

**REPUBLIC OF THE PHILIPPINES**

**S e n a t e**

**Pasay City**

# **Journal**

**SESSION NO. 66**

Wednesday, March 2, 2005

**THIRTEENTH CONGRESS  
FIRST REGULAR SESSION**

**SESSION NO. 66**  
Wednesday, March 2, 2005

**CALL TO ORDER**

At 3:59 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

**PRAYER**

Sen. Juan M. Flavier read the prayer prepared by Sen. Ralph G. Recto, to wit:

Panginoon, lubos Po ang pagpupuri  
namin sa banal Mong Pangalan.  
Ang bayan Mong mahal ay nahaharap  
sa maraming suliranin  
Laganap ang suliraning pangkabuhayan  
at pangkapayapaan.

Sa gitna ng mga suliraning ito  
Hinihingi Po namin ang Inyong gabay  
at pagpapala.

Amang makapangyarihan sa lahat  
Kami'y dumadalangin sa Inyo  
Nawa'y ipagkaloob Mo Po sa amin  
ang karunungan  
Upang kami'y makapagdesisyon ng tama  
Sa gitna ng mga suliranin ng aming bayan.

Pagpalain nawa Po Ninyo kami  
Na matugunan namin ang mga  
pangangailangan ng aming sambayanan  
At maghari ang katahimikan at pagkakaisa.

Dakilang Ama, gawin Mo Po kaming  
instrumento ng kapayapaan at  
pagmamahalan  
Maging mapagpatawad at maunawain sa  
aming kapwa  
At maging gabay namin sa araw-araw ang  
Inyong banal na salita.

Panginoon, bilang mga kinatawan at pinuno  
ng aming bansa  
Ay patuloy Po kaming umaasa  
Na sa kabila ng mga pagsubok na ito  
Ay muling maghari ang kasaganaan,  
kapayapaan at pagmamahalan  
Sa aming Inang Bayan.

Ang lahat ng ito ay hinihiling Po namin sa  
Pangalan Ninyo na Ama naming lahat.

Amen.

**ROLL CALL**

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

Angara, E. J.	Flavier, J. M.
Arroyo, J. P.	Lacson, P. M.
Biazon, R. G.	Lapid, M. L. M.
Drilon, F. M.	Madrigal, M. A.
Defensor Santiago, M.	Magsaysay Jr. R. B.
Ejercito Estrada, J.	Pangilinan, F. N.
Ejercito Estrada L. L. P.	Villar Jr., M. B.
Enrile, J. P.	

With 15 senators present, the Chair declared the presence of a quorum.

Senators Gordon, Lim, Osmeña and Recto arrived after the roll call.

Senators Cayetano and Pimentel were on official mission abroad.

Senator Revilla was also on official mission.

Senator Roxas was absent on account of illness.

**APPROVAL OF THE JOURNAL**

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 65 and considered it approved.

**REFERENCE OF BUSINESS**

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

*Handwritten initials*

**MESSAGE FROM THE  
HOUSE OF REPRESENTATIVES**

Letter from the Secretary General of the House of Representatives, informing the Senate that on February 15, 2005, the House of Representatives passed House Joint Resolution No. 1, entitled

**JOINT RESOLUTION TO EXEMPT  
CERTAIN MUNICIPALITIES  
EMBODIED IN BILLS FILED IN  
CONGRESS BEFORE JUNE 30, 2001  
FROM THE COVERAGE OF  
REPUBLIC ACT NO. 9009,**

in which it requested the concurrence of the Senate.

**To the Committee on Local Government**

**BILLS ON FIRST READING**

Senate Bill No. 1937, entitled

**AN ACT TO AMEND ARTICLE XXII,  
SECTION 261 (dd) OF BATAS  
PAMBANSA BLG. 881, OTHERWISE  
KNOWN AS THE OMNIBUS  
ELECTION CODE OF THE  
PHILIPPINES, AS AMENDED, TO  
INCLUDE OTHER FORMS OF  
ELECTORAL FRAUD, PRESCRIBING  
PENALTIES THEREFOR AND FOR  
OTHER PURPOSES**

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committee on Constitutional Amendments, Revision of Codes and Laws**

