

**REPUBLIC OF THE PHILIPPINES**

**S e n a t e**

**Pasay City**

# **Journal**

**SESSION NO. 58**

Monday, February 14, 2005

**THIRTEENTH CONGRESS  
FIRST REGULAR SESSION**

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**CALL TO ORDER**

At 3:30 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

**PRAYER**

The Body observed a minute of silent prayer.

**NATIONAL ANTHEM**

The Himig Antonio Choir of the St. Anthony Academy of Quezon City led the singing of the national anthem and thereafter rendered the song entitled *Ngayon*.

Upon the request of the Chair, the choir sang *Happy Birthday* to Senator Enrile.

**SUSPENSION OF SESSION**

At the instance of the Chair, there being no objection, the session was suspended.

*It was 3:38 p.m.*

**RESUMPTION OF SESSION**

At 3:39 p.m., the session was resumed.

**ROLL CALL**

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Arroyo, J. P.	Lacson, P. M.
Biazon, R. G.	Lapid, M. L. M.
Cayetano, C. P. S.	Lim, A. S.
Defensor Santiago, M.	Madrigal, M. A.
Drilon, F. M.	Magsaysay Jr., R. B.
Ejercito Estrada, J.	Osmeña III, S. R.
Ejercito Estrada, L. L. P.	Pangilinan, F. N.
Enrile, J. P.	Pimentel Jr., A. Q.
Flavier, J. M.	Revilla Jr. R. B.
Gordon, R. J.	Roxas, M.

With 20 senators present, the Chair declared the presence of a quorum.

Senator Recto arrived after the roll call.

Senator Villar was official mission.

Senator Angara was absent.

**DEFERMENT OF APPROVAL OF THE JOURNAL**

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 57.

**PARLIAMENTARY INQUIRY OF SENATOR PIMENTEL**

Senator Pimentel recalled that during the deliberation on the budget of the Department of Environment and Natural Resources, the Chair committed to constitute the Senate into a Committee of the Whole. He asked when the committee would be convened so that the members could adjust their schedules.

The Chair stated that it would act on the matter when the proper motion is made. It assured that Senators Pangilinan and Pimentel would not object thereto.

At this juncture, Senator Arroyo asked what matters the Committee of the Whole would take up.

Senator Pimentel stated that the idea of constituting the Committee of the Whole was premised on the fact that Senator Madrigal was prevailed upon to defer questions on the Department of Environment and Natural Resources budget with the assurance that the Senate would be convened as a Committee of the Whole to take up the issues she wanted to raise.

Senator Arroyo stated that the Body cannot have a free-wheeling discussion of issues. He asked for a bill of particulars as he underscored that there must be guidelines.

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## INQUIRY OF SENATOR DEFENSOR SANTIAGO

Asked by Senator Defensor Santiago what rule of the Rules of the Senate provides for the creation of the Committee of the Whole, Senator Osmeña cited Section 125, Rule XLVI.

Senator Defensor Santiago pointed out that the rule adverted to pertains to the Question Hour. She asked the Minority to make a distinction between a Committee of the Whole and the Question Hour.

Senator Pimentel stated that the Rules of the Senate provide that the Body can convert itself into a Committee of the Whole for the purpose of pursuing a matter that is under the jurisdiction of a particular committee.

Senator Roxas clarified that Senator Osmeña was referring to the Senate rule on the Question Hour. However, he said that under Section 14, Rule X of the Rules of the Senate, the Body in plenary session can organize special committees whenever necessary, the membership and jurisdiction of which shall be determined by the Senate President. In this regard, he said that the Committee of the Whole is considered a special committee that would take up a particular matter as explained by Senator Pimentel. He said that the requirements on the three-day notice as well as the listing of questions that are pertinent to the Question Hour do not apply to the Committee of the Whole.

Senator Enrile stated that Section 135, Rule L of the Rules of the Senate should apply because it has been an all-embracing rule since the beginning of Congress. He said that it specifically provides that, "If there is no Rule applicable to a specific case, the precedents of the Legislative Department of the Philippines shall be resorted to, and as supplement to these, the Rules contained in *Jefferson's Manual*, *Riddick's Precedents and Practices*, and *Hind's Precedents*."

On the matter of precedents, Senator Enrile said that there have been situations in the past that are reflected in the records where the Senate constituted itself as a Committee of the Whole. He reminded the Members that the Minority had agreed not to put an obstacle to the approval of the national budget on the condition that a Committee of the Whole would be constituted immediately after the voting on Third Reading. He urged the senators to abide by that promise.

Senator Pimentel said that page 80 of the Congressional Record of January 30, 1962 speaks of the Committee of the Whole as being a regular committee prior to 1950 but was later considered as obsolete and unnecessary with the adoption of the Senate rules. Thus, he said, the "Committee of the Whole" is a traditional name for the Body when it meets in some kind of session. The Record, he stressed, supports the move to convene a Committee of the Whole.

Senator Osmeña also reminded the Body that it already established a precedent when the Committee of the Whole was convened to question Sec. Angelo Reyes.

Senator Arroyo agreed to the constitution of a Committee of the Whole, saying that the Senate had already adopted the practice, aside from the fact that the Body agreed to it during the budget hearing. He said that he only wanted to find out what the guidelines would be.

Relative thereto, Senator Arroyo said that Section 22, Article VI of the Constitution provides that:

The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

He noted that the particular provision is reproduced as Section 125 of the Rules of the Senate. However, he stated that when it concerns a cabinet member, who is an extension of the President's personality, there is a limitation on how far Congress can go.

Senator Arroyo stressed the importance of drawing guidelines especially since the last

Committee of the Whole conducted hearings on the Oakwood mutiny involving personalities who were not cabinet members. He believed that there are certain parameters that lesser officials could not go beyond when they appear before either House of Congress. He reiterated that there should not be a free-willing interpellation.

Senator Pimentel expressed willingness to put the motion in writing and to specify, to the fullest extent possible, the questions that would be raised principally by Senator Madrigal, without prejudice to the intervention of the other members.

