

Testing Constitutional Waters VI: Developments in Treaty-Making and the Enhanced Defense Cooperation Agreement

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Treaties play a fundamental role in international relations. They pave the way for “developing peaceful co-operation among nations, whatever their constitutional and social systems.” They are also considered as “the primary source of legal relations between States.” In short, treaties provide a multitude of benefits for State-parties.

With this, the Article begins with a discussion on treaties — how they are made, their requirements under the Vienna Convention on the Law of Treaties, and their recognition in international law. Thereafter, the Authors discuss the treaty-making process in the Philippines. This is done by pointing out pertinent Constitutional provisions, as well as by distinguishing treaties from executive agreements, one difference being that the latter does not require Senate ratification.

After explaining and providing a background on the applicable concepts, the Article delves into the case of *Saguisag v. Executive Secretary* regarding the constitutionality of the Enhanced Defense Cooperation Agreement, or the EDCA. Consequentially, the Authors give a quick background of the case, as well as a brief overview of how US Armed Forces came into the Philippines, and how this led to the EDCA. In essence, the controversy of the case stems from the EDCA being executed as an executive agreement, and not as a treaty. In other words, questions arose as to whether the Court applied the Constitution too liberally, and whether the Court misinterpreted certain Constitutional mandates.

With this, the Authors critiqued the decision upholding the validity of the EDCA. According to them, the Court adopted a liberal interpretation of the Constitution, which should not be the case. Instead of treating the

EDCA as a treaty, which necessitates Senate ratification, it was executed as an executive agreement. Thus, in fine, the Authors agree with the dissenting opinions to the extent that the President, albeit given broad powers to enter into foreign relations to protect national interest, should uphold the Constitution at all costs.