Senate Bill No. 1938, entitled

**AN ACT MANDATING THE USE OF  
RECYCLABLE OR BIODEGRADABLE  
MATERIALS FOR THE  
PACKAGING OF CONSUMER  
PRODUCTS**

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committees on Environment and Natural Resources; Trade and Commerce; and Ways and Means**

Senate Bill No. 1939, entitled

**AN ACT AMENDING BATAS  
PAMBANSA BLG. 881, OTHERWISE  
KNOWN AS THE OMNIBUS  
ELECTION CODE OF THE  
PHILIPPINES, AS AMENDED, AND  
FOR OTHER PURPOSES**

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committee on Constitutional Amendments, Revision of Codes and Laws**

Senate Bill No. 1940, entitled

**AN ACT REQUIRING MANDA-  
TORY REPORTING OF MARINE  
CASUALTIES**

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committees on Public Services; and Justice and Human Rights**

Senate Bill No. 1941, entitled

**AN ACT PROMOTING FULL  
EMPLOYMENT AND EQUALITY OF  
EMPLOYMENT OPPORTUNITIES  
FOR ALL CREATING THEREBY  
THE HUMAN RESOURCES  
COORDINATING COMMISSION  
AND FOR OTHER PURPOSES**

Introduced by Senator Magsaysay, Jr.

**To the Committees on Labor, Employment and Human Resources Development; Social Justice, Welfare and Rural Development; and Finance**

Senate Bill No. 1942, entitled

**AN ACT PROVIDING FOR THE  
REGISTRATION, LICENSURE AND  
PRACTICE OF FOOD TECHNO-  
LOGY IN THE PHILIPPINES,  
PROVIDING FUNDS THEREFOR,  
AND FOR OTHER PURPOSES**

Introduced by Senator Magsaysay Jr.

**To the Committees on Civil Service and Government Reorganization; and Finance**

**RESOLUTION**

Proposed Senate Resolution No. 200, entitled

RESOLUTION DIRECTING THE COMMITTEE ON PUBLIC SERVICES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE "FORFEITURE POLICY" ON UNUSED VALUES OF CELLPHONE LOAD PRACTICED BY TELECOMMUNICATION COMPANIES TO PREPAID SUBSCRIBERS, WITH THE END VIEW OF DETERMINING WHETHER SUCH PRACTICE IS IN VIOLATION OF R.A. NO. 7925 AND RECOMMENDING POLICY MEASURES TO PREVENT SUCH IRREGULAR AND UNFAIR PRACTICE

Introduced by Senator Villar Jr.

**To the Committees on Public Services; and Trade and Commerce**

**COMMUNICATION**

Letter from Atty. Juan S. Baun Jr., VP for Administration of the Manila Jockey Club, Inc., submitting to the Senate the annual report and financial statement of the Manila Jockey Club, Inc. for CY 2004, in compliance with Section 20 of Republic Act No. 8407

**To the Committees on Public Services; and Games and Amusement and Sports**

**ADDITIONAL REFERENCE OF BUSINESS**

**MESSAGES FROM THE HOUSE OF REPRESENTATIVES**

Letter from the Secretary General of the House of Representatives, informing the Senate that on February 23, 2005, the House of Representatives passed the following House bills in which it requested the concurrence of the Senate:

House Bill No. 643, entitled

AN ACT GRANTING FILIPINO CITIZENSHIP TO MR. CHARLES WILLIAM MOSSER, WITH ALL

THE RIGHTS, PRIVILEGES AND PREROGATIVES APPURTENANT THERETO

**To the Committee on Justice and Human Rights**

House Bill No. 2659, entitled

AN ACT GRANTING PHILIPPINE CITIZENSHIP TO MAHMOUD A.M. ASFOUR

**To the Committee on Justice and Human Rights**

and House Bill No. 3696, entitled

AN ACT FURTHER AMENDING THE FRANCHISE OF VISAYAN ELECTRIC COMPANY, INC., GRANTED UNDER ACT NO. 3499, AS AMENDED, TO CONSTRUCT, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE ENDUSERS IN THE CITIES OF CEBU, MANDAUE AND TALISAY AND THE MUNICIPALITIES OF MINGLANILLA, NAGA, SAN FERNANDO, CONSOLACION AND LILO-AN, PROVINCE OF CEBU AND RENEWING/EXTENDING THE TERM OF THE FRANCHISE TO ANOTHER TWENTY-FIVE YEARS FROM THE DATE OF APPROVAL OF THIS ACT