Senator Defensor Santiago affirmed that the reading by Senator Enrile of Section 135 of Rule L on *Supplementary Rules* was absolutely correct; the precedents that had been established in the Chamber should be applied. She said that she was, in fact, a participant in such precedents. However, she said that Section 135 further provides that "precedents...shall be resorted to, and as supplement to these, the Rules contained in *Jefferson's Manual*, *Riddick's Precedents and Practices*, and *Hind's Precedents*."

To comply with Section 135 and to resolve the problem correctly, Senator Defensor Santiago suggested that the Committee on Rules conduct a briefing on the provisions of the three books. She clarified that she was not opposed to the constitution of the Committee of the Whole but was just trying to draw a distinction between a Committee of the Whole and the Question Hour as provided for in the Constitution and the Senate rules. She said that since the Senate rules have, in effect, reproduced verbatim the constitutional provision, the intent is that there should be no more Committee of the Whole but a Question Hour. She said that the chair of the Committee on Rules would be best qualified to brief the Body in plenary session on what the three books provide so that it could be guided on such issues in the future.

Asked by Senator Pimentel if she would accept a written memorandum from the Committee on Rules on the issues that she raised, Senator Defensor Santiago replied in the affirmative. Senator Pimentel gave assurance that the same would be provided to the Members the following day.

The Chair hoped that it would be able to act on Senator Pimentel's motion as modified by Senator

Defensor Santiago as soon as the memorandum shall have been issued by the rules committee.

### PARLIAMENTARY INQUIRY OF SENATOR LACSON

Senator Lacson said that he did not rise to move for the reconsideration of the approval of the GAB on Third Reading but to be clarified as to how much of the budget has really been slashed and realigned, and the net amount of the national budget that the Senate approved on Third Reading.

Upon request of the Chair, Senator Lacson agreed to pose his query to Senator Villar at the proper time.

### PRIVILEGE SPEECH OF SENATOR ENRILE

Availing himself of the privilege hour, Senator Enrile delivered the following speech:

I should not be taking the floor today for obvious reason. But duty and responsibility demand that I must, in order to clarify certain issues that appeared in our dailies a few days ago.

By taking the floor, I would like to forward the statement that I have no desire to cast any aspersion, any suspicion or accusation against anyone, but rather to serve the interest of the country by narrating certain facts and, hopefully, to have these matters clarified by those who are in a position to clarify them.

If we will recall, last year the distinguished Minority Leader of the Senate, on his return from China as a member of the official party of the President during her state visit to that country, delivered a privilege speech. In that privilege speech, he informed the Senate, among others, about the signing of a loan agreement, based on my impression, between the Chinese government and the Philippine government to cover the cost of rehabilitating the railway system between Caloocan to Malolos, a stretch of about 32 kilometers.

The amount of the loan, according to the speech of the distinguished Minority Leader

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when he delivered it, was supposed to be US\$395,220,000. But evidently, that is not the correct amount, and the amount is supposed to be US\$421 million to be funded by the Chinese government through the Export-Import Bank of China with terms of 20 years, 5-year grace period and at 3% interest.

A counterpart fund will be provided by the Philippine government in the amount of US\$82 million. All told, the project covering that stretch of 32 kilometers would entail a total amount of US\$503 million.

As an offshoot of that privilege speech of the distinguished Minority Leader, the Committee on Urban Planning, Housing and Human Resettlement conducted a hearing last Friday chaired by Senator Biazon. Along with Senator Flavio, I attended that hearing.

In the course of that hearing, two important facts came out, and these were: One, that the local governments along which the project will pass are under pressure to relocate the informal settlers along the railway to be rehabilitated. I did not select the word "pressure." The word "pressure" was used by no less than the governor of the Province of Bulacan. And they were supposed to relocate some 40,000 informal settlers along this area to be rehabilitated in a matter of one month.

The second fact that came out was additional 1% was going to be charged for the total amount of the project, this time not by the government of China, but by the Philippine government itself.

The government of China is committed to charge 3% which is the going rate, I understand, of interest in the People's Republic of China. But in addition to this, the Philippine government, through the Department of Finance, was going to conclude with the North Luzon Railway Corporation, the owner of the project, a subsidiary contract, and the Department of Finance requires the government corporation—National Luzon Railway Corporation—to pay a 1% interest.

I asked point-blank from the representative of the Department of Finance what was this 1% interest for. And his answer was that this was intended to cover the cost of managing the loan.

The loan from China evidently is a government-to-government foreign loan of US\$421 million. And proof of this is the fact that it was the Secretary of Finance, Juanita Amatong, along with the Secretary of Foreign Affairs, Secretary Delia Albert, who signed the contract of loan for the Republic of the Philippines. Because of the character of this loan as a government-to-government contract, several questions arose in my mind, and I would like to ask the questions for the record and request an answer from the government.

One, what is the role of a certain Mr. William Go in that transaction? Mr. William Go is a Hong Kong Chinese businessman. He is not a government employee of China; neither is he connected with the Philippine government. But I understand he is a principle actor in this loan of US\$421 million from China, and he operates under an international trading company called Jibsen, whose principal business is to import coal for the National Power Corporation, and export coconut oil from the Philippines to China.

I understand that Mr. William Go was so interested with this loan contract so much so that it was he who spent or advanced the money for the preparation of the feasibility studies on the project for the rehabilitation of these 32 kilometers from Caloocan to Malolos. He was also the one, based on my information, who nominated the Chinese contractor for this project — CNMEG or China National Machinery and Equipment Group. This company is going to be the one that will handle the construction work.

But what is surprising is that China National Machinery and Equipment Group has no experience, I understand, in any railway construction. It is a machinery and equipment supplier.

Originally, the one designated to handle this project for the government of China was no less than the Railway Company of China which handles the entire railway system of the People's Republic of China, a very able, competent, qualified and experienced railway company. But to everybody's surprise, all of a sudden this China Railway Company was shunted and set aside. And, lo and behold, China National Machinery and Equipment Group came into the picture to replace China Railway Company.

