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PAX SILICA SERIES, PIECE 3

Treaty or Executive Agreement? The Senate Question Behind Pax Silica, and Behind a Launch Site

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D **Documented.** From a public source listed in the sources.

P **Attributed.** Reported, or attributed to a named party.

I **Inference.** The author's reasoning.

KEY JUDGMENTS

1. **The Constitution sets two tests, not one.** Article VII, Section 21 makes any treaty or international agreement invalid without the concurrence of two-thirds of the Senate. Article XVIII, Section 25 separately requires a Senate-concurred treaty for any foreign military bases, troops or facilities. D
2. **The Supreme Court has left room for executive agreements.** In *Saguisag v. Ochoa* (2016) it upheld EDCA without Senate concurrence, as an executive agreement implementing existing treaties. D The question for any new US–Philippine instrument is whether it implements existing law and treaties or creates new national commitments.
3. **Pax Silica is being built to look like an executive arrangement.** BCDA says the zone will be governed by two existing Philippine laws, the Investors' Lease Act and the BCDA law, and no signing date is set. D Ambassador Romualdez now says the government has decided to take it to legislation, and that "it's not a treaty, not at all." D A bill, House Bill 11758, is already pending in the House. D Legislation is not the same as treaty concurrence, but it moves the question into the open.
4. **A launch-site safeguards agreement is a harder case.** The US treats its Technology Safeguards Agreements as executive agreements on its own side. Its partners have handled them as treaties: New Zealand records its TSA as a bilateral treaty, Australia's went to parliamentary treaty review, and Brazil's was ratified by its Congress. D A Philippine TSA would create US-controlled areas on Philippine soil, which would, on the reasoning in *Saguisag*, raise the Section 21 question. I
5. **The route chosen decides durability.** An executive agreement is faster and can be undone by the next administration. A Senate-concurred treaty is slower and survives 2028. I For Pax Silica and for any SpaceX launch site, durability is what an investor is really buying.

The constitutional test

Two provisions.

- **Article VII, 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." D
- **Article XVIII, Section 25:** after the Military Bases Agreement expired in 1991, foreign military bases, troops or facilities are allowed only under a treaty concurred in by the Senate. D

One recognized exception. Philippine practice and jurisprudence accept a class of executive agreements that the President may conclude without Senate concurrence. D The leading modern case is *Saguisag v. Ochoa*, decided on January 12, 2016 and affirmed on reconsideration that July.

- The Supreme Court held that EDCA is an executive agreement implementing the Mutual Defense Treaty and the Visiting Forces Agreement, so it needed no concurrence under Article XVIII, Section 25. D
- The vote was 10–4–1. P
- The dissenters argued that an agreement bringing in new obligations should have gone to the Senate. D
- The Senate had resisted beforehand: Resolution No. 105 of November 10, 2015 asserted that EDCA required its concurrence. D

The working line. Agreements that implement existing law or treaties, or that are temporary or administrative, can be executive agreements. Agreements that change national policy or create new, permanent commitments need concurrence. D I The line is drawn case by case, and the Senate has shown it will contest it.

The count

The arithmetic. Section 21 requires two-thirds of *all* the Members of the Senate: 16 of 24 seats, not two-thirds of those voting. D The governing majority is smaller than that. Senate President Gatchalian was elected on June 17, 2026 with 13 of 24 votes. D Concurrence therefore needs at least three senators from outside that majority. I

The denominator is now contested. In the Vice President's impeachment trial, senators voted that "all the Members" means those capable of participating. With at least four senators absent (two in jail, one in hiding, one on medical leave abroad), that reading puts a conviction at 14 votes. P The impeachment provision, Article XI, Section 3(6), uses the same words as Section 21. D If that reading carries over, the bar for concurrence moves with the Senate's attendance, and the first instrument concurred in that way would invite a Supreme Court challenge. I

The best map of the blocs is coming. The impeachment verdict is expected within about a month of the defense resting. P It will be a recorded vote of the whole chamber on its most divisive question, and a better guide than any statement on Pax Silica to who can be counted for a US-aligned instrument. I The calendar points the same way: Romualdez expects the Pax Silica bill to be taken up after the trial, and the Senate has convened a Committee of the Whole on the initiative rather than a bill of its own. D A senator-by-senator count will follow in a later piece.

Where Pax Silica stands

The instruments so far. The Philippines joined Pax Silica in April 2026, as its 13th signatory. D The framework agreement governing the proposed hub remains unsigned. D CI Paper 2026-01 reads the instruments that are public.

The negotiating posture.