**To the Committee on Public Services**

**PROPOSED SENATE RESOLUTION NO. 191**

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Proposed Senate Resolution No. 191 (Committee Report No. 11), entitled

RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT BURMA SHOULD NOT ASSUME THE CHAIRMANSHIP OF THE ASEAN IN 2006 UNLESS THERE HAS BEEN COMPLIANCE WITH THE

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PRINCIPLES OF HUMAN RIGHTS LAW, PARTICULARLY THOSE WHICH NECESSITATE THE FREEDOM FROM HOUSE ARREST OF AUNG SAN SUU KYI AND PARTICIPATION OF HER POLITICAL PARTY IN THE POLITICAL PROCESS IN BURMA.

The Chair recognized Senator Defensor Santiago for the sponsorship.

#### SPONSORSHIP SPEECH OF SENATOR DEFENSOR SANTIAGO

In sponsoring Proposed Senate Resolution No. 191, Senator Defensor Santiago delivered the following speech:

##### MYANMAR, HUMAN RIGHTS, AND THE 2006 ASEAN CHAIR

Our Committee on Foreign Relations is humbly pleased to present this report recommending approval of Proposed Senate Resolution No. 191, entitled "RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT BURMA SHOULD NOT ASSUME THE CHAIRMANSHIP OF THE ASEAN IN 2006 UNLESS THERE HAS BEEN COMPLIANCE WITH THE PRINCIPLES OF HUMAN RIGHTS LAW, PARTICULARLY THOSE WHICH NECESSITATE THE FREEDOM FROM HOUSE ARREST OF AUNG SAN SUU KYI AND PARTICIPATION OF HER POLITICAL PARTY IN THE POLITICAL PROCESS IN BURMA."

The basis of this affirmative report of the Committee on Foreign Relations is, first of all, the Universal Declaration of Human Rights (UDHR).

The *Universal Declaration of Human Rights* (UDHR) is not part of international law. It is the two covenants that resulted from the declaration which are considered as part of international law.

But the *Universal Declaration of Human Rights* is not an ordinary declaration. It is deemed to be the moral standard of the international community.

In Article 9, this *Universal Declaration* provides: "No one shall be subjected to arbitrary arrest, detention or exile." The declaration represents "a world milestone in the long struggle for human rights," to use the words of the UN General Assembly Representative from France. The declaration was adopted by the United Nations in December 1948, almost coterminous with the dates of birth of virtually every member of the Senate present here. And yet, 56 years later, Article 9 continues to be violated in the case of Aung San Suu Kyi, who is held under house arrest by the Burmese military junta. Nobel Laureate Aung San Suu Kyi who is held incommunicado — unlike former President Estrada, who is, at least, granted permission by our government to communicate with the press and other relevant personalities — represents the thousands of Burmese who continue to suffer as political prisoners.

Aung San Suu Kyi was born on 19 June, 1945 in Yangon, Burma. Her father, Aung San, is Burma's most respected independent hero. When the State Law and Order Restoration Council, a fancy name for the military junta, allowed multi-party general elections on 27 May 1990, Aung San's National League for Democracy or NLD won 82% of the seats contested. The results were ignored, parliament was not allowed to convene and the NLD's elected candidates were imprisoned. Efforts to revive any NLD party activities have been unsuccessful and its members have been jailed and physically attacked. On 14 October 1991, Suu Kyi was awarded the Nobel Peace Prize for "her nonviolent struggle for democracy and human rights." Until now, she remains the symbol of non-violent struggle for democracy.