This money — US\$421 million — is a loan to the Republic of the Philippines. And after the loan contract has been concluded, that money ought to have been deposited to the account of the Republic of the Philippines. But in this particular case, that is not so. The money will remain under the control and possession of the Eximbank of China and it will be the Eximbank of the government of China that will disburse this fund to pay off this Chinese contractor, CNMEG or China National Machinery Equipment Group, on the basis of a certification of completion issued by the project holder in the Philippines, the North Luzon Railway Corporation.

But the worse part of the whole deal is that this contract has been awarded to this Chinese contractor without any feasibility study and without any public bidding. How did they determine the cost of this project if there has been no feasibility study?

During the privilege speech of the Minority Leader, I raised these questions: whether there were feasibility studies, the cost of the project, the number of passengers that will daily use the transportation system and the revenue of this railway system when completed. No answers could be given with definiteness because, indeed, there was no feasibility study, and yet, they came up with a project of US\$503 million. But worst of all, in violation of all our laws, there has been no public bidding.

To my knowledge and experience in government, we have had concessional loans from other countries, from the United

States, from the World Bank, from the Asian Development Bank, from JBIC of Japan, from the government of Japan, from the German government, from other governments. All of these funds are placed under the control of the Republic of the Philippines. And it is the Philippine government that handles the public bidding of the contract although the nationals of the lending countries were allowed to supply the equipment and to do the construction based on an open public bidding. But in this particular case, there has been no public bidding. It was simply negotiated. Who negotiated it? No one knows. In the coffee shops and golf courses in the country they are talking about it, and they said: "This is the biggest *loco* motive in the country." And it will appear to be — and this is not my word, it is the word of the coffee shop habitués and golf course habitués — that probably this will be something like a real railroad train robbery.

Why are they talking like this? And why are these talks going on in the coffee shops and in the golf courses? Because, evidently, the high and mighty officials of the country, not Malacañang, to be fair. I would like to hasten that, not Malacañang, were seen several times playing golf at the Manila golf course with Mr. William Go and with the people representing CNMEG or China National Machinery and Equipment Group, which lead some suspicious minds to believe that there is something a cooking in this deal. Some even went further and said that a ranking politician of the country traveled to Hong Kong last year in November and met Mr. William Go in Marco Polo Hotel. And there were witnesses who saw them talking in the lobby of that hotel.

Why this person, William Go, is so important to be the guest of a high-ranking politician of the country and play golf in one of the most expensive golf courses in the land in the company of a winning contractor without any public bidding and being seen talking to the same person in an exclusive hotel in Hong Kong is something that ought to be explained to the people. I am not casting aspersion. I am just stating this fact

so that this can be clarified. Because even I am even in doubt about the veracity, the rectitude, the cleanliness of this transaction if this indeed happened as narrated to me. I understand that during the Ramos Administration, this project had already been studied and the proponent of the study at that time was a Spanish group. And the feasibility study was made where the North Luzon Railway Corporation spent \$33 million covering the same land between Caloocan all the way to Clark Field not from Caloocan all the way to Malolos. The feasibility study done by a reputable international engineering group came up with a project cost of \$400 million. And the Spanish group was willing to undertake this project covering the stretch from Caloocan all the way to Clark Field for that amount using modern railway system, elevated railway not using the present line of the Philippine Railway. Unlike in the case of this contract that we are discussing, this will use a two-track line using an old narrow gauge, perhaps a scan from the railway system of China, and yet the cost will be \$503 million from Caloocan to Malolos, a stretch of 32 kilometers. Now, the question is, we as senators, responsible as we are to the Filipino people, presumed to fear no one except the wrath of the Filipino people. What are we going to do about this issue?

Coming back to the hearing last Friday, Governor Josie dela Cruz said, "We are being pressured to finish the relocation of the informal settlers along this 32 kilometers stretch in one month. But we do not have the money." And they said, how much is the money needed? I think it is between P7 billion to P8 billion. But I understand the reason for this frantic plea of Governor Dela Cruz and all the mayors who appeared in that hearing, — the mayors of Valenzuela, Marilao, Meycauyan, Bocaue, Balagtas, Guiguinto, etcetera, all the way to Malolos — they were all there. And they said "We do not have the money, and the time is so short. One month, we cannot do it. Maybe 90 days, we can do it."

I understand that the reason for this is, first, the government is incurring cost

already. Why? Because this lucky contractor, through its mediator, Mr. William Go, succeeded in having 25% of the loan released from the Eximbank of China.

Second, there is a stipulation in the contract that in the event of a delay in the removal of the squatters or informal settlers along the stretch to be rehabilitated, the government will pay a monthly commitment fee of P20 million. And the delay started last November. Multiply four months by P20 million is P80 million and it is already incurred as cost. That is the reason for the "pressure" being exerted, and quite rightfully on the local executives to move the informal settlers along the way so we can cut cost and prevent incurring this heavy drain on our already over-burdened treasury.

I brought this matter to the attention of the Chamber in the hope that we can look into this so that we can unravel the mystery of this particular transaction. I cannot believe that a contract like the one we are talking about, a government-to-government contact covering a loan of money to the Republic of the Philippines by the government of the People's Republic of China, could be the object of a private negotiation to select a private contractor to do a multi-billion contract in our country.

We have the experience, as I already have said, with JBIC, we have done that in all the railways that we have seen we have implemented in this country. They allowed us to do the bidding because the money is ours. Whether the Philippines will dissipate that money, we will be obligated to pay it back. And I think we should not allow a precedent like this where a government will dictate on the Republic of the Philippines how to spend the money it borrows.

Because of that, I move that the proper committee of the Senate must look into this through an inquiry in aid of legislation, if necessary.

