



CenPEG

# Issue Analysis

Policy Study,  
Publication and  
Advocacy (PSPA)

ISSUE ANALYSIS No. 04  
Series of 2014

## EDCA and the Price of Inequality

By the Policy Study, Publication, and Advocacy  
Center for People Empowerment in Governance (CenPEG)  
May 6, 2014

Signed on April 28 by Defense Secretary Voltaire Gazmin and U.S. Ambassador Philip S. Goldberg, the Enhanced Defense Cooperation Agreement (EDCA) risks violating the country's national sovereignty and invites American forces' occupation of the Philippines under various ruses set forth in the new pact.

### Constitutionality and extraterritoriality

In the guise of "enhanced defense cooperation," EDCA construes U.S. military basing in the Philippines that is more expanded and extensive than its previous military facilities under the 1947 Military Bases Agreement. In the agreement, the U.S. will "preposition and store" military equipment, supplies, and materiel at AFP bases and other territories. Under their operational control, they can use airfields, ports, public roads, and community areas; as well as construct infrastructures and other facilities in so-called "agreed locations."

The agreement may remain in force beyond the 10 years contemplated in the absence of any prior notice for its termination which is unlikely considering that the U.S. will not spend so much money for building the facilities aside from operations without being assured of a longer or permanent stay. The new facilities, continuing prepositioning and rotation of U.S. forces and military equipment as well as the use of airfields, ports, public roads, and other territories including waters throughout the Philippines are nothing less than a basing system.

There is no other way to call this new U.S. military presence particularly in so-called "agreed locations" such as within AFP camps – where they will operate for free - than as

a base. An example is the U.S. Joint Special Operations Task Force – Philippines (JSOTF-P) facility for espionage, psy-ops, and other covert operations of the U.S. Special Forces built inside Camp Navarro, Zamboanga City since 2003. The JSOTF-P has become a permanent site with at least 500 U.S. special operations forces involved in secret operations inside and out at any time. AFP authorities have to ask for permission in order to access this secret and high-security base. The JSOTF-P and other facilities set up by U.S. forces since the VFA have been described by Pentagon documents as "forward or advance operating bases."

Is there a basis for invoking the 1951 Mutual Defense Treaty (MDT) between the U.S. and the Philippines to justify EDCA? The MDT was a cold war instrument whereby the Philippines at that time was made to believe that an "external threat" was poised against her and the U.S. – the "totalitarian USSR," the newly-liberated communist China, and North Korea which sent forces into South Korea. The war in Indochina from which emerged the U.S. "domino theory" would heat up much later.

Conversely in the context of EDCA, there is no imminent "external attack": The Philippine government can always say that China's assertiveness in the South China Sea (West Philippine Sea) is an "armed threat" to the Philippines that warrants the treaty allies' defensive or counter-offensive posture and the operationalization of the MDT. But the other treaty partner – the U.S., through President Barack Obama – has been non-committal to fighting on the side of the Philippines against China clarifying that the U.S. maintains "constructive" relations with China and calls for the rules-based peaceful settlement of the maritime disputes in the SCS/WPS.

Nuclear weapons will come in. Art. IV, Sec. 6 of the agreement which excludes nuclear weapons refers only to prepositioned materiel. The whole agreement is silent on the entry or access to Philippine territories of warships, warplanes, aircraft carriers, and submarines – most of them nuclear weapons-equipped whose presence in the country is prohibited by the 1987 Constitution. In fact since 1992 upon the dismantling of the first U.S. military bases, the U.S. has docked its nuclear-armed warships and flown its aircraft on Philippine territory with the quiet acquiescence of Philippine authorities. The U.S. has notoriety for its “neither confirm nor deny” policy on nuclear weapons. In 1995, a Top Secret document revealed that the U.S. stored as many as 70 nuclear weapons in the Philippines during the cold war. Then as now, Philippine authorities are powerless at preventing the entry of these weapons of mass destruction given that whatever “access” is allowed does not carry the right to inspect on either prepositioned materiel or mobile vehicles such as nuclear-armed warships and warplanes.