Burma was admitted as a member-nation in the ASEAN in 1997 and is scheduled to assume the chairmanship of the ASEAN standing committee in 2006. ASEAN, in this respect, follows simply the *principle of rotation* and it just so happens that by rotation, Burma should be chair of ASEAN by next year. Hence, this is an opportune time to revisit the ASEAN policy

of non-intervention in the domestic affairs of states in the light of the principles of international human rights law. Daw Aung San Suu Kyi herself said to the Community of Democracies Ministerial Conference on 26 June 2000: "In Burma, we know that we will be better off with a government that is accountable, that is transparent, that knows that if it does not abide by its promises to the people, it risks being flung out at the next elections. It is only such governments that will look to the good of the nation sincerely rather than to the perpetuation of their own power. This is the tragedy of *authoritarian regimes*, that their main concern is the perpetuation of their own power, and by concentrating on this concern, they destroy their nations. Perhaps they do not mean to do so. Many authoritarian governments justify their presence in the name of patriotism, in the name of nationalism, in the name of development and progress. But very seldom are they able to bring up true development, true progress in human terms. We in Burma want democracy because we think that this is the political system that will bring us human progress, that will help our people to develop their potential, to realize their potential."

Our very own president, Gloria Macapagal Arroyo, in an official statement, sent through the Department of Foreign Affairs stated: "It would be best for Daw Aung San Suu Kyi and the National League for Democracy to be represented in the political process of Myanmar."

Unless there has been compliance with the principles of human rights law, particularly those which necessitate the freedom from house arrest of Aung San Suu Kyi and the participation of her political party in the Burmese political process, Burma should not assume chairmanship of the ASEAN in 2006 under the principle of rotation. The so-called policy of "constructive engagement" with Myanmar has failed to produce respect for international human rights law and it is not appropriate for a state with such attitudinal problems to become chair of ASEAN.

## MOTION OF SENATOR DEFENSOR SANTIAGO

Upon motion of Senator Defensor Santiago, there being no objection, the Body dispensed with the reading of the text of the resolution.

## INTERPELLATION OF SENATOR ENRILE

At the outset, Senator Enrile agreed that human rights is indeed a valuable concept which the Senate should preserve. However, he asked whether through the resolution, the Senate would be sacrificing the national interest of the Philippines for the interest of one prisoner under Myanmar law. Senator Defensor Santiago disagreed with the premise of the query. She clarified that the resolution does not seek protection for just one individual or one political party in one country but to emphasize the relevance of international human rights law in this part of the world.

Asked whether Brunei should also be prevented from assuming the chairmanship of ASEAN since like Burma, it is also an authoritarian government, Senator Defensor Santiago noted that the circumstances between the two governments are significantly different. She explained that the authoritarian rule exercised by the Sultan of Brunei appears to have the consent of the general population, whereas the imprisonment of Daw Aung San Suu Kyi appears to be unpopular among the Burmese. Replying to a further query, she said that she has not visited Burma as she has never been invited.

Senator Enrile informed the Body that he had been to Burma several times but he could not conclude that the Burmese are unhappy with their government. On the contrary, he noted that the Burmese are even better off than the Filipinos. Senator Defensor Santiago believed that the impression that the imprisonment of Aung San is not popular with the Burmese population is not mere fiction as it is supported by several media accounts and that, in fact, many books have been written and movies produced about her life.

Senator Enrile cautioned the Body against taking a position on such matters as it should balance the interests of the Philippines against certain other considerations. He observed that the Burmese system of government might not jibe with the Filipino idea of a democratic government but it cannot be

concluded that the more than 40 million people living in Myanmar are really against their government, particularly since there has been no indication of unrest in Yangon and other major cities. He disclosed that, precisely, the name of the country was changed to Myanmar as "Burma" referred only to a tribe in the country.

Senator Defensor Santiago stressed, however, that she had personally viewed materials from the Internet and cable television depicting police brutality against supporters of Aung San Suu Kyi as well as interview clips of the Burmese opposition leader denouncing the military government for having kept the country under military rule for decades.

Senator Enrile argued that if the Members would base their decision on video tapes, other countries could use the same against the Philippines because they have also seen video footages of farmers being massacred and striking workers beaten up during demonstrations. Senator Defensor Santiago clarified that she was not standing on the credibility of video tapes but on the processes of reason and logic after viewing those footages. She disclosed that the Prime Minister of Burma, a former military general, himself admitted to President Macapagal Arroyo that an armed insurgency movement still exists in Burma.

