition of Saguisag *et al.*, p. 5, *rollo* (G.R. No. 212426, Vol. I), p. 7; Petition of Bayan *et al.*, p. 5, *rollo* (G.R. No. 212444, Vol. I), p. 7.

that the instrument violated multiple constitutional provisions.[3] In reply, respondents argue that petitioners lack standing to bring the suit. To support the legality of their actions, respondents invoke the 1987 Constitution, treaties, and judicial precedents.[4]

A proper analysis of the issues requires this Court to lay down at the outset the basic parameters of the constitutional powers and roles of the President and the Senate in respect of the above issues. A more detailed discussion of these powers and roles will be made in the latter portions.

I. BROAD CONSTITUTIONAL CONTEXT OF THE POWERS OF THE PRESIDENT: DEFENSE, FOREIGN RELATIONS, AND EDCA

A. The Prime Duty of the State and the Consolidation of Executive Power in the President

> *Mataimtim kong pinanunumpaan (o pinatotohanan) na tutuparin ko nang buong katapatan at sigasig ang aking mga tungkulin bilang Pangulo (o Pangalawang Pangulo o Nanunungkulang Pangulo) ng Pilipinas, pangangalagaan at ipagtatanggol ang kanyang Konstitusyon, ipatutupad ang mga batas nito, magiging makatarungan sa bawat tao, at itatalaga ang aking sarili sa paglilingkod sa Bansa. Kasihan nawa ako ng Diyos.*
>
> — *Panunumpa sa Katungkulan ng Pangulo ng Pilipinas ayon sa Saligang Batas*[5]

The 1987 Constitution has "vested the executive power in the President of the Republic of the Philippines."[6] While the vastness of the executive power that has been consolidated in the person of the President cannot be expressed fully in one provision, the Constitution has stated the prime duty of the government, of which the President is the head:

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[3] Principally the following provisions under the Constitution: Art. VII, Sec. 21; Art. XVIII, Sec. 25; Art. I; Art. II, Secs. 2, 7, & 8; Art. VI, Sec. 28(4); and Art. VIII, Sec. 1. *See* Petition of Saguisag *et al.*, pp. 23-59, *rollo* (G.R. No. 212426, Vol. I), pp. 25-61; Petition of Bayan *et al.*, *rollo*, pp. 23-93, (G.R. No. 212444, Vol. I), pp. 25-95.

[4] Memorandum of the OSG, pp. 8-38, *rollo* (G.R. No. 212426, Vol. I), pp. 438-468.

[5] *The Protocol, Ceremony, History, and Symbolism of the Presidential Inauguration*, THE PRESIDENTIAL MUSEUM AND LIBRARY, available at <http://malacanang.gov.ph/1608-the-protocol-ceremony-history-and-symbolism-of-the-presidential-inauguration> (last visited 5 Nov. 2015).

[6] CONSTITUTION, Art. VII, Sec. 1.

> The **prime duty of the Government** is **to serve and protect the people.** The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.[7] (Emphases supplied)

B. The duty to protect the territory and the citizens of the Philippines, the power to call upon the people to defend the State, and the President as Commander-in-Chief

The duty to protect the State and its people must be carried out earnestly and effectively throughout the whole territory of the Philippines in accordance with the constitutional provision on national territory. Hence, the President of the Philippines, as the sole repository of executive power, is the guardian of the Philippine archipelago, including all the islands and waters embraced therein and all other territories over which it has sovereignty or jurisdiction. These territories consist of its terrestrial, fluvial, and aerial domains; including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas; and the waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions.[8]

To carry out this important duty, the President is equipped with authority over the Armed Forces of the Philippines (AFP),[9] which is the protector of the people and the state. The AFP's role is to secure the sovereignty of the State and the integrity of the national territory.[10] In addition, the Executive is constitutionally empowered to maintain peace and order; protect life, liberty, and property; and promote the general welfare.[11] In recognition of these powers, Congress has specified that the President must oversee, ensure, and reinforce our defensive capabilities against external and internal threats[12] and, in the same vein, ensure that the country is adequately prepared for all national and local emergencies arising from natural and man-made disasters.[13]

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[7] CONSTITUTION, Art. II, Sec. 4.
[8] CONSTITUTION, Art. I.
[9] CONSTITUTION, Art. II, Sec. 3.
[10] Id.
[11] CONSTITUTION, Art. II, Sec. 5.
[12] *See* CONSTITUTION, Art. VII, Sec. 18 in relation to Art. II, Secs. 3, 4 & 7; Executive Order No. 292 (Administrative Code of 1987), Book IV (Executive Branch), Title VIII (National Defense), Secs. 1, 15, 26 & 33 [hereinafter Administrative Code of 1987].
[13] Administrative Code of 1987, Book IV (Executive Branch), Title XII (Local Government), Sec. 3(5).

To be sure, this power is limited by the Constitution itself. To illustrate, the President may call out the AFP to prevent or suppress instances of lawless violence, invasion or rebellion,[14] but not suspend the privilege of the writ of habeas corpus for a period exceeding 60 days, or place the Philippines or any part thereof under martial law exceeding that same span. In the exercise of these powers, the President is also duty-bound to submit a report to Congress, in person or in writing, within 48 hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus; and Congress may in turn revoke the proclamation or suspension. The same provision provides for the Supreme Court's review of the factual basis for the proclamation or suspension, as well as the promulgation of the decision within 30 days from filing.

C. The power and duty to conduct foreign relations

The President also carries the mandate of being the sole organ in the conduct of foreign relations.[15] Since every state has the capacity to interact with and engage in relations with other sovereign states,[16] it is but logical that every state must vest in an agent the authority to represent its interests to those other sovereign states.

> The conduct of foreign relations is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. It can only be entrusted to that department of government which can act on the basis of the best available information and can decide with decisiveness. x x x It is also the President who possesses the most comprehensive and the most confidential information about foreign countries for our diplomatic and consular officials regularly brief him on meaningful events all over the world. He has also unlimited access to ultra-sensitive military intelligence data. In fine, the presidential role in foreign affairs is dominant and the President is traditionally accorded a wider degree of discretion in the conduct of foreign affairs. The regularity, nay, validity of his actions are adjudged under less stringent standards, lest their judicial repudiation lead to breach of an international obligation, rupture of state relations, forfeiture of confidence,

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[14] CONSTITUTION, Art. VII, Sec. 18.

[15] *See* CONSTITUTION, Art. VII, Sec. 1 *in relation to* Administrative Code of 1987, Book IV (Executive Branch), Title I (Foreign Affairs), Secs. 3(1) and 20; *Akbayan Citizens Action Party v. Aquino*, 580 Phil. 422 (2008); *Pimentel v. Office of the Executive Secretary*, 501 Phil. 303 (2005); *People's Movement for Press Freedom v. Manglapus*, G.R. No. 84642, 13 September 1988 (unreported) (citing *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 [1936]); JOAQUIN BERNAS, FOREIGN RELATIONS IN CONSTITUTIONAL LAW, 101 (1995); IRENE R. CORTÉS, THE PHILIPPINE PRESIDENCY: A STUDY OF EXECUTIVE POWER 187 (1966); VICENTE G. SINCO, PHILIPPINE POLITICAL LAW: PRINCIPLES AND CONCEPTS 297 (10th ed., 1954).

[16] *See* 1933 Montevideo Convention on the Rights and Duties of States, Art. 1, 165 LNTS 19; JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 61 (2nd ed. 2007).

> national embarrassment and a plethora of other problems with equally undesirable consequences.[17]

The role of the President in foreign affairs is qualified by the Constitution in that the Chief Executive must give paramount importance to the sovereignty of the nation, the integrity of its territory, its interest, and the right of the sovereign Filipino people to self-determination.[18] In specific provisions, the President's power is also limited, or at least shared, as in Section 2 of Article II on the conduct of war; Sections 20 and 21 of Article VII on foreign loans, treaties, and international agreements; Sections 4(2) and 5(2)(a) of Article VIII on the judicial review of executive acts; Sections 4 and 25 of Article XVIII on treaties and international agreements entered into prior to the Constitution and on the presence of foreign military troops, bases, or facilities.

D. The relationship between the two major presidential functions and the role of the Senate

Clearly, the power to defend the State and to act as its representative in the international sphere inheres in the person of the President. This power, however, does not crystallize into absolute discretion to craft whatever instrument the Chief Executive so desires. As previously mentioned, the Senate has a role in ensuring that treaties or international agreements the President enters into, as contemplated in Section 21 of Article VII of the Constitution, obtain the approval of two-thirds of its members.

Previously, treaties under the 1973 Constitution required ratification by a majority of the *Batasang Pambansa*,[19] except in instances wherein the President "may enter into international treaties or agreements as the national welfare and interest may require."[20] This left a large margin of discretion that the President could use to bypass the Legislature altogether. This was a departure from the 1935 Constitution, which explicitly gave the President the power to enter into treaties only with the concurrence of two-thirds of all the Members of the Senate.[21] The 1987 Constitution returned the Senate's power[22] and, with it, the legislative's traditional role in foreign affairs.[23]

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[17] *Vinuya v. Executive Secretary*, 633 Phil. 538, 570 (2010) (quoting the Dissenting Opinion of then Assoc. Justice Reynato S. Puno in *Secretary of Justice v. Lantion*, 379 Phil. 165, 233-234 [2004]).
[18] CONSTITUTION, Art. II, Sec. 7.
[19] CONSTITUTION (1973, as amended), Art. VIII, Sec. 14(1).
[20] CONSTITUTION (1973, as amended), Art. VIII, Sec. 16.
[21] CONSTITUTION (1935), Art. VII, Sec. 10(7).
[22] CONSTITUTION, Art. VII, Sec. 21.
[23] Quoth the Court: "For the role of the Senate in relation to treaties is essentially legislative in character; the Senate, as an independent body possessed of its own erudite mind, has the prerogative to either accept or reject the proposed agreement, and whatever action it takes in the exercise of its wide latitude of discretion, pertains to the wisdom rather than the legality of the act. In this sense, the Senate partakes a

The responsibility of the President when it comes to treaties and international agreements under the present Constitution is therefore shared with the Senate. This shared role, petitioners claim, is bypassed by EDCA.

II. HISTORICAL ANTECEDENTS OF EDCA

A. U.S. takeover of Spanish colonization and its military bases, and the transition to Philippine independence

The presence of the U.S. military forces in the country can be traced to their pivotal victory in the 1898 Battle of Manila Bay during the Spanish-American War.[24] Spain relinquished its sovereignty over the Philippine Islands in favor of the U.S. upon its formal surrender a few months later.[25] By 1899, the Americans had consolidated a military administration in the archipelago.[26]

When it became clear that the American forces intended to impose colonial control over the Philippine Islands, General Emilio Aguinaldo immediately led the Filipinos into an all-out war against the U.S.[27] The Filipinos were ultimately defeated in the Philippine-American War, which lasted until 1902 and led to the downfall of the first Philippine Republic.[28] The Americans henceforth began to strengthen their foothold in the country.[29] They took over and expanded the former Spanish Naval Base in Subic Bay, Zambales, and put up a cavalry post called Fort Stotsenberg in Pampanga, now known as Clark Air Base.[30]

When talks of the eventual independence of the Philippine Islands gained ground, the U.S. manifested the desire to maintain military bases and armed forces in the country.[31] The U.S. Congress later enacted the Hare-Hawes-Cutting Act of 1933, which required that the proposed constitution of

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cont.
principal, yet delicate, role in keeping the principles of separation of powers and of checks and balances alive and vigilantly ensures that these cherished rudiments remain true to their form in a democratic government such as ours. The Constitution thus animates, through this treaty-concurring power of the Senate, a healthy system of checks and balances indispensable toward our nation's pursuit of political maturity and growth." *Bayan v. Zamora*, 396 Phil. 623 (2000).

[24] FOREIGN SERVICE INSTITUTE, AGREEMENTS ON UNITED STATES MILITARY FACILITIES IN PHILIPPINE MILITARY BASES 1947-1985 ix (Pacifico A. Castro revised ed. 1985).

[25] Treaty of Peace Between the United States of America and the Kingdom of Spain, 10 Dec. 1898, 30 US Stat. 1754, T.S. No. 343 (1898) (entered into force 11 Apr. 1899).

[26] FOREIGN SERVICE INSTITUTE, supra note 24 at ix.

[27] Id.

[28] Id.

[29] Id.

[30] Id.

[31] Id.; ROLAND G. SIMBULAN, THE BASES OF OUR INSECURITY: A STUDY OF THE US MILITARY BASES IN THE PHILIPPINES 13 (2nd ed. 1985).

an independent Philippines recognize the right of the U.S. to maintain the latter's armed forces and military bases.[32] The Philippine Legislature rejected that law, as it also gave the U.S. the power to unilaterally designate any part of Philippine territory as a permanent military or naval base of the U.S. within two years from complete independence.[33]

The U.S. Legislature subsequently crafted another law called the Tydings-McDuffie Act or the Philippine Independence Act of 1934. Compared to the old Hare-Hawes-Cutting Act, the new law provided for the surrender to the Commonwealth Government of "all military and other reservations" of the U.S. government in the Philippines, except "naval reservations and refueling stations."[34] Furthermore, the law authorized the U.S. President to enter into negotiations for the adjustment and settlement of all questions relating to naval reservations and fueling stations within two years after the Philippines would have gained independence.[35] Under the Tydings-McDuffie Act, the U.S. President would proclaim the American withdrawal and surrender of sovereignty over the islands 10 years after the inauguration of the new government in the Philippines.[36] This law eventually led to the promulgation of the 1935 Philippine Constitution.

The original plan to surrender the military bases changed.[37] At the height of the Second World War, the Philippine and the U.S. Legislatures each passed resolutions authorizing their respective Presidents to negotiate the matter of retaining military bases in the country after the planned

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[32] Hare-Hawes-Cutting Act, ch. 11, Sec. 2(l), 47 US Stat. 761 (1933) According to the law: "Sec. 2. The **constitution formulated and drafted** shall be republican in form, shall contain a bill of rights, and **shall**, either as a part thereof or in an ordinance appended thereto, **contain provisions to the effect** that, **pending the final and complete withdrawal of the sovereignty** of the United States over the Philippine Islands - (1) The Philippine Islands **recognizes the right of the United States** x x x **to maintain military and other reservations and armed forces in the Philippines** x x x."

[33] Hare-Hawes-Cutting Act, Secs. 5 & 10. According to the law: "Sec. 5. **All the property and rights** which may have been **acquired in the Philippine Islands by the United States** under the treaties mentioned in the first section of this Act, **except such land or other property as has heretofore been designated by the President of the United States for military and other reservations of the Government of the United States** x x x are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted. x x x x." "Sec. 10. On the 4th day of July, **immediately following the expiration of a period of ten years from the date of the inauguration of the new government** under the constitution provided for in this Act, **the President of the United States shall by proclamation withdraw and surrender** all right of possession, supervision, jurisdiction, control, or **sovereignty** then existing and exercised by the United States **in and over the territory and people** of the Philippine Islands, **including all military and other reservations** of the Government of the United States in the Philippines **(except such land or property reserved under section 5 as may be redesignated by the President of the United States** not later than two years after the date of such proclamation)." *See* FOREIGN SERVICE INSTITUTE, supra note 24, at ix; SIMBULAN, supra note 31.

[34] Philippine Independence Act, US Pub. L. No. 73-127, Secs. 5 & 10, 48 US Stat. 456 (1934) [hereinafter Philippine Independence Act]. According to the law: " SEC. 10. (a) On the 4th day of July **immediately following the expiration of a period of ten years from the date of the inauguration of the new government** under the constitution provided for in this Act the **President of the United States shall by proclamation withdraw and surrender** all right of possession, supervision, jurisdiction, control, or **sovereignty** then existing and exercised by the United States **in and over the territory and people** of the Philippine Islands, **including all military and other reservations** of the Government of the United States in the Philippines (**except such naval reservations and fueling stations as are reserved** under section 5) x x x." *See* FOREIGN SERVICE INSTITUTE, supra note 24.

[35] Philippine Independence Act, Secs. 5 & 10; FOREIGN SERVICE INSTITUTE, supra note 24.

[36] Philippine Independence Act, Sec. 10.

[37] FOREIGN SERVICE INSTITUTE, supra note 24, at x; SIMBULAN, supra note 31 at 13-14.

withdrawal of the U.S.[38] Subsequently, in 1946, the countries entered into the Treaty of General Relations, in which the U.S. relinquished all control and sovereignty over the Philippine Islands, *except* the areas that would be covered by the American military bases in the country.[39] This treaty eventually led to the creation of the post-colonial legal regime on which would hinge the continued presence of U.S. military forces until 1991: the Military Bases Agreement (MBA) of 1947, the Military Assistance Agreement of 1947, and the Mutual Defense Treaty (MDT) of 1951.[40]

B. Former legal regime on the presence of U.S. armed forces in the territory of an independent Philippines (1946-1991)

Soon after the Philippines was granted independence, the two countries entered into their first military arrangement pursuant to the Treaty of General Relations – the 1947 MBA.[41] The Senate concurred on the premise of "mutuality of security interest,"[42] which provided for the presence and operation of 23 U.S. military bases in the Philippines for 99 years or until the year 2046.[43] The treaty also obliged the Philippines to negotiate with the U.S. to allow the latter to expand the existing bases or to acquire new ones as military necessity might require.[44]

A number of significant amendments to the 1947 MBA were made.[45] With respect to its duration, the parties entered into the Ramos-Rusk Agreement of 1966, which reduced the term of the treaty from 99 years to a total of 44 years or until 1991.[46] Concerning the number of U.S. military bases in the country, the Bohlen-Serrano Memorandum of Agreement provided for the return to the Philippines of 17 U.S. military bases covering

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[38] *See* Agreement Between the Republic of the Philippines and the United States of America Concerning Military Bases, preamble, 14 Mar. 1947, 43 UNTS 271 (entered into force 26 Mar. 1947) [hereinafter 1947 Military Bases Agreement]; FOREIGN SERVICE INSTITUTE, supra note 24, at x.

[39] Treaty of General Relations between the Republic of the Philippines and the United States of America, Art. I, 4 Jul. 1946, 7 UNTS 3 (1946) (entered into force 22 Oct. 1946) [hereinafter 1946 Treaty of General Relations]. According to the treaty: "The **United States of America** agrees to withdraw and surrender, and does **hereby withdraw and surrender, all rights of** possession, supervision, jurisdiction, control or **sovereignty** existing and exercised by the United States of America in and over the **territory and the people** of the Philippine Islands, **except the use of such bases, necessary appurtenances to such bases,** and the rights incident thereto, **as the United States of America, by agreement with the Republic of the Philippines may deem necessary to retain for the mutual protection** of the Republic of the Philippines and of the United States of America. x x x." The Philippine Senate concurred in this treaty (S. Res. 11, 1st Cong. [1946]). *See also*: *Nicolas v. Romulo*, 598 Phil. 262 (2009).

[40] FOREIGN SERVICE INSTITUTE, supra note 24, at x-xi; *Bayan v. Zamora*, supra note 23.

[41] 1947 Military Bases Agreement.

[42] S. Res. 29, 1st Cong. (1946); Philippine instrument of ratification was signed by the President on 21 Jan. 1948 and the treaty entered into force on 26 Mar. 1947; *Nicolas v. Romulo*, supra note 39.

[43] FOREIGN SERVICE INSTITUTE, supra note 24, at xi; SIMBULAN, supra note 31, at 76-79.

[44] 1947 Military Bases Agreement, Art. 1(3); FOREIGN SERVICE INSTITUTE, supra note 24, at xii; SIMBULAN, supra note 31, at 78-79.

[45] FOREIGN SERVICE INSTITUTE, supra note 24, at xii-xv.

[46] Id., at xiii.

a total area of 117,075 hectares.[47] Twelve years later, the U.S. returned Sangley Point in Cavite City through an exchange of notes.[48] Then, through the Romulo-Murphy Exchange of Notes of 1979, the parties agreed to the recognition of Philippine sovereignty over Clark and Subic Bases and the reduction of the areas that could be used by the U.S. military.[49] The agreement also provided for the mandatory review of the treaty every five years.[50] In 1983, the parties revised the 1947 MBA through the Romualdez-Armacost Agreement.[51] The revision pertained to the operational use of the military bases by the U.S. government within the context of Philippine sovereignty,[52] including the need for prior consultation with the Philippine government on the former's use of the bases for military combat operations or the establishment of long-range missiles.[53]

Pursuant to the legislative authorization granted under Republic Act No. 9,[54] the President also entered into the 1947 Military Assistance Agreement[55] with the U.S. This executive agreement established the conditions under which U.S. military assistance would be granted to the Philippines,[56] particularly the provision of military arms, ammunitions, supplies, equipment, vessels, services, and training for the latter's defense forces.[57] An exchange of notes in 1953 made it clear that the agreement would remain in force until terminated by any of the parties.[58]

To further strengthen their defense and security relationship,[59] the Philippines and the U.S. next entered into the MDT in 1951. Concurred in

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[47] Id., at xii.
[48] Id., at xiii.
[49] Id.
[50] Id.
[51] Id., at xiii-xiv.
[52] Id.
[53] Id.
[54] Republic Act No. 9 – *Authority of President to Enter into Agreement with US under Republic of the Phil. Military Assistance Act* (1946). According to Section 1 thereof: "The **President** of the Philippines is **hereby authorized to enter into agreement or agreements** with the President of the United States, or with any of the agencies or instrumentalities of the Government of the United States, **regarding military assistance to the armed forces of the Republic** of the Philippines, in the form of **transfer of property and information, giving of technical advice and lending of personnel to instruct and train them**, pursuant to the provisions of United States Public Act Numbered Four hundred and fifty-four, commonly called the 'Republic of the Philippines Military Assistance Act,' **under the terms and conditions provided in this Act.**"
[55] Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America on Military Assistance to the Philippines, 45 UNTS 47 (entered into force 21 Mar. 1947) [hereinafter 1947 Military Assistance Agreement].
[56] FOREIGN SERVICE INSTITUTE, supra note 24, at xi; SIMBULAN, supra note 31, at 79-89.
[57] 1947 Military Assistance Agreement, Sec. 6.
[58] Exchange of Notes Constituting an Agreement Extending the Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America on Military Assistance to the Philippines, 26 Jun. 1953, 213 UNTS 77 (entered into force 5 Jul. 1953) *reproduced in* FOREIGN SERVICE INSTITUTE, supra note 24, at 197-203. *See* Mutual Logistics Support Agreement (21 Nov. 2007). *See generally*: *People v. Nazareno*, 612 Phil. 753 (2009) (on the continued effectivity of the agreement).
[59] *See* 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) [hereinafter 1951 MDT]. According to its preamble: "The Parties to this Treaty x x x Desiring 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 x x x hereby agreed as follows[.]" *See*: *Bayan v. Zamora*, supra note 23.

by both the Philippine[60] and the U.S.[61] Senates, the treaty has two main features: *first*, it allowed for mutual assistance in maintaining and developing their individual and collective capacities to resist an armed attack;[62] and *second*, it provided for their mutual self-defense in the event of an armed attack against the territory of either party.[63] 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.[64]

C. Current legal regime on the presence of U.S. armed forces in the country

In view of the impending expiration of the 1947 MBA in 1991, the Philippines and the U.S. negotiated for a possible renewal of their defense and security relationship.[65] Termed as the Treaty of Friendship, Cooperation and Security, the countries sought to recast their military ties by providing a new framework for their defense cooperation and the use of Philippine installations.[66] One of the proposed provisions included an arrangement in which U.S. forces would be granted the use of certain installations within the Philippine naval base in Subic.[67] On 16 September 1991, the Senate rejected the proposed treaty.[68]

The consequent expiration of the 1947 MBA and the resulting paucity of any formal agreement dealing with the treatment of U.S. personnel in the Philippines led to the suspension in 1995 of large-scale joint military exercises.[69] In the meantime, the respective governments of the two countries agreed[70] to hold joint exercises at a substantially reduced level.[71]

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[60] S. Res. 84, 2nd Cong. (1952); FOREIGN SERVICE INSTITUTE, supra note 24, at 193-194; The Philippine instrument of ratification was signed by the President on 27 August 1952 and it entered into force on the same date upon the exchange of ratification between the Parties (Philippines and U.S.), and was proclaimed by the President by virtue of Proc. No. 341, S. 1952.

[61] *Nicolas v. Romulo*, supra note 39 (citing U.S. Congressional Record, 82nd Congress, Second Session, Vol. 98 - Part 2, pp. 2594-2595).

[62] 1951 MDT, Art. II.

[63] 1951 MDT, Arts. IV-V.

[64] COLONEL PATERNO C. PADUA, REPUBLIC OF THE PHILIPPINES UNITED STATES DEFENSE COOPERATION: OPPORTUNITIES AND CHALLENGES, A FILIPINO PERSPECTIVE 6 (2010).

[65] *Bayan v. Zamora*, supra note 23; *People's Movement for Press Freedom v. Manglapus*, supra note 15.

[66] *See* Treaty of Friendship, Cooperation and Security Between the Government of the Republic of the Philippines and the Government of the United States of America, 27 Aug. 1991 (rejected by the Senate on 16 Sept. 1991).

[67] Id., Art. VII; Supplementary Agreement Two to the Treaty of Friendship, Cooperation and Security, Arts. I & II(9).

[68] *Bayan v. Zamora*, supra note 23.

[69] *Bayan v. Zamora*, supra note 23; 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); *Lim v. Executive Secretary*, 430 Phil. 555 (2002).

[70] Agreement regarding the status of U.S. military and civilian personnel, Exchange of notes between the DFA and the U.S. Embassy in Manila on Apr. 2, and June 11 and 21, 1993, Hein's No. KAV 3594 (entered into force 21 June 1993) [hereinafter Status of Forces Agreement of 1993]. The agreement was extended on 19 September 1994; on 28 April 1995 (*See* Hein's No. KAV 4245); and 8 December 1995 (*See* Hein's No. KAV 4493). *See also* R. CHUCK MASON, STATUS OF FORCES AGREEMENT (SOFA): WHAT IS IT, AND HOW HAS IT BEEN UTILIZED? 14 (2012).

The military arrangements between them were revived in 1999 when they concluded the first Visiting Forces Agreement (VFA).[72]

As a "reaffirm[ation] [of the] obligations under the MDT,"[73] the VFA has laid down the regulatory mechanism for the treatment of U.S. military and civilian personnel visiting the country.[74] It contains provisions on the entry and departure of U.S. personnel; the purpose, extent, and limitations of their activities; criminal and disciplinary jurisdiction; the waiver of certain claims; the importation and exportation of equipment, materials, supplies, and other pieces of property owned by the U.S. government; and the movement of U.S. military vehicles, vessels, and aircraft into and within the country.[75] The Philippines and the U.S. also entered into a second counterpart agreement (VFA II), which in turn regulated the treatment of Philippine military and civilian personnel visiting the U.S.[76] The Philippine Senate concurred in the first VFA on 27 May 1999.[77]

Beginning in January 2002, U.S. military and civilian personnel started arriving in Mindanao to take part in joint military exercises with their Filipino counterparts.[78] Called *Balikatan*, these exercises involved trainings aimed at simulating joint military maneuvers pursuant to the MDT.[79]

In the same year, the Philippines and the U.S. entered into the Mutual Logistics Support Agreement to "further the interoperability, readiness, and effectiveness of their respective military forces"[80] in accordance with the MDT, the Military Assistance Agreement of 1953, and the VFA.[81] The new

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cont.

[71] Joint Report of the Committee on Foreign Relations and the Committee on National Defense and Security *reproduced in* SENATE OF THE PHILIPPINES, supra note 69; *Lim v. Executive Secretary*, supra note 69; *Bayan v. Zamora*, supra note 23.

[72] 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 Feb. 1998, TIAS No. 12931 (entered into force 1 Jun. 1999) [hereinafter VFA I], *reproduced in* SENATE OF THE PHILIPPINES, supra, at 257-266 (1999); *Lim v. Executive Secretary*, supra note 69.

[73] VFA I, preamble. *See*: *Lim v. Executive Secretary*, supra note 69. In *Lim*, we explained that "It is the VFA which gives continued relevance to the MDT despite the passage of years. Its primary goal is to facilitate the promotion of optimal cooperation between American and Philippine military forces in the event of an attack by a common foe."

[74] *Bayan v. Zamora*, supra note 23, at 637.

[75] VFA I; *Lim v. Executive Secretary*, supra note 69.

[76] Agreement between the Government of the United States of America and the Government of the Republic of the Philippines Regarding the Treatment of Republic of the Philippines Personnel Visiting the United States of America, Phil.-U.S., 9 Oct. 1998, TIAS No. 12931 [hereinafter VFA II].

[77] Senate Resolution No. 18, 27 May 1999 *reproduced in* SENATE OF THE PHILIPPINES, supra note 63, at 185-190; *Bayan v. Zamora*, supra note 23.

[78] *Lim v. Executive Secretary*, supra note 69.

[79] Id.

[80] Mutual Logistics Support Agreement Between the Department of Defense of the United States of America and the Department of National Defense of the Republic of the Philippines, Preamble, 21 Nov. 2002 [hereinafter 2002 MLSA]. According to the preamble thereof, the parties "have resolved to conclude" the agreement in light of their "desir[e] to further the interoperability, readiness, and effectiveness of their respective military forces through increased logistic cooperation in accordance with the RP-US Mutual Defense Treaty, RP-US Visiting Forces Agreement or the RP-US Military Assistance Agreement." Consequently, Article II of the agreement provides that: "[it] shall be implemented, applied and interpreted by the Parties in accordance with the provisions of the Mutual Defense Treaty, the Visiting Forces Agreement or the Military Assistance Agreement and their respective constitutions, national laws and regulations."

[81] 2002 MLSA, Preamble.

agreement outlined the basic terms, conditions, and procedures for facilitating the reciprocal provision of logistics support, supplies, and services between the military forces of the two countries.[82] The phrase "logistics support and services" includes billeting, operations support, construction and use of temporary structures, and storage services during an approved activity under the existing military arrangements.[83] Already extended twice, the agreement will last until 2017.[84]

D. The Enhanced Defense Cooperation Agreement

EDCA authorizes the U.S. military forces to have access to and conduct activities within certain "Agreed Locations" in the country. It was not transmitted to the Senate on the executive's understanding that to do so was no longer necessary.[85] Accordingly, in June 2014, the Department of Foreign Affairs (DFA) and the U.S. Embassy exchanged diplomatic notes confirming the completion of *all* necessary internal requirements for the agreement to enter into force in the two countries.[86]

According to the Philippine government, the conclusion of EDCA was the result of intensive and comprehensive negotiations in the course of almost two years.[87] After eight rounds of negotiations, the Secretary of National Defense and the U.S. Ambassador to the Philippines signed the agreement on 28 April 2014.[88] President Benigno S. Aquino III ratified EDCA on 6 June 2014.[89] The OSG clarified during the oral arguments[90] that the Philippine and the U.S. governments had yet to agree formally on the specific sites of the Agreed Locations mentioned in the agreement.