#### INTERPELLATION OF SENATOR BIAZON

At the outset, Senator Biazon stated that the privilege speech delivered by Senator Pimentel was

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referred to two committees, one of which is the Committee on Urban Planning, Housing and Resettlement that he chairs. He said that from the public hearings conducted, two major issues emerged, one of which is the relocation of the informal settlers which seems to be the more urgent concern at the moment.

Senator Biazon stated there is no sufficient money to support the relocation. He pointed out that the project has two very different aspects, for instance, the relocation of 41,000 informal settlers would need P7 billion to P8 billion but as of last year, only P600 million was allocated and an additional P850 million is provided for in the GAB, which leaves a balance of P5.5 billion to P6.5 billion. He revealed that the actual amount needed is not known since the concerned agencies could not give an exact figure during the budget deliberations.

Senator Biazon recalled that a US\$503 million contract between the Philippines and a Spanish railways group was initiated during the Ramos administration with the signing of a memorandum of understanding in 1995; in 1999, the memorandum was dropped when funding was obtained from the JBIC; in 2003, the JBIC funding was also dropped because the Japanese government was setting conditions. He stated that the Japanese government was asking for clear directions as it was concerned about the massive relocation of families. If the information that the DOF would add 1% interest to the 3% interest charged by the Chinese financier is correct, he said that this means that the Philippine government would be paying P160 million to P170 million in interest alone. He pointed out that the DOF officials had claimed that the Chinese had to be paid for the management of the financing component of the project.

Senator Biazon proposed that the finance department and other agencies submit pertinent documents and if an examination of the same would show that anomalies were committed, then the proper inquiry be made. He proposed the referral of this aspect to the Blue Ribbon Committee.

Asked whether he agreed to the proposal, Senator Enrile observed that given the fact that the money should have been received by the National Treasury and appropriated by Congress for the project, the Senate, acting as a Committee of the Whole, must deal with the problem. There is no

indication as yet, he said, of any malfeasance of a public officer that would warrant its referral to the Blue Ribbon Committee. He pointed out that digging deeper into the issue would reveal the identity of high-ranking officials in Malacañang and possibly some people in the legislature. To give justice to those involved, he stressed that the responsibility falls on the Senate itself, more than the Blue Ribbon Committee or any committee for that matter.

Senator Biazon informed the Body that his committee would submit a report on the North Rail Project in due time.

In this light, Senator Enrile stressed that the role of William Go should be exposed. He remarked that a businessman would not go out of his way and spend money for a feasibility study without expecting something in return. He stated that he wanted to find out how much commission William Go earned from the loan and why there was such a commission when it was supposed to be a government-to-government contract.

On the issue that CNMEG was allowed to nominate the primary contractor, Senator Biazon pointed out that government officials justified their decision by saying that they considered the agreement as an executive agreement between China and the Philippines and as such, the financier is allowed to choose the contractor. This is another matter that should be looked into during the inquiry, he said. Senator Enrile asserted that whoever agreed to the stipulation is bound by the Constitution and the laws.

Senator Biazon reported that it was in 2003 when the Investment Coordinating Council approved the project with CNMEG. Senator Enrile argued that even if the project is beneficial, it does not excuse anyone from following the laws of the land.

On whether the two aspects of the project should be separated – the relocation aspect to be addressed in a report of the Housing and Urban Development Committee; and the financing aspect to be addressed by another committee. Senator Enrile replied that it is up to Senator Biazon to decide on the matter.

#### INTERPELLATION OF SENATOR OSMEÑA

Senator Osmeña observed that in the past few months, the Body has spent a lot of time discussing

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the consolidated public sector debt deficit, raising new taxes and the problems of the GOCCs. He noted that in the case of the GOCCs, they have committed the country and the Filipino people to huge loans without the approval of Congress, which, under the Constitution, has the sole authority to appropriate funds to repay such loans.

Asked how this particular project escaped early scrutiny, Senator Enrile noted that the Secretary of Finance signed the loan agreement with China, with knowledge about the GOCCs condition, the huge deficit, the burden of looking for money to help augment the finances of the government, and the general sentiment of the members of Congress to abolish all GOCCs that are financially draining the nation. In spite of that, he stated that Finance Secretary Amatong and Foreign Affairs Secretary Delia Albert signed the contract. He posited that the loan to the NLRC should have been signed by the chairman of the BCDA. In fairness to the President, he stated that she did not sign the contract but there were others who succeeded in forcing the two cabinet members to sign in behalf of the government. He stated that he wanted to discover the identity of the people involved, in particular the role of Mr. William Go in the transaction. He remarked that there is no national experience where a man acted as a broker in a government-to-government loan contract.

Senator Osmeña recalled that Mr. George Treviño brokered the PEA-Amari deal. Senator Enrile noted that Mr. Treviño reportedly handled P400 million, P100 million of which went to a Hong Kong account and P300 million to a high government official in the Philippines.

Queried on the identity of the government official concerned, Senator Enrile refrained from giving an answer.

Senator Osmeña noted that under the Constitution, all appropriations must be approved by Congress. Senator Enrile agreed as he pointed out that all government funds – tax and non-tax — are remitted to the National Treasury and are subject to the appropriating powers of Congress. However, he said that this was not the case in the NLR project.

Senator Osmeña wondered how the administration could sign a loan agreement for a project which Congress has neither appropriated money for

nor approved. Senator Enrile asserted that since the project was supposedly covered by an executive agreement – or a contract between two governments – then it should have been considered an economic treaty that must be presented to the Senate for ratification. This, he opined, might have been the reason why the foreign affairs secretary and the finance secretary were made to sign the agreement.

Upon further queries, Senator Enrile affirmed that as alter egos of the President, department secretaries such as the foreign affairs secretary and the finance secretary are authorized to sign and to commit the full faith and credit of the Republic.

Citing the PIATCO contract which was signed by the DOTC Secretary, Senator Osmeña observed that it is not the President but only the secretaries of the concerned departments who signed such agreements. Further, he explained that in these instances, the President has to issue authorization known as a “forward obligational authority” for his representative to sign and commit to the repayment of the loan on behalf of the Republic. He asked whether Malacañang had, in fact, issued such an authorization for the finance secretary to commit the Republic to repay the loan. Senator Enrile stated that he had suggested that the Senate be constituted as a Committee of the Whole precisely to look into the possibility that high government officials are involved.

