G.R. No. 212426 – RENE A.V. SAGUISAG, WIGBERTO E. TAÑADA, FRANCISCO "DODONG" NEMENZO, JR., SR. MARY JOHN MANANZAN, PACIFICO A. AGABIN, ESTEBAN "STEVE" SALONGA, H. HARRY L. ROQUE, JR., EVALYN G. URSUA, EDRE U. OLALIA, DR. CAROL PAGADUAN-ARAULLO, DR. ROLAND SIMBULAN, and TEDDY CASIÑO, Petitioners **v. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., DEPARTMENT OF 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.

G.R. No. 212444 – BAGONG ALYANSANG MAKABAYAN (BAYAN), represented by its SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI J. COLMENARES and CARLOS ZARATE, GABRIELA WOMEN'S PARTY-LIST REPRESENTATIVES LUZ ILAGAN and EMERENCIANA DE JESUS, ACT TEACHERS PARTY-LIST REPRESENTATIVE ANTONIO L. TINIO, ANAKPAWIS PARTY-LIST REPRESENTATIVE FERNANDO HICAP, KABATAAN PARTY LIST REPRESENTATIVE TERRY RIDON, MAKABAYANG KOALISYON NG MAMAMAYAN (MAKABAYAN), represented by SATURNINO OCAMPO and LIZA MAZA, BIENVENIDO LUMBERA, JOEL C. LAMANGAN, RAFAEL MARIANO, SALVADOR FRANCE, ROGELIO M. SOLUTA, and CLEMENTE G. BAUTISTA, Petitioners **v. 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.

KILUSANG MAYO UNO, represented by its Chairperson, ELMER LABOG, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), represented by its NATIONAL PRESIDENT FERDINAND GAITE, NATIONAL FEDERATION OF LABOR UNIONS-KILUSANG MAYO UNO, represented by its National President, JOSELITO

USTAREZ, NENITA GONZAGA, VIOLETA ESPIRITU, VIRGINIA FLORES, and ARMANDO TEODORO, JR., Petitioners-in-Intervention.

RENE A.Q. SAGUISAG, JR., Petitioner-in-Intervention.

Promulgated:

July 26, 2016

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DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I maintain my dissent. The *certiorari* petitions[1] attributing grave abuse of discretion against herein respondents, acting for and on behalf of the Government of the Republic of the Philippines (RP or Philippines), for entering into the Enhanced Defense Cooperation Agreement (EDCA) with the Government of the United States of America (US) as an executive agreement are meritorious. The motions for reconsideration,[2] which mainly argue that the EDCA significantly amends, modifies, or expands the provisions of existing military treaties, and introduces new concepts, obligations, and arrangements therein,[3] and that it is a basing agreement which requires constitutional legislative approval for its effectivity,[4] should therefore be granted.

I.

A thorough study of the provisions of the EDCA vis-à-vis the provisions of our past agreements with the US on the same subject matter ultimately impresses upon me that the EDCA should have been entered into as a treaty, and not as an executive agreement. This is because the EDCA does not merely embody detail adjustments to existing national policies that are, more or less, only temporary in nature. Quite the opposite, it substantially modifies our present policies and arrangements with the US Government on national defense. In *Commissioner of Customs v. Eastern Sea Trading*:[5]

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[1] *Rollo* (G.R. No. 212426) Vol. I, pp. 3-66; and *rollo* (G.R. No. 212444), Vol. I, pp. 3-101.

[2] See motions for reconsideration of the following: (*a*) petitioners Rene A.V. Saguisag, *et al.* (Saguisag, *et al.*) in G.R. No. 212426 dated February 3, 2016; (*b*) petitioners Bagong Alyansang Makabayan, *et al.* (BAYAN, *et al.*) dated February 3, 2016; and (*c*) petitioners-in-intervention Kilusang Mayo Uno, *et al.* (Mayo Uno, *et al.*) dated February 4, 2016.

[3] See motions for reconsideration of BAYAN, *et al.* in G.R. No. 212444 dated February 3, 2016, pp. 28-41; and Saguisag, *et al.* in G.R. No. 212426 dated February 3, 2016, pp. 9-25.