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[82] 2002 MLSA, Art. I.
[83] 2002 MLSA, Art. IV(1)(a); PADUA, supra note 64, at 1-2.
[84] *See* Mutual Logistics Support Agreement Between the Department of Defense of the United States of America and the Department of National Defense of the Republic of the Philippines, Art. IX, 8 Nov. 2007 (applied provisionally on 8 Nov. 2007; entered into force 14 Jan. 2009) [hereinafter 2007 MLSA]; Extension of the Mutual Logistics Support Agreement (RP-US-01) Between the Department of Defense of the United States of America and the Department of National Defense of the Republic of the Philippines (entered into force 6 Nov. 2012).
[85] Memorandum of the OSG, pp. 8, 24 *rollo* (G.R. No. 212426, Vol. I), pp. 438, 454.
[86] *See* Note No. 1082 of the U.S. Embassy to the DFA dated 25 June 2014, Annex B of the Memorandum of the OSG, *rollo* (G.R. No. 212426, Vol. I), p. 477; Memorandum of the OSG, p. 8, *rollo* (G.R. No. 212426, Vol. I), p. 438.
[87] *Statement of Secretary Albert F. del Rosario On the signing of the PH-U.S. EDCA*, DEPARTMENT OF FOREIGN AFFAIRS (28 Apr. 2014) available at < https://www.dfa.gov.ph/index.php/newsroom/dfa-releases/2694-statement-of-secretary-albert-f-del-rosario-on-the-signing-of-the-philippines-us-enhanced-defense-cooperation-agreement> (last visited 5 Nov. 2015); *Frequently Asked Questions (FAQ) on the Enhanced Defense Cooperation Agreement*, DEPARTMENT OF FOREIGN AFFAIRS (28 Apr. 2014) available at <https://www.dfa.gov.ph/index.php/newsroom/dfa-releases/2693-frequently-asked-questions-faqs-on-the-enhanced-defense-cooperation-agreement> (last visited 5 Nov. 2015).
[88] EDCA; Memorandum of OSG, p. 3, *rollo* (G.R. No. 212426, Vol. I), p. 433
[89] Instrument of Ratification, Annex of A of the Memorandum of OSG, *rollo*, p. 476.
[90] Oral Arguments TSN, 25 November 2014, pp. 119-120.

Two petitions for *certiorari* were thereafter filed before us assailing the constitutionality of EDCA. They primarily argue that it should have been in the form of a treaty concurred in by the Senate, not an executive agreement.

On 10 November 2015, months after the oral arguments were concluded and the parties ordered to file their respective memoranda, the Senators adopted Senate Resolution No. (SR) 105.[91] The resolution expresses the "strong sense"[92] of the Senators that for EDCA to become valid and effective, it must first be transmitted to the Senate for deliberation and concurrence.

III. ISSUES

Petitioners mainly seek a declaration that the Executive Department committed grave abuse of discretion in entering into EDCA in the form of an executive agreement. For this reason, we cull the issues before us:

A. Whether the essential requisites for judicial review are present

B. Whether the President may enter into an executive agreement on foreign military bases, troops, or facilities

C. Whether the provisions under EDCA are consistent with the Constitution, as well as with existing laws and treaties

IV. DISCUSSION

A. Whether the essential requisites for judicial review have been satisfied

Petitioners are hailing this Court's power of judicial review in order to strike down EDCA for violating the Constitution. They stress that our fundamental law is explicit in prohibiting the presence of foreign military forces in the country, except under a treaty concurred in by the Senate. Before this Court may begin to analyze the constitutionality or validity of an

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[91] *Rollo* pp.865-867, G.R. No. 212444

[92] According to the Resolution: "Be it further resolved that this resolution expressing the strong sense of the Senate be formally submitted to the Supreme Court through the Chief Justice." *Rollo* (G.R. No. 212444), p. 867.

official act of a coequal branch of government, however, petitioners must show that they have satisfied all the essential requisites for judicial review.[93]

Distinguished from the general notion of judicial power, the power of judicial review specially refers to both the authority and the duty of this Court to determine whether a branch or an instrumentality of government has acted beyond the scope of the latter's constitutional powers.[94] As articulated in Section 1, Article VIII of the Constitution, the power of judicial review involves the power to resolve cases in which the questions concern the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation.[95] In *Angara v. Electoral Commission*, this Court exhaustively discussed this "moderating power" as part of the system of checks and balances under the Constitution. In our fundamental law, the role of the Court is to determine whether a branch of government has adhered to the specific restrictions and limitations of the latter's power:[96]

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. **Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere.** But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. **The Constitution has provided for an elaborate system of checks and balances** to secure coordination in the workings of the various departments of the government. x x x. **And the judiciary in turn**, with the Supreme Court as the final arbiter, **effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.**
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> x x x x
>
> As any human production, **our Constitution** is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument **which is the expression of their sovereignty** however limited, **has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the**

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[93] *Francisco v. House of Representatives*, 460 Phil. 830, 914 (2003).

[94] *See*: *Chavez v. Judicial and Bar Council*, G.R. No. 202242, 17 July 2012, 676 SCRA 579; *Tagolino v. House of Representatives Electoral Tribunal*, G.R. No. 202202, 19 March 2013, 693 SCRA 574; *Gutierrez v. House of Representatives Committee on Justice*, 658 Phil. 322 (2011); *Francisco v. House of Representatives*, supra; *Demetria v. Alba*, 232 Phil. 222 (1987).

[95] The Constitution provides: "SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. **Judicial power includes the duty of the courts** of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.**"

[96] *Angara v. Electoral Commission*, 63 Phil. 139, 156-158 (1936).

> **restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms.** Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. x x x. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of [the 1935] Constitution.
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> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. **And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.** This is in truth all that is involved in what is termed "judicial supremacy" **which properly is the power of judicial review under the Constitution.** x x x x. (Emphases supplied)

The power of judicial review has since been strengthened in the 1987 Constitution. The scope of that power has been extended to the determination of whether in matters traditionally considered to be within the sphere of appreciation of another branch of government, an exercise of discretion has been attended with grave abuse.[97] The expansion of this power has made the political question doctrine "no longer the insurmountable obstacle to the exercise of judicial power or the impenetrable shield that protects executive and legislative actions from judicial inquiry or review."[98]

This moderating power, however, must be exercised carefully and only if it cannot be completely avoided. We stress that our Constitution is so incisively designed that it identifies the spheres of expertise within which the different branches of government shall function and the questions of policy that they shall resolve.[99] Since the power of judicial review involves the delicate exercise of examining the validity or constitutionality of an act of a coequal branch of government, this Court must continually exercise restraint

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[97] *Gutierrez v. House of Representatives Committee on Justice*, supra note 94; *Francisco v. House of Representatives*, supra note 94; *Tañada v. Angara*, 338 Phil. 546 (1997); *Oposa v. Factoran*, G.R. No. 101083, 30 July 1993, 224 SCRA 792, 809-810 (citing *Llamas v. Orbos*, 279 Phil. 920 [1991]; *Bengzon v. Senate Blue Ribbon Committee*, G.R. No. 89914, 20 November 1991, 203 SCRA 767; *Gonzales v. Macaraig*, G.R. No. 87636, 19 November 1990, 191 SCRA 452; *Coseteng v. Mitra*, G.R. No. 86649, 12 July 1990, 187 SCRA 377; *Daza v. Singson*, 259 Phil. 980 [1989]; and I RECORD, CONSTITUTIONAL COMMISSION 434-436 [1986]).

[98] *Oposa v. Factoran*, supra, at 97.

[99] *Morfe v. Mutuc*, 130 Phil. 415, 442 (1968); *Angara v. Electoral Commission*, supra note 96, at 178.

to avoid the risk of supplanting the wisdom of the constitutionally appointed actor with that of its own.[100]

Even as we are left with no recourse but to bare our power to check an act of a coequal branch of government – in this case the executive – we must abide by the stringent requirements for the exercise of that power under the Constitution. *Demetria v. Alba*[101] and *Francisco v. House of Representatives*[102] cite the "pillars" of the limitations on the power of judicial review as enunciated in the concurring opinion of U.S. Supreme Court Justice Brandeis in *Ashwander v. Tennessee Valley Authority.*[103] *Francisco*[104] redressed these "pillars" under the following categories:

1. That there be **absolute necessity of deciding** a case
2. That rules of constitutional law shall be **formulated only as required by the facts** of the case
3. That judgment **may not be sustained on some other ground**
4. That there be **actual injury sustained by the party** by reason of the operation of the statute
5. That the **parties are not in *estoppel***
6. That the Court upholds the **presumption of constitutionality** (Emphases supplied)

These are the specific safeguards laid down by the Court when it exercises its power of judicial review.[105] Guided by these pillars, it may invoke the power only when the following four stringent requirements are satisfied: (a) there is an actual case or controversy; (b) petitioners possess *locus standi;* (c) the question of constitutionality is raised at the earliest opportunity; and (d) the issue of constitutionality is the *lis mota* of the case.[106] Of these four, the first two conditions will be the focus of our discussion.

1. Petitioners have shown the presence of an actual case or controversy.

The OSG maintains[107] that there is no actual case or controversy that exists, since the Senators have not been deprived of the opportunity to

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[100] *See*: *Francisco v. House of Representatives*, supra note 93; *United States v. Raines*, 362 U.S. 17 (1960); and *Angara v. Electoral Commission*, supra note 96.
[101] *Demetria v. Alba*, supra note 94, at 226.
[102] *Francisco v. House of Representatives*, supra note 93, at 922-923.
[103] *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-348 (1936).
[104] *Francisco v. House of Representatives*, supra note 93, at 923.
[105] Id., at 922.
[106] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 471 (2010); *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006); *Francisco v. House of Representatives*, supra note 93 at 892; *Angara v. Electoral Commission*, supra note 96, at 158.
[107] Memorandum of OSG, p. 6, *rollo*, p. 436.

invoke the privileges of the institution they are representing. It contends that the nonparticipation of the Senators in the present petitions only confirms that even they believe that EDCA is a binding executive agreement that does not require their concurrence.

It must be emphasized that the Senate has already expressed its position through SR 105.[108] Through the Resolution, the Senate has taken a position contrary to that of the OSG. As the body tasked to participate in foreign affairs by ratifying treaties, its belief that EDCA infringes upon its constitutional role indicates that an actual controversy – albeit brought to the Court by non-Senators, exists.

Moreover, we cannot consider the sheer abstention of the Senators from the present proceedings as basis for finding that there is no actual case or controversy before us. We point out that the focus of this requirement is the ripeness for adjudication of the matter at hand, as opposed to its being merely conjectural or anticipatory.[109] The case must involve a definite and concrete issue involving real parties with conflicting legal rights and legal claims admitting of specific relief through a decree conclusive in nature.[110] It should not equate with a mere request for an opinion or advice on what the law would be upon an abstract, hypothetical, or contingent state of facts.[111] As explained in *Angara v. Electoral Commission*:[112]

> [The] power of **judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties**, and limited further to the constitutional question raised or the very *lis mota* presented. **Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation.** More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because **the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.** (Emphases supplied)

We find that the matter before us involves an actual case or controversy that is already ripe for adjudication. The Executive Department has already sent an official confirmation to the U.S. Embassy that "all

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[108] *Rollo* (G.R. No. 212444), pp. 865-867.
[109] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 106, at 479.
[110] *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304-305 (2005) (citing *Aetna Life Insurance Co. v. Hayworth*, 300 U.S. 227 [1937]); *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 106, at 480; *David v. Macapagal-Arroyo*, supra note 106, at 753 (2006); *Francisco v. House of Representatives*, supra note 93, 879-880; *Angara v. Electoral Commission*, supra note 96, at 158.
[111] *Information Technology Foundation of the Philippines v. Commission on Elections*, supra (citing *Aetna Life Insurance Co. v. Hayworth*, 300 U.S. 227 [1937]); *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 106, at 480; *Lozano v. Nograles*, 607 Phil. 334, 340 [2009]).
[112] *Angara v. Electoral Commission*, supra note 96, at 158-159.

internal requirements of the Philippines x x x have already been complied with."[113] By this exchange of diplomatic notes, the Executive Department effectively performed the last act required under Article XII(1) of EDCA before the agreement entered into force. Section 25, Article XVIII of the Constitution, is clear that the presence of foreign military forces in the country shall only be allowed by virtue of a treaty concurred in by the Senate. Hence, the performance of an official act by the Executive Department that led to the entry into force of an executive agreement was sufficient to satisfy the actual case or controversy requirement.

2. While petitioners Saguisag *et. al.*, do not have legal standing, they nonetheless raise issues involving matters of transcendental importance.

The question of *locus standi* or legal standing focuses on the determination of whether those assailing the governmental act have the right of appearance to bring the matter to the court for adjudication.[114] They must show that they have a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, some direct injury as a consequence of the enforcement of the challenged governmental act.[115] Here, "interest" in the question involved must be material – an interest that is in issue and will be affected by the official act – as distinguished from being merely incidental or general.[116] Clearly, it would be insufficient to show that the law or any governmental act is invalid, and that petitioners stand to suffer in some indefinite way.[117] They must show that they have a particular interest in bringing the suit, and that they have been or are about to be denied some right or privilege to which they are lawfully entitled, or that they are about to be subjected to some burden or penalty by reason of the act complained of.[118] The reason why those who challenge the validity of a law or an international agreement are required to allege the existence of a personal stake in the outcome of the controversy is "to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[119]

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[113] Memorandum of OSG, supra note 80. *See also* Note No. 1082, supra note 86.

[114] *Almario v. Executive Secretary*, G.R. No. 189028, 16 July 2013, 701 SCRA 269, 302; *Bayan Muna v. Romulo*, 656 Phil. 246 (2011).

[115] *Funa v. CSC Chairman*, G.R. No. 191672, 25 November 2014; *Almario v. Executive Secretary*, supra note 114, at 302; *Bayan Muna v. Romulo*, supra note 114, at 265; *Bayan v. Zamora*, supra note 23; *Francisco v. House of Representatives*, supra note 93, 895-896.

[116] *Bayan Muna v. Romulo*, supra note 114 at 265; *Pimentel v. Office of the Executive Secretary*, supra note 15; *Joya v. Presidential Commission on Good Government*, G.R. No. 96541, 24 August 1993, 225 SCRA 568.

[117] *Funa v. CSC Chairman*, supra note 115 *Almario v. Executive Secretary*, supra note 114 at 302; *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 106, at 472; *Francisco v. House of Representatives*, supra note 93 at 895-896.

[118] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 106.

[119] *Bayan Muna v. Romulo*, supra note 114, at 265; *Francisco v. House of Representatives*, supra note 93, at 893.

The present petitions cannot qualify as citizens', taxpayers', or legislators' suits; the Senate as a body has the requisite standing, but considering that it has not formally filed a pleading to join the suit, as it merely conveyed to the Supreme Court its sense that EDCA needs the Senate's concurrence to be valid, petitioners continue to suffer from lack of standing.

In assailing the constitutionality of a governmental act, petitioners suing as citizens may dodge the requirement of having to establish a direct and personal interest if they show that the act affects a public right.[120] In arguing that they have legal standing, they claim[121] that the case they have filed is a concerned citizen's suit. But aside from general statements that the petitions involve the protection of a public right, and that their constitutional rights as citizens would be violated, they fail to make any specific assertion of a particular public right that would be violated by the enforcement of EDCA. **For their failure to do so, the present petitions cannot be considered by the Court as citizens' suits that would justify a disregard of the aforementioned requirements.**

In claiming that they have legal standing as taxpayers, petitioners[122] aver that the implementation of EDCA would result in the unlawful use of public funds. They emphasize that Article X(1) refers to an appropriation of funds; and that the agreement entails a waiver of the payment of taxes, fees, and rentals. During the oral arguments, however, they admitted that the government had not yet appropriated or actually disbursed public funds for the purpose of implementing the agreement.[123] The OSG, on the other hand, maintains that petitioners cannot sue as taxpayers.[124] Respondent explains that EDCA is neither meant to be a tax measure, nor is it directed at the disbursement of public funds.

A taxpayer's suit concerns a case in which the official act complained of directly involves the illegal disbursement of public funds derived from taxation.[125] Here, those challenging the act must specifically show that they

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[120] *Bayan Muna v. Romulo*, supra note 114, at 266-267; *Akbayan Citizens Action Party v. Aquino*, supra note 15; *Francisco v. House of Representatives*, supra note 93; *Tañada v. Tuvera*, 220 Phil. 422 (1985).
[121] Petition of Saguisag *et al.*, p. 20, *rollo* (G.R. No. 212426, Vol. I), p. 22; Memorandum of Saguisag *et al.*, p. 15, *rollo* (G.R. No. 212426, Vol. II), p. 985; Petition of Bayan *et al.*, p. 9, *rollo* (G.R. No. 212444, Vol. I), p. 11; Memorandum of Bayan *et al.*, pp. 19, 23, *rollo* (G.R. No. 212444, Vol. I), pp. 583, 587.
[122] Petition of Saguisag *et al.*, p. 10, *rollo* (G.R. No. 212426, Vol. I), p. 12; Petition of Bayan *et al.*, pp. 9-10, *rollo* (G.R. No. 212444, Vol. I), pp. 11-12; Memorandum of Bayan *et al.*, pp. 19, 23, *rollo* (G.R. No. 212444, Vol. I), pp. 583, 587.
[123] Oral Arguments TSN, 18 November 2014, pp. 19-20.
[124] Consolidated Comment of the OSG, p. 4, *rollo* (G.R. No. 212426, Vol. I), p. 241; Memorandum of OSG, p. 7, *rollo* (G.R. No. 212426, Vol. I), p. 437.
[125] *Bayan v. Zamora*, supra note 23.

have sufficient interest in preventing the illegal expenditure of public money, and that they will sustain a direct injury as a result of the enforcement of the assailed act.[126] Applying that principle to this case, they must establish that EDCA involves the exercise *by Congress* of its taxing or spending powers.[127]

We agree with the OSG that the petitions cannot qualify as taxpayers' suits. We emphasize that a taxpayers' suit contemplates a situation in which there is already an appropriation or a disbursement of public funds.[128] A reading of Article X(1) of EDCA would show that there has been neither an appropriation nor an authorization of disbursement of funds. The cited provision reads:

> All obligations under this Agreement are **subject to the availability of appropriated funds** authorized for these purposes. (Emphases supplied)

This provision means that if the implementation of EDCA would require the disbursement of public funds, the money must come from *appropriated* funds that are specifically *authorized* for this purpose. Under the agreement, before there can even be a disbursement of public funds, there must first be a legislative action. **Until and unless the Legislature appropriates funds for EDCA, or unless petitioners can pinpoint a specific item in the current budget that allows expenditure under the agreement, we cannot at this time rule that there is in fact an appropriation or a disbursement of funds that would justify the filing of a taxpayers' suit.**

Petitioners Bayan *et al.* also claim[129] that their co-petitioners who are party-list representatives have the standing to challenge the act of the Executive Department, especially if it impairs the constitutional prerogatives, powers, and privileges of their office. While they admit that there is no incumbent Senator who has taken part in the present petition, they nonetheless assert that they also stand to sustain a derivative but substantial injury as legislators. They argue that under the Constitution, legislative power is vested in both the Senate and the House of Representatives; consequently, it is the entire Legislative Department that has a voice in determining whether or not the presence of foreign military should be allowed. They maintain that as members of the Legislature, they

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[126] *Bayan v. Zamora*, supra note 23 (citing *Pascual v. Secretary of Public Works*, 110 Phil. 331 [1960]; *Maceda v. Macaraig*, G.R. No. 88291, 31 May 1991, 197 SCRA 771; *Lozada v. Commission on Elections*, 205 Phil. 283 [1983]; *Dumlao v. Commission on Elections*, 184 Phil. 369 [1980]; *Gonzales v. Marcos* , 160 Phil. 637 [1975]).

[127] *See*: *Bayan v. Zamora*, supra note 23 (citing *Bugnay Const. & Development Corp. v. Laron*, 257 Phil. 245 [1989]).

[128] *Lozano v. Nograles*, supra note 111, at 342-343.

[129] Petition of Bayan *et al.*, p. 10, *rollo* (G.R. No. 212444, Vol. I), p. 12; Memorandum of Bayan *et al.*, pp. 19-20, *rollo* (G.R. No. 212444, Vol. I), pp. 583-584.

have the requisite personality to bring a suit, especially when a constitutional issue is raised.

The OSG counters[130] that petitioners do not have any legal standing to file the suits concerning the lack of Senate concurrence in EDCA. Respondent emphasizes that the power to concur in treaties and international agreements is an "institutional prerogative" granted by the Constitution to the Senate. Accordingly, the OSG argues that in case of an allegation of impairment of that power, the injured party would be the Senate as an institution or any of its incumbent members, as it is the Senate's constitutional function that is allegedly being violated.

The legal standing of an institution of the Legislature or of any of its Members has already been recognized by this Court in a number of cases.[131] What is in question here is the alleged impairment of the constitutional duties and powers granted to, or the impermissible intrusion upon the domain of, the Legislature or an institution thereof.[132] In the case of suits initiated by the legislators themselves, this Court has recognized their standing to question the validity of any official action that they claim infringes the prerogatives, powers, and privileges vested by the Constitution in their office.[133] As aptly explained by Justice Perfecto in *Mabanag v. Lopez Vito*:[134]

> Being members of Congress, **they are even duty bound to see that the latter act within the bounds of the Constitution** which, **as representatives of the people**, they should uphold, unless they are to commit a flagrant betrayal of public trust. They are representatives of the sovereign people and **it is their sacred duty to see to it that the fundamental law embodying the will of the sovereign people is not trampled upon**. (Emphases supplied)

We emphasize that in a legislators' suit, those Members of Congress who are challenging the official act have standing only to the extent that the alleged violation impinges on their right to participate in the exercise of the powers of the institution of which they are members.[135] Legislators have the standing "to maintain inviolate the prerogatives, powers, and privileges vested by the Constitution in *their office* and are allowed to sue to question the validity of any official action, which they claim infringes their

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[130] Consolidated Comment of the OSG, pp. 3-4, *rollo* (G.R. No. 212444, Vol. I), pp. 240-241; Memorandum of the OSG, pp. 4-7, *rollo* (G.R. No. 212444, Vol. I), pp. 434-437.

[131] *Pimentel v. Office of the Executive Secretary*, supra note 15; *Bayan v. Zamora*, supra note 23; *Philippine Constitution Association. v. Enriquez*, G.R. No. 113105, 113174, 113766, 113888, 19 August 1994, 235 SCRA 506; *Gonzales v. Macaraig*, supra note 97; *Mabanag v. Lopez Vito*, 78 Phil. 1 (1947).

[132] *Philippine Constitution Association. v. Enriquez*, supra.

[133] *Pimentel v. Office of the Executive Secretary*, supra note 15; *Philippine Constitution Association. v. Enriquez*, supra.

[134] *Mabanag v. Lopez Vito* [Dis. Op., J. Perfecto], supra note 131, at 35.

[135] *Pimentel v. Office of the Executive Secretary*, supra note 15; *Bayan v. Zamora*, supra note 23; *Philippine Constitution Association. v. Enriquez*, supra note 131.

prerogatives as legislators."[136] As legislators, they must clearly show that there was a direct injury to their persons or the institution to which they belong.[137]

As correctly argued by respondent, the power to concur in a treaty or an international agreement is an institutional prerogative granted by the Constitution to the Senate, not to the entire Legislature. In *Pimentel v. Office of the Executive Secretary*, this Court did not recognize the standing of one of the petitioners therein who was a member of the House of Representatives. The petition in that case sought to compel the transmission to the Senate for concurrence of the signed text of the Statute of the International Criminal Court. Since that petition invoked the power of the Senate to grant or withhold its concurrence in a treaty entered into by the Executive Department, only then incumbent Senator Pimentel was allowed to assert that authority of the Senate of which he was a member.

Therefore, **none of the initial petitioners in the present controversy has the standing to maintain the suits as legislators.**

Nevertheless, this Court finds that there is basis for it to review the act of the Executive for the following reasons.

In any case, petitioners raise issues involving matters of transcendental importance.

Petitioners[138] argue that the Court may set aside procedural technicalities, as the present petition tackles issues that are of transcendental importance. They point out that the matter before us is about the proper exercise of the Executive Department's power to enter into international agreements in relation to that of the Senate to concur in those agreements. They also assert that EDCA would cause grave injustice, as well as irreparable violation of the Constitution and of the Filipino people's rights.

The OSG, on the other hand, insists[139] that petitioners cannot raise the mere fact that the present petitions involve matters of transcendental importance in order to cure their inability to comply with the constitutional requirement of standing. Respondent bewails the overuse of "transcendental importance" as an exception to the traditional requirements of constitutional litigation. It stresses that one of the purposes of these requirements is to

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[136] *Pimentel v. Office of the Executive Secretary*, supra note 15.
[137] *Bayan v. Zamora*, supra note 23.
[138] Petition of Saguisag *et al.*, pp. 21-22, *rollo* (G.R. No. 212426, Vol. I), pp. 23-24; Memorandum of Saguisag *et al.*, pp. 15-17, *rollo* (G.R. No. 212426, Vol. II), pp. 985-987; Petition of Bayan *et al.*, pp. 6, *rollo* (G.R. No. 212444, Vol. I), pp. 8; Memorandum of Bayan *et al.*, pp. 19, 23, *rollo* (G.R. No. 212444, Vol. I), pp. 583, 587.
[139] Consolidated Comment of the OSG, pp. 4-5, *rollo* (G.R. No. 212444, Vol. I), pp. 241-242; Memorandum of the OSG, pp. 7-8, *rollo* (G.R. No. 212444, Vol. I), pp. 437-438.

protect the Supreme Court from unnecessary litigation of constitutional questions.

In a number of cases,[140] this Court has indeed taken a liberal stance towards the requirement of legal standing, especially when paramount interest is involved. Indeed, when those who challenge the official act are able to craft an issue of transcendental significance to the people, the Court may exercise its sound discretion and take cognizance of the suit. It may do so in spite of the inability of the petitioners to show that they have been personally injured by the operation of a law or any other government act.

While this Court has yet to thoroughly delineate the outer limits of this doctrine, we emphasize that not every other case, however strong public interest may be, can qualify as an issue of transcendental importance. Before it can be impelled to brush aside the essential requisites for exercising its power of judicial review, it must at the very least consider a number of factors: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party that has a more direct and specific interest in raising the present questions.[141]

An exhaustive evaluation of the memoranda of the parties, together with the oral arguments, shows that petitioners have presented serious constitutional issues that provide ample justification for the Court to set aside the rule on standing. The transcendental importance of the issues presented here is rooted in the Constitution itself. Section 25, Article XVIII thereof, cannot be any clearer: there is a much stricter mechanism required before foreign military troops, facilities, or bases may be allowed in the country. The DFA has already confirmed to the U.S. Embassy that "all internal requirements of the Philippines x x x have already been complied with."[142] It behooves the Court in this instance to take a liberal stance towards the rule on standing and to determine forthwith whether there was grave abuse of discretion on the part of the Executive Department.

We therefore rule that this case is a proper subject for judicial review.

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[140] *Bayan Muna v. Romulo*, supra note 114, at 265 (citing *Constantino v. Cuisia*, 509 Phil. 486 [2005]; *Agan v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744 [2003]; *Del Mar v. Philippine Amusement and Gaming Corporation*, 400 Phil. 307 [2000]; *Tatad v. Garcia*, 313 Phil. 296 [1995]; *Kilosbayan v. Guingona*, G.R. No. 113375, 5 May 1994, 232 SCRA 110); *Integrated Bar of the Phil. v. Zamora*, 392 Phil. 618 (2000).

[141] *Kilosbayan, Inc. v. Guingona* [Con. Op., J. Feliciano], supra, at 155-156 (1995) (cited in *Magallona v. Ermita*, 671 Phil. 243 (2011); *Paguia v. Office of the President*, 635 Phil. 568 [2010]; *Francisco v. House of Representatives*, supra note 93, at 899).

[142] Memorandum of OSG, supra note 80. *See also* Note No. 1082, supra note 86.

B. Whether the President may enter into an executive agreement on foreign military bases, troops, or facilities

C. Whether the provisions under EDCA are consistent with the Constitution, as well as with existing laws and treaties

Issues ***B*** and ***C*** shall be discussed together *infra*.

1. The role of the President as the executor of the law includes the duty to defend the State, for which purpose he may use that power in the conduct of foreign relations

Historically, the Philippines has mirrored the division of powers in the U.S. government. When the Philippine government was still an agency of the Congress of the U.S., it was as an agent entrusted with powers categorized as executive, legislative, and judicial, and divided among these three great branches.[143] By this division, the law implied that the divided powers cannot be exercised except by the department given the power.[144]

This divide continued throughout the different versions of the Philippine Constitution and specifically vested the supreme executive power in the Governor-General of the Philippines,[145] a position inherited by the President of the Philippines when the country attained independence. One of the principal functions of the supreme executive is the responsibility for the faithful execution of the laws as embodied by the oath of office.[146] The oath of the President prescribed by the 1987 Constitution reads thus:

> I do solemnly swear (or affirm) that **I will faithfully and conscientiously fulfill my duties as President** (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, **execute its laws**, do justice to every man, and consecrate myself to the service of the Nation. So help me God. (In case of affirmation, last sentence will be omitted.)[147] (Emphases supplied)

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[143] *Government of the Philippine Islands v. Springer*, 50 Phil. 259 (1927).
[144] Id.
[145] Id.
[146] CONSTITUTION, Art. VII, Sec. 5; CONSTITUTION (1973, as amended), Art. VII, Sec. 7; CONSTITUTION (1935, as amended), Art. VII, Sec. 7.
[147] CONSTITUTION, Art. VII, Sec. 5.

This Court has interpreted the faithful execution clause as an obligation imposed on the President, and not a separate grant of power.[148] Section 17, Article VII of the Constitution, expresses this duty in no uncertain terms and includes it in the provision regarding the President's power of control over the executive department, *viz:*

> The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

The equivalent provisions in the next preceding Constitution did not explicitly require this oath from the President. In the 1973 Constitution, for instance, the provision simply gives the President control over the ministries.[149] A similar language, not in the form of the President's oath, was present in the 1935 Constitution, particularly in the enumeration of executive functions.[150] By 1987, executive power was codified not only in the Constitution, but also in the Administrative Code:[151]

> SECTION 1. Power of Control. — The President shall have control of all the executive departments, bureaus, and offices. **He shall ensure that the laws be faithfully executed.** (Emphasis supplied)

Hence, the duty to faithfully execute the laws of the land is inherent in executive power and is intimately related to the other executive functions. These functions include the faithful execution of the law in autonomous regions;[152] the right to prosecute crimes;[153] the implementation of transportation projects;[154] the duty to ensure compliance with treaties, executive agreements and executive orders;[155] the authority to deport undesirable aliens;[156] the conferment of national awards under the President's jurisdiction;[157] and the overall administration and control of the executive department.[158]

These obligations are as broad as they sound, for a President cannot function with crippled hands, but must be capable of securing the rule of law

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[148] *Almario v. Executive Secretary*, supra note 114.
[149] CONSTITUTION (1973, as amended), Art. VII, Sec. 10: "The President shall have control of the ministries."
[150] CONSTITUTION (1935, as amended), Art. VII, Sec. 10(1): "The President shall have control of all executive departments, bureaus or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."
[151] Administrative Code of 1987, Book III, Title I, Sec. 1.
[152] CONSTITUTION, Art. X, Sec. 16: "The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed."
[153] *Ilusorio v. Ilusorio*, 564 Phil. 746 (2007); *Gonzalez v. Hongkong & Shanghai Banking Corp.*, 562 Phil. 841 (2007).
[154] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, 557 Phil. 121 (2007).
[155] *La Perla Cigar & Cigarette Factory v. Capapas*, 139 Phil. 451 (1969).
[156] *In re: R. McCulloch Dick*, 38 Phil. 211 (1918).
[157] *Almario v. Executive Secretary*, supra note 114.
[158] Administrative Code of 1987, Book IV, Sec. 38.

within all territories of the Philippine Islands and be empowered to do so within constitutional limits. Congress cannot, for instance, limit or take over the President's power to adopt implementing rules and regulations for a law it has enacted.[159]

More important, this mandate is self-executory by virtue of its being inherently executive in nature.[160] As Justice Antonio T. Carpio previously wrote,[161]

> [i]f the rules are issued by the President in implementation or execution of self-executory constitutional powers vested in the President, the rule-making power of the President is not a delegated legislative power. The most important self-executory constitutional power of the President is the President's constitutional duty and mandate to "ensure that the laws be faithfully executed." The rule is that the President can execute the law without any delegation of power from the legislature.

