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SENATE

P.S. Res. No. 943

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Introduced by Senator Antonio “Sonny” F. Trillanes IV and Senator Francis  
“Kiko” N. Pangilinan

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**RESOLUTION URGING THE EXECUTIVE DEPARTMENT TO  
RELEASE THE DEFINITIVE DRAFT OF THE OIL AND GAS  
EXPLORATION AGREEMENT/S WITH CHINA BEFORE SIGNING, AND  
DIRECTING SENATE COMMITTEE ON ENERGY TO INVESTIGATE,  
IN AID OF LEGISLATION, THE POTENTIAL DEAL/S ON OIL AND GAS  
EXPLORATION WITH CHINA**

*WHEREAS*, territory is an essential element of a State. A State’s territory houses the soul and identity of a nation. The national territory of the Philippines is an integral part of its patrimony, which is to be conserved, developed and utilized for the benefit of present and future generations of Filipinos.

*WHEREAS*, under Article I of the 1987 Constitution, the national territory of the Philippines “comprises of the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.”

*WHEREAS*, the West Philippine Sea is part of the national territory of the Philippines under the Constitution. It consists of the Philippines’ “territorial sea...seabed...subsoil...insular shelves, and other submarine areas” in the South China Sea over which the Philippines has “sovereignty or jurisdiction.”

*WHEREAS*, the only legal way to cede or diminish the Philippines’ national territory is through constitutional amendment. Any public officer exceeds his or her authority and violates the Constitution by conceding sovereignty or sovereign rights to another State. Any such act manifestly contravenes an unequivocal and fundamental principle of the Constitution and thus, is *ultra vires* and invalid.<sup>1</sup>

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<sup>1</sup> Exceptions to Article 46 and Article 47. VIENNA CONVENTION ON THE LAW OF TREATIES (VCLT), United Nations, *Treaty Series*, vol. 1155, p. 331, adopted on 22 May 1969 and entered into force

*WHEREAS*, the Tribunal constituted under the United Nations Convention on the Law of the Sea (“UNCLOS”) rendered the Award in *The South China Sea Arbitration* on 12 July 2016 which overwhelmingly upheld the Philippines’ submissions. Thus, under international law, the **West Philippine Sea is no longer part of disputed waters** because it has been independently established that the West Philippine Sea exclusively belongs to the Philippines pursuant to UNCLOS.

*WHEREAS*, until now, **no** claimant State in the South China Sea has agreed to accept China’s offer of joint development of natural resources given that such offer involves the recognition of China’s expansive claims in the South China Sea and therefore prejudices the claimant States’ existing rights and entitlements under international law.<sup>2</sup>

*WHEREAS*, despite the Award in *The South China Sea Arbitration*, China continues to maintain its expansive claim in the South China Sea encroaching upon 80 percent of the Philippines’ Exclusive Economic Zone.

*WHEREAS*, as recent as 15 November 2018, Chinese Ambassador to the Philippines Zhao Jianhua wrote in the *Philippine Star* that China and the Philippines are “separated by only a narrow strip of water, [and] have been close neighbors for centuries...”<sup>3</sup> This is a continued assertion of **China’s unlawful and expansive nine-dash line claim** in the South China Sea because the Philippines and China are not “separated by only a narrow strip of water” but instead, by a distance of approximately 580 nautical miles from Luzon to the coast of Hainan, China.

*WHEREAS*, the **non-transparent process** that led to the signing of the Joint Marine Seismic Undertaking with China on 1 September 2004 should remind us to **exercise extraordinary vigilance** in any potential deal with China involving Philippine waters, the seabed, the subsoil, the insular shelves, other submarine areas, and their natural resources.

*WHEREAS*, an ominous example is China’s and Japan’s 2008 “joint” development agreement of natural resources in the East China Sea. China **unilaterally** undertook natural resource development activities in the East China Sea

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27 January 1980. Retrieved from: [https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch\\_XXIII\\_01.pdf](https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01.pdf) Both the Philippines and China are State Parties to the VCLT.

<sup>2</sup> See e.g., BILL HAYTON, *THE SOUTH CHINA SEA: THE STRUGGLE FOR POWER IN ASIA* 121-150 (2014).