Senator Osmeña stated that he initially believed that the Philippine National Railway owned both the North and South lines.

Asked when the North Luzon Railway Corporation was organized, Senator Enrile replied that it is a subsidiary of the Bases Conversion Development Authority (BCDA).

Senator Osmeña wondered how a newly organized corporation of a GOCC could commit to undertake such a huge project with a loan face value of P30 billion that never passed through Congress or how anyone in government could form a subsidiary corporation and authorize it to make a commitment on behalf of the government.

Adverting to materials submitted during the budget hearing, Senator Enrile informed the Body that the North Luzon Railway Corporation was incorporated on August 2, 1995, to implement the

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development, construction, operation and maintenance of a mass transit system in Central and Northern Luzon. However, he said that he was not aware if the corporation was granted a congressional franchise. He wondered why the operating company has no franchise to allow it to collect money for services rendered to the public. Further, he asked who would regulate the fare structure.

For his part, Senator Osmeña affirmed the observation that aside from the question concerning the loan, there is even a lack of a franchise to operate a public utility or public service company. Moreover, he noted that as mentioned by Senator Enrile, no feasibility study had been undertaken to determine how much the project would cost the Filipino people in the long run given that there is no railway system in the country that makes money.

Senator Enrile said that he had received information from reliable sources that a US\$33 million feasibility study has been undertaken on the North Luzon Railways project during the Ramos Administration. At that time, he said that the project cost for the railway's rehabilitation from Caloocan to Clark was only US\$400 million.

Upon further queries, Senator Enrile said that the Caloocan to Clark railway would have covered about 84 kilometers that is nearly triple the distance of the Caloocan to Malolos railway. Therefore, Senator Osmeña observed that the NLRC project is highly overpriced if compared to the 1995 project cost estimate. Senator Enrile agreed, adding that he had computed the project cost at about US\$15.7 million per kilometer or about P875 million per kilometer if the relocation of the informal settlers were included.

At this juncture, the Chair clarified that the loan agreement excluded expenses for relocation. Senator Enrile stated that the P400 million or P500 million estimate already includes the US\$84 million assumed by the Philippine government.

Asked for the explanation given by North Luzon Railways Corporation, DOTC or DOF as regards the project, Senator Enrile conceded that he had not spoken with representatives of the concerned agencies as he had just pieced his facts through interviews with various sources. Additionally, he said that he was willing to be corrected if he had misstated facts.

Senator Osmeña believed it would be difficult for the government to hike taxes such as the VAT to raise P30 billion in the light of the information that the government has wasted the same amount on the North Luzon Railway project. Further, he believed that Filipinos would not want their money to be misspent. He warned that the outcome of the Senate's investigation into the matter might well affect the passage of the VAT bill. Senator Enrile agreed, saying that there is an aspect that requires corrective legislation, i.e., whether the government should allow a foreign bank, the Eximbank of China in this case, which is not a designated depository of the Philippine government to hold and disburse its funds.

Senator Osmeña surmised that these financial arrangements were made to accommodate certain high government officials. Senator Enrile clarified that he raised the issue since US\$421 million or about P25 billion will be deposited in the Eximbank of China which is outside the control of the National Treasury. Further, he expressed concern that said bank will disburse funds upon the mere certification of the North Luzon Railway Corporation regarding the quantity or degree of completed work by the contractor. He noted that there would be no public bidding or checking of the cost of the railway rehabilitation since the procurement of the materials would be done by the contractor.

Upon query of Senator Osmeña, the Chair said that Jose Cortez Jr. is the president of the NLRC. Senator Osmeña said that Mr. Cortez, who used to be the undersecretary of the Department of Transportation and Communications, is a very close friend of a powerful couple. Further, he noted that Mr. Cortez was made chief executive officer of the railway corporation just for this particular project.

For his part, Senator Enrile clarified that he delivered his speech not to accuse anyone but to bare the facts for the benefit of the people. He believed that the Filipinos are entitled to have these explanations made public.

#### INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

At the outset, Senator Defensor Santiago said that based on Senator Enrile's speech, the project violates at least two constitutional provisions which are purposely intended to give the Legislative branch

a role in the contracting of foreign loans. Adverting to Article VII, Section 21 of the Constitution, she said that the assertion of project proponents that the contract as an executive agreement which does not require congressional ratification is absolutely wrong. She explained that the Constitution no longer allows executive agreements, that is why it uses the words "or international agreement".

While conceding that a treaty is an international agreement, Senator Defensor Santiago noted, however, that it was then the belief that international agreements did not necessarily take the form of treaties which require congressional authorization and that these could be made through a so-called executive agreement — a document signed by the two heads of state that do not pass through their respective legislatures. Additionally, she said that this is the reason why Section 21 uses the language "No treaty or international agreement shall be valid and effected unless concurred in by at least two-thirds of all the members of the Senate." She further pointed out that if the contract instrument was in the form of an international agreement, in constitutional contemplation, it should have had the concurrence of the Senate.

Senator Defensor Santiago pointed out that the second basis is found in Article VII, Section 20 which states that the President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitation as may be provided by law. She explained that this provision is an application of the principle of statutory construction — when the law mentions one or a few things or persons, the provisions of that law apply only to that one or a few things or persons to the exclusion of all others. This principle of *inclusio unius est exclusio alterius* means that only the President or his or her authorized representative, such as a cabinet member, may contract or guarantee foreign loans on behalf of the government, she said. She posited that the fact the contract was not signed by the President and the fact that there is no document which gives her alter ego authorization to negotiate and conclude the loan is already indicative of unconstitutionality.

