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OF THE PHILIPPINES)
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SENATE
P. S. R. No. 408

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

RESOLUTION
DIRECTING THE COMMITTEE ON FOREIGN RELATIONS
TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE
CUSTODY OF FOUR U.S. MARINES CHARGED WITH RAPE

WHEREAS, after preliminary investigation, the Philippine prosecution service has resolved to file in court a charge of rape against four U.S. Marines and a Filipino;

WHEREAS, the five accused subsequently filed motions seeking judicial determination of probable cause, or a stay of arrest, which are still pending, thus delaying the issuance of arrest warrants by the court;

WHEREAS, by comparison, after an alleged 3 January 2006 case of robbery and killing of a Japanese woman, the police reportedly arrested a U.S. sailor, and on 7 January 2006, the U.S. Navy reportedly turned over custody of the American to the Japanese authorities;

WHEREAS, there appears to be no appreciable legal basis for the difference in treatment by the U.S. military authorities over the American accused in the two countries;

WHEREAS, the Visiting Forces Agreement (VFA) with the Philippines provides in Article 5, Section 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 In extraordinary cases, the Philippine Government shall present its position to the United States Government regarding custody, which the United States Government shall take into full account;"

WHEREAS, the Status of Forces Agreement (SOFA) with Japan provides in Article 17, Section 5, para. (c): “The custody of an accused member of the United States armed forces or the civilian component over whom Japan is to exercise jurisdiction shall, if he is in the hands of the United States, remain with the United States until he is charged by Japan;”

WHEREAS, while the VFA (Philippines) provides for U.S. custody “until completion of all judicial proceedings,” the SOFA (Japan) provides that “the U.S. shall have custody until the accused is charged.” Ostensibly, there is a difference, because while the VFA provides for U.S. custody until the judicial process is finished, the SOFA provides for U.S. custody, only until the accused is charged in court;

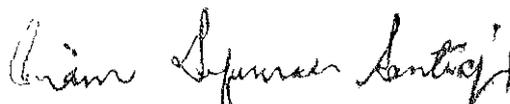
WHEREAS, the seeming difference between the provisions on custody of the VFA (Philippines) and SOFA (Japan) is negated by the provision in the VFA that even if the U.S. is entitled to custody, in extraordinary cases, the U.S. if requested, shall take into full account the request for Philippine custody;

WHEREAS, the Vienna Convention on the Law of Treaties provides in Article 31: “1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Under this general rule on interpretation, the VFA (Philippines) “extraordinary cases” exception should be interpreted in good faith by the Americans, in the context of respect for, and observance of, Philippine legal procedures, and in the light of the purpose to treat the Philippines as an ally, equal with other American allies;

WHEREFORE, BE IT HEREBY RESOLVED, that the Committee on Foreign Relations shall conduct an inquiry in aid of legislation on whether the U.S. has a diplomatic obligation to interpret the VFA (Philippines) “extraordinary cases” exception, so as to be equal to the SOFA (Japan) provision that U.S. custody is allowed, only until the accused American is charged in court;

WHEREFORE, BE IT FURTHER RESOLVED, that if the above inquiry should prove to be fruitless, the same Committee should then inquire whether it is necessary to request for a renegotiation of the VFA, to the end that the Philippine custody provision should be amended so as to approximate the Japanese custody provision.

Adopted,


MIRIAM DEFENSOR SANTIAGO