Asked if the same yardstick should be applied to Singapore which does not allow strikes or to Malaysia which violates the rights of migrant workers or to the Philippines which detains a former president and denies his access to media, Senator Defensor Santiago maintained that the issue goes to the very core of human rights law which is now an accepted part of international law.

To the query why the Philippines should interfere with the internal problem of Myanmar at the expense of the former's national interest, Senator Defensor Santiago posited that such argument was valid 50 or 70 years ago when the state system first established itself on the principle of sovereignty which forbids any State to interfere in any manner or form in the internal domestic affairs of another State. She explained that this principle of non-interference made for an orderly international community. However, she said, leaders of the international community have realized that when the government itself is the persecutor, the people of that country no longer have any remedy, so little by

little, people began to accept the idea that if only to uphold the dignity of a human being, a State whose government is accused of persecution of its own people should be subject to the jurisdiction of the international community in such form as public opinion, arbitration or a court of justice.

Moreover, Senator Defensor Santiago pointed out that international covenants on civil and political rights would have no meaning if states insist on keeping silent in the face of violations of human rights. She recalled the dictum of an American hero that "for evil to triumph, it is sufficient that good men do nothing." She explained that the resolution urges the Senate and the entire Philippine government to do something, even if only to express its disapproval of an administration which insists on detaining a Nobel peace laureate incommunicado for the past 15 years.

Senator Enrile pointed out that the UN Covenant on Human Rights is the anchor of the international human rights law, yet the UN has not done anything about the supposed authoritarian government in Myanmar. He asked why the Philippines, which has no economic, political or military muscle, should now interfere in the affairs of a fellow member in the UN and Asean. He stressed that he was protecting the national interest of the Philippines which might be injured if it got involved in something beyond its capability to handle.

Senator Defensor Santiago recalled that there was spirited debate among the ASEAN members when Myanmar first applied for membership. Eventually, she said, the argument of "constructive engagement" prevailed among the members that if Myanmar would become a member of ASEAN, a dialogue could be initiated which might culminate in a more liberal regime in that country but after seven years, she noted, it was apparent that said policy has failed. Moreover, she informed the Body that the UN Secretary General, who was designated special envoy to Myanmar, was prevented by the military junta from returning to the country after the initial meeting.

Senator Enrile pointed out that, precisely, the issue of human rights was used by the superpowers to interfere in the affairs of other countries with insurgency problems like the Philippines which, in fact, resisted such attempts. He asked if the Philippines would allow such interference should

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the resolution be passed. Senator Defensor Santiago believed that the adoption of the resolution would mean that the Philippines is enhancing its advocacy of international human rights law and would be obligated to accept inspection teams from the international community should another dictator assume power in the country.

Senator Enrile argued that the Filipinos could unseat another dictator through people power. He urged the Body to think very carefully about passing the resolution as it is two-bladed.

### INTERPELLATION OF SENATOR BIAZON

Replying to Senator Biazon's query, Senator Defensor Santiago stated that the Asean Summit would resolve the Myanmar issue but some consensus should be reached on the ministerial level.

Senator Biazon noted that the members of ASEAN including Myanmar, Cambodia and Laos affirmed that the Treaty of Amity and Cooperation should govern the relationship among members. He said that the treaty adheres to the principles of mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; the right of every State to be free from external interference, subversion or coercion; non-interference in the internal affairs of one another; peaceful settlement of differences; renunciation of the use of force or threat; and effective cooperation among members. He asked how the Body should deal with this treaty should the resolution be adopted. Senator Defensor Santiago replied that opposition to the present human rights practices in Myanmar is mounting such that supporters of Aung San now prefer to call the country by its former name. She said that 16 activist groups have sent a joint letter to leaders of ASEAN countries demanding that Myanmar be disqualified as the next ASEAN chair.

Citing an article from the Internet, Senator Defensor Santiago stated that these groups have sent a joint letter to ASEAN leaders warning that the credibility of the ASEAN would be threatened if Myanmar assumes the ASEAN chairmanship because of the military junta's track record on human rights violations, economic mismanagement and sanctioned drug production. Acknowledging that Myanmar is considered as one of the fastest growing economies in the region, she

pointed out, however, that it is unknown where it sources its economic growth, one of which, as alleged, is drug production. She added that the website also revealed that Myanmar's pledges to the ASEAN to carry out economic and political reforms have been broken.