<sup>3</sup> Zhao Jianhua, “Working together to reinforce the three pillars for golden age of China-Philippines relations,” *Philippine Star* (15 November 2018), at <https://www.philstar.com/opinion/2018/11/15/1868747/working-together-reinforce-three-pillars-golden-age-china-philippines-relations>.

despite the 2008 agreement “to maintain cooperation on developing resources in the area, where no official border between them has been drawn.”<sup>4</sup> On 27 September 2018, the Ministry of Foreign Affairs of Japan stated that “[i]n recent years, China has accelerated its development activities of natural resources in the East China Sea, and the government of Japan has confirmed that there are 16 structures in total...”<sup>5</sup> Despite Japan’s protests, China continues its drilling.<sup>6</sup> This example serves as a **grave warning** with respect to any Chinese offer of joint development, or any purported agreement over natural resources which concedes rights to China.

*WHEREAS*, there are allegations that China produced a draft entitled “Framework Agreement on Joint Maritime Oil and Gas Exploration between China and the Philippines” establishing a Committee and Working Group, composed of Chinese and Philippine nationals, which will operate as the “working mechanism” for joint oil and gas exploration. **Signing the Chinese draft violates the Constitution because the Philippines will lose its exclusive sovereign rights over its natural resources.**

*WHEREAS*, signing the Chinese draft will make the Philippines recognize an unlawful “co-ownership” with China of the West Philippine Sea, because the exploration, development and utilization of the resources will be jointly decided by Chinese and Filipino nationals, contrary to the Constitution. This will fulfill President Rodrigo Duterte’s alarming statement that China’s “offer [of] joint exploration...[which] is like co-ownership. It’s like the two of us would be the owners. I think that’s better than fighting.”<sup>7</sup>

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<sup>4</sup> “Japan protests over radar on Chinese exploration rig in East China Sea,” South China Morning Post (2016 August 8), <https://www.scmp.com/news/china/diplomacy-defence/article/2000560/japan-protests-over-radar-chinese-exploration-rig-east>.

<sup>5</sup> Ministry of Foreign Affairs of Japan, “The Current Status of China’s Unilateral Development of Natural Resources in the East China Sea” (2018 September 27), [https://www.mofa.go.jp/a\\_o/c\\_m1/page3e\\_000356.html](https://www.mofa.go.jp/a_o/c_m1/page3e_000356.html); Shannon Tiezzi, “Japan-China Maritime Dispute Back in the Spotlight” The Diplomat (2015 July 23), <https://thediplomat.com/2015/07/japan-china-maritime-dispute-back-in-the-spotlight/>

<sup>6</sup> “Japan protests over China drilling vessel in disputed waters,” (2018 June 29), <https://www.smh.com.au/world/asia/japan-protests-over-china-drilling-vessel-in-disputed-waters-20180629-p4zomd.html>.

<sup>7</sup> “China’s offer of joint exploration in disputed areas is ‘co-ownership’, says Duterte,” The Straits Times (2018 October 30), <https://www.straitstimes.com/asia/se-asia/chinas-offer-of-joint-exploration-in-disputed-areas-is-co-ownership-says-duterte>; see also Dharel Placido, “Duterte says joint exploration in disputed sea like ‘co-ownership’ with China” ABS-CBN News (2018 February 28), <https://news.abs-cbn.com/news/02/28/18/duterte-says-joint-exploration-in-disputed-sea-like-co-ownership-with-china>; Jess Diaz, “Co-ownership of West Philippine Sea a surrender to China” Philstar (2018 March 2), <https://www.philstar.com/headlines/2018/03/02/1792783/co-ownership-west-philippine-sea-surrender-china>; Pia Ranada, “‘Oil is everything’ – Duterte’s rhetoric on West PH Sea joint exploration,” Rappler (2018 November 16), <https://www.rappler.com/newsbreak/iq/216586-duterte-rhetoric-west-philippine-sea-joint-exploration>.

*WHEREAS*, while the “Framework Agreement on Joint Maritime Oil and Gas Exploration” drafted by China provides that the “joint oil and gas exploration shall not affect the respective position on sovereignty and maritime rights and interests of the two parties,” the implementation of such a draft, *i.e.* joint decision through a committee or working group, actually concedes the Philippines’ exclusive sovereign rights over its natural resources to China notwithstanding such a provision.

*WHEREAS*, on 26 October 2018, Dennis A. Uy, through Dennison Holdings Corporation, already bought 340,000,000 common shares of PXP Energy at a price of 11.85 per share, or a total amount of **PhP 4.03 Billion**. PXP Energy currently holds Service Contract 72 which covers Recto Bank (“Reed Bank”) and which China considers to be within its nine-dash line in the South China Sea.