- In early November, BCDA was awaiting Washington's response to the draft framework agreement, after negotiating guidance from the Office of the President. D
- At the November 11 joint hearing of the House committees on economic affairs and on trade and industry, BCDA said the zone would be governed by Philippine law. Its then-president said "Sovereignty rests with the Philippines," named the Investors' Lease Act and the BCDA law, and gave no signing date. D
- Legislators pressed on a US Embassy fact sheet describing the zone as a joint governance initiative. D
- No signing occurred during President Trump's visit; Washington agreed to give Manila more time to review the proposed terms. D

The shift. On November 20 Ambassador Romualdez said legislation is being proposed, to be debated in open hearings in both chambers. D On Bilyonaryo News Channel's On Point that day, asked whether it would be a Republic Act and not a treaty, he went further: "No, it's not a treaty, not at all. It's just a manufacturing hub," adding that it "requires some legislation because there are, of course, economic components, exemptions probably, and some other things that will make sure that this is legally binding." D He said the proposed bill had been submitted by the Executive Secretary before going to Congress, and that it would be taken up "right after this impeachment proceedings." D A vehicle already exists: House Bill 11758, the Advanced Industries Development Act, filed on October 26, would create an Advanced Industries Zone in New Clark City under a dedicated authority. D Nothing public ties it to the bill Romualdez described, and the timing suggests the administration may file its own. I On air, Romualdez also described the "earlier agreement" as "the memorandum of agreement which we signed last February, I think." D The signed instruments on the public record date from April. Whether he misspoke or a February instrument exists is unresolved. I Commentators are pressing further: analyst Edmund Tayao has urged a formal treaty with Senate concurrence, to protect long-term commitments from changes in political leadership. D Opponents argue that commitments touching land, water, energy and minerals cannot proceed as a mere executive agreement or BCDA deal. P

Assessment. "Implemented under existing Philippine law" is the classic posture of an executive arrangement, and it is defensible if the framework only operates existing statutes. Joint-governance language, multi-decade land and water commitments, and fiscal incentives beyond existing law would each push it toward Section 21. I Romualdez's legislation route is a third path: Congress acts by statute without the Senate concurring in an international agreement. That gives political legitimacy without settling the constitutional question. I The government has now named its route: a statute, plus an agreement it says is not a treaty. That answers the political question. It does not answer Section 21, which turns on what the signed framework obliges the Philippines to do internationally, not on what it is called. I

The launch-site case: a Technology Safeguards Agreement

No US launch vehicle flies from a foreign country without a Technology Safeguards Agreement (TSA). The agreement sets how US launch technology is protected: who may enter controlled areas, how hardware and data are handled, and how they return to the United States. D On November 20 President Marcos confirmed early talks with SpaceX on a possible launch complex. D If those talks become a project, a TSA comes first. CI's Special Edition, *Pacific Starbase*, examines the engineering case.

How partners have treated TSAs.

Country	Signed	Domestic treatment
New Zealand	June 16, 2016	Recorded as a bilateral treaty "to enable the use and secure management of sensitive US space launch and satellite technology"; in force, with a side-arrangement on how NZ agencies exercise their powers D
Brazil	March 2019	Ratified by Brazil's Congress; entered into force December 16, 2019 D
Australia	October 26, 2023	Tabled before Parliament's treaties committee on February 27, 2024; in force July 2024 D
Norway	2026	Reported by the State Department to Congress as an international agreement D

On the US side these agreements are concluded as executive agreements and reported to Congress, not sent to the Senate. Partners have generally given them treaty-level domestic treatment. D I

Why a Philippine TSA would draw a Section 21 challenge. I

- It is a binding international agreement creating ongoing obligations on Philippine agencies: access control, customs, law enforcement and the return of US equipment.
- It implements no existing US–Philippine treaty in the way EDCA implemented the Mutual Defense Treaty. The *Saguisag* reasoning would be harder to borrow.
- It would create US-controlled areas on Philippine soil. A commercial launch site is not a military base, but the Article XVIII, Section 25 debate over "facilities" would be raised anyway.

The likely path. A TSA either goes to the Senate, or rests on an enabling statute: a Philippine space-launch law that the TSA then implements. PhilSA has no dedicated launch-licensing regime yet, so the second path would require new legislation. I Either way, the Senate is in the loop.

What decides it

Indicators that push an instrument toward Senate concurrence I

- It binds future legislation or treatment of foreign investors beyond existing statutes.
- It submits the Philippines to an international dispute-settlement mechanism.
- It commits land, water, energy or fiscal resources for decades.
- It shares governance or jurisdiction over Philippine territory with a foreign government.
- It creates areas where foreign personnel control access.

Indicators that support an executive agreement I

- It operates only within existing statutes: the Investors' Lease Act, the BCDA law, PEZA and economic-zone law.
- It implements an existing treaty.
- It is time-limited, administrative or terminable by either side on notice.