Moreover, Senator Defensor Santiago pointed out that another article on the DVB website states that "ASEAN should deny Myanmar its chairmanship in 2006 if the military-run State fails to show tangible proof that it is moving towards democracy... ASEAN's 'constructive engagement' policy with its member has failed and Myanmar has become a liability" to ASEAN. Further, she stated that the same article quoted Lim Kit Siang, Malaysia's opposition leader, who told a gathering of ASEAN lawmakers and diplomats that "if there is no tangible progress in Myanmar, then the rotation of ASEAN chair in 2006 should be denied." She noted that the same article reported that Jon Ungphakorn, a Thai senator, told the AFP "Unless there is a clear direction for progress and time-frame ... the ultimate measure that can be taken is expelling Myanmar."

In contrast, Senator Defensor Santiago said that the resolution does not call for any action but merely expresses the sense of the Senate; in effect, it leaves to the military junta in Myanmar the decision on how it can waive the ASEAN chairmanship in 2006. She emphasized that the resolution uses a language that can be interpreted as a friendly wake-up call to Myanmar. At this point, she adverted to the statements of Burmese activist Aung Naing Oo who suggested that ASEAN's postponement of Myanmar's chairmanship could be a means to press for change; and Asda Jayanama, Thailand's former permanent representative to the UN, who believed that the ASEAN had been "spineless" in its dealings with Myanmar whose "activities such as forced labor and the use of children for soldiers were hurting ASEAN's image," that if Myanmar insists on taking the chairmanship without making any reforms, ASEAN's dialogue partners such as the U.S. and the E.U. may not attend future meetings. She stated that one should read between the lines because the failure of the U.S. and E.U. to attend the meetings might actually translate into retaliatory measures against ASEAN. On the other hand, she pointed out that Ajit Singh, former ASEAN Secretary General, cautioned against any tough approach to Yangon since "it won't work just to lock them up."



Senator Defensor Santiago stated that according to an article downloaded from the Internet, Senator Pimentel reported that the position on the deferment of Myanmar's chairmanship of ASEAN was adopted by six of the ten member-countries of ASEAN during the Workshop of ASEAN Parliamentarians on the Myanmar Issue in November 2004.

As regards the Treaty of Amity and Cooperation in Southeast Asia, Senator Defensor Santiago said that almost 30 years have passed since it was signed at the first ASEAN Summit in 1976. She said that 30 years in international law could be an eternity since international law has two sources: international customary law which takes a long time to develop; and international conventional law which could change the paradigm of international law overnight. She said that no international human rights law was recognized at the time the treaty was signed; since then, the international community has accepted a new field called "international human rights law." Therefore, she said, the principles enumerated by Senator Biazon need to be qualified by appropriate clauses from said law.

Senator Biazon said that the Bali Concord II signed by 10 heads of states, including President Macapagal Arroyo, on October 7, 2003, reiterates that the Treaty of Amity and Cooperation in Southeast Asia (TAC) is an effective code of conduct for relations among governments and people. He said that it has been instrumental in the promotion of peace and stability among member-states within the region.

Asked whether the principles of Bali Concord II still prevail, Senator Defensor Santiago clarified that the ASEAN Workshop made the latest pronouncement in the area of international human rights law in Southeast Asia.

Senator Biazon stated that the structure for effecting international relations differs for each country. He posited that in the Philippines, the President is the architect of foreign policies; however, she shares power with the Senate, which is mandated to ratify any international treaties.

Asked if the ASEAN Workshop was on the same level as Bali Concord II, Senator Defensor Santiago explained that the international law is not a codified set of rules, unlike domestic law. She

explained that international law is a process that goes on all the time, hence, the weight of the statement of one group cannot be compared with the weight of a contrary statement of another group on the basis of the positions taken by each group. She stated that if, for instance, 200 countries come together and sign an agreement that is eventually ratified, each signatory becomes a state-party to a certain convention, thereby establishing overnight an international law. As regards customary law, she explained that it is not a document on which representatives affix their signatures; instead, a country complies with three requirements, to wit: 1) practice — it is practiced not only in terms of individual human conduct but also in the form of enunciations, declarations, manifestations and other statements similar to what the ASEAN Workshop issued; 2) international custom — it must be repeated overtime to develop into international customary law; and 3) *opinio juris* or the general conviction and belief of the world as exemplified by community leaders that the practice is not only legal, it must also be moral.