[4] See motions for reconsideration of Saguisag, *et al.* in G.R. No. 212426 dated February 3, 2016, pp. 25-30; and BAYAN, *et al.* in G.R. No. 212444 dated February 3, 2016, pp. 49-52.

[5] 113 Phil. 333 (1961).

> International agreements involving political issues or changes of national policy and those involving international arrangements 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.[6]

The need for the EDCA to be entered into as a treaty stems from the mandate of Section 25, Article XVIII of the 1987 Philippine Constitution which provides:

> 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. (Emphasis and underscoring supplied)

Contrary to the *ponencia*'s stand, this constitutional provision does not only pertain to the conduct of "initial entry" as there is no temporal qualification which situates the allowance of foreign military bases, troops, or facilities in the Philippines.[7] As aptly pointed out by petitioners, the constitutional requirements set forth therein are clear and unambiguous which clearly do not require further construction or interpretation.[8] Certainly, we should not make a qualification when there is none. Following the plain language of the law, the presence of foreign military bases, troops, or facilities in the Philippines is only constitutionally permissible if it is sanctioned by a treaty duly concurred in by Senate.[9]

For context, the Agreement between the RP and the US (Parties) concerning Military Bases contained in this constitutional provision pertains to the Military Bases Agreement of 1947[10] (MBA), whereby the US was accorded the following rights: (*a*) power, authority, and control over military establishments;[11] (*b*) use, operation, and defense of its bases, as well as the areas adjacent thereto in order to access the same;[12] (*c*) use of certain land, coastal areas, and the air for military maneuvers, staging areas, and other

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6 Id. at 338, citations omitted.

7 See *ponencia*, p. 37.

8 See motion for reconsideration of BAYAN, *et al.* in G.R. No. 212444 dated February 3, 2016, pp. 18-27.

9 The requisite concurrence of Senate is relatedly provided for in Section 21, Article VII of the 1987 Constitution:

> Section 21. 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.

10 Signed by the Philippines and the US on March 14, 1947 and concurred in by the Philippine Senate on March 26, 1947.

11 See Article III, MBA.

12 See id.

military exercises, free of charge;[13] and (*d*) entry of US base personnel, their families, and other technical personnel of other nationalities into the Philippines.[14] The Parties agreed that the MBA would be effective for a period of ninety-nine (99) years,[15] or until the year 2046. Throughout the years, a number of piecemeal amendments were made thereto, particularly: (*a*) the shortening of its term to a total of forty-one (41) years, or until 1991, pursuant to the Ramos-Rusk Agreement;[16] (*b*) the return of 17 US military bases to the Philippines, in accordance with the Bohlen-Serrano Memorandum of Agreement;[17] (*c*) the recognition of Philippine sovereignty over the Clark and Subic Bases through the Romulo-Murphy Exchange of Notes of 1979;[18] and (*d*) the placing of the concept of operational use of military bases by the US Government within the context of Philippine sovereignty, including the need for prior consultation with the Philippine Government on the former's use of the bases, pursuant to the Romualdez-Armacost Agreement of 1983.[19] Apparently, these amendments were reflective of the Philippines' intention to gradually restrict US control over the bases. The growing recalcitrance on US control was the catalyst for the adoption of Section 25, Article XVIII of the 1987 Philippine Constitution which, as above-cited, stringently demands, as a first requisite, a treaty duly concurred in by Senate, if we were to allow once more the presence of foreign military bases, troops, or facilities in the country.

II.

With the expiration of the MBA, no treaty subsists which would legitimize the presence of foreign military bases, troops, or facilities in the Philippines, at least, to the extent provided for in the EDCA. The closest subsisting legal anchorage for US military presence in the Philippines would be the Mutual Defense Treaty Between the Republic of the Philippines and the United States of America (the Mutual Defense Treaty or the MDT), signed on August 30, 1951, and the 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 (Visiting Forces Agreement or the VFA), signed on February 10, 1998.[20] However, the obligations of the RP Government to the US Government under the MDT and VFA are clearly limited in scope as compared to the EDCA. As will be later elaborated upon, the EDCA institutionalizes the functional equivalent of military bases in the Philippines through its introduction of the concept of "Agreed Locations." Due to sheer

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13 See Article VI, MBA.