The import of this characteristic is that the manner of the President's execution of the law, even if not expressly granted by the law, is justified by necessity and limited only by law, since the President must "take necessary and proper steps to carry into execution the law."[162] Justice George Malcolm states this principle in a grand manner:[163]

> The executive should be clothed with sufficient power to administer efficiently the affairs of state. He should have complete control of the instrumentalities through whom his responsibility is discharged. It is still true, as said by Hamilton, that "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government." The mistakes of State governments need not be repeated here.
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> x x x x
>
> Every other consideration to one side, this remains certain — The Congress of the United States clearly intended that the Governor-General's power should be commensurate with his responsibility. The Congress never intended that the Governor-General should be saddled with the responsibility of administering the government and of executing the laws but shorn of the power to do so. The interests of the Philippines will be best served by strict adherence to the basic principles of constitutional government.

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[159] Concurring Opinion of J. Carpio, *Abakada Guro Party List v. Purisima*, 584 Phil. 246 (2008).
[160] Id.
[161] Id. at 297.
[162] *Philippine Constitution Association v. Enriquez*, supra note 131.
[163] *Government of the Philippine Islands v. Springer*, supra note 143.

In light of this constitutional duty, it is the President's prerogative to do whatever is legal and necessary for Philippine defense interests. It is no coincidence that the constitutional provision on the faithful execution clause was followed by that on the President's commander-in-chief powers,[164] which are specifically granted during extraordinary events of lawless violence, invasion, or rebellion. And this duty of defending the country is unceasing, even in times when there is no state of lawlesss violence, invasion, or rebellion. At such times, the President has full powers to ensure the faithful execution of the laws.

It would therefore be remiss for the President and repugnant to the faithful-execution clause of the Constitution to do nothing when the call of the moment requires increasing the military's defensive capabilities, which could include forging alliances with states that hold a common interest with the Philippines or bringing an international suit against an offending state.

The context drawn in the analysis above has been termed by Justice Arturo D. Brion's Dissenting Opinion as the beginning of a "patent misconception."[165] His dissent argues that this approach taken in analyzing the President's role as executor of the laws is preceded by the duty to preserve and defend the Constitution, which was allegedly overlooked.[166]

In arguing against the approach, however, the dissent grossly failed to appreciate the nuances of the analysis, if read holistically and in context. The concept that the President cannot function with crippled hands and therefore can disregard the need for Senate concurrence in treaties[167] was never expressed or implied. Rather, the appropriate reading of the preceding analysis shows that the point being elucidated is the reality that the President's duty to execute the laws and protect the Philippines is inextricably interwoven with his foreign affairs powers, such that he must resolve issues imbued with both concerns to the full extent of his powers, subject only to the limits supplied by law. In other words, apart from an expressly mandated limit, or an implied limit by virtue of incompatibility, the manner of execution by the President must be given utmost deference. This approach is not different from that taken by the Court in situations with fairly similar contexts.

Thus, the analysis portrayed by the dissent does not give the President authority to bypass constitutional safeguards and limits. In fact, it specifies what these limitations are, how these limitations are triggered, how these limitations function, and what can be done within the sphere of constitutional duties and limitations of the President.

Justice Brion's dissent likewise misinterprets the analysis proffered when it claims that the foreign relations power of the President should not be

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[164] *See* CONSTITUTION, Art. VII, Secs. 17 & 18.
[165] Dissenting Opinion of Justice Arturo D. Brion, p. 17.
[166] Id., at 18.
[167] Id., at 17-19.

interpreted in isolation.[168] The analysis itself demonstrates how the foreign affairs function, while mostly the President's, is shared in several instances, namely in Section 2 of Article II on the conduct of war; Sections 20 and 21 of Article VII on foreign loans, treaties, and international agreements; Sections 4(2) and 5(2)(a) of Article VIII on the judicial review of executive acts; Sections 4 and 25 of Article XVIII on treaties and international agreements entered into prior to the Constitution and on the presence of foreign military troops, bases, or facilities.

In fact, the analysis devotes a whole subheading to the relationship between the two major presidential functions and the role of the Senate in it.

This approach of giving utmost deference to presidential initiatives in respect of foreign affairs is not novel to the Court. The President's act of treating EDCA as an executive agreement is not the principal power being analyzed as the Dissenting Opinion seems to suggest. Rather, the preliminary analysis is in reference to the expansive power of foreign affairs. We have long treated this power as something the Courts must not unduly restrict. As we stated recently in *Vinuya v. Romulo*:

> To be sure, not all cases implicating foreign relations present political questions, and courts certainly possess the authority to construe or invalidate treaties and executive agreements. However, the question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches. In this case, the Executive Department has already decided that it is to the best interest of the country to waive all claims of its nationals for reparations against Japan in the Treaty of Peace of 1951. The wisdom of such decision is not for the courts to question. Neither could petitioners herein assail the said determination by the Executive Department via the instant petition for certiorari.
>
> In the seminal case of *US v. Curtiss-Wright Export Corp.*, the US Supreme Court held that "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign relations."
>
> > It is quite apparent that if, in the maintenance of our international relations, embarrassment — perhaps serious embarrassment — is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field **must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible where domestic affairs alone involved.** Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential

[168] Dissenting Opinion of Justice Arturo D. Brion, pp. 19-20.

> sources of information. He has his agents in the form of diplomatic, consular and other officials....
>
> **This ruling has been incorporated in our jurisprudence through *Bayan v. Executive Secretary* and *Pimentel v. Executive Secretary***; its overreaching principle was, perhaps, best articulated in (now Chief) Justice Puno's dissent in Secretary of Justice v. Lantion:
>
> > . . . The conduct of foreign relations is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. It can only be entrusted to that department of government which can act on the basis of the best available information and can decide with decisiveness. . . . It is also the President who possesses the most comprehensive and the most confidential information about foreign countries for our diplomatic and consular officials regularly brief him on meaningful events all over the world. He has also unlimited access to ultra-sensitive military intelligence data. **In fine, the presidential role in foreign affairs is dominant and the President is traditionally accorded a wider degree of discretion in the conduct of foreign affairs. The regularity, nay, validity of his actions are adjudged under less stringent standards, lest their judicial repudiation lead to breach of an international obligation, rupture of state relations, forfeiture of confidence, national embarrassment and a plethora of other problems with equally undesirable consequences.**[169] (Emphases supplied)

Understandably, this Court must view the instant case with the same perspective and understanding, knowing full well the constitutional and legal repercussions of any judicial overreach.

2. The plain meaning of the Constitution prohibits the entry of foreign military bases, troops or facilities, except by way of a treaty concurred in by the Senate — a clear limitation on the President's dual role as defender of the State and as sole authority in foreign relations.

Despite the President's roles as defender of the State and sole authority in foreign relations, the 1987 Constitution expressly limits his ability in instances when it involves the entry of foreign military bases, troops or facilities. The initial limitation is found in Section 21 of the

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[169] *Vinuya v. Romulo*, supra note 17.

provisions on the Executive Department: "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." The specific limitation is given by Section 25 of the Transitory Provisions, the full text of which reads as follows:

> SECTION 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.

It is quite plain that the Transitory Provisions of the 1987 Constitution intended to add to the basic requirements of a treaty under Section 21 of Article VII. This means that both provisions must be read as additional limitations to the President's overarching executive function in matters of defense and foreign relations.

> **3. The President, however, may enter into an executive agreement on foreign military bases, troops, or facilities, if (a) it is not the instrument that allows the presence of foreign military bases, troops, or facilities; or (b) it merely aims to implement an existing law or treaty.**

Again we refer to Section 25, Article XVIII of the Constitution:

> SECTION 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. (Emphases supplied)

In view of this provision, petitioners argue[170] that EDCA must be in the form of a "treaty" duly concurred in by the Senate. They stress that the Constitution is unambigous in mandating the transmission to the Senate of all international agreements concluded after the expiration of the MBA in 1991 – agreements that concern the presence of foreign military bases, troops, or facilities in the country. Accordingly, petitioners maintain that the Executive Department is not given the choice to conclude agreements like EDCA in the form of an executive agreement.

This is also the view of the Senate, which, through a majority vote of 15 of its members – with 1 against and 2 abstaining – says in SR 105[171] that

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[170] Memorandum of Bayan *et al.*, pp. 29-32, *rollo* (G.R. No. 212444), pp. 593-596; Memorandum of Saguisag *et al.*, pp. 17-29, 35-37, *rollo* (G.R. No. 212426, Vol. II), pp. 987-999, 1005-1007.

[171] The pertinent text of SR 105 is reproduced below:

> WHEREAS, the treaty known as RP-US EDCA (Enhanced Defense Cooperation Agreement) is at present subject of Supreme Court proceedings on the question of whether this treaty is valid and effective, considering that the Senate has not concurred with the treaty;
>
> WHEREAS, the Office of the President argues that the document is not a treaty but is instead an executive agreement that allegedly does not require Senate concurrence;
>
> WHEREAS, the only constitutional ground for the position taken by the Executive is the mere inclusion of the term "executive agreement" in the Constitution which provides: "All cases involving the constitutionality of an ... executive agreement ..." (Article VIII, Section 4, paragraph 2) as one of items included in the list of cases which the Supreme Court has power to decide.
>
> WHEREAS, there is no other provision in the Constitution concerning a so-called executive agreement, and there is no mention at all of its definition, its requirements, the role of the Senate, or any other characteristic of, or protocol for, any such so-called "executive agreement";
>
> WHEREAS, "executive agreement" is a term wandering alone in the Constitution, bereft of provenance and an unidentified constitutional mystery;
>
> WHEREAS, in stark contrast to the lone mention of the term "executive agreement," the Constitution provides categorically:
>
> (a) "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 VII, Section 21);
> (b) "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 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", (Article XVIII, Section 25);
>
> WHEREAS, on the one hand, the Constitution is clear and categorical that Senate concurrence is absolutely necessary for the validity and effectivity of any treaty, particularly any treaty that promotes for foreign military bases, troops and facilities, such as the EDCA;
>
> WHEREAS, under the rules of constitutional and statutory construction, the two constitutional provisions on Senate concurrence are specific provisions, while the lone constitutional provision merely mentioning an "executive agreement" is a general provision, and therefore, the specific provisions on Senate concurrence prevail over the general provision on "executive agreement";

EDCA must be submitted to the Senate in the form of a treaty for concurrence by at least two-thirds of all its members.

The Senate cites two constitutional provisions (Article VI, Section 21 and Article XVIII, Section 25) to support its position. Compared with the lone constitutional provision that the Office of the Solicitor General (OSG) cites, which is Article XVIII, Section 4(2), which includes the constitutionality of "executive agreement(s)" among the cases subject to the Supreme Court's power of judicial review, the Constitution clearly requires submission of EDCA to the Senate. Two specific provisions versus one general provision means that the specific provisions prevail. The term "executive agreement" is "a term wandering alone in the Constitution, bereft of provenance and an unidentified constitutional mystery."

The author of SR 105, Senator Miriam Defensor Santiago, upon interpellation even added that the MDT, which the Executive claims to be partly implemented through EDCA, is already obsolete.

There are two insurmountable obstacles to this Court's agreement with SR 105, as well as with the comment on interpellation made by Senator Santiago.

First, the concept of "executive agreement" is so well-entrenched in this Court's pronouncements on the powers of the President. When the Court validated the concept of "executive agreement," it did so with full knowledge of the Senate's role in concurring in treaties. It was aware of the problematique of distinguishing when an international agreement needed Senate concurrence for validity, and when it did not; and the Court continued to validate the existence of "executive agreements" even after the 1987 Constitution.[172] This follows a long line of similar decisions upholding the power of the President to enter into an executive agreement.[173]

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cont.

> WHEREAS, the Senate is aware of and obeys the ruling of the Supreme Court in *Pimentel v. Office of the Executive Secretary*, 462 SCRA 622 (2005);
>
> WHEREAS, the ruling cited above does not apply to the EDCA case, because the Senate makes no attempt to force the President of the Philippines to submit the EDCA treaty for concurrence by the Senate, by this Resolution, the Senate merely takes a definitive stand on the non-negotiable power of the Senate to decide whether a treaty will be valid and effective, depending on the Senate concurrence[;]
>
> WHEREFORE, be it hereby resolved by the Senate that the RP-US EDCA treaty requires Senate concurrence, in order to be valid and effective;
>
> Be it further resolved, That this Resolution expressing the strong sense of the Senate be formally submitted to the Supreme Court through the Chief Justice.

[172] *Arigo v. Swift*, G.R. No. 206510, 16 September 2014, 735 SCRA 102; *Land Bank v. Atlanta Industries, Inc.*, G.R. No. 193796, 2 July 2014, 729 SCRA 12; *Roxas v. Ermita*, G.R. No. 180030, June 10, 2014; *Bayan Muna v. Romulo*, supra note 114; *Vinuya v. Romulo*, supra note 17; *Nicolas v. Romulo*, supra note 39; *Akbayan Citizens Action Party v. Aquino*, supra note 15; *Suplico v. NEDA*, 580 Phil. 301 (2008); *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 572 Phil. 554 (2008); *Abaya v. Ebdane*, 544 Phil. 645 (2007); *Senate of the Philippines v. Ermita*, 522 Phil. 1 (2006); *Pimentel v. Office*

Second, the MDT has not been rendered obsolescent, considering that as late as 2009,[174] this Court continued to recognize its validity.

Third, to this Court, a plain textual reading of Article XIII, Section 25, inevitably leads to the conclusion that it applies only to a proposed agreement between our government and a foreign government, whereby military bases, troops, or facilities of such foreign government would be "allowed" or would "gain entry" Philippine territory.

Note that the provision "shall not be allowed" is a negative injunction. This wording signifies that the President is not authorized by law to allow foreign military bases, troops, or facilities to enter the Philippines, except under a treaty concurred in by the Senate. Hence, the constitutionally restricted authority pertains to the entry of the bases, troops, or facilities, and not to the activities to be done after entry.

Under the principles of constitutional construction, of paramount consideration is the plain meaning of the language expressed in the Constitution, or the *verba legis* rule.[175] It is presumed that the provisions have been carefully crafted in order to express the objective it seeks to attain.[176] It is incumbent upon the Court to refrain from going beyond the plain meaning of the words used in the Constitution. It is presumed that the framers and the people meant what they said when they said it, and that this understanding was reflected in the Constitution and understood by the people in the way it was meant to be understood when the fundamental law was ordained and promulgated.[177] As this Court has often said:

> We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are

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cont.
of the Executive Secretary, supra note 15; *Bayan v. Zamora*, supra note note 23; *Chavez v. PCGG*, 360 Phil. 133 (1998).

[173] *Republic v. Quasha*, 150-B Phil. 140 (1972); *Adolfo v. Court of First Instance of Zambales*, 145 Phil. 264 (1970); *Commissioner of Internal Revenue v. Guerrero*, 128 Phil. 197 (1967); *Gonzales v. Hechanova*, 118 Phil. 1065 (1963); *Commissioner of Customs v. Eastern Sea Trading*, 113 Phil. 333 (1961); *USAFFE Veterans Ass'n., Inc. v. Treasurer of the Phil.*, 105 Phil. 1030 (1959); *Uy Matiao & Co., Inc. v. City of Cebu*, 93 Phil. 300 (1953); *Abbot Laboratories v. Agrava*, 91 Phil. 328 (1952).

[174] *Nicolas v. Romulo*, supra note 39.

[175] *Chavez v. Judicial and Bar Council*, supra note 94; *Francisco v. House of Representatives*, supra note 93 (quoting *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 142 Phil. 719 [1970]; citing *Baranda v. Gustilo*, 248 Phil. 205 [1988]; *Luz Farms v. Secretary of the Department of Agrarian Reform*, 270 Phil. 151 [1990]; *Ordillo v. Commission on Elections*, 270 Phil. 183 [1990]).

[176] *Chavez v. Judicial and Bar Council*, supra note 94; *Ang Bagong Bayani-OFW v. Commission on Elections*, 412 Phil. 308 (2001) (citing *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, supra; *Gold Creek Mining Corp. v. Rodriguez*, 66 Phil 259, 264 [1938]; RUBEN C. AGPALO, STATUTORY CONSTRUCTION 311 [1990]).

[177] *Chavez v. Judicial and Bar Council*, supra note 94; *Francisco v. House of Representatives*, supra note 93 (quoting *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, supra; citing *Baranda v. Gustilo*, supra, at 770; *Luz Farms v. Secretary of the Department of Agrarian Reform*, supra; *Ordillo v. Commission on Elections*, supra); *Sarmiento v. Mison*, 240 Phil. 505 (1987); *Gold Creek Mining Corp. v. Rodriguez*, supra.

> couched express the objective sought to be attained. **They are to be given their ordinary meaning except where technical terms are employed** in which case the significance thus attached to them prevails. As **the Constitution is not primarily a lawyer's document**, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, **its language as much as possible should be understood in the sense they have in common use.** What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, **based on the postulate that the framers and the people mean what they say. Thus, these are the cases where the need for construction is reduced to a minimum.**[178] (Emphases supplied)

It is only in those instances in which the constitutional provision is unclear, ambiguous, or silent that further construction must be done to elicit its meaning.[179] In *Ang Bagong Bayani-OFW v. Commission on Elections*,[180] we reiterated this guiding principle:

> **it [is] safer to construe the Constitution from what appears upon its face.** The proper interpretation therefore depends more on **how it was understood by the people adopting it than in the framers' understanding thereof.** (Emphases supplied)

The effect of this statement is surprisingly profound, for, if taken literally, the phrase "shall not be allowed in the Philippines" plainly refers to the entry of bases, troops, or facilities in the country. The *Oxford English Dictionary* defines the word "allow" as a transitive verb that means "to permit, enable"; "to give consent to the occurrence of or relax restraint on (an action, event, or activity)"; "to consent to the presence or attendance of (a person)"; and, when with an adverbial of place, "to permit (a person or animal) to go, come, or be in, out, near, etc."[181] *Black's Law Dictionary* defines the term as one that means "[t]o grant, approve, or permit."[182]

The verb "allow" is followed by the word "in," which is a preposition used to indicate "place or position in space or anything having material extension: Within the limits or bounds of, within (any place or thing)."[183] That something is the Philippines, which is the noun that follows.

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[178] *Francisco v. House of Representatives*, supra note 93 (quoting *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, supra).
[179] *Ang Bagong Bayani-OFW v. Commission on Elections*, supra note 176.
[180] *Ang Bagong Bayani-OFW v. Commission on Elections*, supra note 176 (quoting the Separate Opinion of Justice Mendoza in *Civil Liberties Union v. Executive Secretary*, 272 Phil. 147 [1991]).
[181] OED Online, available at <http://www.oed.com/view/Entry/5460>, accessed on 28 October 2015; *See also* Merriam-Webster Online Dictionary, "*allow*," available at <http://www.merriam-webster.com/dictionary/allow>, accessed on 28 October 2015.
[182] BLACK'S LAW DICTIONARY (2nd ed).
[183] OED Online, available at <http://www.oed.com/view/Entry/92970?rskey=JDaO1Y&result=6>, accessed on 28 October 2015; *See also* Merriam-Webster Online Dictionary, available at <http://www.merriam-webster.com/dictionary/in>, accessed on 28 October 2015.

It is evident that the constitutional restriction refers solely to the initial entry of the foreign military bases, troops, or facilities. Once entry is authorized, the subsequent acts are thereafter subject only to the limitations provided by the rest of the Constitution and Philippine law, and not to the Section 25 requirement of validity through a treaty.

The VFA has already allowed the entry of troops in the Philippines. This Court stated in *Lim v. Executive Secretary*:

> After studied reflection, it appeared farfetched that the ambiguity surrounding the meaning of the word "activities" arose from accident. In our view, it was deliberately made that way to give both parties a certain leeway in negotiation. **In this manner, visiting US forces may sojourn in Philippine territory for purposes other than military.** As conceived, the joint exercises may include training on new techniques of patrol and surveillance to protect the nation's marine resources, sea search-and-rescue operations to assist vessels in distress, disaster relief operations, civic action projects such as the building of school houses, medical and humanitarian missions, and the like.
>
> Under these auspices, the VFA gives legitimacy to the current Balikatan exercises. It is only logical to assume that "Balikatan 02-1," a "mutual anti- terrorism advising, assisting and training exercise," falls under the umbrella of sanctioned or allowable activities in the context of the agreement. Both the history and intent of the Mutual Defense Treaty and the VFA support the conclusion that combat-related activities -as opposed to combat itself-such as the one subject of the instant petition, are indeed authorized.[184] (Emphasis supplied)

Moreover, the Court indicated that the Constitution continues to govern the conduct of foreign military troops in the Philippines,[185] readily implying the legality of their initial entry into the country.

The OSG emphasizes that EDCA can be in the form of an executive agreement, since it merely involves "adjustments in detail" in the implementation of the MDT and the VFA. [186] It points out that there are existing treaties between the Philippines and the U.S. that have already been concurred in by the Philippine Senate and have thereby met the requirements of the Constitution under Section 25. Because of the status of these prior agreements, respondent emphasizes that EDCA need not be transmitted to the Senate.

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[184] G.R. No. 151445, 11 April 2002.

[185] In the words of the Court: "The present Constitution contains key provisions useful in determining the extent to which foreign military troops are allowed in Philippine territory." *Lim v. Executive Secretary,* supra note 69.

[186] Memorandum of OSG, pp. 14-27, *rollo*, pp. 444-457.

The aforecited Dissenting Opinion of Justice Brion disagrees with the *ponencia*'s application of *verba legis* construction to the words of Article XVIII, Section 25.[187] It claims that the provision is "neither plain, nor that simple."[188] To buttress its disagreement, the dissent states that the provision refers to a historical incident, which is the expiration of the 1947 MBA.[189] Accordingly, this position requires questioning the circumstances that led to the historical event, and the meaning of the terms under Article XVIII, Section 25.

This objection is quite strange. The construction technique of *verba legis* is not inapplicable just because a provision has a specific historical context. In fact, every provision of the Constitution has a specific historical context. The purpose of constitutional and statutory construction is to set tiers of interpretation to guide the Court as to how a particular provision functions. *Verba legis* is of paramount consideration, but it is not the only consideration. As this Court has often said:

> We look to the language of the document itself in our search for its meaning. **We do not of course stop there, but that is where we begin.** It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. **They are to be given their ordinary meaning except where technical terms are employed** in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, **its language as much as possible should be understood in the sense they have in common use.** What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, **based on the postulate that the framers and the people mean what they say. Thus, these are the cases where the need for construction is reduced to a minimum.**[190] (Emphases supplied)

As applied, *verba legis* aids in construing the ordinary meaning of terms. In this case, the phrase being construed is "shall not be allowed in the Philippines" and not the preceding one referring to "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." It is explicit in the wording of the provision itself that any interpretation goes beyond the text itself and into the discussion of the framers, the context of the Constitutional Commission's time of drafting, and the history of the 1947 MBA. Without reference to these factors, a reader would not understand those terms. However, for the phrase "shall not

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[187] Dissenting Opinion of Justice Arturo D. Brion, p. 29.
[188] Id., at 31.
[189] Id.
[190] *Francisco v. House of Representatives*, supra note 93 (quoting *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, supra note 175).

be allowed in the Philippines," there is no need for such reference. The law is clear. No less than the Senate understood this when it ratified the VFA.

4. The President may generally enter into executive agreements subject to limitations defined by the Constitution and may be in furtherance of a treaty already concurred in by the Senate.

We discuss in this section why the President can enter into executive agreements.

It would be helpful to put into context the contested language found in Article XVIII, Section 25. Its more exacting requirement was introduced because of the previous experience of the country when its representatives felt compelled to consent to the old MBA.[191] They felt constrained to agree to the MBA in fulfilment of one of the major conditions for the country to gain independence from the U.S.[192] As a result of that experience, a second layer of consent for agreements that allow military bases, troops and facilities in the country is now articulated in Article XVIII of our present Constitution.

This second layer of consent, however, cannot be interpreted in such a way that we completely ignore the intent of our constitutional framers when they provided for that additional layer, nor the vigorous statements of this Court that affirm the continued existence of that class of international agreements called "executive agreements."

The power of the President to enter into *binding* executive agreements without Senate concurrence is already well-established in this jurisdiction.[193]

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[191] *See* IV RECORD, CONSTITUTIONAL COMMISSION 759, (18 Sep. 1986): "By inequalities, is the Commissioner referring to the one-sided provisions, the onerous conditions of the RP-US Bases Agreement?," *Nicolas v. Romulo*, supra note 39, at 280 (2009).

[192] *See* Treaty of General Relations between the Republic of the Philippines and the United States of America, October 22, 1946, Art. 1 (1946); Philippine Independence Act (Tydings-McDuffie Act), Pub.L. 73–127, 48 Stat. 456, (24 March 1934), Secs. 5 and 10; FOREIGN SERVICE INSTITUTE, supra note 24, at ix-x.

[193] *Land Bank v. Atlanta Industries, Inc.*, supra note 172; *Bayan Muna v. Romulo*, supra note 114; *Nicolas v. Romulo*, supra note 39; *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 172; *DBM-PS v. Kolonwel Trading*, 551 Phil. 1030 (2007); *Abaya v. Ebdane*, supra note 172; *Republic v. Quasha*, supra note 173; *Adolfo v. Court of First Instance of Zambales*, supra note 173; *Commissioner of Internal Revenue v. Guerrero*, supra note 173; *Gonzales v. Hechanova*, supra note 173; *Commissioner of Customs v. Eastern Sea Trading*, supra note 173; *USAFFE Veterans Ass'n., Inc. v. Treasurer of the Phil.*, supra note 173; *Uy Matiao & Co., Inc. v. City of Cebu*, supra note 173; *Abbot Laboratories v. Agrava*, supra note 173; II RECORD, CONSTITUTIONAL COMMISSION, 544-546 (31 July 1986); CORTÉS, supra note 15, at 190; SINCO, supra note 15, at 303-305.

That power has been alluded to in our present and past Constitutions,[194] in various statutes,[195] in Supreme Court decisions,[196] and during the deliberations of the Constitutional Commission.[197] They cover a wide array of subjects with varying scopes and purposes,[198] including those that involve the presence of foreign military forces in the country.[199]

As the sole organ of our foreign relations[200] and the constitutionally assigned chief architect of our foreign policy,[201] the President is vested with the exclusive power to conduct and manage the country's interface with other states and governments. Being the principal representative of the Philippines, the Chief Executive speaks and listens for the nation; initiates, maintains, and develops diplomatic relations with other states and governments; negotiates and enters into international agreements; promotes trade, investments, tourism and other economic relations; and settles international disputes with other states.[202]

As previously discussed, this constitutional mandate emanates from the inherent power of the President to enter into agreements with other states, including the prerogative to conclude *binding* executive agreements that do not require further Senate concurrence. The existence of this presidential power[203] is so well-entrenched that Section 5(2)(a), Article VIII of the Constitution, even provides for a check on its exercise. As expressed below, executive agreements are among those official governmental acts that can be the subject of this Court's power of judicial review:

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[194] CONSTITUTION, Art. VIII (Judicial Department), Secs. 4(2) & 5(2)(a); CONSTITUTION (1973, as amended), Art. X (The Judiciary), Secs. 2(2) & 5(2)(a), Art. XVII (Transitory Provisions), Sec. 12; CONSTITUTION (1935), Ordinance Appended to the Constitution or "Parity Amendment."

[195] Republic Act No. 9184 (Government Procurement Reform Act) (2003), Sec. 4; Administrative Code of 1987, Book II, Sec. 18(2)(a); Presidential Decree No. 1464, as amended (Tariff and Customs Code of 1978), Sec. 402(f); Republic Act No. 1789 (Reparations Law) (1957), Sec. 18.; Commonwealth Act No. 733 (Acceptance of Executive Agreement Under Title IV of [United States] Public Law 371—79th Congress) (1946).

[196] *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 172; *Republic v. Quasha*, supra note 173; *Commissioner of Internal Revenue v. Guerrero*, supra note 173; *Gonzales v. Hechanova*, supra note 173; *Commissioner of Customs v. Eastern Sea Trading*, supra note 173; *USAFFE Veterans Ass'n., Inc. v. Treasurer of the Phil.*, supra note 173; *Abbot Laboratories v. Agrava*, supra note 173.

[197] II RECORD, CONSTITUTIONAL COMMISSION, supra note 184.

[198] *Bayan Muna v. Romulo*, supra note 114. *See also* SINCO supra note 15.

[199] *See generally*: *Nicolas v. Romulo*, supra note 39; *Lim v. Executive Secretary*, supra note 69.

[200] *See*: *Akbayan Citizens Action Party v. Aquino*, supra note 15; *Pimentel v. Office of the Executive Secretary*, supra note 15. *See* CONSTITUTION, Art. VII, Sec. 1 *in relation to* Administrative Code of 1987, Book IV (Executive Branch), Title I (Foreign Affairs), Secs. 3(1) and 20; SINCO, supra note 15, at 297.

[201] *Pimentel v. Office of the Executive Secretary*, supra note 15. *See* CONSTITUTION, Art. VII, Sec. 1 *in relation to* Administrative Code of 1987, Book IV (Executive Branch), Title I (Foreign Affairs), Secs. 3(1) and 20; SINCO, supra note 15, at 298.

[202] *See*: CONSTITUTION, Art. VII, Sec. 1 *in relation to* Administrative Code of 1987, Book III (Office of the President), Title I (Powers of the President), Sec. 1 and Book IV (Executive Branch), Title I (Foreign Affairs), Secs. 3(1) and 20 and Title III (Justice), Sec. 35(10); *Pimentel v. Office of the Executive Secretary*, supra note 15 (on ratification of treaties); *Vinuya v. Executive Secretary*, supra note 17 (on espousing claims against foreign governments); *Abaya v. Ebdane*, supra note 172 (on contracting foreign loans); *People's Movement for Press Freedom v. Manglapus*, supra note 15 (on treaty negotiations with foreign states); SINCO, supra note 15, at 298.

[203] *See* SINCO, supra note 15, at 297-298.

> (2) **Review, revise, reverse, modify, or affirm** on appeal or *certiorari*, as the law or the Rules of Court may provide, **final judgments and orders of lower courts** in:
>
> (a) 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. (Emphases supplied)

In *Commissioner of Customs v. Eastern Sea Trading*, executive agreements are defined as "international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature."[204] In *Bayan Muna v. Romulo*, this Court further clarified that executive agreements can cover a wide array of subjects that have various scopes and purposes.[205] They are no longer limited to the traditional subjects that are usually covered by executive agreements as identified in *Eastern Sea Trading*. The Court thoroughly discussed this matter in the following manner:

> The **categorization of subject matters** that may be **covered by international agreements** mentioned **in *Eastern Sea Trading*** is **not cast in stone.** x x x.
>
> As may be noted, **almost half a century has elapsed since** the Court rendered its decision in ***Eastern Sea Trading***. Since then, the **conduct of foreign affairs has become more complex and the domain of international law wider**, as to include such subjects as human rights, the environment, and the sea. In fact, in the US alone, the executive agreements executed by its President from 1980 to 2000 covered subjects such as **defense, trade, scientific cooperation, aviation, atomic energy, environmental cooperation, peace corps, arms limitation, and nuclear safety, among others**. Surely, the **enumeration in *Eastern Sea Trading* cannot circumscribe the option of each state** on the matter of which the **international agreement format would be convenient to serve its best interest.** As Francis Sayre said in his work referred to earlier:
>
> > . . . It would be **useless to undertake to discuss here the large variety of executive agreements as such concluded from time to time.** Hundreds of executive agreements, other than those entered into under the trade-agreement act, have been negotiated with foreign governments. . . . They cover such subjects as the inspection of vessels, navigation dues, income tax on shipping profits, the admission of civil air craft, custom matters and commercial relations generally, international

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[204] *Commissioner of Customs v. Eastern Sea Trading*, supra note 173.
[205] *Bayan Muna v. Romulo*, supra note 114. *See also* SINCO, supra note 15.

