

The Legal Issues Pertaining to the Visiting Forces Agreement

A legal study on the VFA

By the General Counsel of Bayan Muna

Us-RP Military Bases Agreement

- *signed in March 14, 1947 but not consented as a treaty by the US Senate*
- *Established 23 bases and facilities in the country including :*
 - *1. Clark Airbase-26,0000 hectares*
 - *2. Subic Naval Base- more than 60,000 hectares*
- *Not renewed in 1991*

Roots of Protests vs US Bases

- 1. Impingement on Philippine sovereignty*
- 2. Launching pad for US imperialist aggression in Asia*
- 3. Magnets of Attack*
- 4. Violation of nuclear weapons free provision and danger of nuclear accident*
- 5. social cost and human rights violations*
- 6. Will be used against the Filipino people*

MOIST EYE OVER SOUTHEAST ASIA in 1990s

Southeast Asia is strategic in the US imperialist designs in the region and China

- (i) As early as 1998 its 595 million population has produced \$700 billion in GNP
- (ii) Four countries—Thailand, Singapore, the Philippines and Malaysia—together received more than \$35 billion in investment in 1998.
- (iii) The region accounts for 20 percent of the world's liquefied petroleum

(iii) More than \$1.3 trillion in merchandise trade passed through the Strait of Malacca and Lombok in 1999—nearly half of the world's trade—including crucial oil supplies from the Persian Gulf to Japan, South Korea and China.

(iv) And of course, there is China

Is VFA Constitutional ?

1. **Sec. 25. x x x foreign military bases, troops or facilities shall not be allowed in the Philippines EXCEPT UNDER A TREATY CONCURRED IN THE SENATE and, x x x RECOGNIZED AS A TREATY BY THE OTHER CONTRACTING PARTY**

“Bayan vs Zamora “Ron Hubbard’ s letter *accepts or acknowledges* the agreement as a treaty” therefore VALID”

MDT

- Desiring to declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific Area,
- Desiring further to strengthen their present efforts for collective defense x x x pending the development of a more comprehensive system of regional security

2. Impinges on Philippine sovereignty

- **Article II Section 7. The State shall pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination**
- **Section 2. The Philippines renounces war as an instrument of national policy, x x x and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations**

3. Article VIII, Section 2 on the Supreme Court's power to:

- **Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts x x x**
- **VFA "6. The custody of any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with United States military authorities, if they so request, from the commission of the offense until completion of all judicial proceedings. "**

1. Nuclear Free Provision in Article II, Section 8—no right to inspect in VFA
2. Grants tax exemption in Art. VII, Sec. 28(4)—no import and export tax
3. Equal Protection Laws in Art. III, Sec. 1
 - Right to bail
 - Custody and detention facilities
 - 1 year period
 - VFA II

VFA vs. VFA II

- "VFA Art. III Sec. 2. United States military personnel shall be exempt from passport and visa regulations upon entering and departing the Philippines. (VFA)
- **VFA II Art. IV Sec. 1.(a) The Embassy of the United States of America will issue visas, valid for multiple entries, to Philippine personnel traveling to the US and reserves the right to deny visa**

Different Rules on Waiver of Jurisdiction in VFA Art. V, 3 (b)

- **Recognizing the responsibility of the United States military authorities to maintain good order and discipline among their forces, Philippine authorities will, upon request by the United States, waive their primary right to exercise jurisdiction**

VFA II Art. VIII, Sec. 2

- *When so requested by the Philippines, The State Dept. will ask the appropriate authorities in the US having jurisdiction over an offense committed by (a Filipino) to waive in favor of the Philippines their right to exercise jurisdiction, except in cases where the Department of State and the Department of Defense, after special consideration, determine that United States interests require the exercise of United States federal or state jurisdiction.*

Different Jails

- **“(VFA I) Art. IV, Sec. 10. The confinement or detention by Philippine authorities of United States personnel shall be carried out in facilities agreed on by appropriate Philippine and United States authorities**

Different Confinement

- **Article IX: Confinement and Visitation**
- **1.** Confinement imposed by a United States federal or state court upon Republic of the Philippines personnel shall be served in penal institutions in the United States suitable for the custody level of the prisoners chosen after consultation between the two Governments.

Different Taxation (VFA I

- **“2. Reasonable quantities of personal baggage, personal effects, and other property for the personal use of US personnel may be imported into and used in the Philippines free of all duties, taxes and other similar charges during the period of their temporary stay in the Philippines.**

Art. X and XI of VFA II

- The acquisition of goods and services in the US market by Philippines personnel for personal purposes shall be subject to applicable United States taxes.
- The baggage and effects of Republic of the Philippines personnel and articles, including household goods, for the personal and family use may be entered into the United States within six months of first arrival without the payment of duties, internal revenue taxes.

VFA limits Philippine jurisdiction in Art. V (3)

- (a) Philippine authorities shall have the primary right to exercise jurisdiction over all offenses committed by United States personnel, except in cases provided for in paragraphs
 - 1(b) violates US military law
 - 2 (b) violates US Security
 - 3 (b) offenses in performance of official duty.

VFA II

- “
- **NOTHING –THE PHILIPPINES DID NOT LIMIT US JURISDICTION in VFA II**



CONCLUSION: VFA must go

- The imposition of the VFA on the Filipino people:
 - i. is unconstitutional
 - ii. Threat to the peace process
 - iii. Disregards the will of the people and the senate in 1991
 - iv. Discriminatory and a national humiliation

GOODBYE !