14 See Article XI, MBA.

15 See Article XXIX, MBA.

16 See Foreign Service Institute, Agreements on United States Military Facilities in Philippine Military Bases 1947-1985, (Pacifico A. Castro revised ed. 1985), p. xiii. See also *ponencia*, p. 10.

17 Id. at xii. See also *ponencia*, pp. 10-11.

18 Id. at xiii. See also *ponencia*, p. 11.

19 Id. at xiii-xiv. See also *ponencia*, p. 11.

20 See *Bagong Alyansang Makabayan (BAYAN) v. Zamora*, 396 Phil. 623, 637-645 (2000), where the VFA was quoted in full text.

variance of purpose, context, and parameters, this arrangement cannot find its legal bearings from the MDT or the VFA.

For its part, the MDT only embodies the Parties' general commitment to "maintain and develop their individual and collective capacity to resist [an] armed attack."[21] Under the MDT, the Parties "[d]eclare publicly and formally their sense of unity and determination to defend themselves against [an] **external armed attack**," and recognize their desire "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."[22] Notably, the MDT was aligned with the situation at that time: it was a collaborative response of the RP and US Governments to the burgeoning threats brought about by the period of communist expansion in Asia following World War II and the Korean War.[23] Thus, as pointed out by my esteemed colleague, Associate Justice Marvic M.V.F. Leonen (Justice Leonen), the MDT's main aim is to provide support against state enemies effectively and efficiently.[24] In this regard, no way should the MDT be construed as a blanket license to legitimize subsequent agreements that further military objectives beyond this purpose. The MDT was in effect (and still remains in effect[25]) at the time the 1987 Constitution was adopted. Hence, it would be rather absurd for Section 25, Article XVIII of the 1987 Philippine Constitution to require a treaty duly concurred in by Senate anew if the presence of foreign military bases, troops, or facilities was already validated by the MDT.

This finding is more forceful in the case of the VFA. The VFA merely provides a mechanism for regulating the circumstances and conditions under which US forces may visit the Philippines for **bilateral military exercises**. In simple terms, these exercises pertain to **joint training**. As signified in the Terms of Reference of the "Balikatan 02-1," "[t]he Exercise is a mutual counter-terrorism advising, assisting[,] and training Exercise"[26] and that it "shall involve the conduct of mutual military assisting, advising[,] and training of [Republic of the Philippines (RP)] and US Forces with the primary objective of enhancing operational capabilities of both forces to combat terrorism."[27] In this respect, the VFA governs the entry and exit of US personnel in the country[28] and establishes the manner of disposing

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[21] See Dissenting Opinion on the main of Justice Leonen, p. 20, citing Article III (should be Article II), MDT.

[22] See third and fourth preambular paragraphs, MDT; emphasis and underscoring supplied.

[23] See Vaugh, Bruce (2007) "US Strategic Defense Relationships in the Asia-Pacific Region." Congressional Research Service, pp. 22-24. <https://www.fas.org/sgp/crs/row/RL33821.pdf> (visited June 2, 2016).

[24] See Dissenting Opinion, p. 22.

[25] See Primer 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 <http://web.archive.org/web/2007092704626/http://www.dfa.gov.ph/vfa/content/Primer.htm> (visited June 2, 2016).

[26] See paragraph I (6), Draft Terms of Reference of "Balikatan 02-1" (TOR), cited in *Lim v. Executive Secretary*, 430 Phil. 555, 566 (2002).

[27] See paragraph II (1) (a) of the TOR; id. at 566-567.

[28] Article III, VFA.

criminal cases against any of its members, who commits an offense in the Philippines.[29] The VFA also establishes a procedure for resolving differences that may arise between the two sides with regard to the provisions of the agreement.[30]

III.