Moreover, Senator Defensor Santiago noted that there was no evidence to show that the contract had the concurrence of the Monetary Board, as

provided for in said constitutional proviso. Additionally, she stated that the limitations that may be provided by law for that contract might emerge in the inquiry being proposed by Senator Enrile.

Senator Defensor Santiago read the rest of the provision indicating that the power of the President is definitely meant to be shared by Congress, to wit:

The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the government-owned and -controlled corporations which would have the effect of increasing the foreign debt and containing other matters as may be provided by law.

That being the case, she stated that Congress has the power to interfere in any pending loan negotiation because every three months, the Monetary Board, which is part of the Executive branch, is required by the Constitution to submit a list of all applications for loans and how it decided the applications.

At this juncture, Senator Defensor Santiago asked whether the Monetary Board has ever complied with the constitutional duty to submit a report every quarter containing the decisions on applications for loans by the government. The Chair replied that it would be able to supply the necessary information later.

If only the Monetary Board complies with its constitutional duty to submit a list of loan applications and the decision that it made on each application, Senator Defensor Santiago believed that the government would have been able to prevent this kind of anomalous and unconstitutional contract. Nevertheless, she said, the contract appears to be invalid in its face alone because a government loan cannot be negotiated by a mere cabinet member without authority by the President, much less can it be negotiated by a foreigner without authority from any major branch of the Philippine government. She stated that Section 20 of Article VII of the Constitution mandates congressional participation whenever a foreign debt is negotiated in order for Congress to fully avail of the power of the purse to protect public interest. That being the case, she concluded that no one committee would be sufficient

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to investigate such a far-reaching anomaly, especially in the light of the fact that whenever there is a loan especially of that magnitude — \$431 million — there is always a commission. If ever there is a Question Hour, she stated that she would ask who negotiates or manages the loan and who gets commission every time there is a loan. She stated that the Senate can require the Monetary Board to include in its quarterly report the names of these persons. She suggested that the Senate summon the foreign affairs and finance secretaries to a Question Hour because they are signatories to the contract.

At this point, Senator Enrile read some provisions in the contract, to wit:

*Sec. 15.2 – Good Faith Consultation.*

The parties hereto undertake to use their best efforts to resolve any dispute arising out of or in connection with this agreement through consultation in good faith and mutual understanding, provided that such consultation shall not prejudice either party hereto by any such party in respect of any such dispute.

*Sec. 15.3. Submission to Jurisdiction.*

– The borrower—and that is the Republic of the Philippines—hereby irrevocably agrees that any suit, legal action or proceedings arising out of or relating to this agreement may be brought in the courts of the People’s Republic of China and hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the aforesaid courts. Nothing herein shall limit the right of the lender—China in this case—to commence any legal action or proceeding or otherwise proceed against the borrower and/or its property in any other jurisdiction or to serve process in any manner permitted by law and taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

*Sec. 15.4. Waiver.* – The borrower irrevocably and unconditionally waives any objection which it may now have or hereafter have to the choice of the People’s Republic of China as the venue of any legal action arising out of or relating to this agreement and agrees not to claim that any

court thereof is not a convenient or appropriate forum. The borrower also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness provided that: (a) the court rendering judgment had jurisdiction over the subject matter of the action in accordance with its jurisdictional rules, (b) the Republic had a notice of the proceedings, (c) the judgment of the court was not obtained through collusion or fraud, and (d) such judgment was not based on a clear mistake or fact or law.

*Sec. 15.5. Waiver of Immunity.* – The borrower irrevocably and unconditionally waives any immunity to which it or its property may at any time be or become entitled whether characterized as sovereign immunity or otherwise from any suit, judgment, service of process upon it or any agent, execution on judgment set off, attachment prior to judgment, attachment in aid of execution, to which it or its assets may be entitled, in any legal action of proceedings, with respect to this agreement, or any of the transactions contemplated hereby or hereunder. Notwithstanding the foregoing, borrower does not waive any immunity in respect of its assets which are used by a diplomatic or consular mission of the borrower.

- (ii) assets of a military character and under control of a military authority or defense agency; and
- (iii) located in the Philippines and dedicated to a public or governmental use as distinguished from patrimonial assets or assets to commercial use.

Upon query, Senator Enrile informed the Body that the document, entitled “Buyer Credit Loan Agreement No. BLA 04055” between Export-Import Bank of China and the Department of Finance of the Republic of the Philippines for North Rail Project, Phase 1, Section 1, February 26, 2004, Manila, Philippines, was signed by Finance Secretary

Juanita D. Amatong and Yang Zilin, Chairman and President of the Export-Import Bank of China.

Senator Defensor Santiago surmised that the chances of the case, if brought before the International Court of Justice, are very slim, although, there is a chance that the International Court of Justice would rule that the very onerous nature of the contract has invalidated itself.

However, Senator Enrile expressed apprehension that the Philippines, because of this contract, had in effect surrendered its sovereignty to China. Senator Defensor Santiago agreed, stating that she was about to suggest that the Senate summon former Secretary Amatong as her departure from her official position does not confer immunity for her past official acts.

Senator Enrile opined that it would be cheaper on the part of the Philippine government to shoulder the \$421 million loan and consider it a loss, rather than defy China because the rule of force would be against the Philippines in this case. Senator Defensor Santiago agreed as she noted that the language used in the treaty already shows that it was drafted by the Chinese.

Without prejudging the case, Senator Enrile pointed out the need to hold responsible the cabinet officials who studied the contract because the President, in good faith, depends on her advisers. In this particular case, he said, the members of the cabinet failed her.

If there is a constitutional provision directly involved in any subject matter, Senator Defensor Santiago submitted that any anomaly exposed by any senator in a privilege speech should automatically call for the Question Hour to which the department secretary concerned should be summoned because in this case, the highest law of the land is involved; and whoever provided the legal counsel to the President to authorize the contract — the President presumably authorized somebody else to sign in her behalf, which, in law, is equivalent to her own personal signature on the document — should be disbarred by the Supreme Court, and perhaps, criminally charged for violating the Constitution.