> claims, postal matters, the registration of trademarks and copyrights, etc. . . . (Emphases Supplied)

One of the distinguishing features of executive agreements is that their validity and effectivity are not affected by a lack of Senate concurrence.[206] This distinctive feature was recognized as early as in *Eastern Sea Trading* (1961), *viz:*

> **Treaties** are **formal documents** which **require ratification with the approval** of two-thirds of the **Senate**. **Executive agreements** become **binding through executive action without the need** of a **vote by the Senate** or by Congress.
>
> x x x x
>
> [T]he **right of the Executive** to **enter into binding agreements *without* the necessity of subsequent Congressional approval** has been ***confirmed by long usage.*** From the earliest days of our history we have entered into executive agreements covering such subjects as commercial and consular relations, most-favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. *The* ***validity of these has never been seriously questioned by our courts.*** (Emphases Supplied)

That notion was carried over to the present Constitution. In fact, the framers specifically deliberated on whether the general term "international agreement" included executive agreements, and whether it was necessary to include an express proviso that would exclude executive agreements from the requirement of Senate concurrence. After noted constitutionalist Fr. Joaquin Bernas quoted the Court's ruling in *Eastern Sea Trading*, the Constitutional Commission members ultimately decided that the term "international agreements" as contemplated in Section 21, Article VII, does not include executive agreements, and that a proviso is no longer needed. Their discussion is reproduced below:[207]

> MS. AQUINO: Madam President, first I would like a clarification from the Committee. We have retained the words "international agreement" which I think is the correct judgment on the matter because an international agreement is different from a treaty. A treaty is a contract between parties which is in the nature of international agreement and also a municipal law in the sense that the people are bound. So there is a conceptual difference. However, **I would like to be clarified if the international agreements include executive agreements.**

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[206] *Commissioner of Customs v. Eastern Sea Trading*, supra note 173.

[207] II RECORD, CONSTITUTIONAL COMMISSION 544-546 (31 July 1986). *See also* Miriam Defensor Santiago, *International Agreements in Constitutional Law: The Suspended RP-China (ZTE) Loan Agreement*, 53 ATENEO L.J. 537, 539 (2008).

MR. CONCEPCION: That depends upon the parties. All parties to these international negotiations stipulate the conditions which are necessary for the agreement or whatever it may be to become valid or effective as regards the parties.

MS. AQUINO: Would that depend on the parties or would that depend on the nature of the executive agreement? According to common usage, there are **two types of executive agreement: one** is **purely proceeding from an executive act which affects external relations independent of the legislative** and the **other** is an **executive act in pursuance of legislative authorization.** The **first kind** might take the form of just **conventions or exchanges of notes or protocol** while **the other**, which would be **pursuant to the legislative authorization**, may be in the **nature of commercial agreements**.

MR. CONCEPCION: **Executive agreements** are **generally made to implement a treaty already enforced or to determine the details for the implementation of the treaty.** We are speaking of executive agreements, not international agreements.

MS. AQUINO: I am in full agreement with that, except that it does not cover the first kind of executive agreement which is just protocol or an exchange of notes and this would be in the nature of reinforcement of claims of a citizen against a country, for example.

MR. CONCEPCION: The Commissioner is free to require ratification for validity insofar as the Philippines is concerned.

MS. AQUINO: **It is my humble submission** that we should **provide**, unless the Committee explains to us otherwise, an **explicit proviso** which would **except executive agreements** from the **requirement of concurrence of two-thirds of the Members of the Senate**. Unless I am enlightened by the Committee I propose that tentatively, the sentence should read. "No treaty or international agreement EXCEPT EXECUTIVE AGREEMENTS shall be valid and effective."

FR. BERNAS: I wonder if a **quotation from the Supreme Court decision [in Eastern Sea Trading] might help clarify this**:

> The **right of the executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage**. From the earliest days of our history, we have entered into executive agreements covering such subjects as commercial and consular relations, most favored nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of this has never been seriously questioned by our Courts.
>
> Agreements with respect to the registration of trademarks have been concluded by the executive of various countries under the Act of Congress of March 3, 1881 (21 Stat. 502) . . . **International agreements**

> **involving political issues or changes of national policy and those** involving international agreements **of a permanent character** usually take the form of **treaties**. But international agreements embodying **adjustments of detail, carrying out well established national policies and traditions** and those involving **arrangements of a more or less temporary nature** usually take the form of **executive agreements**.

MR. ROMULO: Is the Commissioner, therefore, excluding the executive agreements?

FR. BERNAS: What we are referring to, therefore, **when we say international agreements which need concurrence** by at least two-thirds are **those which are permanent in nature.**

MS. AQUINO: And it may include commercial agreements which are executive agreements essentially but which are proceeding from the authorization of Congress. If that is our understanding, then I am willing to withdraw that amendment.

FR. BERNAS: **If it is with prior authorization of Congress, then it does not need subsequent concurrence by Congress.**

MS. AQUINO: In that case, I am withdrawing my amendment.

MR. TINGSON: Madam President.

THE PRESIDENT: Is Commissioner Aquino satisfied?

MS. AQUINO: Yes. There is **already an agreement among us on the definition of "executive agreements" and that would make unnecessary any explicit proviso on the matter.**

x x x

MR. GUINGONA: I am not clear as to the meaning of "executive agreements" because I heard that these executive agreements must rely on treaties. In other words, there must first be treaties.

MR. CONCEPCION: No, I was speaking about the common use, as executive agreements being the implementation of treaties, details of which do not affect the sovereignty of the State.

MR. GUINGONA: But what about the matter of permanence, Madam President? Would 99 years be considered permanent? What would be the measure of permanency? I do not conceive of a treaty that is going to be forever, so there must be some kind of a time limit.

MR. CONCEPCION: I suppose the Commissioner's question is whether this type of agreement should be included in a provision of the Constitution requiring the concurrence of Congress.

> MR. GUINGONA: It depends on the concept of the executive agreement of which I am not clear. **If the executive agreement partakes of the nature of a treaty, then it should also be included.**
>
> MR. CONCEPCION: Whether it partakes or not of the nature of a treaty, it is within the power of the Constitutional Commission to require that.
>
> MR. GUINGONA: Yes. **That is why I am trying to clarify whether the words "international agreements" would include executive agreements.**
>
> MR. CONCEPCION: **No, not necessarily; generally no.**
>
> x x x
>
> MR. ROMULO: I wish to be recognized first. I have only one question. Do we take it, therefore, that **as far as the Committee is concerned, the term "international agreements" does not include the term "executive agreements" as read by the Commissioner in that text?**
>
> FR. BERNAS: **Yes.** (Emphases Supplied)

The inapplicability to executive agreements of the requirements under Section 21 was again recognized in *Bayan v. Zamora* and in *Bayan Muna v. Romulo*. These cases, both decided under the aegis of the present Constitution, quoted *Eastern Sea Trading* in reiterating that executive agreements are valid and binding even without the concurrence of the Senate.

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,[208] 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;[209] (2) pursuant to or upon confirmation by an act of the Legislature;[210] or (3) in the exercise of the President's independent

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[208] *Bayan Muna v. Romulo*, supra note 114, at 261; *Gonzales v. Hechanova*, supra note 173; *Commissioner of Customs v. Eastern Sea Trading*, supra note 173; II RECORD, CONSTITUTIONAL COMMISSION 544-546 (31 July 1986); CORTÉS, supra note 15; SINCO, supra note 15.

[209] *See, e.g.*: *Bayan Muna v. Romulo*, supra note 114 (on the transfer or surrender of US nationals in the Philippines who may be sued before international tribunals); *Nicolas v. Romulo*, supra note 39 (on agreement concerning the detention of a member of the U.S. Armed Forces, who was accused of committing a crime in the Philippines); *Adolfo v. Court of First Instance of Zambales*, supra note 173 (on exchange of notes pursuant to the 1947 MBA); Treaty of General Relations Between the Republic of the Philippines and the United States of America (1946).

[210] *See, e.g.*: *Republic v. Quasha*, supra note 173; *Commissioner of Internal Revenue v. Guerrero*, supra note 173; *Abbot Laboratories v. Agrava*, supra note 173 (on the interpretation of the provision in the Philippine Patent Law of 1947 concerning the reciprocity measure on priority rights to be granted to U.S. nationals); *Uy Matiao & Co., Inc. v. City of Cebu*, supra note 173; Republic Act No. 9 – *Authority of President to Enter into Agreement with US under Republic of the Phil. Military Assistance Act* (1946).

powers under the Constitution.[211] 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.[212] 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.[213] 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.[214] 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

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[211] *See, e.g.*: *Land Bank v. Atlanta Industries, Inc.*, supra note 172 (on foreign loan agreement); *Bayan Muna v. Romulo*, supra note 114; *DBM-PS v. Kolonwel Trading*, supra note 193 (on foreign loan agreement); *Abaya v. Ebdane*, supra note 172 (on foreign loan agreement); *Commissioner of Customs v. Eastern Sea Trading*, supra note 173 (on foreign trade and financial agreements); *USAFFE Veterans Ass'n., Inc. v. Treasurer of the Phil.*, supra note 173 (on conversion of unspent fund as a foreign loan). *But see* on limitations: *Gonzales v. Hechanova*, supra note 173.

[212] *See generally*: *Bayan v. Zamora*, supra note 23; Philippe Gautier, *1969 Vienna Convention, Article 2 – Use of Terms*, *in* THE VIENNA CONVENTIONS ON THE LAW OF TREATIES: A COMMENTARY, VOL. I 35-36 (Olivier Corten & Pierre Klein eds. 2011).

[213] *See generally*: *Bayan v. Zamora*, supra note 23; Philippe Gautier, *1969 Vienna Convention, Article 2 – Use of Terms*, *in* THE VIENNA CONVENTIONS ON THE LAW OF TREATIES: A COMMENTARY, VOL. I 37 (Olivier Corten & Pierre Klein eds. 2011) (quoting *Customs régime between Germany and Austria*, Advisory Opinion, 1931 PCIJ, Ser. A/B no. 41, p. 47).

[214] *Gonzales v. Hechanova*, supra note 173.

the Senate[215] unlike executive agreements, which are solely executive actions.[216] Because of legislative participation through the Senate, a treaty is regarded as being on the same level as a statute.[217] If there is an irreconcilable conflict, a later law or treaty takes precedence over one that is prior.[218] An executive agreement is treated differently. Executive agreements that are inconsistent with either a law or a treaty are considered ineffective.[219] Both types of international agreement are nevertheless subject to the supremacy of the Constitution.[220]

This rule does not imply, though, that the President is given *carte blanche* to exercise this discretion. Although the Chief Executive wields the exclusive authority to conduct our foreign relations, this power must still be exercised within the context and the parameters set by the Constitution, as well as by existing domestic and international laws. There are constitutional provisions that restrict or limit the President's prerogative in concluding international agreements, such as those that involve the following:

a. The policy of freedom from nuclear weapons within Philippine territory[221]
b. The fixing of tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, which must be pursuant to the authority granted by Congress[222]
c. The grant of any tax exemption, which must be pursuant to a law concurred in by a majority of all the Members of Congress[223]
d. The contracting or guaranteeing, on behalf of the Philippines, of foreign loans that must be previously concurred in by the Monetary Board[224]
e. The authorization of the presence of foreign military bases, troops, or facilities in the country must be in the form of a treaty duly concurred in by the Senate.[225]
f. For agreements that do not fall under paragraph 5, the concurrence of the Senate is required, should the form of the government chosen be a treaty.

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[215] *Bayan Muna v. Romulo*, supra note 114 (affirming *Adolfo v. Court of First Instance of Zambales*, supra note 173).
[216] *See*: *Bayan Muna v. Romulo*, supra note 114.
[217] *Pharmaceutical and Health Care Association v. Duque*, 561 Phil. 386 (2007); *Lim v. Executive Secretary*, supra note 69; *Secretary of Justice v. Lantion*, supra note 17; *Philip Morris, Inc. v. Court of Appeals*, G.R. No. 91332, 16 July 1993, 224 SCRA 576.
[218] *See*: *Bayan Muna v. Romulo*, supra note 114 (affirming *Adolfo v. Court of First Instance of Zambales*, supra note 173); CIVIL CODE, Art. 7.
[219] *See*: *Bayan Muna v. Romulo*, supra note 114; *Nicolas v. Romulo*, supra note 39; *Gonzales v. Hechanova*, supra note 173; CIVIL CODE, Art. 7.
[220] *See* CONSTITUTION, Art. VIII, Sec. 5(2); CIVIL CODE, Art. 7.
[221] CONSTITUTION, Art. II, Sec. 8.
[222] CONSTITUTION, Art. VI, Sec. 28(2).
[223] CONSTITUTION, Art. VI, Sec. 28(4).
[224] CONSTITUTION, Art. VII, Sec. 20.
[225] CONSTITUTION, Art. XVIII, Sec. 25.

5. The President had the choice to enter into EDCA by way of an executive agreement or a treaty.

No court can tell the President to desist from choosing an executive agreement over a treaty to embody an international agreement, unless the case falls squarely within Article VIII, Section 25.

As can be gleaned from the debates among the members of the Constitutional Commission, they were aware that legally binding international agreements were being entered into by countries in forms other than a treaty. At the same time, it is clear that they were also keen to preserve the concept of "executive agreements" and the right of the President to enter into such agreements.

What we can glean from the discussions of the Constitutional Commissioners is that they understood the following realities:

1. Treaties, international agreements, and executive agreements are all constitutional manifestations of the conduct of foreign affairs with their distinct legal characteristics.

    a. Treaties are formal contracts between the Philippines and other States-parties, which are in the nature of international agreements, and also of municipal laws in the sense of their binding nature.[226]
    b. International agreements are similar instruments, the provisions of which may require the ratification of a designated number of parties thereto. These agreements involving political issues or changes in national policy, as well as those involving international agreements of a permanent character, usually take the form of treaties. They may also include commercial agreements, which are executive agreements essentially, but which proceed from previous authorization by Congress, thus dispensing with the requirement of concurrence by the Senate.[227]
    c. Executive agreements are generally intended to implement a treaty already enforced or to determine the details of the implementation thereof that do not affect the sovereignty of the State.[228]

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[226] II RECORD, CONSTITUTIONAL COMMISSION 544 (31 July 1986).
[227] II RECORD, CONSTITUTIONAL COMMISSION 545 (31 July 1986).
[228] II RECORD, CONSTITUTIONAL COMMISSION 545 (31 July 1986).

2. Treaties and international agreements that cannot be mere executive agreements must, by constitutional decree, be concurred in by at least two-thirds of the Senate.

3. However, an agreement – the subject of which is the entry of foreign military troops, bases, or facilities – is particularly restricted. The requirements are that it be in the form of a treaty concurred in by the Senate; that when Congress so requires, it be ratified by a majority of the votes cast by the people in a national referendum held for that purpose; and that it be recognized as a treaty by the other contracting State.

4. Thus, executive agreements can continue to exist as a species of international agreements.

That is why our Court has ruled the way it has in several cases.

In *Bayan Muna v. Romulo*, we ruled that the President acted within the scope of her constitutional authority and discretion when she chose to enter into the RP-U.S. Non-Surrender Agreement in the form of an executive agreement, instead of a treaty, and in ratifying the agreement without Senate concurrence. The Court *en banc* discussed this intrinsic presidential prerogative as follows:

> Petitioner parlays the notion that the Agreement is of dubious validity, partaking as it does of the nature of a treaty; hence, it must be duly concurred in by the Senate. x x x x. Pressing its point, petitioner submits that the subject of the Agreement does not fall under any of the subject-categories that x x x may be covered by an executive agreement, such as commercial/consular relations, most-favored nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and settlement of claims.
>
> The categorization of subject matters that may be covered by international agreements mentioned in *Eastern Sea Trading* is not cast in stone. There are **no hard and fast rules on the propriety of entering,** on a given subject, **into a treaty or an executive agreement** as an instrument of international relations. The **primary consideration in the choice** of the form of agreement is the **parties' intent and desire to craft an international agreement in the form they so wish to further their respective interests.** Verily, the **matter of form takes a back seat** when it comes to effectiveness and binding effect of the enforcement of a treaty or an executive agreement, as the parties in either international agreement each labor under the *pacta sunt servanda* principle.
>
> x x x x
>
> But over and above the foregoing considerations is **the fact that** — save for the situation and matters contemplated in Sec. 25, Art. XVIII of the Constitution — when a treaty is required, **the Constitution does**

> **not classify any subject, like that involving political issues, to be in the form of, and ratified as, a treaty.** What the Constitution merely prescribes is that treaties need the concurrence of the Senate by a vote defined therein to complete the ratification process.
>
> x x x x
>
> x x x. As the President wields vast powers and influence, her conduct in the external affairs of the nation is, as *Bayan* would put it, "executive altogether." **The right of the President to enter into or ratify binding executive agreements has been confirmed by long practice.**
>
> **In thus agreeing to conclude the Agreement** thru E/N BFO-028-03, then President Gloria Macapagal-Arroyo, represented by the Secretary of Foreign Affairs, **acted within the scope of the authority and discretion vested in her by the Constitution.** At the end of the day, **the President — by ratifying, thru her deputies, the non-surrender agreement — did nothing more than discharge a constitutional duty and exercise a prerogative that pertains to her office.** (Emphases supplied)

Indeed, in the field of external affairs, the President must be given a larger measure of authority and wider discretion, subject only to the least amount of checks and restrictions under the Constitution.[229] The rationale behind this power and discretion was recognized by the Court in *Vinuya v. Executive Secretary*, cited earlier.[230]

Section 9 of Executive Order No. 459, or the Guidelines in the Negotiation of International Agreements and its Ratification, thus, correctly reflected the inherent powers of the President when it stated that the DFA "shall determine whether an agreement is an executive agreement or a treaty."

Accordingly, in the exercise of its power of judicial review, the Court does not look into whether an international agreement should be in the form of a treaty or an executive agreement, save in cases in which the Constitution or a statute requires otherwise. Rather, in view of the vast constitutional powers and prerogatives granted to the President in the field of foreign affairs, the task of the Court is to determine whether the international agreement is consistent with the applicable limitations.

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[229] SINCO, supra note 15, at 297. *See*: *Vinuya v. Executive Secretary*, supra note 17 (on espousal of the claims of Philippine nationals against a foreign government); *Pimentel v. Office of the Executive Secretary*, supra note 15 (on ratification of international agreements); *Secretary of Justice v. Lantion*, supra note 17 (on temporarily withholding of the right to notice and hearing during the evaluation stage of the extradition process); *People's Movement for Press Freedom v. Manglapus*, supra note 15 (on the imposition of secrecy in treaty negotiations with foreign countries).

[230] *Vinuya v. Executive Secretary*, supra note 17.

6. Executive agreements may cover the matter of foreign military forces if it merely involves detail adjustments.

The practice of resorting to executive agreements in adjusting the details of a law or a treaty that already deals with the presence of foreign military forces is not at all unusual in this jurisdiction. In fact, the Court has already implicitly acknowledged this practice in *Lim v. Executive Secretary*.[231] In that case, the Court was asked to scrutinize the constitutionality of the Terms of Reference of the *Balikatan 02-1* joint military exercises, which sought to implement the VFA. Concluded in the form of an executive agreement, the Terms of Reference detailed the coverage of the term "activities" mentioned in the treaty and settled the matters pertaining to the construction of temporary structures for the U.S. troops during the activities; the duration and location of the exercises; the number of participants; and the extent of and limitations on the activities of the U.S. forces. The Court upheld the Terms of Reference as being consistent with the VFA. It no longer took issue with the fact that the *Balikatan* Terms of Reference was not in the form of a treaty concurred in by the Senate, even if it dealt with the regulation of the activities of foreign military forces on Philippine territory.

In *Nicolas v. Romulo*,[232] the Court again impliedly affirmed the use of an executive agreement in an attempt to adjust the details of a provision of the VFA. The Philippines and the U.S. entered into the Romulo-Kenney Agreement, which undertook to clarify the detention of a U.S. Armed Forces member, whose case was pending appeal after his conviction by a trial court for the crime of rape. In testing the validity of the latter agreement, the Court precisely alluded to one of the inherent limitations of an executive agreement: it cannot go beyond the terms of the treaty it purports to implement. It was eventually ruled that the Romulo-Kenney Agreement was "not in accord" with the VFA, since the former was squarely inconsistent with a provision in the treaty requiring that the detention be "by Philippine authorities." Consequently, the Court ordered the Secretary of Foreign Affairs to comply with the VFA and "forthwith negotiate with the United States representatives for the appropriate agreement on detention facilities under Philippine authorities as provided in Art. V, Sec. 10 of the VFA."[233]

Culling from the foregoing discussions, we reiterate the following pronouncements to guide us in resolving the present controversy:

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[231] *Lim v. Executive Secretary*, supra note 69.
[232] *Nicolas v. Romulo*, supra note 39.
[233] *Nicolas v. Romulo*, supra note 39, at 291.

1. Section 25, Article XVIII of the Constitution, contains stringent requirements that must be fulfilled by the international agreement allowing the presence of foreign military bases, troops, or facilities in the Philippines: (a) the agreement must be in the form of a treaty, and (b) it must be duly concurred in by the Senate.

2. If the agreement is not covered by the above situation, then the President may choose the form of the agreement (*i.e.*, either an executive agreement or a treaty), provided that the agreement dealing with foreign military bases, troops, or facilities is not the principal agreement that first allows their entry or presence in the Philippines.

3. The executive agreement must not go beyond the parameters, limitations, and standards set by the law and/or treaty that the former purports to implement; and must not unduly expand the international obligation expressly mentioned or necessarily implied in the law or treaty.

4. The executive agreement must be consistent with the Constitution, as well as with existing laws and treaties.

In light of the President's choice to enter into EDCA in the form of an executive agreement, respondents carry the burden of proving that it is a mere implementation of existing laws and treaties concurred in by the Senate. EDCA must thus be carefully dissected to ascertain if it remains within the legal parameters of a valid executive agreement.

7. EDCA is consistent with the content, purpose, and framework of the MDT and the VFA

The starting point of our analysis is the rule that "an executive agreement x x x may not be used to amend a treaty."[234] In *Lim v. Executive Secretary* and in *Nicolas v. Romulo*, the Court approached the question of the validity of executive agreements by comparing them with the general framework and the specific provisions of the treaties they seek to implement.

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[234] *Bayan Muna v. Romulo*, supra note 114, at 273. *See also*: *Nicolas v. Romulo*, supra note 39; *Adolfo v. Court of First Instance of Zambales*, supra note 173; *Abbot Laboratories v. Agrava*, supra note 173. Senate Resolution No. 18, dated 27 May 1999, which embodies the concurrence of the Senate in the VFA, stresses in its preamble that "**nothing in this Resolution or in the VFA** shall be construed as **authorizing the President** of the Philippines alone **to bind the Philippines to any amendment of any provision of the VFA.**" (Emphases Supplied)

In *Lim*, the Terms of Reference of the joint military exercises was scrutinized by studying "the framework of the treaty antecedents to which the Philippines bound itself,"[235] *i.e.*, the MDT and the VFA. The Court proceeded to examine the extent of the term "activities" as contemplated in Articles I[236] and II[237] of the VFA. It later on found that the term "activities" was deliberately left undefined and ambiguous in order to permit "a wide scope of undertakings subject only to the approval of the Philippine government"[238] and thereby allow the parties "a certain leeway in negotiation."[239] The Court eventually ruled that the Terms of Reference fell within the sanctioned or allowable activities, especially in the context of the VFA and the MDT.

The Court applied the same approach to *Nicolas v. Romulo*. It studied the provisions of the VFA on custody and detention to ascertain the validity of the Romulo-Kenney Agreement.[240] It eventually found that the two international agreements were not in accord, since the Romulo-Kenney Agreement had stipulated that U.S. military personnel shall be detained at the U.S. Embassy Compound and guarded by U.S. military personnel, instead of by Philippine authorities. According to the Court, the parties "recognized the difference between custody during the trial and detention after conviction."[241] Pursuant to Article V(6) of the VFA, the custody of a U.S. military personnel resides with U.S. military authorities during trial. Once there is a finding of guilt, Article V(10) requires that the confinement or detention be "by Philippine authorities."

Justice Marvic M.V.F. Leonen's Dissenting Opinion posits that EDCA "substantially modifies or amends the VFA"[242] and follows with an enumeration of the differences between EDCA and the VFA. While these arguments will be rebutted more fully further on, an initial answer can already be given to each of the concerns raised by his dissent.

The first difference emphasized is that EDCA does not only regulate visits as the VFA does, but allows temporary stationing on a rotational basis of U.S. military personnel and their contractors in physical locations with permanent facilities and pre-positioned military materiel.

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[235] *Lim v. Executive Secretary*, supra note 69, at 571.

[236] The provision states: "As 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. x x x." (Emphases supplied)

[237] The provision states: "It is the duty of United States personnel to respect the laws of the Republic of the Philippines and to **abstain from any activity inconsistent with the spirit of this agreement**, and, **in particular, from any political activity in the Philippines.** The Government of the United States shall take all measures within its authority to ensure that this is done." (Emphases supplied)

[238] *Lim v. Executive Secretary*, supra note 69, at 572.

[239] *Lim v. Executive Secretary*, supra note 69, at 575.

[240] According to the agreement: "[H]e will be detained at the first floor, Rowe (JUSMAG) Building, U.S. Embassy Compound in a room of approximately 10 x 12 square feet. He will be guarded round the clock by U.S. military personnel. The Philippine police and jail authorities, under the direct supervision of the Philippine Department of Interior and Local Government (DILG) will have access to the place of detention to ensure the United States is in compliance with the terms of the VFA."

[241] *Nicolas v. Romulo*, supra note 39, at 287.

[242] Dissenting Opinion of Justice Marvic M.V.F. Leonen, p. 1.

This argument does not take into account that these permanent facilities, while built by U.S. forces, are to be owned by the Philippines once constructed.[243] Even the VFA allowed construction for the benefit of U.S. forces during their temporary visits.

The second difference stated by the dissent is that EDCA allows the prepositioning of military materiel, which can include various types of warships, fighter planes, bombers, and vessels, as well as land and amphibious vehicles and their corresponding ammunition.[244]

However, the VFA clearly allows the same kind of equipment, vehicles, vessels, and aircraft to be brought into the country. Articles VII and VIII of the VFA contemplates that U.S. equipment, materials, supplies, and other property are imported into or acquired in the Philippines by or on behalf of the U.S. Armed Forces; as are vehicles, vessels, and aircraft operated by or for U.S. forces in connection with activities under the VFA. These provisions likewise provide for the waiver of the specific duties, taxes, charges, and fees that correspond to these equipment.

The third difference adverted to by the Justice Leonen's dissent is that the VFA contemplates the entry of troops for training exercises, whereas EDCA allows the use of territory for launching military and paramilitary operations conducted in other states.[245] The dissent of Justice Teresita J. Leonardo-De Castro also notes that VFA was intended for non-combat activities only, whereas the entry and activities of U.S. forces into Agreed Locations were borne of military necessity or had a martial character, and were therefore not contemplated by the VFA.[246]

This Court's jurisprudence however established in no uncertain terms that combat-related activities, as opposed to actual combat, were allowed under the MDT and VFA, *viz*:

> Both the history and intent of the Mutual Defense Treaty and the VFA support the conclusion that combat-related activities as opposed to combat itself such as the one subject of the instant petition, are indeed authorized.[247]

Hence, even if EDCA was borne of military necessity, it cannot be said to have strayed from the intent of the VFA since EDCA's combat-related components are allowed under the treaty.

Moreover, both the VFA and EDCA are silent on what these activities actually are. Both the VFA and EDCA deal with the presence of U.S. forces

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[243] EDCA, Art. V(1) and (4).
[244] Dissenting Opinion of Justice Leonen, supra note 242, p.2.
[245] Id.
[246] Concurring and Dissenting Opinion of Justice Teresita J. Leonardo-De Castro, p. 25.
[247] Lim v. Executive Secretary, supra note 69, at 575.

within the Philippines, but make no mention of being platforms for activity beyond Philippine territory. While it may be that, as applied, military operations under either the VFA or EDCA would be carried out in the future, the scope of judicial review does not cover potential breaches of discretion but only actual occurrences or blatantly illegal provisions. Hence, we cannot invalidate EDCA on the basis of the potentially abusive use of its provisions.

The fourth difference is that EDCA supposedly introduces a new concept not contemplated in the VFA or the MDT: Agreed Locations, Contractors, Pre-positioning, and Operational Control.[248]

As previously mentioned, these points shall be addressed fully and individually in the latter analysis of EDCA's provisions. However, it 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. This concern shall be further elucidated in this Decision.

The fifth difference highlighted by the Dissenting Opinion is that the VFA does not have provisions that may be construed as a restriction on or modification of obligations found in existing statues, including the jurisdiction of courts, local autonomy, and taxation. Implied in this argument is that EDCA contains such restrictions or modifications.[249]

This last argument cannot be accepted in view of the clear provisions of EDCA. Both the VFA and EDCA ensure Philippine jurisdiction in all instances contemplated by both agreements, with the exception of those outlined by the VFA in Articles III-VI. In the VFA, taxes are clearly waived whereas in EDCA, taxes are assumed by the government as will be discussed later on. This fact does not, therefore, produce a diminution of jurisdiction on the part of the Philippines, but rather a recognition of sovereignty and the rights that attend it, some of which may be waived as in the cases under Articles III-VI of the VFA.

Taking off from these concerns, the provisions of EDCA must be compared with those of the MDT and the VFA, which are the two treaties from which EDCA allegedly draws its validity.

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[248] Dissenting Opinion of Justice Leonen, supra note 242.
[249] Id.

"Authorized presence" under the VFA versus "authorized activities" under EDCA: (1) U.S. personnel and (2) U.S. contractors

The OSG argues[250] that EDCA merely details existing policies under the MDT and the VFA. It explains that EDCA articulates the *principle of defensive preparation* embodied in Article II of the MDT; and seeks to enhance the defensive, strategic, and technological capabilities of both parties pursuant to the objective of the treaty to strengthen those capabilities to prevent or resist a possible armed attack. Respondent also points out that EDCA simply implements Article I of the VFA, which already allows the entry of U.S. troops and personnel into the country. Respondent stresses this Court's recognition in *Lim v. Executive Secretary* that U.S. troops and personnel are authorized to conduct activities that promote the goal of maintaining and developing their defense capability.

Petitioners contest[251] the assertion that the provisions of EDCA merely implement the MDT. According to them, the treaty does not specifically authorize the entry of U.S. troops in the country in order to maintain and develop the individual and collective capacities of both the Philippines and the U.S. to resist an armed attack. They emphasize that the treaty was concluded at a time when there was as yet no specific constitutional prohibition on the presence of foreign military forces in the country.

Petitioners also challenge the argument that EDCA simply implements the VFA. They assert that the agreement covers only *short-term* or *temporary visits* of U.S. troops "from time to time" for the specific purpose of *combined* military exercises with their Filipino counterparts. They stress that, in contrast, U.S. troops are allowed under EDCA to perform activities *beyond* combined military exercises, such as those enumerated in Articles III(1) and IV(4) thereof. Furthermore, there is some degree of permanence in the presence of U.S. troops in the country, since the effectivity of EDCA is continuous until terminated. They proceed to argue that while troops have a "rotational" presence, this scheme in fact fosters their permanent presence.