Senator Defensor Santiago stated that like the resolution, the statement issued by the ASEAN Workshop over a long period of time would comply with the requirement of repetition. She said that if the declaration of the Bali Concord II is not constantly repeated over a period of time, it would be disqualified as a basis for international law regardless of the high standing of those who signed it. She said that the Bali Concord II declaration is only one out of many statements contemplated by the process of international law but it cannot be authoritative.

Asked on the purpose of the resolution, Senator Defensor Santiago stated that it is to meet a criterion that before a principle can become an international customary law, it must first be practiced. She said that the resolution would be adding another layer of practice to existing practices in the hope that at some point in the immediate future, the proper proportionate number of practices shall be reached. She added that the Body would also be supporting the President, as the sole spokesperson on foreign relations, who has taken the position that Aung San Suu Kyi should be freed and the opposition party should be allowed to participate in the political process of Myanmar. Furthermore, she posited that a united stand on the issue is an input into the third criterion — *opinio juris*.

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Senator Biazon asked what would happen in case there is a difference in the position of the President, on the one hand, and the Senate, on the other. Senator Defensor Santiago explained that although it is accepted in political science that the President has the sole power to conduct foreign relations, in most political systems including that of the Philippines, the Congress or an entity other than the executive branch has the power to ratify a convention. She said that since Congress has the power over all public monies and documents of international law involve either spending or receipt of money, it is only proper that Congress be given the opportunity to either concur in or reject the President's decision to support initiatives for any international agreement or conference. She said that the resolution, however, does not involve the disbursement of funds.

#### INTERPELLATION OF SENATOR ANGARA

At the outset, Senator Angara said that he shares the sentiment of Senator Defensor Santiago that ASEAN and the whole world should proclaim that Aung San Suu Kyi should be set free because she is the head of the Opposition and the popularly elected leader of Myanmar.

Asked whether the resolution could instead call on the ruling military junta of Myanmar to set free Aung San, Senator Defensor Santiago pointed out that this would mean the resolution, in effect, would be dealing with her detention in particular and human rights law in general. Senator Angara observed that while every member condemns any violations of human rights, it is another matter when the issue affects the internal affairs of another country, in which case, the Senate might indeed be treading on dangerous grounds. However, he asserted that in view of the clamor of the international community and in keeping with Filipino tradition, it would be good for the Senate to pass a resolution calling for the release of Aung San from detention as it is a violation of her human rights.

Senator Defensor Santiago asked whether Senator Angara was proposing that the resolution no longer mention the chairmanship of Myanmar of ASEAN in 2006. She said that she was a little uncomfortable about the proposal because Senator Pimentel himself advocated the issue in a privilege speech and he might object to a reformatted resolution.

Senator Angara agreed to await the arrival of Senator Pimentel as he believed that the resolution is not a matter of life and death that has to be passed this week. Senator Defensor Santiago expressed hope that the discussions would be finished that day. However, she said that she would accede to a suspension of the consideration of the resolution to find out whether the Opposition have a united position or whether the interpellators were speaking only in their individual capacity. Senator Angara stated that he was speaking only in his personal capacity; however, he expressed hope that the Body could act as one.

Asked whether the Bali Concord II is perfectly in tune with the principle enunciated in Section 2, Article II of the Constitution, Senator Defensor Santiago said that it is, in general terms. However, she pointed out that every rule has its own exception, and this time the government should decide whether to face retaliation or vindictory measures afterwards. She expressed the belief that no amount of trade could compensate for the loss of dignity of even only one individual.

Senator Angara stated that there would be no great loss of trade between the Philippines and Myanmar. He said that as a former president of the ASEAN Law Association, he learned that the moving spirit within the ASEAN community had always been the spirit of consensus, amity, and cooperation and no country decides on its own but with the rest. He opined that this might be the reason why decision-making has been slow, yet the decisions, once reached, are firm.