Why durability matters more than speed. The next Philippine presidential election is in May 2028. An executive agreement signed now can be reviewed, renegotiated or terminated by the next administration. A Senate-concurred treaty, or an agreement resting on a statute, survives it. I For an investor committing to a 99-year lease, or a launch operator building a site with a three-year construction lead time, the route chosen is the single biggest determinant of political risk. Analysts making this argument for Pax Silica are making it for every strategic project that follows. I

Watch items

1. **Publication of the Pax Silica framework text.** We have not located a published text. I
2. **The vehicle chosen:** the government now points to legislation plus an agreement it calls "not a treaty." Watch House Bill 11758, or an administration bill, through committee, and whether the signed framework is ever sent to the Senate.
3. **Senate resolutions** asserting a concurrence requirement, on the model of Resolution No. 105 for EDCA.
4. **Petitions to the Supreme Court** challenging a signed framework as an invalid executive agreement.
5. **The new BCDA president's first statements** on the framework's legal form.
6. **Any notice of US–Philippine Technology Safeguards Agreement negotiations**, or a Philippine space-launch bill. Either is the first concrete signal that a launch site is real.
7. **Joint-governance language** in any published text: its presence, its definition, or its removal.
8. **The impeachment roll call and the denominator.** How each senator votes on the verdict, and whether the "capable of participating" reading is applied outside impeachment.

Sources

1. 1987 Constitution of the Philippines, Article VII, Section 21; Article XVIII, Section 25.
2. *Saguisag v. Ochoa*, G.R. Nos. 212426 and 212444 (January 12, 2016) and resolution on reconsideration (July 2016); dissenting opinions of Justices Brion, Leonen and De Castro; case summaries (jur.ph).
3. Senate Resolution No. 105 (16th Congress), November 10, 2015; Senator Santiago press release, January 2016.
4. *Philippine Star*, "Phl, US share view: EDCA not a treaty," January 13, 2016.
5. GMA News, "Pax Silica to operate under Philippine laws — BCDA," November 11, 2026; BusinessWorld, "Lawmakers question US role in Pax Silica zone," November 11, 2026.
6. Asia News Network / Philippine Daily Inquirer, "Philippines awaits US reply on Pax Silica deal," November 5, 2026.
7. Philippine Canadian Inquirer, "No Pax Silica deal signed during Trump's Philippine visit," November 19, 2026; Asia Times, November 20, 2026.
8. Daily Tribune, "Pax Silica, planong isabatas," November 20, 2026 (Romualdez on legislation).

9. Daily Tribune, “Pax Silica hub to go through Congress — Amb. Romualdez,” November 20, 2026.
10. Politiko, “Congress gets a say! Marcos admin eyes law for US-backed Pax Silica hub,” November 21, 2026 (Romualdez on Bilyonaryo News Channel’s On Point; the quotation in this paper is Politiko’s rendering); Bilyonaryo News Channel, On Point, “What did the Philippines gain from Trump’s ASEAN Summit visit?”, November 20, 2026 (broadcast; YouTube auto-captions match).
11. Bilyonaryo News Channel, “PH ambassador says legislation for Pax Silica in the works,” November 2026.
12. House of Representatives, House Bill 11758, “An Act Establishing the Advanced Industries Zone in New Clark City … Creating for the Purpose the Advanced Industries Development Authority,” filed October 26, 2026 (official record not retrieved; provisions as reported; not to be confused with Republic Act 11758 of 2022); GMA News, “Bill filed establishing ecozone for Pax Silica ops, other critical industries,” October 26, 2026.
13. GMA News, “Pax Silica to operate under Philippine laws — BCDA,” November 11, 2026.
14. Manila Times, “Pax Silica deal far from done, Gatchalian says,” November 22, 2026 (Senate Committee of the Whole).
15. Bilyonaryo News Channel, “Gov’t urged to make Pax Silica deal a treaty requiring Senate concurrence,” November 2026 (Tayao).
16. Inquirer Technology, “America rejects what it seeks to export: The PAX Silica question,” November 2026 (opinion).
17. New Zealand Ministry of Foreign Affairs and Trade treaty record, US–NZ Technology Safeguards Agreement (2016), and the MBIE side-arrangement.
18. US–Brazil Technology Safeguards Agreement, signed March 2019, in force December 16, 2019.
19. US State Department, US–Australia Technology Safeguards Agreement, October 26, 2023; Parliament of Australia, Joint Standing Committee on Treaties, tabled February 27, 2024.
20. US State Department reports to Congress under 1 U.S.C. 112b (2026), listing the US–Norway Technology Safeguards Agreement.
21. Manila Bulletin, “Gatchalian formally ascends as Senate President; Sotto elected as SP Pro Tempore,” June 17, 2026; Associated Press, June 17, 2026 (13 of 24 votes).
22. AFP via Kuwait Times, “Philippine prosecutors drop most impeachment charges against VP Sara Duterte,” October 2026 (“capable of participating”; 14 votes).
23. Daily Tribune, “Sara’s impeachment fate to be decided 20–25 days after defense rests,” November 13, 2026.

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CORRECTIONS

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NOT LEGAL ADVICE

The author is a US patent attorney, admitted in Colorado. He is not admitted to practice law in the Philippines. This paper is policy analysis of public material, not a legal opinion on Philippine law.

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