

SUPREME COURT
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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EN BANC

RENE A.V. SAGUISAG, Sr., et al.,
Petitioners,

- versus -

G.R. No. 212426
For: Certiorari

DEPARTMENT OF DEFENSE
SECRETARY VOLTAIRE GAZMIN,
et al.,

Respondents.

x-----x

RENE A.Q. SAGUISAG, Jr.,
Petitioner-in-intervention,

-versus-

G.R. No. 212444
For: Certiorari

DEPARTMENT OF DEFENSE SECRETARY
VOLTAIRE GAZMIN, et al.,

Respondents,

x-----x

MEMORANDUM FOR THE PETITIONER-IN-INTERVENTION

Lead Petitioner, *pro se* and for Petitioner-Intervenor son, most respectfully beg leave to manifest that undersigned, as *salimpusa*, as it were, has been informed that our Memorandum may be due today, at a time when traffic seems gridlocked all over Metro Manila, making meetings difficult, hampering coordination as we celebrate Yuletide the longest in the world, accentuated at this time of year with bonuses galore.

May we be so bold to submit this minor memorandum for the Saguisags and adopt all that co-petitioners may file on the main petition; this modest paper will focus only on our intervention, graciously allowed by this Honorable Court, for which we are grateful.

Rene III, son of intervenor, turned six last November 14 and loves to play soldier (his maternal Lolo rests in the *Libingan ng Mga Bayani*). Given the open-endedness of the Enhanced Defense Cooperative Agreement (EDCA) on duration, he may end up involved in a shooting war with China in a decade or so. Our interest or personality should be clear then, with all due respect; Tres's fate should not be decided by the President and the Defense Secretary alone, as much as we esteem them. The Constitution says the Senate must be involved to allow American aggressive presence. The South Koreans have hundreds of soldiers for a year now in Yolanda-stricken areas. No static. Non-aggressive non-provocative fraternal presence.

American praxis says local law trumps a treaty.¹ So do our obiters in Ichong, Garcia and Hechanova, infra. If the Palace disrespects our Constitution, this Honorable Court will have to be the vindicator of the system and intone Thou-Shalt-Not.

In sum and substance, the EDCA is non-compliant with the Philippine Constitution, over which EDCA has no "superior sanctity,"² Edye v. Robertson, 112 U.S. 580 (1884). The doctrine and praxis in the U.S., in that "so far as the provisions in that act [imposing a customs duty] may be found to be in conflict with any treaty with a foreign nation [here, Russia], they must prevail in all the judicial courts of this country."³

What should prevail in our country? Our Constitution, to stress the unnecessary. Typical is the obiter in Ichong v. Hernandez: "But even supposing that the law infringes upon the said treaty [of amity with China), the treaty is always subject to qualification or amendment by a subsequent law."⁴ Let us assume that "[t]he American theory [is] to the effect that, in the event of a conflict between a treaty and a statute, the one which is latest in point of time shall prevail. . . ." Gonzales v. Hechanova,⁵ Here, it is no less than our 1987 Constitution we are expounding.

America won't come to help just because we are such nice people. They will come to help in light of their interests. When Capt. Bonifas of West Point was axed to death by North Koreans on August 18, 1976, in full view of his fellow soldiers. the U.S. did nothing. Nothing as well when the Nokors seize the USS Pueblo and detained the personnel for nearly a year in 1968. The vessels remains in display in Pyongyang. The U.S. could not defend their own then and us in December 1941 when invaded by Japan, now with us against China. In 1941, we were one huge U.S. military base. No permanent friends, no permanent enemies, only permanent interests, said Lord Palmerston.

Our paradigms should include the Vietnamese, who defeated the French and the Americans, and have held their own against China. A matter of *puso*. We should not expect the U.S. what it could not do for its own, given the polycentric dimensions of foreign relations.

So our most respectful submission is to follow the constitutional,

¹ Please see e.g., H. Steiner and D. Vagst, Transnational Legal Transactions (3rd ed. 1986).

² Edye v. Robertson, 112 U.S. 580 (1884).

³ Id. at 598.