Although the EDCA states that it seeks to deepen defense cooperation between the Parties, and maintain and develop individual and collective capacity to resist armed attacks in furtherance of Article II of the MDT, and within the context of the VFA,[31] it provides material obligations and activities not covered by the said treaties and, thus, partake of the nature of a treaty itself. As above-intimated, the principal modification ushered in by the EDCA which thus demand that it be entered into as a treaty revolve around what it terms "Agreed Locations." As defined in the EDCA:

> **Article II**
> **DEFINITIONS**
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> x x x x
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> 4. **"Agreed Locations" means <u>facilities and areas that are provided by the Government of the Philippines</u> through the [Armed Forces of the Philippines] and that United States forces, United States contractors, and others as mutually agreed, <u>shall have the right to access and use</u> pursuant to this Agreement**. Such Agreed Locations may be listed in an annex to be appended in this Agreement, and **<u>may be further described in implementing arrangements</u>**. (Emphases and underscoring supplied)

While the EDCA mentions in one of its preambular paragraphs that the "Parties share an understanding for the [US] not to establish a permanent military presence or base in the territory in the Philippines,"[32] a conscientious examination of its provisions governing the rights to access and use granted to US forces and contractors, including their vehicles, vessels, and aircrafts, shows that an "Agreed Location" under the auspices of the EDCA is, in reality, **<u>the functional equivalent of a military base</u>**. The concept of a "military base" was instructively discussed by my respected colleague Associate Justice Arturo D. Brion (Justice Brion) in his own dissent on the main:

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[29] Article V, VFA.

[30] See Primer 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 <http://web.archive.org/web/20070927046264/http://www.dfa.gov.ph/vfa/content/Primer.htm> (visited June 2, 2016). See also Motion for reconsideration of Saguisag *et al.*, pp. 18-19.

[31] Article I (1), EDCA.

[32] See 5th preambular paragraph, EDCA.

There exists no rigid definition of a military base. However, it is a term used in the field of military operations and thus has a *generally accepted connotation.* The U.S. Department of Defense (*DoD*) Dictionary of Military and Associated terms defines a base as "***an area or locality containing installations which provide logistic or other support"; home airfield; or home carrier.***

Under our laws, we find the definition of a military base in Presidential Decree No. 1227 [Section 2] which states that a military base is "any military, air, naval, coast guard reservation, base, fort, camp, arsenal, yard, station, or installation in the Philippines. **A military base connotes the presence, in a relatively permanent degree, of troops and facilities in a particular area**.[33] (Emphases and underscoring supplied)

No matter how the agreement attempts to mask it, the "Agreed Locations" under the EDCA fit the bill of a military base as above-attributed. At its core, "Agreed Locations" constitute areas of Philippine territory provided for by the RP to the US for the use of the latter's forces and contractors in their various military endeavors. In particular, the EDCA authorizes US forces and contractors, including their vehicles, vessels, and aircrafts, to conduct **any** of the following military 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**."[34] Noticeably, the enumeration does not mention that an activity must be interrelated to another. Thus, for instance, prepositioning of equipment, supplies, and materiel may be independently conducted by US forces even if there is no training exercise with Philippine troops involved. US forces may also deploy forces or its already prepositioned equipment from within our territory, regardless of our interest in said activity.

Central to the pursuit of these activities is the grant to the US Government of **operational control**. Under the EDCA, "operational control" has been defined as "[t]he authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission."[35] The Philippines, however, was not completely removed of any role: unfortunately, it was only relegated to the role of consultant. The EDCA provides that "[US] forces shall consult on issues regarding 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 [US] forces should be consistent with the

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33 See Dissenting Opinion, p. 47.
34 Article III (1), EDCA.
35 Justice Leonen's Opinion, p. 42, citing United States Department of Defense Dictionary of Military and Associated Terms.

requirements and standards of both Parties."[36] There is a gaping hole though in the EDCA anent the binding force of any consultation conducted, much more, the consequence of any failure to seek prior consultation with the Philippine Government.

Further, while the EDCA provides that the Philippines shall retain ownership and title to the "Agreed Locations,"[37] the same effectively translates to the Philippines holding only a nominal title to said locations, as the concept of "operational control" allows the US to ultimately exercise beneficial ownership over the same. These privileges over the "Agreed Locations" also do not come with a fee since "the Parties agree that the Philippines shall make the Agreed Locations available to the [US] forces without rental or similar costs," save for the necessary operational expenses which, of course, should be shouldered by the US Government.[38] In this relation, it must be highlighted that the EDCA shall subsist for a period of **<u>at least (10) years</u>**, which is, in fact, even subject to automatic renewal unless terminated in advance (one year prior notice) by a party.[39] Thus, the arrangement established is undeniably, one of a "relatively permanent degree."