*WHEREAS*, this is the same Dennis A. Uy which partnered with China Telecom Corporation for the establishment of the “Third Telco” and China National Offshore Corporation (“CNOOC”) for the construction and operation of a liquefied natural gas terminal and gas fired power plant in the Philippines. There are disturbing reports that Dennis A. Uy approached a number of telecom companies and allegedly told them that upon “instruction from the President,” China Telecom would buy into a local telecom company to ensure the entry of China Telecom as the Third Telco.

*WHEREAS*, the United Nations General Assembly adopted resolution 1803 (XVII) on the “Permanent Sovereignty over Natural Resources” on 14 December 1962 which declared “[t]he right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.”

*WHEREAS*, **Article XII, Section 2 of the 1987 Constitution** provides, in part, that the “exploration, development, and utilization of natural resources shall be under the **full control and supervision of the State**.” It also provides that “[t]he State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.”

*WHEREAS*, the “exploration, development, and utilization of natural resources,” including oil and gas in West Philippine Sea, is constitutionally mandated to be “under the full control and supervision” of the Philippines. Thus, any agreement which diminishes or undermines the Philippines’ “full control and supervision” over its natural resources, including its oil and gas, violates the Constitution.

*WHEREAS*, it is a violation of the Constitution if an agreement is signed which gives a committee or group composed of Philippine and non-Philippine nationals the decision-making authority to undertake oil and gas exploration in the Philippines. Only the Philippines, through its designated officials, can decide

whether or not to undertake oil and gas exploration in Philippine waters under domestic and international law.

*WHEREAS*, it is also a violation of the Constitution to sign an agreement which does not reserve the use and enjoyment of the Philippines' "archipelagic waters, territorial sea, and exclusive economic zone" exclusively to Filipinos.

*WHEREAS*, under international law, a duly signed agreement with China may bind the Philippines, notwithstanding the fact that such agreement is violative of the Philippine Constitution and other domestic laws.<sup>8</sup> It is, therefore, in the **paramount public interest** to release the definitive draft of the oil and gas agreement with China, or any other agreement involving Philippine natural resources, to inform all relevant stakeholders and to ensure that the Philippines will not be internationally bound by provisions that are contrary to its Constitution and laws.

*WHEREAS*, Article II, Section 28 of the Constitution provides that "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest." Article III, Section 7 of the Constitution provides that "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

*WHEREAS*, in *Chavez v. National Housing Authority*,<sup>9</sup> the Supreme Court held that the Philippine government must fully disclose "definite propositions of the government involving public interest. It ruled that "Sec. 28, Art. II [of the Constitution] **compels the State and its agencies to fully disclose all of its transactions involving public interest**. Thus, the government agencies, without need of demand from anyone, must bring into public view all the steps and negotiations leading to the consummation of the transaction and the contents of the perfected contract. Such information must pertain to **definite propositions** of the government, meaning official recommendations or final positions reached on the different matters subject of negotiation."<sup>10</sup>

*WHEREAS*, the President is the Commander-in-Chief of the Armed Forces of the Philippines. Article II, Section 3 of the 1987 Constitution provides, in part, that "The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national

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<sup>8</sup> Vienna Convention on the Law of Treaties, Art. 27. "*Internal Law and Observance of Treaties*. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty..."

<sup>9</sup> G.R. No. 164527, 15 November 2007.

<sup>10</sup> *Id.* Emphasis supplied; citations omitted.

territory.” The President has also taken an oath to “preserve and defend [the] Constitution...”<sup>11</sup>

**WHEREAS**, the protection of the sovereignty of the Philippines and the integrity of its national territory is the highest constitutional mandate of the President, the Armed Forces of the Philippines and of all Filipinos. Consequently, the abdication of this mandate is the gravest betrayal of public trust, a culpable violation of the Constitution and should be penalized as one of the gravest crimes under the law.

**NOW, THEREFORE, BE IT RESOLVED**, as it is hereby resolved by the Philippine Senate, *as a matter of paramount public interest*, to urge the Executive Department to release the definitive draft of the oil and gas agreement with China, or any other agreement involving Philippine natural resources, before the signing of such agreement and urge the Executive Department **not to sign** any agreement with China or any other State which diminishes the Philippines’ exclusive right under domestic and international law to explore, develop and utilize its natural resources.

**BE IT RESOLVED FURTHER**, as it is hereby resolved, to direct the Committee on Energy and/or other appropriate Committees of the Senate to **investigate, inquire and look into, in aid of legislation, any potential deal with China involving natural resources, including oil and gas exploration.**

*Adopted,*

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<sup>11</sup> CONSTITUTION, Art. VII, Sec. 5.