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[250] Memorandum of OSG, pp. 14-27, *rollo* (G.R. No. 212426), pp. 444-457.
[251] Memorandum of Saguisag *et al.*, pp. 22-23, 38-49, *rollo* (G.R. No. 212426, Vol. II), pp. 992-993, 1008-1019; Memorandum of Bayan *et al.*, pp. 35-41, *rollo* (G.R. No. 212444), pp. 599-605.

a. Admission of U.S. military and civilian personnel into Philippine territory is already allowed under the VFA

We shall first deal with the recognition under EDCA of the presence in the country of three distinct classes of individuals who will be conducting different types of activities within the Agreed Locations: (1) U.S. military personnel; (2) U.S. civilian personnel; and (3) U.S. contractors. The agreement refers to them as follows:

> **"United States personnel"** means **United States military** and **civilian personnel temporarily in the territory of the Philippines** in connection with activities approved by the Philippines, **as those terms are defined** in the **VFA**.[252]
>
> **"United States forces"** means the entity comprising United States **personnel** and all **property, equipment, and materiel** of the United States Armed Forces present in the territory of the Philippines.[253]
>
> **"United States contractors"** means **companies and firms**, and **their employees, under contract or subcontract** to or on behalf of the United States Department of Defense. United States contractors are **not** included as part of the definition of **United States personnel** in this Agreement, including within the context of the VFA.[254]
>
> **United States forces may contract** for **any materiel, supplies, equipment, and services** (including construction) to be furnished or undertaken in the territory of the Philippines without restriction as to choice of contractor, supplier, or person **who provides** such **materiel, supplies, equipment**, or **services**. Such contracts shall be solicited, awarded, and administered in accordance with the laws and regulations of the United States.[255] (Emphases Supplied)

A thorough evaluation of **how EDCA is phrased clarifies that the agreement does not deal with the entry into the country of U.S. personnel and contractors *per se***. While Articles I(1)(b)[256] and II(4)[257]

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[252] EDCA, Art. II(1).
[253] EDCA, Art. II(2).
[254] EDCA, Art. II(3).
[255] EDCA, Art. VIII(1).
[256] According to this provision: "1. This Agreement deepens defense cooperation between the Parties and maintains and develops their individual and collective capacities, in furtherance of Article II of the MDT, which states that 'the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack,' and within the context of the VFA. This includes: xxxx (b) **Authorizing access to Agreed Locations** in the territory of the Philippines by United States forces on a rotational basis, as mutually determined by the Parties.
[257] According to this provision: **"Agreed Locations"** means **facilities and areas** that are provided by the Government of the Philippines through the AFP and **that United States forces, United States contractors**, and others as mutually agreed, **shall have the right to access and use pursuant** to this

speak of "the right to access and use" the Agreed Locations, their wordings indicate the presumption that these groups have already been allowed entry into Philippine territory, for which, unlike the VFA, EDCA has no specific provision. Instead, Article II of the latter simply alludes to the VFA in describing *U.S. personnel*, a term defined under Article I of the treaty as follows:

> As 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. Within this definition:
>
> 1. The term "**military personnel**" refers to **military members** of the **United States Army, Navy, Marine Corps, Air Force, and Coast Guard.**
>
> 2. The term "**civilian personnel**" refers to individuals who are **neither nationals of nor ordinarily resident in the Philippines** and who are **employed by the United States armed forces or who are accompanying the United States armed forces**, such as employees of the **American Red Cross** and the **United Services Organization**.[258]

Article II of EDCA must then be read with Article III of the VFA, which provides for the entry accommodations to be accorded to U.S. military and civilian personnel:

> 1. The Government of the **Philippines shall facilitate** the **admission of United States personnel** and their departure from the Philippines in connection with activities covered by this agreement.
>
> 2. United States **military personnel shall be exempt from passport and visa regulations upon entering** and departing the Philippines.
>
> 3. The following documents only, which shall be required in respect of United States military personnel who enter the Philippines; x x x x.
>
> 4. United States **civilian personnel** shall be **exempt from visa requirements but shall present**, upon demand, **valid passports upon entry** and departure of the Philippines. (Emphases Supplied)

By virtue of Articles I and III of the VFA, the Philippines already allows U.S. military and civilian personnel to be "temporarily in the Philippines," so long as their presence is "in connection with activities

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cont.
agreement. Such Agreed Locations may be listed in an annex to be appended to this Agreement, and may be further described in implementing arrangements.

[258] VFA I, Art. I.

approved by the Philippine Government." The Philippines, through Article III, even guarantees that it shall facilitate the admission of U.S. personnel into the country and grant exemptions from passport and visa regulations. The VFA does not even limit their temporary presence to specific locations.

Based on the above provisions, the **admission and presence of U.S. military and civilian personnel in Philippine territory are already allowed under the VFA, the treaty supposedly being implemented by EDCA.** What EDCA has effectively done, in fact, is merely provide the mechanism to identify the locations in which U.S. personnel may perform allowed activities pursuant to the VFA. As the implementing agreement, it regulates and limits the presence of U.S. personnel in the country.

b. EDCA does not provide the legal basis for admission of U.S. contractors into Philippine territory; their entry must be sourced from extraneous Philippine statutes and regulations for the admission of alien employees or business persons.

Of the three aforementioned classes of individuals who will be conducting certain activities within the Agreed Locations, we note that only *U.S. contractors* are not explicitly mentioned in the VFA. This does not mean, though, that the recognition of their presence under EDCA is *ipso facto* an amendment of the treaty, and that there must be Senate concurrence before they are allowed to enter the country.

Nowhere in EDCA are U.S. contractors guaranteed immediate admission into the Philippines. Articles III and IV, in fact, merely grant them the right of access to, and the authority to conduct certain activities within the Agreed Locations. Since Article II(3) of EDCA specifically leaves out *U.S. contractors* from the coverage of the VFA, they shall not be granted the same entry accommodations and privileges as those enjoyed by U.S. military and civilian personnel under the VFA.

Consequently, it is neither mandatory nor obligatory on the part of the Philippines to admit U.S. contractors into the country.[259] We emphasize that the admission of aliens into Philippine territory is "a matter of pure permission and simple tolerance which creates no obligation on the part of the government to permit them to stay."[260] Unlike U.S. personnel who are accorded entry accommodations, U.S. contractors are subject to Philippine

[259] *See*: *Djumantan v. Domingo*, 310 Phil. 848 (1995).
[260] *Djumantan v. Domingo*, 310 Phil. 848, 854 (1995).

immigration laws.[261] The latter must comply with our visa and passport regulations[262] and prove that they are not subject to exclusion under any provision of Philippine immigration laws.[263] The President may also deny them entry pursuant to his absolute and unqualified power to prohibit or prevent the admission of aliens whose presence in the country would be inimical to public interest.[264]

In the same vein, the President may exercise the plenary power to expel or deport U.S. contractors[265] as may be necessitated by national security, public safety, public health, public morals, and national interest.[266] They may also be deported if they are found to be illegal or undesirable aliens pursuant to the Philippine Immigration Act[267] and the Data Privacy

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[261] Commonwealth Act No. 613 (The Philippine Immigration Act of 1940, as amended).

[262] Commonwealth Act No. 613 (The Philippine Immigration Act of 1940, as amended), Secs. 10 & 11.

[263] Commonwealth Act No. 613 (The Philippine Immigration Act of 1940, as amended), Sec. 29 & 30. Under Section 29, the following classes of aliens shall be excluded from entry into the Philippines: (1) Idiots or insane persons and persons who have been insane; (2) Persons afflicted with a loathsome or dangerous contagious disease, or epilepsy; (3) Persons who have been convicted of a crime involving moral turpitude; (4) Prostitutes, or procurers, or persons coming for any immoral purposes; (5) Persons likely to become, public charge; (6) Paupers, vagrants, and beggars; (7) Persons who practice polygamy or who believe in or advocate the practice of polygamy; (8) **Persons who believe in or advocate** the **overthrow by force and violence** of the **Government** of the Philippines, or of constituted lawful authority, or who disbelieve in or are opposed to organized government, or who **advocate the assault or assassination of public officials** because of their office, or who **advocate or teach principles, theories, or ideas contrary to the Constitution of the Philippines** or advocate or teach the unlawful destruction of property, or who are members of or affiliated with any organization entertaining or teaching such doctrines; (9) Persons over fifteen years of age, physically capable of reading, who cannot read printed matter in ordinary use in any language selected by the alien, but this provision shall not apply to the grandfather, grandmother, father, mother, wife, husband or child of a Philippine citizen or of an alien lawfully resident in the Philippines; (10) Persons who are members of a family accompanying an excluded alien, unless in the opinion of the Commissioner of Immigration no hardship would result from their admission; (11) Persons accompanying an excluded person who is helpless from mental or physical disability or infancy, when the protection or guardianship of such accompanying person or persons is required by the excluded person, as shall be determined by the Commissioner of Immigration; (12) Children under fifteen years of age, unaccompanied by or not coming to a parent, except that any such children may be admitted in the discretion of the Commissioner of Immigration, if otherwise admissible; (13) Stowaways, except that any stowaway may be admitted in the discretion of the Commissioner of Immigration, if otherwise admissible; (14) Persons coming to perform unskilled manual labor in pursuance of a promise or offer of employment, express or implied, but this provision shall not apply to persons bearing passport visas authorized by Section Twenty of this Act; (15) **Persons who have been excluded or deported from the Philippines**, but this provision may be waived in the discretion of the Commissioner of Immigration: *Provided, however*, That the Commissioner of Immigration shall not exercise his discretion in favor of aliens excluded or deported on the ground of conviction for any crime involving moral turpitude or for any crime penalized under Sections [45] and [46] of this Act or on the ground of having engaged in hoarding, black-marketing or profiteering unless such aliens have previously resided in the Philippines immediately before his exclusion or deportation for a period of ten years or more or are married to native Filipino women; (16) Persons who have been removed from the Philippines at the expense of the Government of the Philippines, as indigent aliens, under the provisions of section [43] of this Act, and who have not obtained the consent of the Board of Commissioners to apply for readmission; and (17) Persons not properly documented for admission as may be required under the provisions of this Act. (Emphasis supplied)

[264] *Djumantan v. Domingo*, supra note 259.

[265] Administrative Code of 1987, Book III (Office of the President), Title I (Powers of the President), Secs. 8 & 11 *in relation to* Commonwealth Act No. 613 (The Philippine Immigration Act of 1940), Sec. 52 and Act. No. 2711 (Revised Administrative Code of 1917), Sec. 69. *See*: *Djumantan v. Domingo*, supra note 259; *Teo Tung v. Machlan*, 60 Phil. 916 (1934).

[266] *See*: Commonwealth Act No. 613 (The Philippine Immigration Act of 1940, as amended), Secs. 6, 12, 28 & 29; *Djumantan v. Domingo*, supra note 259; *Salazar v. Achacoso*, 262 Phil. 160 (1990); RONALDO P. LEDESMA, DEPORTATION PROCEEDINGS: PRACTICE, PRECEDENTS, AND PROCEDURES 96 (2013).

[267] Commonwealth Act No. 613 (The Philippine Immigration Act of 1940, as amended), Sec. 37. The provision enumerates as follows: (1) Any **alien who enters the Philippines** x x x by means of **false and misleading statements** or **without inspection and admission** by the immigration authorities x x x; (2) Any alien who enters the Philippines x x x, who was **not lawfully admissible at the time of entry**; (3) Any

Act.[268] In contrast, Article III(5) of the VFA requires a request for removal from the Philippine government before a member of the U.S. personnel may be "dispos[ed] x x x outside of the Philippines."

c. Authorized activities of U.S. military and civilian personnel within Philippine territory are in furtherance of the MDT and the VFA

We begin our analysis by quoting the relevant sections of the MDT and the VFA that pertain to the activities in which U.S. military and civilian personnel may engage:

MUTUAL DEFENSE TREATY

Article II

> In order more effectively to achieve the objective of this Treaty, the Parties separately and **jointly by** self-help and **mutual aid** will **maintain and develop their individual and collective capacity** to **resist armed attack.**

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cont.
alien who, x x x, is **convicted in the Philippines** and sentenced for a term of one year or more for a **crime involving moral turpitude** committed within five years after his entry to the Philippines, or who, at any time after such entry, is so convicted and sentenced more than once; (4) Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs; (5) Any alien who practices prostitution or is an inmate of a house of prostitution or is connected with the management of a house of prostitution, or is a procurer; (6) Any alien who becomes a public charge within five years after entry from causes not affirmatively shown to have arisen subsequent to entry; (7) Any alien who remains in the Philippines in **violation of any limitation or condition under which he was admitted as a non-immigrant**; (8) Any alien who **believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines**, or of constituted law and authority, or who disbelieves in or is opposed to organized government or who advises, advocates, or teaches the assault or assassination of public officials because of their office, or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines; (9) Any alien who commits any of the acts described in sections [45] and [46] of this Act, independent of criminal action which may be brought against him: x x x; (10) Any alien who, at any time within five years after entry, shall have been **convicted of violating** the provisions of the Philippine Commonwealth Act [653], otherwise known as the **Philippine Alien Registration Act of 1941**, or who, at any time after entry, shall have been convicted more than once of violating the provisions of the same Act; (11) Any alien who engages in **profiteering, hoarding, or blackmarketing**, independent of any criminal action which may be brought against him; (12) Any alien who is **convicted of any offense** penalized under Commonwealth Act [473], otherwise known as the **Revised Naturalization Laws of the Philippines**, or any law relating to acquisition of Philippine citizenship; (13) Any alien who defrauds his creditor by absconding or alienating properties to prevent them from, being attached or executed. (Emphasis supplied)

[268] Republic Act No. 10173, Sec. 34. According to the provision, "[i]f the offender is an alien, he or she shall, **in addition to the penalties** herein prescribed, be **deported without further proceedings** after serving the penalties prescribed."

Article III

The Parties, **through their Foreign Ministers or their deputies**, will **consult together** from time to time regarding the **implementation of this Treaty** and whenever in the opinion of either of them the territorial integrity, political independence or security of either of the Parties is threatened by external armed attack in the Pacific.

VISITING FORCES AGREEMENT

Preamble

x x x

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;

Considering that **cooperation** between the United States and the Republic of the Philippines **promotes their common security interests**;

x x x

Article I – Definitions

As 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**. Within this definition: x x x

Article II – Respect for Law

It is the **duty of United States personnel** to **respect the laws of the Republic of the Philippines** and **to abstain from any activity inconsistent with the spirit of this agreement**, and, in particular, from **any political activity** in the Philippines. The Government of the United States shall take all measures within its authority to ensure that this is done.

Article VII – Importation and Exportation

1. 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**, shall be free of all Philippine duties, taxes and other similar charges. Title to such property shall remain with the United States, which may remove such property from the Philippines at any time, free from export duties, taxes, and other similar charges. x x x.

Article VIII – Movement of Vessels and Aircraft

> 1. **Aircraft operated** by or for the **United States armed forces may enter the Philippines upon approval** of the Government of the Philippines **in accordance** with procedures stipulated in **implementing arrangements.**
>
> 2. **Vessels operated** by or for the **United States armed forces may enter** the Philippines **upon approval of the Government of the Philippines.** The movement of vessels shall be **in accordance with international custom and practice governing such vessels,** and **such agreed implementing arrangements as necessary**. x x x (Emphases Supplied)

Manifest in these provisions is the abundance of references to the creation of further "implementing arrangements" including the identification of "activities [to be] approved by the Philippine Government." To determine the parameters of these implementing arrangements and activities, we referred to the content, purpose, and framework of the MDT and the VFA.

By its very language, the MDT contemplates a situation in which both countries shall engage in *joint* activities, so that they can maintain and develop their defense capabilities. The wording itself evidently invites a reasonable construction that the *joint* activities shall involve *joint* military trainings, maneuvers, and exercises. Both the interpretation[269] and the subsequent practice[270] of the parties show that the MDT independently allows joint military exercises in the country. *Lim v. Executive Secretary*[271] and *Nicolas v. Romulo*[272] recognized that *Balikatan* exercises, which are activities that seek to enhance and develop the strategic and technological capabilities of the parties to resist an armed attack, "fall squarely under the provisions of the RP-US MDT."[273] In *Lim*, the Court especially noted that the Philippines and the U.S. continued to conduct joint military exercises even after the expiration of the MBA and even before the conclusion of the

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[269] *See*: *Secretary of Justice v. Lantion*, supra note 17. According to the Court: "An **equally compelling factor to consider is the understanding of the parties themselves** to the RP-US Extradition Treaty x x x. The rule is recognized that while courts have the power to interpret treaties, **the meaning given them by the departments of government** particularly **charged with their negotiation and enforcement** is **accorded great weight**. x x x This interpretation by the two governments cannot be given scant significance. It will be presumptuous for the Court to assume that both governments did not understand the terms of the treaty they concluded." (Emphasis supplied)

[270] *See* Status of Forces Agreement of 1993, supra note 70. The International Law Commission explains that the subsequent practice of states in the application of the treaty may be taken into account in ascertaining the parties' agreement in the interpretation of that treaty. This is "well-established in the jurisprudence of international tribunals" even before the Vienna Convention on the Law of Treaties was concluded. *See* International Law Commission, *Draft Articles on the Law of Treaties with Commentaries*, 1966(II) Y.B.I.L.C. 187, at 221-222 (citing *Russian Claim for Indemnities* [Russia/Turkey], XI R.I.A.A. 421, 433 [1912] [Nov. 11]; *Competence of the ILO to Regulate Agricultural Labour*, 1922 P.C.I.J. [ser. B] No. 2, 39 [Aug. 12]; *Interpretation of Article 3, paragraph 2, of the Treaty of Lausanne*, 1925 P.C.I.J. [ser. B] No. 12, 24 [Nov. 21]; *Brazilian Loans*, 1929 P.C.I.J. (ser. A) No. 21, 119 [Jul. 12]; and *Corfu Channel* [U.K. v. Albania], 1949 I.C.J. 4, 25 [Apr. 9]).

[271] *Lim v. Executive Secretary*, supra note 69, at 571-572.

[272] *Nicolas v. Romulo*, supra note 39, at 284.

[273] Id.

VFA.[274] These activities presumably related to the Status of Forces Agreement, in which the parties agreed on the status to be accorded to U.S. military and civilian personnel while conducting activities in the Philippines in relation to the MDT.[275]

Further, it can be logically inferred from Article V of the MDT that these *joint* activities may be conducted on Philippine or on U.S. soil. The article expressly provides that the term *armed attack* includes "an armed attack on the **metropolitan territory** of either of the Parties, or on the **island territories under its jurisdiction** in the Pacific or on its **armed forces, public vessels or aircraft** in the Pacific." Surely, in maintaining and developing our defense capabilities, an assessment or training will need to be performed, separately and jointly by self-help and mutual aid, in the territories of the contracting parties. It is reasonable to conclude that the assessment of defense capabilities would entail understanding the terrain, wind flow patterns, and other environmental factors unique to the Philippines.

It would also be reasonable to conclude that a simulation of how to respond to attacks in vulnerable areas would be part of the training of the parties to maintain and develop their capacity to resist an actual armed attack and to test and validate the defense plan of the Philippines. It is likewise reasonable to imagine that part of the training would involve an analysis of the effect of the weapons that may be used and how to be prepared for the eventuality. This Court recognizes that all of this may require training in the area where an armed attack might be directed at the Philippine territory.

The provisions of the MDT must then be read in conjunction with those of the VFA.

Article I of the VFA indicates that the presence of U.S. military and civilian personnel in the Philippines is "in connection with activities approved by the Philippine Government." While the treaty does not expressly enumerate or detail the nature of activities of U.S. troops in the country, its Preamble makes explicit references to the reaffirmation of the obligations of both countries under the MDT. These obligations include the strengthening of international and regional security in the Pacific area and the promotion of common security interests.

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[274] *Lim v. Executive Secretary*, supra note 69, at 575; Joint Report of the Committee on Foreign Relations and the Committee on National Defense and Security *reproduced in* SENATE OF THE PHILIPPINES, supra note 69, at 206.

[275] Status of Forces Agreement of 1993, supra note 70. According to Note No. 93-2301 dated 11 June 1993 of the DFA to the U.S. Embassy, "The [DFA] x x x has the honor to reaffirm its position that all U.S. military and civilian personnel present in the Philippines participating in activities undertaken in relation to the Mutual Defense Treaty will be accorded the same status as the U.S. Embassy's technical and administrative personnel who are qualified to enter the Philippines under existing Philippine laws. The Department further proposes that the procedures as well as the arrangements for these MDT-related activities are to be mutually agreed upon by the MDB, subject to the guidelines of the Council of Ministers."

The Court has already settled in *Lim v. Executive Secretary* that the phrase "activities approved by the Philippine Government" under Article I of the VFA was intended to be ambiguous in order to afford the parties flexibility to adjust the details of the purpose of the visit of U.S. personnel.[276] In ruling that the Terms of Reference for the *Balikatan* Exercises in 2002 fell within the context of the treaty, this Court explained:

> After studied reflection, it appeared **farfetched** that the **ambiguity surrounding the meaning of the word "activities" arose from accident.** In our view, it was **deliberately made that way to give both parties a certain leeway in negotiation.** In this manner, **visiting US forces may sojourn in Philippine territory for purposes other than military.** As conceived, the joint exercises may include training on new techniques of patrol and surveillance to protect the nation's marine resources, sea search-and-rescue operations to assist vessels in distress, disaster relief operations, civic action projects such as the building of school houses, medical and humanitarian missions, and the like.
>
> Under these auspices, the VFA gives legitimacy to the current Balikatan exercises. **It is only logical to assume that "Balikatan 02-1," a "mutual anti-terrorism advising, assisting and training exercise," falls under the umbrella of sanctioned or allowable activities in the context of the agreement.** Both the history and intent of the Mutual Defense Treaty and the VFA support the conclusion that combat-related activities — as opposed to combat itself — such as the one subject of the instant petition, are indeed authorized. (Emphases Supplied)

The joint report of the Senate committees on foreign relations and on national defense and security further explains the wide range and variety of activities contemplated in the VFA, and how these activities shall be identified:[277]

> These **joint exercises** envisioned in the VFA are **not limited to combat-related activities**; they have a **wide range and variety**. They include exercises that will reinforce the AFP's ability to **acquire new techniques of patrol and surveillance** to protect the country's maritime resources; **sea-search and rescue operations** to assist ships in distress; and **disaster-relief operations** to aid the civilian victims of natural calamities, such as earthquakes, typhoons and tidal waves.
>
> x x x x
>
> Joint activities under the VFA will include combat maneuvers; training in aircraft maintenance and equipment repair; civic-action projects; and consultations and meetings of the Philippine-U.S. Mutual

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[276] *Lim v. Executive Secretary*, supra note 69. *See also* Joint Report of the Committee on Foreign Relations and the Committee on National Defense and Security *reproduced in* SENATE OF THE PHILIPPINES, supra note 69, at 230-231.

[277] Joint Report of the Committee on Foreign Relations and the Committee on National Defense and Security *reproduced in* SENATE OF THE PHILIPPINES, supra note 69, at 205-206, 231.

> Defense Board. **It is at the level of the Mutual Defense Board**—which is headed jointly by the Chief of Staff of the AFP and the Commander in Chief of the U.S. Pacific Command—**that the VFA exercises are planned. Final approval of any activity** involving U.S. forces is, however, **invariably given by the Philippine Government**.
>
> x x x x
>
> 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. (Emphases Supplied)

What can be gleaned from the provisions of the VFA, the joint report of the Senate committees on foreign relations and on national defense and security, and the ruling of this Court in *Lim* is that the "activities" referred to in the treaty are meant to be specified and identified in *further* agreements. EDCA is one such agreement.

EDCA seeks to be an instrument that enumerates the Philippine-approved activities of U.S. personnel referred to in the VFA. EDCA allows U.S. military and civilian personnel to perform "activities approved by the Philippines, as those terms are defined in the VFA"[278] and clarifies that these activities include those conducted within the Agreed Locations:

1. Security cooperation exercises; joint and combined training activities; humanitarian assistance and disaster relief activities; and such other activities as may be agreed upon by the Parties[279]

2. 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; deployment of forces and materiel; and such other activities as the Parties may agree[280]

3. Exercise of operational control over the Agreed Locations for construction activities and other types of activity, including alterations and improvements thereof[281]

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[278] EDCA, Art. II(1).
[279] EDCA, Art. I(3).
[280] EDCA, Art. III(1).
[281] EDCA, Art. III(4) & (6).

4. Exercise of all rights and authorities within the Agreed Locations that are necessary for their operational control or defense, including the adoption of appropriate measures to protect U.S. forces and contractors[282]

5. Use of water, electricity, and other public utilities[283]

6. Operation of their own telecommunication systems, including the utilization of such means and services as are required to ensure the full ability to operate telecommunication systems, as well as the use of the necessary radio spectrum allocated for this purpose[284]

According to Article I of EDCA, one of the purposes of these activities is to maintain and develop, jointly and by mutual aid, the individual and collective capacities of both countries to resist an armed attack. It further states that the activities are in furtherance of the MDT and within the context of the VFA.

We note that these planned activities are very similar to those under the Terms of Reference[285] mentioned in *Lim*. Both EDCA and the Terms of Reference authorize the U.S. to perform the following: (a) participate in training exercises; (b) retain command over their forces; (c) establish temporary structures in the country; (d) share in the use of their respective resources, equipment and other assets; and (e) exercise their right to self-defense. We quote the relevant portion of the Terms and Conditions as follows:[286]

I. **POLICY LEVEL**

x x x x

No permanent US basing and support facilities shall be established. **Temporary structures** such as those for **troop billeting, classroom instruction and messing may be set up for use by RP and US Forces during the Exercise.**

The Exercise shall be implemented jointly by RP and US Exercise Co-Directors under the authority of the Chief of Staff, AFP. In no instance will US Forces operate independently during field training exercises (FTX). **AFP and US Unit Commanders will retain command over their respective forces under the overall**

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[282] EDCA, Art. VI(3).
[283] EDCA, Art. VII(1).
[284] EDCA, Art. VII(2).
[285] According to the Agreed Minutes of the Discussion between the former Philippine Vice-President / Secretary of Foreign Affairs Teofisto T. Guingona, Jr. and U.S. Assistant Secretary of State for East Asian and Pacific Affairs James Kelly, both countries approved the Terms of Agreement of the Balikatan exercises. *See*: *rollo* (G.R. No. 151445), pp. 99-100.
[286] *Lim v. Executive Secretary*, supra note 69, at 565-566.

authority of the Exercise Co-Directors. RP and US participants shall comply with operational instructions of the AFP during the FTX.

The exercise shall be conducted and completed within a period of not more than six months, with the projected participation of 660 US personnel and 3,800 RP Forces. The Chief of Staff, AFP shall direct the Exercise Co-Directors to wind up and terminate the Exercise and other activities within the six month Exercise period.

The Exercise is a **mutual counter-terrorism advising, assisting and training Exercise** relative to Philippine efforts against the ASG, and will be conducted on the Island of Basilan. Further advising, assisting and training exercises shall be conducted in Malagutay and the Zamboanga area. Related activities in Cebu will be for support of the Exercise.

x x x x.

US exercise participants **shall not engage in combat, without prejudice to their right of self-defense**.

These terms of Reference are for purposes of this Exercise only and do not create additional legal obligations between the US Government and the Republic of the Philippines.

II. **EXERCISE LEVEL**

1. **TRAINING**

a. The Exercise shall involve the conduct of **mutual military assisting, advising and training** of RP and US Forces with the primary objective of **enhancing the operational capabilities** of both forces to combat terrorism.

b. **At no time shall US Forces operate independently within RP territory**.

c. Flight plans of all aircraft involved in the exercise will comply with the local air traffic regulations.

2. **ADMINISTRATION & LOGISTICS**

x x x x

a. RP and US participating forces **may share**, in accordance with their respective laws and regulations, in the **use of their resources, equipment and other assets. They will use their respective logistics channels**. x x x. (Emphases Supplied)

After a thorough examination of the content, purpose, and framework of the MDT and the VFA, we find that EDCA has remained within the parameters set in these two treaties. Just like the Terms of Reference mentioned in *Lim*, mere adjustments in detail to implement the MDT and the VFA can be in the form of executive agreements.

Petitioners assert[287] that the duration of the activities mentioned in EDCA is no longer consistent with the temporary nature of the visits as contemplated in the VFA. They point out that Article XII(4) of EDCA has an initial term of 10 years, a term automatically renewed unless the Philippines or the U.S. terminates the agreement. According to petitioners, such length of time already has a badge of permanency.

In connection with this, Justice Teresita J. Leonardo-De Castro likewise argues in her Concurring and Dissenting Opinion that the VFA contemplated mere temporary visits from U.S. forces, whereas EDCA allows an unlimited period for U.S. forces to stay in the Philippines.[288]

However, the provisions of EDCA directly contradict this argument by limiting itself to 10 years of effectivity. Although this term is automatically renewed, the process for terminating the agreement is unilateral and the right to do so automatically accrues at the end of the 10 year period. Clearly, this method does not create a permanent obligation.

Drawing on the reasoning in *Lim*, we also believe that it could not have been by chance that the VFA does not include a maximum time limit with respect to the presence of U.S. personnel in the country. We construe this lack of specificity as a deliberate effort on the part of the Philippine and the U.S. governments to leave out this aspect and reserve it for the "adjustment in detail" stage of the implementation of the treaty. We interpret the subsequent, unconditional concurrence of the Senate in the entire text of the VFA as an implicit grant to the President of a margin of appreciation in determining the duration of the "temporary" presence of U.S. personnel in the country.

Justice Brion's dissent argues that the presence of U.S. forces under EDCA is "more permanent" in nature.[289] However, this argument has not taken root by virtue of a simple glance at its provisions on the effectivity period. EDCA does not grant permanent bases, but rather temporary rotational access to facilities for efficiency. As Professor Aileen S.P. Baviera notes:

> The new EDCA would grant American troops, ships and planes rotational access to facilities of the Armed Forces of the Philippines – but not permanent bases which are prohibited under the Philippine

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[287] Memorandum of Saguisag *et al.*, pp. 43-46, *rollo* (G.R. No. 212426, Vol. II), pp. 1013-1016.
[288] Concurring and Dissenting Opinion of Justice Teresita J. Leonardo-De Castro, p. 24.
[289] Dissenting Opinion of Justice Brion, pp. 48-51.

> Constitution – with the result of reducing response time should an external threat from a common adversary crystallize.[290]

EDCA is far from being permanent in nature compared to the practice of states as shown in other defense cooperation agreements. For example, Article XIV(1) of the U.S.-Romania defense agreement provides the following:

> This Agreement is **concluded for an indefinite period** and shall enter into force in accordance with the internal laws of each Party x x x. (emphasis supplied)

Likewise, Article 36(2) of the *US-Poland Status of Forces Agreement* reads:

> This Agreement has been **concluded for an indefinite period of time**. It may be terminated by written notification by either Party and in that event it terminates 2 years after the receipt of the notification. (emphasis supplied)

Section VIII of *U.S.-Denmark Mutual Support Agreement* similarly provides:

> 8.1 This Agreement, which consists of a Preamble, SECTIONs I-VIII, and Annexes A and B, shall become effective on the date of the last signature affixed below and **shall remain in force until terminated by the Parties**, provided that it may be terminated by either Party upon 180 days written notice of its intention to do so to the other Party. (emphasis supplied)

On the other hand, Article XXI(3) of the *U.S.-Australia Force Posture Agreement* provides a longer initial term:

> 3. This Agreement shall have an **initial term of 25 years and thereafter shall continue in force**, but may be terminated by either Party at any time upon one year's written notice to the other Party through diplomatic channels. (emphasis supplied)

The phrasing in EDCA is similar to that in the U.S.-Australia treaty but with a term less than half of that is provided in the latter agreement. This

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[290] Aileen S.P. Baviera, *Implications of the US-Philippines Enhanced Defense Cooperation Agreement*, ASIA PACIFIC BULLETIN NO. 292, 9 May 2014.

means that EDCA merely follows the practice of other states in not specifying a non-extendible maximum term. This practice, however, does not automatically grant a badge of permanency to its terms. Article XII(4) of EDCA provides very clearly, in fact, that its effectivity is for an initial term of 10 years, which is far shorter than the terms of effectivity between the U.S. and other states. It is simply illogical to conclude that the initial, extendible term of 10 years somehow gives EDCA provisions a permanent character.

The reasoning behind this interpretation is rooted in the constitutional role of the President who, as Commander-in-Chief of our armed forces, is the principal strategist of the nation and, as such, duty-bound to defend our national sovereignty and territorial integrity;[291] who, as chief architect of our foreign relations, is the head policymaker tasked to assess, ensure, and protect our national security and interests;[292] who holds the most comprehensive and most confidential information about foreign countries[293] that may affect how we conduct our external affairs; and who has unrestricted access to highly classified military intelligence data[294] that may threaten the life of the nation. Thus, if after a geopolitical prognosis of situations affecting the country, a belief is engendered that a much longer period of military training is needed, the President must be given ample discretion to adopt necessary measures including the flexibility to set an extended timetable.