Finally, it is telling to note that "[i]mplementing arrangements may address additional details concerning the presence of [US] forces at Agreed Locations and the functional relations between [US] forces and the [Armed Forces of the Philippines] with respect to Agreed Locations."[40] To this, one of the petitioners astutely questions: "[i]f the EDCA is the alleged implementing agreement of the VFA [or the MDT], then why does [it] also need implementing arrangements to carry out its provisions?"[41]

To reify the point that the "Agreed Locations" under the EDCA is the functional equivalent of a military base, reproduced below is a tabular comparison[42] provided by one of the petitioners juxtaposing the provisions of the MBA and the EDCA. The resemblance between the two is unmistakable, if not uncanny:

1. Both the MBA and EDCA allow similar activities.

MBA	EDCA
Article III: Description of Rights x x x x	Article III Agreed Locations x x x x

[36] Article III (4), EDCA.
[37] Article V (1), EDCA.
[38] See Article III (3), EDCA.
[39] See Article XII (4), EDCA.
[40] Article X (3), EDCA.
[41] See motion for reconsideration of Saguisag, *et al.* in G.R. No. 212426 dated February 3, 2016, p. 17.
[42] See id. at 26-29. See also provisions in the 1947 MBA and EDCA.

2. Such rights, power and authority shall include, *inter alia*, the right, power and authority: a) to construct (including dredging and filling), operate, maintain, utilize, occupy, garrison and control the bases;	4. The Philippines hereby grants to the United States, x x x operational control of Agreed Locations for construction activities and authority to undertake such activities on, and make alterations and improvements to, Agreed Locations. x x x. x x x x
x x x x	6. United States forces shall be responsible on the basis of proportionate use for construction, development, operation, and maintenance costs at Agreed Locations. x x x.
	Article III Agreed Locations
e) 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 x x x.	1. x x x [T]he Philippines hereby authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircraft operated by or for the 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 aircrafts; temporary accommodation of personnel; communications; prepositioning of equipment, supplies, and materiel; deploying forces and materiel; x x x.
	Article IV Equipment, Supplies, and Materiel 1. The Philippines hereby authorizes United States forces, through bilateral security mechanism, such as the MDB and SEB, to preposition and store defense equipment, supplies, and materiel ("prepositioned materiel"), x x x.

2. **Terms of ownership: under both the MBA and EDCA that the US retains the same species of ownership over its facilities.**

MBA	EDCA
Article XVII: Removal of Improvements [Article VII: Ownership and Dispositions of Buildings, Structures, and Other Property of the 1988 Memorandum of Agreement between the United States of	Article V Ownership x x x x

America and the Philippines supplementing and Amending the Agreement of March 14, 1947] 1. It is mutually agreed that the United States shall have the right to remove or dispose of any or all removable improvements, equipment, or facilities located at or on any base and paid for with funds of the United States. x x x.	3. United States forces and United States contractors shall retain title to all equipment, materiel, supplies, relocatable structures, and other moveable property that have been imported into or acquired within the territory of the Philippines by or on behalf of the United States forces. x x x x
2. Non-removable buildings and structures within the bases, including essential utility systems x x x are the property of the Government of the Philippines, and shall be so registered. x x x The United States, shall, however, have the right of full use, in accordance with this Agreement, of such non-removable buildings and structures within the United States Facilities at the bases, 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.

3. Comparing the MBA with EDCA in terms of control of the bases vis-à-vis the "Agreed Locations."

MBA	EDCA
Article III: Description of Rights 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 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. (Emphasis supplied)	Article III Agreed Locations 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. x x x. (Emphasis supplied) Article VI Security 3. 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 measures to protect United States forces and united States contractors. x x x. (Emphasis supplied)

IV.