Senator Enrile opined that it was probably the realization of the gravity of the contract with China

•why these officials are caught in the legal net. He said that he was able to get a copy of the legal study made on the matter dated February 14, 11:57 No. 009, page 2, which is a very thick analysis of the legality of the contract. He stated that it is difficult to draw any conclusion from the author, that is why he went out of his way to compile all the laws of the land bearing on procurement because the contract cannot be justified.

Senator Defensor Santiago argued that the mere fact that there is a *post facto* justification or at least a policy analysis only indicates that the holders of the document not only suspect but are firm in their conviction that they have done something illegal, otherwise, they would not have justified it; it should justify itself by its very term.

#### INTERPELLATION OF SENATOR GORDON

Senator Gordon noted that the said contract violated not only Section 20 of Article VII but also Section 21 of Article XII of the Constitution which states that: "Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the government shall be made available to the public."

Senator Gordon pointed out that Article XII of the Constitution dealing on national patrimony also applies to foreign loans while Article VII, Section 20 mandates the Monetary Board to submit to Congress a complete report of the loans contracted by the government.

Relative thereto, the Chair stated that the *Bangko Sentral ng Pilipinas* periodically submits to the Senate a quarterly report on the country's outstanding external debt and such report is referred to the Committee on Finance. As to the listing of particular loans, it said that the information would be provided shortly.

On Senator Gordon's observation that Central Luzon seems to be the center of all big contracts involving BCDA and SBMA, Senator Enrile maintained that it is the richest part of the country and the center of dissidents.

Senator Gordon revealed that the North Luzon Railway Corporation apparently had a forum-shopping because it first approached the Spaniards

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in 1997, then the Japanese in 1998 and now a contract had been signed with China. He averred that the provincial governments in Central Luzon are complaining about the haste and waste attendant to the project.

On the suggestion that the Body look into all the contracts of BCDA and SBMA in Central Luzon since the projects are interconnected, Senator Enrile believed that the Northrail project is big enough an issue for the Senate to handle without involving other contracts which may dissipate its importance. He expressed the view that the Body should focus on this particular railway contract as it establishes a very dangerous precedent. He contended that the government-to-government contract caught the Philippines and its people in a trap because China as an economic and military colossus of Asia is one country the Philippines cannot go against. He bewailed the lack of prudence and care with which the contract was negotiated and how the Secretary of Justice failed to see the surrender of Philippine sovereignty.

Senator Gordon cited a letter signed by NEDA Secretary Romulo Neri which showed that the Investment Coordinating Committee approved the Northrail project and that the national government is the borrower of the loan from the Export-Import Bank of China.

At this juncture, the Chair informed the Body that the contract between the North Luzon Railway Corporation and the China National Machinery was signed on December 30, 2003, while the loan agreement was signed on February 26, 2004. In other words, it said, the builder was first chosen before the financing package was explored.

Senator Enrile suggested that the government renegotiate the contract at this stage as it would be better to cut cost than continue with the onerous and demeaning terms of the contract.

Senator Gordon supported the suggestion even as he bewailed the utter disregard of fiscal responsibility in big contracts like the Northrail project. He said that as chairman of the Committee on Government Corporations and Public Enterprises, he would look into the other contracts of BCDA in Central Luzon and other parts of the country.

At this juncture, the Chair informed the Body that in a letter dated January 31, 2005, the BSP

governor informed the Senate of a \$400 million loan from the Eximbank of China for the Northrail project. As to whether the letter satisfied the requirement of a complete report, it declined to pass judgment thereon. It added that the letter was referred to the Committee on Finance in accordance with the rules.

## INTERPELLATION OF SENATOR PIMENTEL

At the outset, Senator Pimentel commended Senator Enrile for fleshing out the former's initial observations on the Northrail contract when he reported on the President's official trip to China. He noted that the visit was initially considered as an official working visit but was suddenly upgraded to a state visit. He expressed the view that the Northrail project must have been the primary reason for the sudden change in the nature of the President's visit. He stated that it was only now that he found out Secretary Amaton signed the contract on behalf of the Philippines.

As to the parties who could be held liable for transgressing the constitutional provisions, Senator Pimentel pointed out that the President has not disowned Secretary Amaton's commitment binding the country such that the President could be held as the principal party directly responsible for the transgression.

Senator Enrile declined to draw any conclusion on the President's culpability in the absence of hard evidence that the President went over the loan contract minutely to understand the implications of the waivers in the terms of the contract. He stated that normally, the President relies on the judgment and thoroughness of the analysis of his/her subalterns.

Noting that the President was smiling when the contract was signed, Senator Pimentel asked whether such is proof that the President authorized the signing of the contract. He stressed that the principal is bound by the actuation of the agent unless the former repudiates the powers that were given to the latter.

Senator Enrile agreed, adding that when the President gave full powers to the Secretary of Finance to sign the loan agreement, the same should be respected by the President since the acts of the

yes

Secretary binds the Republic. However, he said that in criminal law or any punitive law, the situation is different because criminal liability is personal, and while punitive laws are very strictly construed, the criminal nature of the act must be known.

Recalling that the President gave full powers to then Sec. Pantaleon Alvarez to negotiate, sign and commit the Republic to the purchase of six vessels, Senator Pimentel assumed that the President gave the same powers to Ms Amatong, otherwise, she would not have signed the contract. He added that Ms. Amatong cited the transaction as one of the major accomplishments of the China visit.

#### **INTERPELLATION OF SENATOR ARROYO**

At the onset, Senator Arroyo stated that he shares the sentiments of Senator Enrile on what the President does and that she usually relies on her ministers. He said the ministers routinely submit documents and she signs it on the representation of the ministry involved.

As regards Section 20, Article VII of the Constitution, Senator Arroyo stated that the President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with prior concurrence of the Monetary Board and subject to such limitations as may be provided by law. He explained that there is an obligation on the Monetary Board to inform Congress of its decisions on loan applications to be contracted by the government or GOCCs that would have an effect on the foreign debt.