⁴ 101 Phil. 1155, 1191 (1957).

⁵ 9 SCRA 230, 242-43 (1963). In re Garcia 2 SCRA 984 (1961) involved the practice of law here by a Spaniard. Our position is that local law is paramount.

institutional and policy arrangement on the matter: involve the people, thru their proxies in the Senate. If EDCA is the right thing, it must be done in the right way. Follow the procedure or arrangement in the 1987 Constitution. EDCA is an international agreement requiring concurrence by the Senate under Sec. 21 of Art. VII of the Constitution, which states: "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." To be read together with Sec. 25 of Art. XVIII, "foreign troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate. . . ." **EDCA THEN IS INEFFECTUAL OR INOPERATIVE PENDING SENATE CONCURRENCE.**

This position of the people as expressed in the document they ratified prevails over any treaty or international agreement.⁶ This doctrine in the U.S., is echoed in an obiter in Ichong v. Hernandez, "But even supposing that the infringes upon the said treaty, the treaty is always subject qualification or amendment by a subsequent law".⁷ Gonzalez v. Hechanova,⁸ In re Garcia.⁹ And it is not but a mere subsequent statute, but it is the 1987 Constitution we are expounding. If we disrespect our own Constitution, who will respect it?

The open-ended EDCA means the presence, not of proscribed bases, but of equally interdicted foreign troops and facilities, that could last for decades, given the automaticity clause on extensions, and could involve our *apos*, a decision no President and his Defense Secretary alone, no matter how well-meaning, should make, for constitutionality, legitimacy and acceptability.

When President Aquino asked Sen. Tañada and undersigned to see him July 1 last on the issue, after the fact, our counsel was simple. **HAVE THE SENATE CONCUR.** At the risk of sounding like a *bulaang propeta*, undersigned predicts Prez Aquino will get the 2/3 anyway, the tidier and neater institutional arrangement. The right thing must be done in the right way. In 1991, President Cory asked Sen. Butz Aquino and undersigned to see her for our votes; we regretted to have to say, "please ask us another." A sense of *deja vu*. We ended the uninterrupted presence of foreign troops for close to 500 years. We have been dubbed the Magnificent Twelve by those who agreed with us, and the Malevolent Twelve, by those who disagreed.

We remain convinced we voted on the right side of history. This 75-year-old oldie is here in that continuum, that our 1991 collegial vote not be nullified by one man, **UNCONSTITUTIONALLY**, no matter how

⁶ H. Steiner and D. Vagst, Transnational Legal Problems 587 (3rd ed. 1986).

⁷ Supra, n. 4.

⁸ Supra, n. 5.

⁹ Id.

much we may like him and wish for him to succeed.

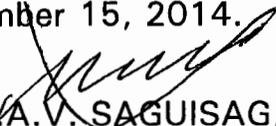
Nothing in the July 1986 Con-Com records, as we understood same, exempts EDCA from the required concurrence. Anyway the voter in the booth understood "international agreement" as one between nations on a serious sovereign matter that may be provocative of another powerful nation. He was not expected to have a copy of the July 29 (pp. 381, 87-88) and 31 (pp. 544-45), 1986 Con-Com debates with him in the voting booth. Plain meaning. No need to know an executive agreement may not involve sovereignty, subject of a treaty needing Senate concurrence.

What have we gotten into? A Constitution is said to be a document of distrust. It is full of "Government - Thou-Shalt-Nots." Hence, the need for more transparency on the part of the Governors and more involvement on the part of the Governed. Transparency. Democracy. *Pamahaalang po ng nakararami, di po ng iilan.*

WHEREFORE, our reliefs prayed for in the basic petition and petition to intervene are most respectfully iterated and that **EDCA be declared inoperative until and unless the President transmits it to the Senate for deliberation and concurrence.**

Other reliefs just and equitable in the premises are likewise prayed for.

Makati, for Manila, December 15, 2014.


R.A.V. SAGUISAG, Sr.

Pro se and co-counsel of his co-petitioners and Intervenor, Jr.

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MCLE Exemption No. IV-001654

4/24/14, Pasig, until 4/14/16

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