In any case, it should be highlighted that in *Bagong Alyansang Makabayan (BAYAN) v. Zamora*,[43] the Court ruled that the phrase "foreign military bases, troops, or facilities" under Section 25, Article XVIII of the 1987 Philippine Constitution should be treated as separate and independent subjects, and **thus, any of the three standing alone places it under the provision's coverage**. Therefore, even if it is assumed that the "Agreed Locations" cannot be classified as a military base in view of the ten (10)-year term[44] of the EDCA which would supposedly strip it of the character of permanency, its concept of "Agreed Locations" and the allowable activities therein correspond to the definition of **facilities** in accordance with the US Department of Defense's (DoD) report to the US Congress regarding the renewed US Global Position, entitled "Strengthening U.S. Global Defense Posture."[45] Specifically, the DoD defined the US global posture in the context of a cross-section of five elements, *i.e.*, relationships, activities, facilities, legal arrangements, and global sourcing and surge. "**Facilities**" **were referred to as the place where its forces live, train, and operate, including the prepositioned equipment and materiel that permits the deployment and sustainment of forces;**[46] **while "Activities" were defined in the context of security cooperation activities to achieve proficiency in joint and combined operations.**[47] Both elements parallel the "Agreed Locations" and the allowable activities in the EDCA, which altogether puts it within the ambit of Section 25, Article XVIII of the 1987 Philippine Constitution.

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43 Supra note 20, at 653 (2000).

44 Article XII (4), EDCA.

45 The said report defined "**facilities**" in three (3) categories:

1. A Main Operating Base (MOB) is an enduring strategic asset established in friendly territory with permanently stationed combat forces, command and control structures, and family support facilities. MOBs serve as the anchor points for throughput, training, engagement, and US commitment to NATO. MOBs have: robust infrastructure; strategic access; established Command and Control; Forward Operating Sites and Cooperative Security Location support capability; and enduring family support facilities. These are already in existence.
2. A Forward Operating Site (FOS) is an expandable host-nation "warm site" with a limited U.S. military support presence and possibly prepositioned equipment. It can host rotational forces and be a focus for bilateral and regional training. These sites will be tailored to meet anticipated requirements and can be used for an extended time period. Backup support by a MOB may be required.
3. A Cooperative Security Location (CSL) is a host-nation facility with little or no permanent U.S. presence. CSLs will require periodic service, contractor and/or host nation support. CSLs provide contingency access and are a focal point for security cooperation activities. They may contain propositioned equipment. CSLs are: rapidly scalable and located for tactical use, expandable to become a FOS, forward and expeditionary. They will have no family support system.

(See <http://www.globalsecurity.org/military/facility/intro.htm> [last visited June 2, 2016]. See also Strengthening U.S. Global Defense Posture, Report to Congress, September 2004, p. 10. <http://www.dmzhawaii.org/wp-content/uploads/2008/12/global_posture.pdf.> [last visited May 31, 2016]). See also dissenting opinion of Justice Brion, pp. 48-49.

46 See Strengthening U.S. Global Defense Posture, Report to Congress, September 2004, p. 8. <http://www.dmzhawaii.org/wp-content/uploads/2008/12/global_posture.pdf.> (last visited May 31, 2016).

47 See id. at 7-8.

Conclusion

The provisions on "Agreed Locations" in the EDCA coalesce into a novel and distinct arrangement neither contained nor contemplated in previous treaties between the Philippine and US Governments. It is untrue that the EDCA merely implements the MDT and/or the VFA because these latter treaties are far limited in scope compared to the former. Under the MDT the RP is obligated to cooperate with the US Government through collective efforts to resist an external armed attack; on the other hand, the VFA is but a regulation of the entry, exit, and dispute settlement terms which govern joint training activities conducted by RP and US forces. On the contrary, the EDCA legitimizes the effective installation of foreign military bases (or at least their functional equivalent), troops, or facilities in the Philippines. Thus, as the EDCA alters our existing policies and arrangements on national defense, it should have been entered into by the respondents as a treaty and not an executive agreement in order to comply with Section 25, Article XVIII of the 1987 Constitution. Failing in which, grave abuse of discretion was committed.

For these reasons, I maintain my dissent and vote to **GRANT** the motions of reconsideration.

ESTELA M. PERLAS-BERNABE
Associate Justice