Asked if the Monetary Board had faithfully complied with its duty to inform Congress of the loans that the government had contracted, the Chair replied that all relevant communications and other inquiries pertaining to the matter were referred to the finance committee for appropriate reply. It added that the Secretary of Finance would have to be informed as well.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Flavier, the session was suspended.

*It was 5:58 p.m.*

#### **RESUMPTION OF SESSION**

At 6:06 p.m., the session was resumed.

#### **RULING OF THE CHAIR**

At this juncture, the Chair referred the motion of Senator Enrile that the matter be inquired into by the Senate sitting as a Committee of the Whole to the Committee on Rules so that it could come up with recommendations and policies on when the Senate, as a whole, could inquire into a particular matter.

The Chair directed the rules committee to come up with recommendation that the Body could adopt with regard to the rules governing the referral of matters to the Committee of the Whole.

#### **COAUTHOR**

Upon request, Senator Enrile was made coauthor of Senate Bill No. 1692.

#### **COMMITTEE REPORT NO. 8 ON SENATE BILL NO. 1286**

*(Continuation)*

Upon motion of Senator Flavier, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1286 *(Committee Report No. 8)*

**AN ACT CREATING THE RANK OF  
FIRST CHIEF MASTER SERGEANT/  
FIRST MASTER CHIEF PETTY  
OFFICER IN THE ENLISTED RANKS  
OF THE ARMED FORCES  
OF THE PHILIPPINES (AFP),  
APPROPRIATING FUNDS  
THEREFOR, AND FOR OTHER  
PURPOSES.**

Senator Flavier stated that parliamentary status was the period of committee amendments.

Thereupon, the Chair recognized Senator Biazon, Sponsor of the measure.

#### **COMMITTEE AMENDMENTS**

As proposed by Senator Biazon, there being no objection, the following Committee amendments were approved by the Body, one after the other:

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1. On page 1, line 13, delete the word "terminated" and replace it with REMOVED;
2. On the same page, line 15, after the word "years" delete the period (.) and in lieu thereof, insert a semicolon (;) and the following proviso: *PROVIDED, FURTHERMORE THAT NO PERSON SHALL BE APPOINTED UNDER THIS SECTION IF HE HAS LESS THAN ONE (1) YEAR IN THE ACTIVE SERVICE PRIOR TO HIS REACHING THE COMPULSORY RETIREMENT AGE, AND; PROVIDED, FINALLY, THAT THE AFP COMMAND SERGEANT MAJOR, AFTER COMPLETING THE THREE-YEAR TERM, SHALL BE DEEMED COMPULSORILY RETIRED EVEN IF HE HAS NOT REACHED THE COMPULSORY RETIREMENT AGE.*
3. On the same page, after the word "equivalent" on line 17, delete all the words starting with the phrase "to the monthly base bay of" up to the word "scheme" on line 2 of page 2, and in lieu thereof, insert the phrase: GIVEN TO SALARY GRADE 18 PLUS ONE-HALF (1/2) OF THE DIFFERENCE BETWEEN SALARY GRADES 18 AND 19 IN ACCORDANCE WITH REPUBLIC ACT NO. 9166.

#### **TERMINATION OF THE PERIOD OF COMMITTEE AMENDMENTS**

Upon motion of Senator Flavier, there being no objection, the Body closed the period of committee amendments.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1286**

Upon motion of Senator Flavier, there being no objection, the Body suspended consideration of the bill.

#### **PARLIAMENTARY INQUIRY OF SENATOR PIMENTEL**

Asked by Senator Pimentel on the status of the Rent Control Law, Senator Biazon said that the

Committee had completed its hearings and is now in the process of consultation with stakeholders; it would be coming out soon with a committee report that would include drastic changes such as enacting a law that would not specify a period so that Congress would not be pressured to extend the law after every three years; and pegging the coverage to a certain amount because given the very high rental rates at the moment, it might reach a level when it is the higher middle class that is protected instead of the marginalized sectors of society.

Senator Pimentel expressed hope that a committee report would be submitted soon so that the issue would be settled definitively. Senator Biazon said that the report might be submitted within the week.

#### **REFERENCE OF BUSINESS**

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

#### **BILLS ON FIRST READING**

Senate Bill No. 1912, entitled

AN ACT ESTABLISHING A PROGRAM FOR THE ACQUISITION OF SCHOOL SITES AND THE CONSTRUCTION, MAINTENANCE, REHABILITATION, AND REPAIR OF SCHOOL BUILDINGS IN THE PUBLIC ELEMENTARY AND SECONDARY SCHOOLS NATION-WIDE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Introduced by Senator Angara

**To the Committees on Education, Arts and Culture; Public Works; and Finance**

Senate Bill No. 1913, entitled

AN ACT TREATING LOCALLY MANUFACTURED INSTANT NOODLES AS BASIC NECESSITY, AMENDING FOR THE PURPOSE SECTION 3 SUBPARAGRAPH (1) OF REPUBLIC ACT NO. 7581, OTHERWISE KNOWN AS THE PRICE ACT



Introduced by Senator Mar Roxas

To the Committee on Trade and Commerce

**RESOLUTION**

Proposed Senate Resolution No. 181, entitled

RESOLUTION URGING THE COMMITTEE ON PUBLIC INFORMATION AND MASS MEDIA TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE FINDINGS OF AN INTERNATIONAL MEDIA ORGANIZATION THAT THE PHILIPPINES WAS THE SECOND MOST DANGEROUS PLACE FOR JOURNALISTS IN THE YEAR 2004

Introduced by Senator Mar Roxas


To the Committee on Public Order and  
Illegal Drugs; and Public Information and Mass  
Media

**ADJOURNMENT OF SESSION**

Upon motion of Senator Flavie, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of the following day.

*It was 6:17 p.m.*

I hereby certify to the correctness of the foregoing.

  
OSCAR G. YABES  
Secretary of the Senate  
MB / elu AP

Approved on February 15, 2005