Due to the sensitivity and often strict confidentiality of these concerns, we acknowledge that the President may not always be able to candidly and openly discuss the complete situation being faced by the nation. The Chief Executive's hands must not be unduly tied, especially if the situation calls for crafting programs and setting timelines for approved activities. These activities may be necessary for maintaining and developing our capacity to resist an armed attack, ensuring our national sovereignty and territorial integrity, and securing our national interests. If the Senate decides that the President is in the best position to define in operational terms the meaning of *temporary* in relation to the visits, considered individually or in their totality, the Court must respect that policy decision. If the Senate feels that there is no need to set a time limit to these visits, neither should we.

Evidently, the fact that the VFA does not provide specificity in regard to the extent of the "temporary" nature of the visits of U.S. personnel does not suggest that the duration to which the President may agree is unlimited. Instead, the boundaries of the meaning of the term *temporary* in Article I of the treaty must be measured depending on the purpose of each visit or

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[291] *See* CONSTITUTION, Art. VII, Sec. 18 in relation to Art. II, Sec. 3.
[292] *See* Administrative Code of 1987, Book IV (Executive Branch), Title I (Foreign Affairs), Sec. 3(1) in relation to CONSTITUTION, Art. VII, Sec. 1 and Art. II, Sec. 3; *Akbayan Citizens Action Party v. Aquino*, supra note 15; *Pimentel v. Office of the Executive Secretary*, supra note 15; *Bayan v. Zamora*, supra note 23.
[293] *Vinuya v. Executive Secretary*, supra note 17.
[294] Id.

activity.[295] That purpose must be analyzed on a case-by-case basis depending on the factual circumstances surrounding the conclusion of the implementing agreement. While the validity of the President's actions will be judged under less stringent standards, the power of this Court to determine whether there was grave abuse of discretion remains unimpaired.

d. Authorized activities performed by U.S. contractors within Philippine territory – who were legitimately permitted to enter the country independent of EDCA – are subject to relevant Philippine statutes and regulations and must be consistent with the MDT and the VFA

Petitioners also raise[296] concerns about the U.S. government's purported practice of hiring private security contractors in other countries. They claim that these contractors – one of which has already been operating in Mindanao since 2004 – have been implicated in incidents or scandals in other parts of the globe involving rendition, torture and other human rights violations. They also assert that these contractors employ paramilitary forces in other countries where they are operating.

Under Articles III and IV of EDCA, U.S. contractors are authorized to perform only the following activities:

1. 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; deployment of forces and materiel; and such other activities as the Parties may agree[297]

2. Prepositioning and storage of defense equipment, supplies, and materiel, including delivery, management, inspection, use, maintenance, and removal of such equipment, supplies and materiel[298]

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[295] *See generally* Joint Report of the Committee on Foreign Relations and the Committee on National Defense and Security *reproduced in* SENATE OF THE PHILIPPINES, supra note 69, at 206. According to the report: "The Mutual Defense Board programs an average of 10 to 12 exercises annually. Participating U.S. personnel, numbering from 10 to more than 1,000, stay in Philippine territory from four days to four weeks, depending on the nature of the exercise."

[296] Memorandum of Bayan, pp. 47-51, *rollo* (G.R. No. 212444), pp. 611-615

[297] EDCA, Art. III(1).

[298] EDCA, Art. IV(4).

3. Carrying out of matters in accordance with, and to the extent permissible under, U.S. laws, regulations, and policies[299]

EDCA requires that all activities within Philippine territory be in accordance with Philippine law. This means that certain privileges denied to aliens are likewise denied to foreign military contractors. Relevantly, providing security[300] and carrying, owning, and possessing firearms[301] are illegal for foreign civilians.

The laws in place already address issues regarding the regulation of contractors. In the 2015 Foreign Investment Negative list,[302] the Executive Department has already identified corporations that have equity restrictions in Philippine jurisdiction. Of note is No. 5 on the list – private security agencies that cannot have any foreign equity by virtue of Section 4 of Republic Act No. 5487;[303] and No. 15, which regulates contracts for the construction of defense-related structures based on Commonwealth Act No. 541.

Hence, any other entity brought into the Philippines by virtue of EDCA must subscribe to corporate and civil requirements imposed by the law, depending on the entity's corporate structure and the nature of its business.

That Philippine laws extraneous to EDCA shall govern the regulation of the activities of U.S. contractors has been clear even to some of the present members of the Senate.

For instance, in 2012, a U.S. Navy contractor, the Glenn Marine, was accused of spilling fuel in the waters off Manila Bay.[304] The Senate Committee on Foreign Relations and the Senate Committee on Environment and Natural Resources chairperson claimed environmental and procedural violations by the contractor.[305] The U.S. Navy investigated the contractor and promised stricter guidelines to be imposed upon its contractors.[306] The statement attributed to Commander Ron Steiner of the public affairs office of the U.S. Navy's 7th Fleet – that U.S. Navy contractors are bound by

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[299] EDCA, Art. IV(5).
[300] Commonwealth Act No. 541.
[301] Republic Act No. 10951.
[302] Executive Order No. 184 (2015).
[303] Republic Act No. 5487 – *The Private Security Agency Law*, as amended by P.D. No. 11.
[304] *Glenn Defense: SBMA suspension doesn't cover all our functions*, RAPPLER, available at <http://www.rappler.com/nation/16688-glenn-defense-sbma-suspension-does-not-cover-all-functions> (last visited 3 December 2015).
[305] *Glenn Defense: SBMA suspension doesn't cover all our functions*, RAPPLER, available at <http://www.rappler.com/nation/16688-glenn-defense-sbma-suspension-does-not-cover-all-functions> (last visited 3 December 2015); Norman Bordadora, *US Navy contractor liable for Subic waste dumping*, PHILIPPINE DAILY INQUIRER, available at <http://globalnation.inquirer.net/63765/us-navy-contractor-liable-for-subic-waste-dumping> (last visited 3 December 2015); Matikas Santos, *US navy contractor dumped millions of liters of wastes in Subic*, PHILIPPINE DAILY INQUIRER, available at <http://globalnation.inquirer.net/63649/us-navy-contractor-dumped-millions-of-liters-of-wastes-in-subic> (last visited 3 December 2015).
[306] Vincent Cabreza, *US Embassy says dumping of untreated waste in Subic not condoned*, PHILIPPINE DAILY INQUIRER, available at <http://globalnation.inquirer.net/60255/us-embassy-says-dumping-of-untreated-waste-in-subic-not-condoned> (last visited 3 December 2015).

Philippine laws – is of particular relevance. The statement acknowledges not just the presence of the contractors, but also the U.S. position that these contractors are bound by the local laws of their host state. This stance was echoed by other U.S. Navy representatives.[307]

This incident simply shows that the Senate was well aware of the presence of U.S. contractors for the purpose of fulfilling the terms of the VFA. That they are bound by Philippine law is clear to all, even to the U.S.

As applied to EDCA, even when U.S. contractors are granted access to the Agreed Locations, all their activities must be consistent with Philippine laws and regulations and pursuant to the MDT and the VFA.

While we recognize the concerns of petitioners, they do not give the Court enough justification to strike down EDCA. In *Lim v. Executive Secretary*, we have already explained that we cannot take judicial notice of claims aired in news reports, "not because of any issue as to their truth, accuracy, or impartiality, but for the simple reason that facts must be established in accordance with the rules of evidence."[308] What is more, we cannot move one step ahead and speculate that the alleged illegal activities of these contractors in other countries would take place in the Philippines with certainty. As can be seen from the above discussion, making sure that U.S. contractors comply with Philippine laws is a function of law enforcement. EDCA does not stand in the way of law enforcement.

Nevertheless, we emphasize that U.S. contractors are explicitly excluded from the coverage of the VFA. As visiting aliens, their entry, presence, and activities are subject to all laws and treaties applicable within the Philippine territory. They may be refused entry or expelled from the country if they engage in illegal or undesirable activities. There is nothing that prevents them from being detained in the country or being subject to the jurisdiction of our courts. Our penal laws,[309] labor laws,[310] and immigrations

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[307] Robert Gonzaga, *Contractor could face sanctions from US navy for violations*, PHILIPPINE DAILY INQUIRER, available at <http://globalnation.inquirer.net/56622/contractor-could-face-sanctions-from-us-navy-for-violations> (last visited 3 December 2015).

[308] *Lim v. Executive Secretary*, supra note 69, at 580.

[309] *See* R.A. No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act. According to Section 4, Article II thereof: In order **to qualify and acquire a license to own and possess a firearm or firearms and ammunition**, the applicant **must be a Filipino citizen**, at least twenty-one (21) years old and has gainful work, occupation or business or has filed an Income Tax Return (ITR) for the preceding year as proof of income, profession, business or occupation. In addition, the applicant shall submit the following certification issued by appropriate authorities attesting the following: x x x x." On the other hand, Section 5 states: "A **juridical person maintaining its own security force may be issued a regular license to own and possess firearms and ammunition** under the following conditions: (a) It must be **Filipino-owned and duly registered** with the Securities and Exchange Commission (SEC); (b) It is current, operational and a continuing concern; (c) It has completed and submitted all its reportorial requirements to the SEC; and (d) It has paid all its income taxes for the year, as duly certified by the Bureau of Internal Revenue. x x x x. Security agencies and LGUs shall be included in this category of licensed holders but shall be subject to additional requirements as may be required by the Chief of the PNP." Finally, Section 22 expresses: "A **person arriving in the Philippines who is legally in possession of any firearm or ammunition in his/her country of origin** and who has declared the existence of the firearm upon embarkation and disembarkation but whose **firearm is not registered in the Philippines in accordance with this Act** shall **deposit the same upon written receipt with the Collector of Customs** for delivery to the FEO of the PNP for safekeeping, or for the issuance of a permit to transport if the person is a competitor in a sports

laws[311] apply to them and therefore limit their activities here. Until and unless there is another law or treaty that specifically deals with their entry and activities, their presence in the country is subject to unqualified Philippine jurisdiction.

EDCA does not allow the presence of U.S.-owned or -controlled military facilities and bases in the Philippines

Petitioners Saguisag *et al.* claim that EDCA permits the establishment of U.S. military bases through the "euphemistically" termed "Agreed Locations."[312] Alluding to the definition of this term in Article II(4) of EDCA, they point out that these locations are actually military bases, as the definition refers to facilities and areas to which U.S. military forces have access for a variety of purposes. Petitioners claim that there are several badges of exclusivity in the use of the Agreed Locations by U.S. forces. *First*, Article V(2) of EDCA alludes to a "return" of these areas once they are no longer needed by U.S. forces, indicating that there would be some transfer of use. *Second*, Article IV(4) of EDCA talks about American forces' unimpeded access to the Agreed Locations for all matters relating to the prepositioning and storage of U.S. military equipment, supplies, and materiel. Third, Article VII of EDCA authorizes U.S. forces to use public utilities and to operate their own telecommunications system.

a. Preliminary point on badges of exclusivity

As a preliminary observation, petitioners have cherry-picked provisions of EDCA by presenting so-called "badges of exclusivity," despite the presence of contrary provisions within the text of the agreement itself.

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cont.
shooting competition. **If the importation of the same is allowed and the party in question desires to obtain a domestic firearm license, the same should be undertaken in accordance with the provisions of this Act.** If no license is desired or leave to import is not granted, the firearm or ammunition in question shall remain in the custody of the FEO of the PNP until otherwise disposed of in accordance with law." (Emphasis supplied)

[310] Article 40 of the Labor Code, as amended, provides: "*Employment permit of non-resident aliens.* Any **alien seeking admission to the Philippines for employment purposes** and any domestic or foreign employer who desires to engage an alien for employment in the Philippines **shall obtain an employment permit from the Department of Labor.** The employment permit may be issued to a non-resident alien or to the applicant employer **after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.** For an **enterprise registered in preferred areas of investments,** said employment permit **may be issued upon recommendation of the government agency** charged with the supervision of said registered enterprise." (Emphasis supplied)

[311] Supra notes 263 and 267.

[312] Memorandum of Saguisag *et al.*, pp. 25-29, *rollo* (G.R. No. 212426, Vol. II), pp. 995-999.

First, they clarify the word "return" in Article V(2) of EDCA. However, the use of the word "return" is within the context of a lengthy provision. The provision as a whole reads as follows:

> The United States shall return to the Philippines any Agreed Locations, or any portion thereof, including non-relocatable structures and assemblies constructed, modified, or improved by the United States, once no longer required by United States forces for activities under this Agreement. The Parties or the Designated Authorities shall consult regarding the terms of return of any Agreed Locations, including possible compensation for improvements or construction.

The context of use is "required by United States forces for activities under this Agreement." Therefore, the return of an Agreed Location would be within the parameters of an activity that the Mutual Defense Board (MDB) and the Security Engagement Board (SEB) would authorize. Thus, possession by the U.S. prior to its return of the Agreed Location would be based on the authority given to it by a joint body co-chaired by the "AFP Chief of Staff and Commander, U.S. PACOM with representatives from the Philippines' Department of National Defense and Department of Foreign Affairs sitting as members."[313] The terms shall be negotiated by both the Philippines and the U.S., or through their Designated Authorities. This provision, seen as a whole, contradicts petitioners' interpretation of the return as a "badge of exclusivity." In fact, it shows the cooperation and partnership aspect of EDCA in full bloom.

Second, the term "unimpeded access" must likewise be viewed from a contextual perspective. Article IV(4) states that U.S. forces and U.S. contractors shall have "unimpeded access to Agreed Locations for all matters relating to the prepositioning and storage of defense equipment, supplies, and materiel, including delivery, management, inspection, use, maintenance, and removal of such equipment, supplies and materiel."

At the beginning of Article IV, EDCA states that the Philippines gives the U.S. the authority to bring in these equipment, supplies, and materiel through the MDB and SEB security mechanism. These items are owned by the U.S.,[314] are exclusively for the use of the U.S.[315] and, after going through the joint consent mechanisms of the MDB and the SEB, are within the control of the U.S.[316] More importantly, before these items are considered prepositioned, they must have gone through the process of prior authorization by the MDB and the SEB and given proper notification to the AFP.[317]

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[313] *PH-US MDB and SEB Convenes*, DEPARTMENT OF NATIONAL DEFENSE, available at <http://www.dndph.org/press-releases/ph-us-mdb-and-seb-convenes> (last visited 3 December 2015).
[314] EDCA, Art. IV(3).
[315] EDCA, Art. IV(3).
[316] EDCA, Art. IV(3).
[317] EDCA, Art. IV(1).

Therefore, this "unimpeded access" to the Agreed Locations is a necessary adjunct to the ownership, use, and control of the U.S. over its own equipment, supplies, and materiel and must have first been allowed by the joint mechanisms in play between the two states since the time of the MDT and the VFA. It is not the use of the Agreed Locations that is exclusive *per se*; it is mere access to items in order to exercise the rights of ownership granted by virtue of the Philippine Civil Code.[318]

As for the view that EDCA authorizes U.S. forces to use public utilities and to operate their own telecommunications system, it will be met and answered in part ***D***, *infra*.

Petitioners also point out[319] that EDCA is strongly reminiscent of and in fact bears a one-to-one correspondence with the provisions of the 1947 MBA. They assert that both agreements (a) allow similar activities within the area; (b) provide for the same "species of ownership" over facilities; and (c) grant operational control over the entire area. Finally, they argue[320] that EDCA is in fact an implementation of the new defense policy of the U.S. According to them, this policy was not what was originally intended either by the MDT or by the VFA.

On these points, the Court is not persuaded.

The similar activities cited by petitioners[321] simply show that under the MBA, the U.S. had the right to construct, operate, maintain, utilize, occupy, garrison, and control the bases. The so-called parallel provisions of EDCA allow only operational control over the Agreed Locations specifically for construction activities. They do not allow the overarching power to operate, maintain, utilize, occupy, garrison, and control a base with full discretion. EDCA in fact limits the rights of the U.S. in respect of every activity, including construction, by giving the MDB and the SEB the power to determine the details of all activities such as, but not limited to, operation, maintenance, utility, occupancy, garrisoning, and control.[322]

The "species of ownership" on the other hand, is distinguished by the nature of the property. For immovable property constructed or developed by the U.S., EDCA expresses that ownership will automatically be vested to the Philippines.[323] On the other hand, for movable properties brought into the Philippines by the U.S., EDCA provides that ownership is retained by the

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[318] Such rights gleaned from Title II, Chapter 1 of the Civil Code are (*Cojuangco v. Sandiganbayan*, 604 Phil. 670 [2009]): the right to possess, to use and enjoy, to abuse or consume, to accessories, to dispose or alienate, to recover or vindicate, and to the fruits.

[319] Memorandum of Saguisag *et al.*, pp. 29-33, *rollo* (G.R. No. 212426, Vol. II), pp. 999-1003; Memorandum of Bayan *et al.*, pp. 41-71 , *rollo* (G.R. No. 212444), pp.605-635 .

[320] Memorandum of Saguisag *et al.*, pp. 33-35, *rollo* (G.R. No. 212426, Vol. II), pp. 1003-1005.

[321] Id., pp. 1000-1001.

[322] Id., p. 1000. EDCA, Arts. I(1)(b), I(2), I(3), & III(4).

[323] Id., p. 1002.

latter. In contrast, the MBA dictates that the U.S. retains ownership over immovable and movable properties.

To our mind, both EDCA and the MBA simply incorporate what is already the law of the land in the Philippines. The Civil Code's provisions on ownership, as applied, grant the owner of a movable property full rights over that property, even if located in another person's property.[324]

The parallelism, however, ends when the situation involves facilities that can be considered immovable. Under the MBA, the U.S. retains ownership if it paid for the facility.[325] Under EDCA, an immovable is owned by the Philippines, even if built completely on the back of U.S. funding.[326] This is consistent with the constitutional prohibition on foreign land ownership.[327]

Despite the apparent similarity, the ownership of property is but a part of a larger whole that must be considered before the constitutional restriction is violated. Thus, petitioners' points on operational control will be given more attention in the discussion below. The arguments on policy are, however, outside the scope of judicial review and will not be discussed

Moreover, a direct comparison of the MBA and EDCA will result in several important distinctions that would allay suspicion that EDCA is but a disguised version of the MBA.

b. There are substantial matters that the U.S. cannot do under EDCA, but which it was authorized to do under the 1947 MBA

The Philippine experience with U.S. military bases under the 1947 MBA is simply not possible under EDCA for a number of important reasons.

First, in the 1947 MBA, the U.S. retained all rights of jurisdiction in and over Philippine territory occupied by American bases. In contrast, the U.S. under EDCA does not enjoy any such right over any part of the Philippines in which its forces or equipment may be found. Below is a comparative table between the old treaty and EDCA:

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[324] *See generally* CIVIL CODE, Arts. 427-429.
[325] Memorandum of Saguisag *et al.*, pp. 33-35, *rollo* (G.R. No. 212426, Vol. II), pp. 1001-1002.
[326] Memorandum of Saguisag *et al.*, pp. 33-35, *rollo* (G.R. No. 212426, Vol. II), pp. 1001-1002.
[327] CONSTITUTION, Art. XII, Sec. 7.

1947 MBA / 1946 Treaty of General Relations	EDCA
1947 MBA, Art. I(1): The Government of the Republic of the **Philippines** (hereinafter referred to as the Philippines) **grants to** the Government of the **United States** of America (hereinafter referred to as the United States) the **right to retain the use of the bases in the Philippines** listed in Annex A attached hereto. **1947 MBA, Art. XVII(2):** **All buildings and structures** which are **erected by the United States** in the bases shall be the **property of the United States** and **may be removed by it** before the expiration of this Agreement or the earlier relinquishment of the base on which the structures are situated. There shall be no obligation on the part of the Philippines or of the United States to rebuild or repair any destruction or damage inflicted from any cause whatsoever on any of the said buildings or structures owned or used by the United States in the bases. x x x x. **1946 Treaty of Gen. Relations, Art. I:** The **United States** of America **agrees to withdraw** and surrender, and does hereby withdraw and surrender, **all rights of possession, supervision, jurisdiction, control or sovereignty** existing and exercised by the United States of America **in and over the territory and the people of the Philippine Islands, except the use of such bases, necessary appurtenances to such bases, and the rights incident thereto,** as the United States of America, by agreement with the Republic of the Philippines may deem necessary to retain for the mutual protection of the Republic of the Philippines and of the United States of America. x x x.	**EDCA, preamble:** Affirming that the Parties share an understanding for the United States **not to establish a permanent military presence or base in the territory of the Philippines;** x x x x Recognizing that all **United States access** to and use of facilities and areas will be **at the invitation of the Philippines** and with **full respect for the Philippine Constitution and Philippine laws;** x x x x **EDCA, Art. II(4):** **"Agreed Locations"** means **facilities and areas** that are **provided by the Government of the Philippines** through the AFP and that United States forces, United States contractors, and others as mutually agreed, shall have the right to access and use pursuant to this Agreement. Such Agreed Locations may be listed in an annex to be appended to this Agreement, and may be further described in implementing arrangements. **EDCA, Art. V:** 1. The **Philippines** shall **retain ownership of and title** to Agreed Locations. x x x x 4. **All buildings, non-relocatable structures, and assemblies affixed to the land** in the Agreed Locations, **including ones altered or improved** by United States forces, **remain the property of the Philippines.** Permanent buildings constructed by United States forces become the property of the Philippines, once constructed, but shall be used by United States forces until no longer required by United States forces.

Second, in the bases agreement, the U.S. and the Philippines were visibly not on equal footing when it came to deciding whether to expand or to increase the number of bases, as the Philippines may be compelled to negotiate with the U.S. the moment the latter requested an expansion of the existing bases or to acquire additional bases. In EDCA, U.S. access is purely at the invitation of the Philippines.

1947 MBA / 1946 Treaty of General Relations	**EDCA**
1947 MBA, Art. I(3): The **Philippines** **agree to enter into negotiations with the United States at the latter's request**, to permit the United States **to expand such bases**, to exchange such bases for other bases, **to acquire additional bases**, or relinquish rights to bases, as any of such exigencies may be required by military necessity. **1946 Treaty of Gen. Relations, Art. I:** The **United States** of America **agrees to withdraw** and surrender, and does hereby withdraw and surrender, **all rights of possession, supervision, jurisdiction, control or sovereignty** existing and exercised by the United States of America **in and over the territory and the people of the Philippine Islands, except the use of such bases,** necessary appurtenances to such bases, and the rights incident thereto, **as the United States of America, by agreement with the Republic of the Philippines may deem necessary to retain** for the mutual protection of the Republic of the Philippines and of the United States of America. x x x.	**EDCA, preamble:** Recognizing that all **United States access** to and use of facilities and areas will be **at the invitation of the Philippines** and with **full respect for the Philippine Constitution and Philippine laws**; x x x x **EDCA, Art. II(4):** **"Agreed Locations"** means **facilities and areas** that are **provided by the Government of the Philippines** through the AFP and that United States forces, United States contractors, and others **as mutually agreed**, shall have the right to access and use pursuant to this Agreement. Such Agreed Locations may be listed in an annex to be appended to this Agreement, and may be further described in implementing arrangements.

Third, in EDCA, the Philippines is guaranteed access over the entire area of the Agreed Locations. On the other hand, given that the U.S. had complete control over its military bases under the 1947 MBA, the treaty did not provide for any express recognition of the right of access of Philippine authorities. Without that provision and in light of the retention of U.S. sovereignty over the old military bases, the U.S. could effectively prevent Philippine authorities from entering those bases.

1947 MBA	EDCA
No equivalent provision.	**EDCA, Art. III(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 consistent with operational safety and security requirements in accordance with agreed procedures developed by the Parties.

Fourth, in the bases agreement, the U.S. retained the right, power, and authority over the establishment, use, operation, defense, and control of military bases, including the limits of territorial waters and air space adjacent to or in the vicinity of those bases. The only standard used in determining the extent of its control was military necessity. On the other hand, there is no such grant of power or authority under EDCA. It merely allows the U.S. to exercise operational control over the construction of Philippine-owned structures and facilities:

1947 MBA	EDCA
1947 MBA, Art. I(2): The Philippines agrees to **permit the United States**, upon notice to the Philippines, to **use such of those bases** listed in Annex B **as the United States determines to be required by military necessity**. **1947 MBA, Art. III(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, operation and defense thereof or appropriate for the control thereof** 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.	**EDCA, Art. III(4):** The Philippines hereby **grants to the United States, through bilateral security mechanisms**, such as the MDB and SEB, **operational control** of **Agreed Locations** for **construction activities** and **authority** to **undertake such activities** on, and make **alterations and improvements** to, Agreed Locations. **United States forces shall consult** on **issues regarding such construction, alterations, and improvements** based on the Parties' shared intent that the technical requirements and construction standards of any such projects undertaken by or on behalf of United States forces should be consistent with the requirements and standards of both Parties.

Fifth, the U.S. under the bases agreement was given the authority to use Philippine territory for additional staging areas, bombing and gunnery ranges. No such right is given under EDCA, as seen below:

1947 MBA	EDCA
1947 MBA, Art. VI: The **United States** shall, subject to previous agreement with the Philippines, have the **right to use land and coastal sea areas** of appropriate size and location for periodic maneuvers, **for additional staging areas, bombing and gunnery ranges, and for such intermediate airfields** as may be required for safe and efficient air operations. Operations in such areas shall be carried on with due regard and safeguards for the public safety. **1947 MBA, Art. I(2):** The Philippines agrees to **permit the United States**, upon notice to the Philippines, to **use such of those bases** listed in Annex B **as the United States determines to be required by military necessity**.	**EDCA, Art. III(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 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.

Sixth, under the MBA, the U.S. was given the right, power, and authority to control and prohibit the movement and operation of all types of vehicles within the vicinity of the bases. The U.S. does not have any right, power, or authority to do so under EDCA.

1947 MBA	EDCA
1947 MBA, Art. III(2)(c) Such rights, power and authority shall include, *inter alia*, the **right, power and authority**: x x x x **to control** (including the right **to prohibit**) in so far as may be required for the efficient operation and safety of the bases, and within the limits of military necessity, **anchorages, moorings, landings, takeoffs, movements and operation of ships and water-borne craft, aircraft and other vehicles on water, in the air or on land comprising**	No equivalent provision.

Seventh, under EDCA, the U.S. is merely given temporary access to land and facilities (including roads, ports, and airfields). On the other hand, the old treaty gave the U.S. the right to improve and deepen the harbors, channels, entrances, and anchorages; and to construct or maintain necessary roads and bridges that would afford it access to its military bases.

1947 MBA	EDCA
1947 MBA, Art. III(2)(b): Such rights, power and authority shall include, *inter alia*, the **right, power and authority**: x x x x **to improve and deepen the harbors, channels, entrances and anchorages**, and **to construct or maintain necessary roads** and bridges affording access to the bases.	**EDCA, Art. III(2):** When requested, the Designated Authority of the Philippines shall assist in **facilitating transit or temporary access** by United States forces to public land and facilities (including roads, ports, and airfields), including those owned or controlled by local governments, and to other land and facilities (including roads, ports, and airfields).

Eighth, in the 1947 MBA, the U.S. was granted the automatic right to use any and all public utilities, services and facilities, airfields, ports, harbors, roads, highways, railroads, bridges, viaducts, canals, lakes, rivers, and streams in the Philippines in the same manner that Philippine military forces enjoyed that right. No such arrangement appears in EDCA. In fact, it merely extends to U.S. forces temporary access to public land and facilities when requested:

1947 MBA	EDCA
1947 MBA, Art. VII: It is mutually agreed that the **United States may employ and use** for United States military forces **any and all public utilities, other services and facilities**, airfields, ports, harbors, roads, highways, railroads, bridges, viaducts, canals, lakes, rivers and streams in the Philippines **under conditions no less favorable than those** that may be **applicable** from time to time to the **military forces of the Philippines.**	**EDCA, Art. III(2):** **When requested**, the Designated Authority of the Philippines shall assist in **facilitating transit or temporary access** by United States forces to public land and facilities (including roads, ports, and airfields), including those owned or controlled by local governments, and to other land and facilities (including roads, ports, and airfields).

Ninth, under EDCA, the U.S. no longer has the right, power, and authority to construct, install, maintain, and employ *any* type of facility, weapon, substance, device, vessel or vehicle, or system unlike in the old treaty. EDCA merely grants the U.S., through bilateral security mechanisms, the authority to undertake construction, alteration, or improvements on the Philippine-owned Agreed Locations.

1947 MBA	EDCA
1947 MBA, Art. III(2)(e): Such rights, power and authority shall include, *inter alia*, the **right, power and authority**: x x x x to **construct, install, maintain, and employ** on any base **any type** of **facilities, weapons, substance, device, vessel or vehicle** 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.	**EDCA, Art. III(4):** The Philippines hereby grants to the **United States, through bilateral security mechanisms**, such as the MDB and SEB, operational control of Agreed Locations for construction activities and **authority to undertake such activities on, and make alterations and improvements to, Agreed Locations.** United States forces shall consult on issues regarding such construction, alterations, and improvements based on the Parties' shared intent that the technical requirements and construction standards of any such projects undertaken by or on behalf of United States forces should be consistent with the requirements and standards of both Parties.

Tenth, EDCA does not allow the U.S. to acquire, by condemnation or expropriation proceedings, real property belonging to any private person. The old military bases agreement gave this right to the U.S. as seen below:

1947 MBA	EDCA
1947 MBA, Art. XXII(1): Whenever it is necessary to **acquire by condemnation or expropriation proceedings real property belonging to any private persons**, associations or corporations located in bases named in Annex A and Annex B in order to carry out the purposes of this Agreement, the Philippines will institute and prosecute such condemnation or expropriation proceedings in accordance with the laws of the Philippines. The United States agrees to reimburse the Philippines for all the reasonable expenses, damages and costs thereby incurred, including the value of the	No equivalent provision.

property as determined by the Court. In addition, subject to the mutual agreement of the two Governments, the United States will reimburse the Philippines for the reasonable costs of transportation and removal of any occupants displaced or ejected by reason of the condemnation or expropriation.	

Eleventh, EDCA does not allow the U.S. to unilaterally bring into the country non-Philippine nationals who are under its employ, together with their families, in connection with the construction, maintenance, or operation of the bases. EDCA strictly adheres to the limits under the VFA.

1947 MBA	EDCA
1947 MBA, Art. XI(1): It is mutually agreed that the **United States shall have the right to bring into the Philippines** members of the United States military forces and the **United States nationals employed by or under a contract with the United States together with their families, and technical personnel of other nationalities** (not being persons excluded by the laws of the Philippines) in connection with the construction, maintenance, or operation of the bases. The United States shall make suitable arrangements so that such persons may be readily identified and their status established when necessary by the Philippine authorities. Such persons, other than members of the United States armed forces in uniform, shall present their travel documents to the appropriate Philippine authorities for visas, it being understood that **no objection will be made to their travel to the Philippines as non-immigrants.**	**EDCA, Art. II:** 1. **"United States personnel"** means United States **military and civilian personnel** temporarily in the territory of the Philippines in connection with activities approved by the Philippines, **as those terms are defined in the VFA.** x x x x 3. **"United States contractors"** means companies and firms, and their employees, under contract or subcontract to or on behalf of the United States Department of Defense. United States contractors are **not included** as part of the **definition** of **United States personnel** in this Agreement, **including within the context of the VFA.**

Twelfth, EDCA does not allow the U.S. to exercise jurisdiction over any offense committed by any person within the Agreed Locations, unlike in the former military bases:

1947 MBA	EDCA
1947 MBA, Art. XIII(1)(a): The Philippines consents that the **United States** shall have the **right to exercise jurisdiction** over the following offenses: (a) **Any offense** committed by any person **within any base** except where the offender and offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines.	No equivalent provision.

Thirteenth, EDCA does not allow the U.S. to operate military post exchange (PX) facilities, which is free of customs duties and taxes, unlike what the expired MBA expressly allowed. Parenthetically, the PX store has become the cultural icon of U.S. military presence in the country.