Extraterritorial rights are granted to the U.S. in further violation of the Philippine constitution and other sovereign laws. Anything goes and the culprits will not be bound by Philippine laws. Because the “agreed locations” and other territories contemplated in the agreement will be under the “operational control” of the U.S. no Filipino will ever know what happens inside those locations especially activities and incidents that violate Philippine laws. U.S. laws and policies – not those of the host country – will govern defense contracts that include construction projects and installation of facilities such as telecommunications and radar systems.

Extraterritoriality suspends not only Philippine but also international laws. As in the VFA practice, the criminal jurisdiction over erring U.S. military and civilian personnel – who are expected to enter the Philippines in massive numbers never before imagined – remains vague. The agreement says all legal disputes and other matters will be left to an equally ambiguous “consultative mechanism” of the two countries. Victims of U.S. crimes are thus estopped from seeking justice and protection provided by Philippine laws; even international laws remain frozen. And yet in the EDCA preamble both parties uphold the primacy of the Philippine Constitution and national laws as well as international laws and UN conventions. How such “consultative mechanisms” for legal disputes and other matters will play to protect the rights of victims is not guaranteed so that the same unwritten rule of protecting erring U.S. forces so they can evade arrest and prosecution – both under the 1947 MBA and current defense agreements – will prevail.

## **On credible defense capability, modernization, and humanitarian aid**

For decades now – except for a few years after its bases were dismantled in 1991 – America has in exchange for supporting its geo-strategic interests provided the Philippine military with sizeable amounts of military aid, arms supplies, military scholarships and training in the U.S. and, since the VFA, has conducted joint Balikatan war exercises and special forces training. Billions of pesos have also been earmarked for the AFP's modernization in post-Marcos years – much of it remaining unaccounted for since Ramos. Now EDCA is being rationalized to help the Philippines develop its defense capability and modernization program – a tacit admission that the 60-year defense partnership has yielded no positive results in terms of at least strengthening the AFP. Today the Philippine military is considered among the weakest in Asia.

In truth, Pentagon reports reveal the unilateral advantages the U.S. gains by using the Philippines as a training ground for its own forces such as jungle warfare and as a laboratory for counter-insurgency, unconventional war, psywar and torture techniques to enhance U.S. military manuals that are then tested in warfronts such as Iraq, Afghanistan and, during the cold war, in Indochina, South America, and other regions. Humanitarian missions and recently, disaster relief, have nothing to do with American sympathy to disaster victims. These non-traditional missions have been part of the U.S.' modern counter-insurgency and anti-terrorist intervention doctrines aimed at winning “the hearts and minds” of people against insurgencies and as a soft power to promote hegemonism.

Thus the alliance architecture crafted over the past 60 years around the now-defunct Military Bases Agreement (MBA, 1947), MDT, VFA, the Mutual Logistics Support Agreement (MLSA), EDCA, and other agreements as well as military assistance, military scholarships, as well as special trainings and war exercises has been one-sided. The alliance compelled the Philippines to support U.S. wars of aggression and allowing the free use of military bases from the Korean war, to the Indochina war, and the first U.S. Gulf War (“Desert Storm”) in 1991, and most recently the “war on terror.” In effect, the alliance system has always been used by the U.S. to draw support for its wars in Asia – which, anyway, ended in either stalemate or in debacles to the U.S. as in Indochina – and to maintain its military hegemony in Asia Pacific. In the end, the alliance system has left the Philippines more and more militarily dependent on the U.S.

and gave the latter the leverage to intervene in Philippine affairs.

The EDCA is an unequal agreement: For all the occupation and extraterritorial rights enjoyed by a foreign army – all for free – the Philippines is merely given the glorified role of providing security for the new bases and U.S. forces. Free security these foreign forces will enjoy whether doing covert operations or enjoying the country's world-renowned beaches, paradise sites, as well as new prostitution communities that will rise once more all over the archipelago to cater to the Americans forces' "R&R" requirements.

---

*For reference regarding this issue analysis:*

Bobby M. Tuazon  
Director for Policy Studies  
Center for People Empowerment in Governance  
3F CSWCD Bldg., Magsaysay Avenue, University of the Philippines, Diliman 1101, Quezon City  
Tel/Fax +9299526; email [info@cenpeg.org](mailto:info@cenpeg.org), [cenpeg.info@gmail.com](mailto:cenpeg.info@gmail.com)  
[www.cenpeg.org](http://www.cenpeg.org)