1947 MBA	EDCA
1947 MBA, Art. XVIII(1): It is mutually agreed that the **United States** shall have the **right to establish on bases, free of all licenses; fees; sales, excise or other taxes, or imposts;** Government agencies, **including concessions**, such as **sales commissaries and post exchanges**; messes and social clubs, **for the exclusive use of the United States military forces and authorized civilian personnel and their families.** The merchandise or services sold or dispensed by such agencies shall be **free of all taxes, duties and inspection by the Philippine authorities.** Administrative measures shall be taken by the appropriate authorities of the United States to prevent the resale of goods which are sold under the provisions of this Article to persons not entitled to buy goods at such agencies and, generally, to prevent abuse of the privileges granted under this Article. There shall be cooperation between such authorities and the Philippines to this end.	No equivalent provision.

In sum, EDCA is a far cry from a basing agreement as was understood by the people at the time that the 1987 Constitution was adopted.

Nevertheless, a comprehensive review of what the Constitution means by "foreign military bases" and "facilities" is required before EDCA can be deemed to have passed judicial scrutiny.

c. The meaning of military facilities and bases

An appreciation of what a military base is, as understood by the Filipino people in 1987, would be vital in determining whether EDCA breached the constitutional restriction.

Prior to the drafting of the 1987 Constitution, the last definition of "military base" was provided under Presidential Decree No. (PD) 1227.[328] Unlawful entry into a military base is punishable under the decree as supported by Article 281 of the Revised Penal Code, which itself prohibits the act of trespass.

Section 2 of the law defines the term in this manner: "'[M]ilitary base' as used in this decree means any military, air, naval, or coast guard reservation, base, fort, camp, arsenal, yard, station, or installation in the Philippines."

Commissioner Tadeo, in presenting his objections to U.S. presence in the Philippines before the 1986 Constitutional Commission, listed the areas that he considered as military bases:

> 1,000 hectares Camp O'Donnel
> 20,000 hectares Crow Valley Weapon's Range
> 55,000 hectares Clark Air Base
> 150 hectares Wallace Air Station
> 400 hectares John Hay Air Station
> 15,000 hectares Subic Naval Base
> 1,000 hectares San Miguel Naval Communication
> 750 hectares Radio Transmitter in Capas,
> Tarlac
> 900 hectares Radio Bigot Annex at Bamban,
> Tarlac[329]

The Bases Conversion and Development Act of 1992 described its coverage in its Declaration of Policies:

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[328] P.D. No. 1227 – *Punishing Unlawful Entry into Any Military Base in the Philippines*, Sec. 2.
[329] IV RECORD, CONSTITUTIONAL COMMISSION 648 (15 September 1986).

> Sec. 2. Declaration of Policies. — It is hereby declared the policy of the Government to accelerate the sound and balanced conversion into alternative productive uses of the Clark and Subic military reservations and their extensions (John Hay Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station and Capas Relay Station), to raise funds by the sale of portions of Metro Manila military camps, and to apply said funds as provided herein for the development and conversion to productive civilian use of the lands covered under the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended.[330]

The result of the debates and subsequent voting is Section 25, Article XVIII of the Constitution, which specifically restricts, among others, *foreign military facilities or bases*. At the time of its crafting of the Constitution, the 1986 Constitutional Commission had a clear idea of what exactly it was restricting. While the term "facilities and bases" was left undefined, its point of reference was clearly those areas covered by the 1947 MBA as amended.

Notably, nearly 30 years have passed since then, and the ever-evolving world of military technology and geopolitics has surpassed the understanding of the Philippine people in 1986. The last direct military action of the U.S. in the region was the use of Subic base as the staging ground for Desert Shield and Desert Storm during the Gulf War.[331] In 1991, the Philippine Senate rejected the successor treaty of the 1947 MBA that would have allowed the continuation of U.S. bases in the Philippines.

Henceforth, any proposed entry of U.S. forces into the Philippines had to evolve likewise, taking into consideration the subsisting agreements between both parties, the rejection of the 1991 proposal, and a concrete understanding of what was constitutionally restricted. This trend birthed the VFA which, as discussed, has already been upheld by this Court.

The latest agreement is EDCA, which proposes a novel concept termed "Agreed Locations."

By definition, Agreed Locations are

> facilities and areas that are provided by the Government of the Philippines through the AFP and that United States forces, United States contractors, and others as mutually agreed, shall have the right to access and use pursuant to this Agreement. Such Agreed Locations may be listed in an annex to be appended to this Agreement, and may be further described in implementing arrangements.[332]

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[330] R.A. No. 7227.
[331] PADUA, supra note 64.
[332] EDCA, Art. II(4).

Preliminarily, respondent already claims that the proviso that the Philippines shall retain ownership of and title to the Agreed Locations means that EDCA is "consistent with Article II of the VFA which recognizes Philippine sovereignty and jurisdiction over locations within Philippine territory."[333]

By this interpretation, respondent acknowledges that the contention of petitioners springs from an understanding that the Agreed Locations merely circumvent the constitutional restrictions. Framed differently, the bone of contention is whether the Agreed Locations are, from a legal perspective, foreign military facilities or bases. This legal framework triggers Section 25, Article XVIII, and makes Senate concurrence a *sine qua non.*

Article III of EDCA provides for Agreed Locations, in which the U.S. is authorized by the Philippines to "conduct the following activities: "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."

This creation of EDCA must then be tested against a proper interpretation of the Section 25 restriction.

d. Reasons for the constitutional requirements and legal standards for constitutionally compatible military bases and facilities

Section 25 does not define what is meant by a "foreign military facility or base." While it specifically alludes to U.S. military facilities and bases that existed during the framing of the Constitution, the provision was clearly meant to apply to those bases existing at the time and to any future facility or base. The basis for the restriction must first be deduced from the spirit of the law, in order to set a standard for the application of its text, given the particular historical events preceding the agreement.

Once more, we must look to the 1986 Constitutional Commissioners to glean, from their collective wisdom, the intent of Section 25. Their speeches are rich with history and wisdom and present a clear picture of what they considered in the crafting the provision.

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[333] Memorandum of OSG, p. 23, *rollo* (G.R. No. 212426), p. 453.

SPEECH OF COMMISSIONER REGALADO[334]

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We have been regaled here by those who favor the adoption of the anti-bases provisions with what purports to be an objective presentation of the historical background of the military bases in the Philippines. Care appears, however, to have been taken to underscore the **inequity in their inception as well as their implementation**, as to seriously reflect on the supposed objectivity of the report. Pronouncements of military and civilian officials shortly after World War II are quoted in support of the proposition on **neutrality**; regrettably, the implication is that the same remains valid today, as if the world and international activity stood still for the last 40 years.

We have been given inspired lectures on the effect of the presence of the military bases on our sovereignty — whether in its legal or political sense is not clear — and the theory that any country with foreign bases in its territory cannot claim to be fully sovereign or completely independent. I was not aware that the concepts of sovereignty and independence have now assumed the totality principle, such that a willing assumption of some delimitations in the exercise of some aspects thereof would put that State in a lower bracket of nationhood.

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We have been receiving a continuous influx of materials on the pros and cons on the advisability of having military bases within our shores. Most of us who, only about three months ago, were just mulling the prospects of these varying contentions are now expected, like armchair generals, to decide not only on the geopolitical aspects and contingent implications of the military bases but also on their political, social, economic and cultural impact on our national life. We are asked to answer a plethora of questions, such as: 1) whether the bases are magnets of nuclear attack or are deterrents to such attack; 2) whether an alliance or mutual defense treaty is a derogation of our national sovereignty; 3) whether criticism of us by Russia, Vietnam and North Korea is outweighed by the support for us of the ASEAN countries, the United States, South Korea, Taiwan, Australia and New Zealand; and 4) whether the social, moral and legal problems spawned by the military bases and their operations can be compensated by the economic benefits outlined in papers which have been furnished recently to all of us.[335]

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Of course, one side of persuasion has submitted categorical, unequivocal and forceful assertions of their positions. They are entitled to the luxury of the absolutes. **We are urged now to adopt the proposed declaration as a "golden," "unique" and "last" opportunity for Filipinos to assert their sovereign rights**. Unfortunately, I have never been enchanted by superlatives, much less for the applause of the moment or the ovation of the hour. Nor do I look forward to any glorious summer after a winter of political discontent. Hence, if I may join Commissioner

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[334] IV RECORD, CONSTITUTIONAL COMMISSION 628-630 (15 September 1986).
[335] Id. at 628.

Laurel, I also invoke a caveat not only against the tyranny of labels but also the tyranny of slogans.[336]

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SPEECH OF COMMISSIONER SUAREZ[337]

MR. SUAREZ: Thank you, Madam President.

I am quite satisfied that the crucial issues involved in the resolution of the problem of the removal of foreign bases from the Philippines have been adequately treated by previous speakers. Let me, therefore, just recapitulate the arguments adduced in favor of a foreign bases-free Philippines:

1. That every nation should be **free to shape its own destiny without outside interference**;

2. That no **lasting peace and no true sovereignty** would ever be achieved so long as there are foreign military forces in our country;

3. That the presence of foreign military **bases deprives us of the very substance of national sovereignty** and this is a constant source of national embarrassment and an insult to our national dignity and self-respect as a nation;

4. That these foreign military bases unnecessarily **expose our country to devastating nuclear attacks**;

5. That these foreign military bases create social problems and are designed to perpetuate the strangle-hold of United States interests in our national economy and development;

6. That **the extraterritorial rights** enjoyed by these foreign bases operate to **deprive our country of jurisdiction over civil and criminal offenses** committed within our own national territory and against Filipinos;

7. That the bases agreements are **colonial impositions** and dictations upon our helpless country; and

8. That on the legal viewpoint and in the ultimate analysis, all the bases agreements are null and void *ab initio*, especially because they did not count the sovereign consent and will of the Filipino people.[338]

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In the real sense, Madam President, if we in the Commission could accommodate the provisions I have cited, what is our objection to include in our Constitution a matter as priceless as the nationalist values we cherish? **A matter of the gravest concern for the safety and survival of this nation** indeed deserves a place in our Constitution.

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[336] Id. at 629.
[337] IV RECORD, CONSTITUTIONAL COMMISSION 630-631 (15 September 1986).
[338] Id. at 630.

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x x x Why should we bargain away our **dignity and our self-respect** as a nation and the future of generations to come with thirty pieces of silver?[339]

SPEECH OF COMMISSIONER BENNAGEN[340]

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The underlying principle of **military bases** and nuclear weapons wherever they are found and whoever owns them is that **those are for killing people or for terrorizing humanity.** This objective by itself at any point in history is morally repugnant. This alone is reason enough for us to constitutionalize the ban on foreign military bases and on nuclear weapons.[341]

SPEECH OF COMMISSIONER BACANI[342]

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x x x Hence, the **remedy to prostitution does not seem to be primarily to remove the bases** because even if the bases are removed, the girls mired in poverty will look for their clientele elsewhere. The remedy to the problem of prostitution lies primarily elsewhere — in an alert and concerned citizenry, a healthy economy and a sound education in values.[343]

SPEECH OF COMMISSIONER JAMIR[344]

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One of the reasons advanced against the maintenance of foreign military bases here is that they impair portions of our sovereignty. While I agree that our country's sovereignty should not be impaired, I also hold the view that there are times when it is necessary to do so according to the imperatives of national interest. There are precedents to this effect. Thus, during World War II, England leased its bases in the West Indies and in Bermuda for 99 years to the United States for its use as naval and air bases. It was done in consideration of 50 overaged destroyers which the United States gave to England for its use in the Battle of the Atlantic.

A few years ago, England gave the Island of Diego Garcia to the United States for the latter's use as a naval base in the Indian Ocean. About the same time, the United States obtained bases in Spain, Egypt and Israel. In doing so, these countries, in effect, contributed to the launching

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[339] Id. at 631.
[340] IV RECORD, CONSTITUTIONAL COMMISSION 632-634 (15 September 1986).
[341] Id. at 632.
[342] IV RECORD, CONSTITUTIONAL COMMISSION 634-635 (15 September 1986).
[343] Id. at 634.
[344] IV RECORD, CONSTITUTIONAL COMMISSION 635-636 (15 September 1986).

of a preventive defense posture against possible trouble in the Middle East and in the Indian Ocean for their own protection.[345]

SPEECH OF COMMISSIONER TINGSON[346]

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In the case of the Philippines and the other Southeast Asian nations, the presence of American troops in the country is a projection of America's security interest. Enrile said that nonetheless, they also serve, although in an incidental and secondary way, the security interest of the Republic of the Philippines and the region. Yes, of course, Mr. Enrile also echoes the sentiments of most of us in this Commission, namely: **It is ideal for us as an independent and sovereign nation to ultimately abrogate the RP-US military treaty and, at the right time, build our own air and naval might.**[347]

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Allow me to say in summation that I am for the retention of American military bases in the Philippines provided that such an extension from one period to another shall be concluded upon concurrence of the parties, and such extension shall be based on justice, the historical amity of the people of the Philippines and the United States and their common defense interest.[348]

SPEECH OF COMMISSIONER ALONTO[349]

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Madam President, sometime ago after this Commission started with this task of framing a constitution, I read a statement of President Aquino to the effect that she is for the removal of the U.S. military bases in this country but that the removal of the U.S. military bases should not be done just to give way to other foreign bases. Today, there are two world superpowers, both vying to control any and all countries which have importance to their strategy for world domination. The Philippines is one such country.

Madam President, **I submit that I am one of those ready to completely remove any vestiges of the days of enslavement,** but not prepared to erase them if to do so would merely leave a vacuum to be occupied by a far worse type.[350]

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[345] Id. at 636.
[346] IV RECORD, CONSTITUTIONAL COMMISSION 637-639 (15 September 1986).
[347] Id. at 638.
[348] Id. at 639.
[349] IV RECORD, CONSTITUTIONAL COMMISSION 640-641(15 September 1986).
[350] Id. at 640.

SPEECH OF COMMISSIONER GASCON[351]

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Let us consider the situation of peace in our world today. Consider our brethren in the Middle East, in Indo-China, Central America, in South Africa — there has been escalation of war in some of these areas because of foreign intervention which views these conflicts through the narrow prism of the East-West conflict. **The United States bases have been used as springboards for intervention in some of these conflicts. We should not allow ourselves to be party to the warlike mentality of these foreign interventionists.** We must always be on the side of peace — this means that we should not always rely on military solution.[352]

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x x x The United States bases, therefore, are **springboards for intervention in our own internal affairs and in the affairs of other nations in this region**.

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Thus, I firmly believe that a self-respecting nation should safeguard its fundamental freedoms which should logically be declared in black and white in our fundamental law of the land — the Constitution. **Let us express our desire for national sovereignty so we may be able to achieve national self-determination**. Let us express our desire for neutrality so that we may be able to follow active nonaligned independent foreign policies. Let us express our desire for peace and a nuclear-free zone so we may be able to pursue a healthy and tranquil existence, to have peace that is autonomous and not imposed.[353]

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SPEECH OF COMMISSIONER TADEO[354]

Para sa magbubukid, ano ba ang kahulugan ng* U.S. military bases?** *Para sa magbubukid,* ***ang kahulugan nito ay pagkaalipin. *Para sa magbubukid, ang pananatili ng* U.S. military bases *ay* ***tinik sa dibdib ng sambayanang Pilipinong patuloy na nakabaon.*** *Para sa sambayanang magbubukid, ang ibig sabihin ng* U.S. military bases *ay* ***batong pabigat na patuloy na pinapasan ng sambayanang Pilipino.*** *Para sa sambayanang magbubukid, ang pananatili ng* U.S. military bases *ay* ***isang nagdudumilat na katotohanan ng patuloy na paggahasa ng imperyalistang Estados Unidos sa ating Inang Bayan*** **— economically, politically and culturally.** *Para sa sambayanang magbubukid. ang* U.S. military bases *ay* ***kasingkahulugan ng* nuclear weapon — *ang kahulugan ay magneto ng isang* nuclear war.** *Para sa sambayanang magbubukid,* ***ang kahulugan ng* U.S. military bases *ay isang salot.***[355]

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[351] IV RECORD, CONSTITUTIONAL COMMISSION 641-645 (15 September 1986).
[352] Id. at 643.
[353] Id. at 644.
[354] IV RECORD, CONSTITUTIONAL COMMISSION 645-649 (15 September 1986).
[355] Id. at 645.

SPEECH OF COMMISSIONER QUESADA[356]

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The drift in the voting on issues related to **freeing ourselves from the instruments of domination and subservience** has clearly been defined these past weeks.

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So for the record, Mr. Presiding Officer, I would like to declare my support for the committee's position to enshrine in the Constitution a fundamental principle forbidding foreign military bases, troops or facilities in any part of the Philippine territory as a **clear and concrete manifestation of our inherent right to national self-determination, independence and sovereignty.**

Mr. Presiding Officer, I would like to relate now these attributes of genuine nationhood to the social cost of allowing foreign countries to maintain military bases in our country. Previous speakers have dwelt on this subject, either to highlight its importance in relation to the other issues or to gloss over its significance and make this a part of future negotiations.[357]

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Mr. Presiding Officer, I feel that banning foreign military bases is one of the solutions and is the response of the Filipino people against this condition and other conditions that have already been clearly and emphatically discussed in past deliberations. The deletion, therefore, of Section 3 in the Constitution we are drafting will have the following implications:

First, the failure of the Constitutional Commission to decisively respond to the **continuing violation of our territorial integrity via the military bases agreement which permits the retention of U.S. facilities within the Philippine soil over which our authorities have no exclusive jurisdiction contrary to the accepted definition of the exercise of sovereignty.**

Second, consent by this forum, this Constitutional Commission, to an **exception in the application of a provision in the Bill of Rights** that we have just drafted regarding equal application of the laws of the land to all inhabitants, permanent or otherwise, within its territorial boundaries.

Third, the **continued exercise by the United States of extraterritoriality** despite the condemnations of such practice by the world community of nations in the light of overwhelming international approval of eradicating all vestiges of colonialism.[358]

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[356] IV RECORD, CONSTITUTIONAL COMMISSION 649-652 (15 September 1986).
[357] Id. at 650.
[358] Id. at 651.

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Sixth, the deification of a new concept called **pragmatic sovereignty**, in the hope that such can be wielded to force the United States government to concede to better terms and conditions concerning the military bases agreement, including the **transfer of complete control to the Philippine government of the U.S. facilities**, while in the meantime we have to suffer all existing indignities and disrespect towards our rights as a sovereign nation.

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Eighth, **the utter failure of this forum to view the issue of foreign military bases as essentially a question of sovereignty** which does not require in-depth studies or analyses and which this forum has, as a constituent assembly drafting a constitution, the expertise and capacity to decide on except that it lacks the political will that brought it to existence and now engages in an elaborate scheme of buck-passing.

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Without any doubt we can establish a new social order in our country, if we reclaim, restore, uphold and defend our national sovereignty. **National sovereignty is what the military bases issue is all about.** It is only the sovereign people exercising their national sovereignty who can design an independent course and take full control of their national destiny.[359]

SPEECH OF COMMISSIONER PADILLA[360]

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Mr. Presiding Officer, in advocating the majority committee report, specifically Sections 3 and 4 on neutrality, nuclear and bases-free country, some **views stress sovereignty of the Republic and even invoke survival of the Filipino nation and people.**[361]

REBUTTAL OF COMMISSIONER NOLLEDO[362]

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The anachronistic and ephemeral arguments against the provisions of the committee report to dismantle the American bases after 1991 only show the urgent need to **free our country from the entangling alliance** with any power bloc.[363]

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[359] Id. at 652.
[360] IV RECORD, CONSTITUTIONAL COMMISSION 652-653 (15 September 1986).
[361] Id.
[362] IV RECORD, CONSTITUTIONAL COMMISSION 653-654 (15 September 1986).
[363] Id. at 653.

> x x x Mr. Presiding Officer, it is not necessary for us to possess expertise to know that the so-called RP-US Bases Agreement will expire in 1991, that it **infringes on our sovereignty and jurisdiction as** well as national dignity and honor, that it goes against the UN policy of disarmament and that it constitutes **unjust intervention in our internal affairs.**[364] (Emphases Supplied)

The Constitutional Commission eventually agreed to allow foreign military bases, troops, or facilities, subject to the provisions of Section 25. It is thus important to read its discussions carefully. From these discussions, we can deduce three legal standards that were articulated by the Constitutional Commission Members. These are characteristics of any agreement that the country, and by extension this Court, must ensure are observed. We can thereby determine whether a military base or facility in the Philippines, which houses or is accessed by foreign military troops, is foreign or remains a Philippine military base or facility. The legal standards we find applicable are: independence from foreign control, sovereignty and applicable law, and national security and territorial integrity.

i. First standard: independence from foreign control

Very clearly, much of the opposition to the U.S. bases at the time of the Constitution's drafting was aimed at asserting Philippine independence from the U.S., as well as control over our country's territory and military.

Under the Civil Code, there are several aspects of control exercised over property.

Property is classified as private or public.[365] It is public if "intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character[,]" or "[t]hose which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth."[366]

Quite clearly, the Agreed Locations are contained within a property for public use, be it within a government military camp or property that belongs to the Philippines.

Once ownership is established, then the rights of ownership flow freely. Article 428 of the Civil Code provides that "[t]he owner has the right to enjoy and dispose of a thing, without other limitations than those

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[364] Id. at 654.
[365] CIVIL CODE, Art. 419.
[366] CIVIL CODE, Art. 420.

established by law." Moreover, the owner "has also a right of action against the holder and possessor of the thing in order to recover it."

Philippine civil law therefore accords very strong rights to the owner of property, even against those who hold the property. Possession, after all, merely raises a disputable presumption of ownership, which can be contested through normal judicial processes.[367]

In this case, EDCA explicitly provides that ownership of the Agreed Locations remains with the Philippine government.[368] What U.S. personnel have a right to, pending mutual agreement, is access to and use of these locations.[369]

The right of the owner of the property to allow access and use is consistent with the Civil Code, since the owner may dispose of the property in whatever way deemed fit, subject to the limits of the law. So long as the right of ownership itself is not transferred, then whatever rights are transmitted by agreement does not completely divest the owner of the rights over the property, but may only limit them in accordance with law.

Hence, even control over the property is something that an owner may transmit freely. This act does not translate into the full transfer of ownership, but only of certain rights. In *Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission*, we stated that the constitutional proscription on property ownership is not violated despite the foreign national's control over the property.[370]

EDCA, in respect of its provisions on Agreed Locations, is essentially a contract of use and access. Under its pertinent provisions, it is the Designated Authority of the Philippines that shall, when requested, assist in facilitating transit or access to public land and facilities.[371] The activities carried out within these locations are subject to agreement as authorized by the Philippine government.[372] Granting the U.S. operational control over these locations is likewise subject to EDCA's security mechanisms, which are bilateral procedures involving Philippine consent and cooperation.[373] Finally, the Philippine Designated Authority or a duly designated representative is given access to the Agreed Locations.[374]

To our mind, these provisions do not raise the spectre of U.S. control, which was so feared by the Constitutional Commission. In fact, they seem to have been the product of deliberate negotiation from the point of view of the

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[367] CIVIL CODE, Art. 433.
[368] EDCA, Art. V.
[369] EDCA, Art. II(4).
[370] *Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission*, 102 Phil. 596 (1957).
[371] EDCA, Art. III(2).
[372] EDCA, Art. III(1).
[373] EDCA, Art. III(4).
[374] EDCA, Art. III(5).

Philippine government, which balanced constitutional restrictions on foreign military bases and facilities against the security needs of the country. In the 1947 MBA, the U.S. forces had "the right, power and authority x x x to construct (including dredging and filling), operate, maintain, utilize, occupy, garrison and control the bases."[375] No similarly explicit provision is present in EDCA.

Nevertheless, the threshold for allowing the presence of foreign military facilities and bases has been raised by the present Constitution. Section 25 is explicit that foreign military bases, troops, or facilities shall not be allowed in the Philippines, except under a treaty duly concurred in by the Senate. Merely stating that the Philippines would retain ownership would do violence to the constitutional requirement if the Agreed Locations were simply to become a less obvious manifestation of the U.S. bases that were rejected in 1991.

When debates took place over the military provisions of the Constitution, the committee rejected a specific provision proposed by Commissioner Sarmiento. The discussion illuminates and provides context to the 1986 Constitutional Commission's vision of control and independence from the U.S., to wit:

> MR. SARMIENTO: Madam President, my proposed amendment reads as follows: "THE STATE SHALL ESTABLISH AND MAINTAIN AN INDEPENDENT AND SELF-RELIANT ARMED FORCES OF THE PHILIPPINES." Allow me to briefly explain, Madam President. The Armed Forces of the Philippines is a vital component of Philippine society depending upon its training, orientation and support. It will either be the people's protector or a staunch supporter of a usurper or tyrant, local and foreign interest. **The Armed Forces of the Philippines' past and recent experience shows it has never been independent and self-reliant.** Facts, data and statistics will show that it has been substantially dependent upon a foreign power. In March 1968, Congressman Barbero, himself a member of the Armed Forces of the Philippines, revealed top secret documents showing what he described as U.S. dictation over the affairs of the Armed Forces of the Philippines. **He showed that under existing arrangements, the United States unilaterally determines not only the types and quantity of arms and equipments that our armed forces would have, but also the time when these items are to be made available to us. It is clear, as he pointed out, that the composition, capability and schedule of development of the Armed Forces of the Philippines is under the effective control of the U.S. government.**[376] (Emphases supplied)

Commissioner Sarmiento proposed a motherhood statement in the 1987 Constitution that would assert "independent" and "self-reliant" armed forces. **This proposal was rejected by the committee, however. As Commissioner De Castro asserted, the involvement of the Philippine**

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[375] 1947 MBA, III(2)(a).
[376] V RECORD, CONSTITUTIONAL COMMISSION 240 (30 September 1986).

military with the U.S. did not, by itself, rob the Philippines of its real independence. He made reference to the context of the times: that the limited resources of the Philippines and the current insurgency at that time necessitated a strong military relationship with the U.S. He said that the U.S. would not in any way control the Philippine military despite this relationship and the fact that the former would furnish military hardware or extend military assistance and training to our military. Rather, he claimed that the proposal was in compliance with the treaties between the two states.

> MR. DE CASTRO: If the Commissioner will take note of my speech on U.S. military bases on 12 September 1986, I spoke on the self-reliance policy of the armed forces. However, due to very limited resources, the only thing we could do is manufacture small arms ammunition. We cannot blame the armed forces. We have to blame the whole Republic of the Philippines for failure to provide the necessary funds to make the Philippine Armed Forces self-reliant. Indeed that is a beautiful dream. And I would like it that way. But as of this time, fighting an insurgency case, a rebellion in our country — insurgency — and with very limited funds and very limited number of men, it will be quite impossible for the Philippines to appropriate the necessary funds therefor. **However, if we say that the U.S. government is furnishing us the military hardware, it is not control of our armed forces or of our government. It is in compliance with the Mutual Defense Treaty.** It is under the military assistance program that it becomes the responsibility of the United States to furnish us the necessary hardware in connection with the military bases agreement. Please be informed that there are three (3) treaties connected with the military bases agreement; namely: the RP-US Military Bases Agreement, the Mutual Defense Treaty and the Military Assistance Program.
>
> **My dear Commissioner, when we enter into a treaty and we are furnished the military hardware pursuant to that treaty, it is not in control of our armed forces nor control of our government.** True indeed, we have military officers trained in the U.S. armed forces school. This is part of our Military Assistance Program, but it does not mean that the minds of our military officers are for the U.S. government, no. I am one of those who took four courses in the United States schools, but I assure you, my mind is for the Filipino people. Also, while we are sending military officers to train or to study in U.S. military schools, we are also sending our officers to study in other military schools such as in Australia, England and in Paris. So, it does not mean that when we send military officers to United States schools or to other military schools, we will be under the control of that country. We also have foreign officers in our schools, we in the Command and General Staff College in Fort Bonifacio and in our National Defense College, also in Fort Bonifacio. [377] (Emphases supplied)

This logic was accepted in *Tañada v. Angara*, in which the Court ruled that independence does not mean the absence of foreign participation:

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[377] V RECORD, CONSTITUTIONAL COMMISSION 240-241 (30 September 1986).

> Furthermore, the constitutional policy of a "self-reliant and independent national economy" **does not necessarily rule out the entry of foreign investments, goods and services.** It contemplates neither "economic seclusion" nor "mendicancy in the international community." As explained by Constitutional Commissioner Bernardo Villegas, sponsor of this constitutional policy:
>
> > Economic self reliance is a primary objective of a developing country that is keenly aware of overdependence on external assistance for even its most basic needs. It does not mean autarky or economic seclusion; rather, it means avoiding mendicancy in the international community. **Independence refers to the freedom from undue foreign control** of the national economy, especially in such strategic industries as in the development of natural resources and public utilities.[378] (Emphases supplied)

The heart of the constitutional restriction on foreign military facilities and bases is therefore the assertion of independence from the U.S. and other foreign powers, as independence is exhibited by the degree of foreign control exerted over these areas. The essence of that independence is self-governance and self-control.[379] Independence itself is "[t]he state or condition of being free from dependence, subjection, or control."[380]

Petitioners assert that EDCA provides the U.S. extensive control and authority over Philippine facilities and locations, such that the agreement effectively violates Section 25 of the 1987 Constitution.[381]

Under Article VI(3) of EDCA, U.S. forces are authorized to act as necessary for "operational control and defense." The term "operational control" has led petitioners to regard U.S. control over the Agreed Locations as unqualified and, therefore, total.[382] Petitioners contend that the word "their" refers to the subject "Agreed Locations."

This argument misreads the text, which is quoted below:

> United States forces are authorized to exercise all rights and authorities within Agreed Locations that are necessary for their operational control or defense, including taking appropriate measure to protect United States forces and United States contractors. The United States should coordinate such measures with appropriate authorities of the Philippines.

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[378] *Tañada v. Angara*, supra note 97.
[379] Tydings-McDuffie Act, Section 10(a) Pub.L. 73–127, 48 Stat. 456 (enacted 24 March 1934).
[380] BLACK'S LAW DICTIONARY 770 (6th ed. 1990). *See also* J. Carpio's Dissenting Opinion in *Liban v. Gordon*, 654 Phil. 680 (2011).
[381] Memorandum of Saguisag, p. 56, *rollo* (G.R. No.212426), p. 594.
[382] Id. at 596.

A basic textual construction would show that the word "their," as understood above, is a possessive pronoun for the subject "they," a third-person personal pronoun in plural form. Thus, "their" cannot be used for a non-personal subject such as "Agreed Locations." The simple grammatical conclusion is that "their" refers to the previous third-person plural noun, which is "United States forces." This conclusion is in line with the definition of operational control.

a. U.S. operational control as the exercise of authority over U.S. personnel, and not over the Agreed Locations

Operational control, as cited by both petitioner and respondents, is a military term referring to

> [t]he authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objective, and giving authoritative direction necessary to accomplish the mission.[383]

At times, though, operational control can mean something slightly different. In *JUSMAG Philippines v. National Labor Relations Commission*, the Memorandum of Agreement between the AFP and JUSMAG Philippines defined the term as follows:[384]

> The term "Operational Control" includes, but is not limited to, all personnel administrative actions, such as: hiring recommendations; firing recommendations; position classification; discipline; nomination and approval of incentive awards; and payroll computation.

Clearly, traditional standards define "operational control" as personnel control. Philippine law, for instance, deems operational control as one exercised by police officers and civilian authorities over their subordinates and is distinct from the administrative control that they also exercise over police subordinates.[385] Similarly, a municipal mayor exercises operational control over the police within the municipal government,[386] just as city

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[383] Id. at 460.
[384] G.R. No. 108813, 15 December 1994, 239 SCRA 224, 229.
[385] R.A. No. 6975 – *Department of the Interior and Local Government Act of 1990*, Sec. 86; P.D. No. 531, Secs. 4, 5, and 6.
[386] Local Government Code of 1991, Sec. 444.

mayor possesses the same power over the police within the city government.[387]

Thus, the legal concept of operational control involves authority over personnel in a commander-subordinate relationship and does not include control over the Agreed Locations in this particular case. Though not necessarily stated in EDCA provisions, this interpretation is readily implied by the reference to the taking of "appropriate measures to protect United States forces and United States contractors."

It is but logical, even necessary, for the U.S. to have operational control over its own forces, in much the same way that the Philippines exercises operational control over its own units.

For actual operations, EDCA is clear that any activity must be planned and pre-approved by the MDB-SEB.[388] This provision evinces the partnership aspect of EDCA, such that both stakeholders have a say on how its provisions should be put into effect.

b. Operational control vis-à-vis effective command and control

Petitioners assert that beyond the concept of operational control over personnel, qualifying access to the Agreed Locations by the Philippine Designated Authority with the phrase "consistent with operational safety and security requirements in accordance with agreed procedures developed by the Parties" leads to the conclusion that the U.S. exercises effective control over the Agreed Locations.[389] They claim that if the Philippines exercises possession of and control over a given area, its representative should not have to be authorized by a special provision.[390]

For these reasons, petitioners argue that the "operational control" in EDCA is the "effective command and control" in the 1947 MBA.[391] In their Memorandum, they distinguish effective command and control from operational control in U.S. parlance.[392] Citing the Doctrine for the Armed Forces of the United States, Joint Publication 1, "command and control (C2)" is defined as "the exercise of authority and direction by a properly designated commander over assigned and attached forces in the accomplishment of the mission x x x."[393] Operational control, on the other

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[387] Local Government Code of 1991, Sec. 455.
[388] *Rollo*, (G.R. No. 212426), pp. 515-525.
[389] Id. at 597.
[390] Id.
[391] Id. at 598.
[392] Id. at 599.
[393] Id. at 599, FN 76

hand, refers to "[t]hose functions of command over assigned forces involving the composition of subordinate forces, the assignment of tasks, the designation of objectives, the overall control of assigned resources, and the full authoritative direction necessary to accomplish the mission."[394]

Two things demonstrate the errors in petitioners' line of argument.

Firstly, the phrase "consistent with operational safety and security requirements in accordance with agreed procedures developed by the Parties" does not add any qualification beyond that which is already imposed by existing treaties. To recall, EDCA is based upon prior treaties, namely the VFA and the MDT.[395] Treaties are in themselves contracts from which rights and obligations may be claimed or waived.[396] In this particular case, the Philippines has already agreed to abide by the security mechanisms that have long been in place between the U.S. and the Philippines based on the implementation of their treaty relations.[397]

Secondly, the full document cited by petitioners contradicts the equation of "operational control" with "effective command and control," since it defines the terms quite differently, *viz:*[398]

> Command and control encompasses the exercise of authority, responsibility, and direction by a commander over assigned and attached forces to accomplish the mission. Command at all levels is the art of motivating and directing people and organizations into action to accomplish missions. Control is inherent in command. To control is to manage and direct forces and functions consistent with a commander's command authority. Control of forces and functions helps commanders and staffs compute requirements, allocate means, and integrate efforts. Mission command is the preferred method of exercising C2. A complete discussion of tenets, organization, and processes for effective C2 is provided in Section B, "Command and Control of Joint Forces," of Chapter V "Joint Command and Control."

Operational control is defined thus:[399]

> OPCON is able to be delegated from a lesser authority than COCOM. It is the authority to perform those functions of command over subordinate forces involving organizing and employing commands and

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[394] Id. at footnote 77.
[395] EDCA, preamble.
[396] *See*: *Bayan Muna v. Romulo*, supra note 114; *Bayan v. Zamora*, supra note 23; *USAFFE Veterans Ass'n., Inc. v. Treasurer of the Phil.*, supra note 173; Vienna Convention on the Law of the Treaties, Art. 27 (on internal law and observance of treaties) in relation to Art. 46 (on provisions of internal law regarding competence to conclude treaties).
[397] "Under EDCA, before constructions and other activities can be undertaken, prior consent of the Philippines will have to be secured through the Mutual Defense Board (MDB) and Security Engagement Board (SEB) which were established under the MDT and the VFA." . See *Q&A on the Enhanced Defense Cooperation Agreement*, OFFICIAL GAZETTE, available at <http://www.gov.ph/2014/04/28/qna-on-the-enhanced-defense-cooperation-agreement> (last accessed 3 December 2015).
[398] UNITED STATES DEPARTMENT OF DEFENSE, DOCTRINE FOR THE ARMED FORCES OF THE UNITED STATES: JOINT PUBLICATION 1, Chap. I-18 (2013).
[399] Id., at Chap. V-6.

> forces, assigning tasks, designating objectives, and giving authoritative direction over all aspects of military operations and joint training necessary to accomplish the mission. It should be delegated to and exercised by the commanders of subordinate organizations; normally, this authority is exercised through subordinate JFCs, Service, and/or functional component commanders. OPCON provides authority to organize and employ commands and forces as the commander considers necessary to accomplish assigned missions. It does not include authoritative direction for logistics or matters of administration, discipline, internal organization, or unit training. These elements of COCOM must be specifically delegated by the CCDR. OPCON does include the authority to delineate functional responsibilities and operational areas of subordinate JFCs.

Operational control is therefore the delegable aspect of combatant command, while command and control is the overall power and responsibility exercised by the commander with reference to a mission. Operational control is a narrower power and must be given, while command and control is plenary and vested in a commander. Operational control does not include the planning, programming, budgeting, and execution process input; the assignment of subordinate commanders; the building of relationships with Department of Defense agencies; or the directive authority for logistics, whereas these factors are included in the concept of command and control.[400]

This distinction, found in the same document cited by petitioners, destroys the very foundation of the arguments they have built: that EDCA is the same as the MBA.

c. Limited operational control over the Agreed Locations only for construction activitites

As petitioners assert, EDCA indeed contains a specific provision that gives to the U.S. operational control within the Agreed Locations during construction activities.[401] This exercise of operational control is premised upon the approval by the MDB and the SEB of the construction activity through consultation and mutual agreement on the requirements and standards of the construction, alteration, or improvement.[402]

Despite this grant of operational control to the U.S., it must be emphasized that the grant is only for construction activities. The narrow and limited instance wherein the U.S. is given operational control within an

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[400] *See* id., at Chap. V-2.
[401] EDCA, Art. III(4).
[402] EDCA, Art. III(4).

Agreed Location cannot be equated with foreign military control, which is so abhorred by the Constitution.

The clear import of the provision is that in the absence of construction activities, operational control over the Agreed Location is vested in the Philippine authorities. This meaning is implicit in the specific grant of operational control only during construction activities. The principle of constitutional construction, "*expressio unius est exclusio alterius*," means the failure to mention the thing becomes the ground for inferring that it was deliberately excluded.[403] Following this construction, since EDCA mentions the existence of U.S. operational control over the Agreed Locations for construction activities, then it is quite logical to conclude that it is not exercised over other activities.

Limited control does not violate the Constitution. The fear of the commissioners was total control, to the point that the foreign military forces might dictate the terms of their acts within the Philippines.[404] More important, limited control does not mean an abdication or derogation of Philippine sovereignty and legal jurisdiction over the Agreed Locations. It is more akin to the extension of diplomatic courtesies and rights to diplomatic agents,[405] which is a waiver of control on a limited scale and subject to the terms of the treaty.

This point leads us to the second standard envisioned by the framers of the Constitution: that the Philippines must retain sovereignty and jurisdiction over its territory.

ii. Second standard: Philippine sovereignty and applicable law

EDCA states in its Preamble the "understanding for the United States not to establish a permanent military presence or base in the territory of the Philippines." Further on, it likewise states the recognition that "all United States access to and use of facilities and areas will be at the invitation of the Philippines and with full respect for the Philippine Constitution and Philippine laws."

The sensitivity of EDCA provisions to the laws of the Philippines must be seen in light of Philippine sovereignty and jurisdiction over the Agreed Locations.

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[403] *Sarmiento v. Mison*, supra note 177. The case also formulated this principle as follows: "an express enumeration of subjects excludes others not enumerated."
[404] Rebuttal of Commissioner Nolledo, supra note 362.
[405] Vienna Convention on Diplomatic Relations, Arts. 31-40, 500 U.N.T.S. 95 (1961).

Sovereignty is the possession of sovereign power,[406] while jurisdiction is the conferment by law of power and authority to apply the law.[407] Article I of the 1987 Constitution states:

> The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has **sovereignty or jurisdiction**, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines. (Emphasis supplied)

From the text of EDCA itself, Agreed Locations are territories of the Philippines that the U.S. forces are allowed to access and use.[408] By withholding ownership of these areas and retaining unrestricted access to them, the government asserts sovereignty over its territory. That sovereignty exists so long as the Filipino people exist.[409]

Significantly, the Philippines retains primary responsibility for security with respect to the Agreed Locations.[410] Hence, Philippine law remains in force therein, and it cannot be said that jurisdiction has been transferred to the U.S. Even the previously discussed necessary measures for operational control and defense over U.S. forces must be coordinated with Philippine authorities.[411]

Jurisprudence bears out the fact that even under the former legal regime of the MBA, Philippine laws continue to be in force within the bases.[412] The difference between then and now is that EDCA retains the primary jurisdiction of the Philippines over the security of the Agreed Locations, an important provision that gives it actual control over those locations. Previously, it was the provost marshal of the U.S. who kept the peace and enforced Philippine law in the bases. In this instance, Philippine forces act as peace officers, in stark contrast to the 1947 MBA provisions on jurisdiction.[413]

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[406] *See* BLACK'S LAW DICTIONARY 1523 (9th ed. 2009).
[407] *See* BLACK'S LAW DICTIONARY 927 (9th ed. 2009).
[408] EDCA, Article I(1)(b).
[409] *Laurel v. Misa*, 77 Phil. 856 (1947).
[410] EDCA. Art. VI(2).
[411] EDCA, Art. VI(3).
[412] *Liwanag v. Hamill*, 98 Phil. 437 (1956).
[413] 1947 MBA, Art. XIII.

iii. Third standard: must respect national security and territorial integrity

The last standard this Court must set is that the EDCA provisions on the Agreed Locations must not impair or threaten the national security and territorial integrity of the Philippines.

This Court acknowledged in *Bayan v. Zamora* that the evolution of technology has essentially rendered the prior notion of permanent military bases obsolete.

> Moreover, military bases established within the territory of another state is no longer viable because of the alternatives offered by new means and weapons of warfare such as nuclear weapons, guided missiles as well as huge sea vessels that can stay afloat in the sea even for months and years without returning to their home country. These military warships are actually used as substitutes for a land-home base not only of military aircraft but also of military personnel and facilities. Besides, vessels are mobile as compared to a land-based military headquarters.[414]

The VFA serves as the basis for the entry of U.S. troops in a limited scope. It does not allow, for instance, the re-establishment of the Subic military base or the Clark Air Field as U.S. military reservations. In this context, therefore, this Court has interpreted the restrictions on foreign bases, troops, or facilities as three independent restrictions. In accord with this interpretation, each restriction must have its own qualification.

Petitioners quote from the website http://en.wikipedia.org to define what a military base is.[415] While the source is not authoritative, petitioners make the point that the Agreed Locations, by granting access and use to U.S. forces and contractors, are U.S. bases under a different name.[416] More important, they claim that the Agreed Locations invite instances of attack on the Philippines from enemies of the U.S. [417]

We believe that the raised fear of an attack on the Philippines is not in the realm of law, but of politics and policy. At the very least, we can say that under international law, EDCA does not provide a legal basis for a justified attack on the Philippines.

In the first place, international law disallows any attack on the Agreed Locations simply because of the presence of U.S. personnel. Article 2(4) of the United Nations Charter states that "All Members shall refrain in their

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[414] *Bayan v. Zamora*, supra note 23.
[415] Memorandum of Saguisag, p. 72, *rollo* (G.R. No. 212426), p. 610.
[416] Id.
[417] Id.

international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[418] Any unlawful attack on the Philippines breaches the treaty, and triggers Article 51 of the same charter, which guarantees the inherent right of individual or collective self-defence.

Moreover, even if the lawfulness of the attack were not in question, international humanitarian law standards prevent participants in an armed conflict from targeting non-participants. International humanitarian law, which is the branch of international law applicable to armed conflict, expressly limits allowable military conduct exhibited by forces of a participant in an armed conflict.[419] Under this legal regime, participants to an armed conflict are held to specific standards of conduct that require them to distinguish between combatants and non-combatants,[420] as embodied by the Geneva Conventions and their Additional Protocols.[421]

Corollary to this point, Professor John Woodcliffe, professor of international law at the University of Leicester, noted that there is no legal consensus for what constitutes a base, as opposed to other terms such as "facilities" or "installation."[422] In strategic literature, "base" is defined as an installation "over which the user State has a right to exclusive control in an extraterritorial sense."[423] Since this definition would exclude most foreign military installations, a more important distinction must be made.

For Woodcliffe, a type of installation excluded from the definition of "base" is one that does not fulfill a combat role. He cites an example of the use of the territory of a state for training purposes, such as to obtain experience in local geography and climactic conditions or to carry out joint exercises.[424] Another example given is an advanced communications technology installation for purposes of information gathering and communication.[425] Unsurprisingly, he deems these non-combat uses as borderline situations that would be excluded from the functional understanding of military bases and installations.[426]

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[418] Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
[419] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3 (1977) [hereinafter Geneva Convention Additional Protocol I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609 (1977).
[420] Articles 48, 51(2) and 52(2), Protocol I, supra note 419.
[421] 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31; 1949 Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; 1949 Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135; 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287; Id.
[422] JOHN WOODCLIFFE, THE PEACETIME USE OF FOREIGN MILITARY INSTALLATIONS UNDER MODERN INTERNATIONAL LAW 30 (1992).
[423] Id.
[424] Id. at 32.
[425] Id.
[426] Id.

By virtue of this ambiguity, the laws of war dictate that the status of a building or person is presumed to be protected, unless proven otherwise.[427] Moreover, the principle of distinction requires combatants in an armed conflict to distinguish between lawful targets[428] and protected targets.[429] In an actual armed conflict between the U.S. and a third state, the Agreed Locations cannot be considered U.S. territory, since ownership of territory even in times of armed conflict does not change.[430]

Hence, any armed attack by forces of a third state against an Agreed Location can only be legitimate under international humanitarian law if it is against a *bona fide* U.S. military base, facility, or installation that directly contributes to the military effort of the U.S. Moreover, the third state's forces must take all measures to ensure that they have complied with the principle of distinction (between combatants and non-combatants).

There is, then, ample legal protection for the Philippines under international law that would ensure its territorial integrity and national security in the event an Agreed Location is subjected to attack. As EDCA stands, it does not create the situation so feared by petitioners – one in which the Philippines, while not participating in an armed conflict, would be *legitimately targeted* by an enemy of the U.S. [431]

In the second place, this is a policy question about the wisdom of allowing the presence of U.S. personnel within our territory and is therefore outside the scope of judicial review.

Evidently, the concept of giving foreign troops access to "agreed" locations, areas, or facilities within the military base of another sovereign state is nothing new on the international plane. In fact, this arrangement has been used as the framework for several defense cooperation agreements, such as in the following:

1. 2006 U.S.-Bulgaria Defense Cooperation Agreement[432]
2. 2009 U.S.-Colombia Defense Cooperation Agreement[433]
3. 2009 U.S.-Poland Status of Forces Agreement[434]

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[427] JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW – VOLUME I: RULES 34-36 (2005)
[428] Art. 52, Protocol I, supra note 419.
[429] Art. 48, Id..
[430] Art. 4., Id.
[431] Memorandum of Saguisag, pp. 66-70, *rollo* (G.R. No. 212426), pp. 604-608.
[432] Article II(6) thereof provides: **"Agreed facilities and areas"** means the **state owned facilities and areas** in the territory of the Republic of Bulgaria listed in Annex A, and **such other state owned facilities and areas**, as may be mutually agreed by the Parties.
[433] Article I(g) thereof provides: **"Agreed facilities and locations"** means those sites, installations, and infrastructure **to which the United States is authorized access** and use by Colombia **in connection with activities carried out within the framework of this Agreement.**
[434] Article 2(i) thereof provides: **"agreed facilities and areas"** shall mean areas, **facilities, buildings or structures** in the territory of the Republic of Poland, **owned by the Republic of Poland**, and used by United States forces with the consent of the Republic of Poland.

4. 2014 U.S.-Australia Force Posture Agreement[435]
5. 2014 U.S.-Afghanistan Security and Defense Cooperation Agreement[436]

In all of these arrangements, the host state grants U.S. forces access to their military bases.[437] That access is without rental or similar costs to the U.S.[438] Further, U.S. forces are allowed to undertake construction activities in, and make alterations and improvements to, the agreed locations, facilities, or areas.[439] As in EDCA, the host states retain ownership and jurisdiction over the said bases.[440]

In fact, some of the host states in these agreements give specific military-related rights to the U.S. For example, under Article IV(1) of the *U.S.-Bulgaria Defense Cooperation Agreement*, "the United States forces x x x are authorized access to and may use agreed facilities and areas x x x for staging and deploying of forces and materiel, with the purpose of conducting x x x contingency operations and other missions, including those undertaken in the framework of the North Atlantic Treaty." In some of these agreements, host countries allow U.S. forces to construct facilities for the latter's exclusive use.[441]

Troop billeting, including construction of temporary structures, is nothing new. In *Lim v. Executive Secretary*, the Court already upheld the Terms of Reference of *Balikatan 02-1*, which authorized U.S. forces to set up "[t]emporary structures such as those for troop billeting, classroom instruction and messing x x x during the Exercise." Similar provisions are also in the Mutual Logistics Support Agreement of 2002 and 2007, which are essentially executive agreements that implement the VFA, the MDT, and

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[435] Article I thereof provides: **"Agreed Facilities and Areas"** means the **facilities and areas in the territory of Australia** provided by Australia which may be listed in Annex A appended to this Agreement, **and such other facilities and areas** in the territory of Australia as may be provided by Australia in the future, **to which United States Forces, United States Contractors**, dependants, and other United States Government personnel as mutually agreed, shall have the **right to access and use pursuant to this Agreement.**

[436] Article 1(7) thereof provides: **"Agreed facilities and areas"** means the **facilities and areas in the territory of Afghanistan provided by Afghanistan at the locations** listed in Annex A, **and such other facilities and areas** in the territory of Afghanistan as may be provided by Afghanistan in the future, to which United States forces, United States contractors, United States contractor employees, and others as mutually agreed, shall have the **right to access and use pursuant to this Agreement.**

[437] US-Bulgaria Defense Cooperation Agreement, Arts. II(6) & IV(1); US-Colombia Defense Cooperation Agreement, Art. IV; US-Poland Status of Forces Agreement, Art. 3(2); US-Australia Force Posture Agreement, Arts. I, IV;

[438] US-Bulgaria Defense Cooperation Agreement, Art. IV(5); US-Colombia Defense Cooperation Agreement, Art. IV; US-Poland Status of Forces Agreement, Art. 3(1); US-Australia Force Posture Agreement, Art. IV(7).

[439] US-Bulgaria Defense Cooperation Agreement, Art. IV(7); US-Colombia Defense Cooperation Agreement, Arts. IV(7), XI; US-Poland Status of Forces Agreement, Art. 3(6); US-Australia Force Posture Agreement, Art. IV(8).

[440] US-Bulgaria Defense Cooperation Agreement, Arts. II(6), IV(1) & VI(1); US-Colombia Defense Cooperation Agreement, Art. IV(6); US-Poland Status of Forces Agreement, Art. 4(1); US-Australia Force Posture Agreement, Art. XIV(1).

[441] US-Bulgaria Defense Cooperation Agreement, Art. IV(8); US-Colombia Defense Cooperation Agreement, Art. IV(4); US-Poland Status of Forces Agreement, Art. 3(10); US-Australia Force Posture Agreement, Art. X(2).

the 1953 Military Assistance Agreement. These executive agreements similarly tackle the "reciprocal provision of logistic support, supplies, and services,"[442] which include "[b]illeting, x x x operations support (and construction and use of temporary structures incident to operations support), training services, x x x storage services, x x x during an approved activity."[443] These logistic supplies, support, and services include temporary use of "nonlethal items of military equipment which are not designated as significant military equipment on the U.S. Munitions List, during an approved activity."[444] The first Mutual Logistics Support Agreement has lapsed, while the second one has been extended until 2017 without any formal objection before this Court from the Senate or any of its members.

The provisions in EDCA dealing with Agreed Locations are analogous to those in the aforementioned executive agreements. Instead of authorizing the building of temporary structures as previous agreements have done, EDCA authorizes the U.S. to build permanent structures or alter or improve existing ones for, and to be owned by, the Philippines.[445] EDCA is clear that the Philippines retains ownership of altered or improved facilities and newly constructed permanent or non-relocatable structures.[446] Under EDCA, U.S. forces will also be allowed to use facilities and areas for "training; x x x; support and related activities; x x x; temporary accommodation of personnel; communications" and agreed activities.[447]

Concerns on national security problems that arise from foreign military equipment being present in the Philippines must likewise be contextualized. Most significantly, **the VFA already authorizes the presence of U.S. military equipment in the country.** Article VII of the VFA already authorizes the U.S. to import into or acquire in the Philippines "equipment, materials, supplies, and other property" that will be used "in connection with activities" contemplated therein. The same section also recognizes that "[t]itle to such property shall remain" with the US and that they have the discretion to "remove such property from the Philippines at any time."

There is nothing novel, either, in the EDCA provision on the prepositioning and storing of "defense equipment, supplies, and materiel,"[448] since these are sanctioned in the VFA. In fact, the two countries have already entered into various implementing agreements in the past that are comparable to the present one. The *Balikatan 02-1* Terms of Reference mentioned in *Lim v. Executive Secretary* specifically recognizes that Philippine and U.S. forces "may share x x x in the use of their resources, equipment and other assets." Both the 2002 and 2007 Mutual Logistics

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[442] 2002 MLSA, Art. III(2); 2007 MLSA, Art. III(2).
[443] 2002 MLSA, Art. IV(1)(a)(2); 2007 MLSA, Art. IV(1)(a)(2).
[444] 2002 MLSA, Art. IV(1)(a)(3); 2007 MLSA, Art. IV(1)(a)(3).
[445] EDCA, Art. V(1).
[446] EDCA, Art. V(2).
[447] EDCA, Art. III(1).
[448] EDCA, Art. IV(1).

Support Agreements speak of the provision of support and services, including the "construction and use of temporary structures incident to operations support" and "storage services" during approved activities.[449] These logistic supplies, support, and services include the "temporary use of x x x nonlethal items of military equipment which are not designated as significant military equipment on the U.S. Munitions List, during an approved activity."[450] Those activities include "combined exercises and training, operations and other deployments" and "cooperative efforts, such as humanitarian assistance, disaster relief and rescue operations, and maritime anti-pollution operations" within or outside Philippine territory.[451] Under EDCA, the equipment, supplies, and materiel that will be prepositioned at Agreed Locations include "humanitarian assistance and disaster relief equipment, supplies, and materiel."[452] Nuclear weapons are specifically excluded from the materiel that will be prepositioned.

Therefore, there is no basis to invalidate EDCA on fears that it increases the threat to our national security. If anything, EDCA increases the likelihood that, in an event requiring a defensive response, the Philippines will be prepared alongside the U.S. to defend its islands and insure its territorial integrity pursuant to a relationship built on the MDT and VFA.

8. Others issues and concerns raised

A point was raised during the oral arguments that the language of the MDT only refers to mutual help and defense in the Pacific area.[453] We believe that any discussion of the activities to be undertaken under EDCA *vis-à-vis* the defense of areas beyond the Pacific is premature. We note that a proper petition on that issue must be filed before we rule thereon. We also note that none of the petitions or memoranda has attempted to discuss this issue, except only to theorize that the U.S. will not come to our aid in the event of an attack outside of the Pacific. This is a matter of policy and is beyond the scope of this judicial review.

In reference to the issue on telecommunications, suffice it to say that the initial impression of the facility adverted to does appear to be one of those that require a public franchise by way of congressional action under Section 11, Article XII of the Constitution. As respondents submit, however, the system referred to in the agreement does not provide telecommunications services to the public for compensation.[454] It is clear from Article VII(2) of EDCA that the telecommunication system is solely for the use of the U.S.

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[449] 2002 MLSA, Art. IV(1)(a)(2); 2007 MLSA, Art. IV(1)(a)(2).
[450] 2002 MLSA, Art. IV(1)(a)(3); 2007 MLSA, Art. IV(1)(a)(3).
[451] 2002 MLSA, Art. III(1); 2007 MLSA, Art. III(1).
[452] EDCA, Art. IV(1).
[453] MDT, Arts. III, IV, and V.
[454] *Rollo*, p. 464.

and not the public in general, and that this system will not interfere with that which local operators use. Consequently, a public franchise is no longer necessary.

Additionally, the charge that EDCA allows nuclear weapons within Philippine territory is entirely speculative. It is noteworthy that the agreement in fact specifies that the prepositioned materiel shall not include nuclear weapons.[455] Petitioners argue that only prepositioned nuclear weapons are prohibited by EDCA; and that, therefore, the U.S. would insidiously bring nuclear weapons to Philippine territory.[456] The general prohibition on nuclear weapons, whether prepositioned or not, is already expressed in the 1987 Constitution.[457] It would be unnecessary or superfluous to include all prohibitions already in the Constitution or in the law through a document like EDCA.

Finally, petitioners allege that EDCA creates a tax exemption, which under the law must originate from Congress. This allegation ignores jurisprudence on the government's assumption of tax liability. EDCA simply states that the taxes on the use of water, electricity, and public utilities are for the account of the Philippine Government.[458] This provision creates a situation in which a contracting party assumes the tax liability of the other.[459] In *National Power Corporation v. Province of Quezon*, we distinguished between enforceable and unenforceable stipulations on the assumption of tax liability. Afterwards, we concluded that an enforceable assumption of tax liability requires the party assuming the liability to have actual interest in the property taxed.[460] This rule applies to EDCA, since the Philippine Government stands to benefit not only from the structures to be built thereon or improved, but also from the joint training with U.S. forces, disaster preparation, and the preferential use of Philippine suppliers.[461] Hence, the provision on the assumption of tax liability does not constitute a tax exemption as petitioners have posited.

Additional issues were raised by petitioners, all relating principally to provisions already sufficiently addressed above. This Court takes this occasion to emphasize that the agreement has been construed herein as to absolutely disauthorize the violation of the Constitution or any applicable statute. On the contrary, the applicability of Philippine law is explicit in EDCA.

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[455] EDCA, Art. IV(6).
[456] *Rollo*, pp. 34-35.
[457] Article II, Sec. 8.
[458] EDCA. Art. VII(1).
[459] *National Power Corporation v. Province of Quezon*, 610 Phil. 456 (2009).
[460] *National Power Corporation v. Province of Quezon*, supra.
[461] EDCA, Art. III(6); Art. IV(2); Art. V(1, 4); Art. VIII(2).

EPILOGUE

The fear that EDCA is a reincarnation of the U.S. bases so zealously protested by noted personalities in Philippine history arises not so much from xenophobia, but from a genuine desire for self-determination, nationalism, and above all a commitment to ensure the independence of the Philippine Republic from any foreign domination.

Mere fears, however, cannot curtail the exercise by the President of the Philippines of his Constitutional prerogatives in respect of foreign affairs. They cannot cripple him when he deems that additional security measures are made necessary by the times. As it stands, the Philippines through the Department of Foreign Affairs has filed several diplomatic protests against the actions of the People's Republic of China in the West Philippine Sea;[462] initiated arbitration against that country under the United Nations Convention on the Law of the Sea;[463] is in the process of negotiations with the Moro Islamic Liberation Front for peace in Southern Philippines,[464] which is the subject of a current case before this Court; and faces increasing incidents of kidnappings of Filipinos and foreigners allegedly by the Abu Sayyaf or the New People's Army.[465] The Philippine military is conducting reforms that seek to ensure the security and safety of the nation in the years to come.[466] In the future, the Philippines must navigate a world in which armed forces fight with increasing sophistication in both strategy and technology, while employing asymmetric warfare and remote weapons.

Additionally, our country is fighting a most terrifying enemy: the backlash of Mother Nature. The Philippines is one of the countries most directly affected and damaged by climate change. It is no coincidence that the record-setting tropical cyclone *Yolanda* (internationally named *Haiyan*), one of the most devastating forces of nature the world has ever seen hit the

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[462] *Statement of Secretary Albert del Rosario before the Permanent Court of Arbitration, Peace Palace, The Hague, Netherlands,* 7 July 2015, OFFICIAL GAZETTE, available at <http://www.gov.ph/2015/07/07/statement-of-secretary-albert-del-rosario-before-the-permanent-court-of-arbitration-peace-palace-the-hague-netherlands/> (last visited 3 December 2015); *Statement on Recent Incidents in the Philippines' Bajo de Masinloc,* 4 February 2015, DEPARTMENT OF FOREIGN AFFAIRS, available at <http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/5337-statement-on-recent-incidents-in-the-philippines-bajo-de-masinloc> (last visited 21 October 2015).

[463] *The Republic of the Philippines v. The People's Republic of China,* Case No. 2013-19 (Perm Ct. Arb.) <http://www.pcacases.com/web/view/7> (last visited 13 October 2015).

[464] *Comprehensive Agreement on the Bangsamoro,* OFFICIAL GAZETTE, available at <http://www.gov.ph/2014/03/27/document-cab> (last visited 21 October 2015).

[465] Frinston Lim, *Authorities believe Abu Sayyaf behind abduction of Filipina, 3 foreigners,* 22 September 2015, PHILIPPINE DAILY INQUIRER, available at <http://globalnation.inquirer.net/128739/authorities-believe-npa-behind-abduction-of-filipina-foreigners (last visited 3 December 2015).

[466] Republic Act No. 10349 (2012); The Philippine Navy, *Picture of the Future: The Philippine Navy Briefer*, available at <http://www.navy.mil.ph/downloads/THE%20PHILIPPINE%20NAVY%20BRIEFER.pdf> (last visited 3 December 2015).

Philippines on 8 November 2013 and killed at least 6,000 people.[467] This necessitated a massive rehabilitation project.[468] In the aftermath, the U.S. military was among the first to extend help and support to the Philippines.

That calamity brought out the best in the Filipinos as thousands upon thousands volunteered their help, their wealth, and their prayers to those affected. It also brought to the fore the value of having friends in the international community.

In order to keep the peace in its archipelago in this region of the world, and to sustain itself at the same time against the destructive forces of nature, the Philippines will need friends. Who they are, and what form the friendships will take, are for the President to decide. The only restriction is what the Constitution itself expressly prohibits. It appears that this overarching concern for balancing constitutional requirements against the dictates of necessity was what led to EDCA.

As it is, EDCA is not constitutionally infirm. As an executive agreement, it remains consistent with existing laws and treaties that it purports to implement.

WHEREFORE, we hereby **DISMISS** the petitions.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice

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[467] Joel Locsin, *NDRRMC: Yolanda death toll hits 6,300 mark nearly 6 months after typhoon,* 17 April 2014, GMA NEWS ONLINE <http://www.gmanetwork.com/news/story/357322/news/nation/ndrrmc-yolanda-death-toll-hits-6-300-mark-nearly-6-months-after-typhoon> (last accessed 3 December 2015).

[468] *Typhoon Yolanda*, OFFICIAL GAZETTE, available at <http://www.gov.ph/crisis-response/updates-typhoon-yolanda/> (last visited 3 December 2015).

WE CONCUR:

See Separate Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

I dissent. See my dissenting opinion

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

I dissent: See my Dissenting Opn.

ARTURO D. BRION
Associate Justice

I join J. Carpio's opinion

DIOSDADO M. PERALTA
Associate Justice

I join the separate concurring opinion of J. Carpio

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

I join the dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion.

MARVIC M.V.F. LEONEN
Associate Justice

No Part.

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision 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