Senator Defensor Santiago explained that the resolution does not seek to engage Myanmar in a tussle, but merely makes a suggestion. Senator Angara stated that while the widespread movement for respect for human rights should always be supported, the Philippines should also take into consideration its external relations relative to the principle of independence of foreign policy as enunciated in Section 7, Article II of the Constitution.

As regards the right to self-determination which summarizes the spirit of said constitutional provision, Senator Defensor Santiago said that even if Myanmar asks that it be left alone to determine its own destiny and insists that the freedom of Aung San Suu Kyi is a matter best left to the will of the

Burmese people, the question is to ascertain the will of the Burmese people.

Senator Defensor Santiago stated that "freedom of self-determination" is a term that came into use only immediately after the colonial period when former colonial states like the Philippines began to urge powerful developed states to abide by the rule of conduct that a former colony should be allowed to determine its fate as an independent state. When no colonial relationship is involved, she said, self-determination is an irrelevant concept. Since there is no colonial relationship between Burma and Great Britain, she believed that there would be no violation of the principle of freedom of self-determination as well as of the other principles because the Senate is expressing its sentiment as politely and as diplomatically as it could in trying to gain a goal which is laudable from the standpoint not only of ASEAN but also of the whole international community.

Senator Angara said that he has no reservation on passing a resolution echoing the sentiment of the Burmese people considering that Aung San has been unjustly detained and had been duly elected as leader of her country. However, he wondered if it is the best form of engagement to prevent Myanmar's chairmanship of ASEAN which is the forum where the sentiments of the Burmese people could be heard. Senator Defensor Santiago replied that the statement that "constructive engagement is the best policy to pursue" became valid only when Myanmar was admitted into ASEAN. Today, she said, experts agree that the policy of constructive engagement with respect to Myanmar seemed to have failed because after so many years, there has been no change in the human rights records of that country. She believed that the resolution is still a peaceful means, a call on Myanmar to waive the ASEAN chairmanship because its insistence on occupying the chairmanship despite the opposition of a majority of the members of ASEAN would be provoking a diplomatic impasse. Despite predictions that denying Myanmar the chairmanship might provoke the military junta into taking some form of more violent action against its critics within its territorial boundaries, she believed that there would always be merit in attempting something for the first time, the result of which shall speak for itself.

At this point, Senator Defensor Santiago said she would have to confer with Senator Pimentel on the subjects to be covered by the resolution since

the Committee on Foreign Relations was merely assigned to discuss his privilege speech on Myanmar's chairmanship of the ASEAN in 2006.

#### **SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 191**

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the resolution.

#### **MANIFESTATION OF SENATOR DEFENSOR SANTIAGO**

Senator Defensor Santiago sought leave to sponsor the RP-EU resolution in the next session.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 5:18 p.m.*

#### **RESUMPTION OF SESSION**

At 5:21 p.m., the session was resumed.

#### **COAUTHOR**

Senator Biazon manifested that Senator Ejercito Estrada (L) is coauthor of Senate Bill No. 1286.

#### **COMMITTEE REPORT NO. 7 ON SENATE BILL 1862**

*(Continuation)*

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1862 (Committee Report No. 7), entitled

**AN ACT PRESCRIBING A FIXED TERM OF OFFICE FOR THE CHIEF OF STAFF AND THE MAJOR SERVICE COMMANDERS OF THE ARMED FORCES OF THE PHILIPPINES (AFP) AND FOR OTHER PURPOSES.**

Senator Pangilinan stated that the parliamentary status was still the period of amendments.

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

**WORKING DRAFT**

The Chair manifested that the basis of the discussion would be the February 28 version of the bill.

**BIAZON AMENDMENT**

On page 2, lines 9 to 13, as proposed by Senator Biazon, there being no objection, the Body approved the deletion of the phrase "That the officer appointed as Chief of Staff of the AFP shall remain in office unless sooner removed for LOSS OF CONFIDENCE by the President, and, *Provided further.*"

**ENRILE AMENDMENTS**

As proposed by Senator Enrile and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

1. On page 2, delete Section 3. *Rules and Regulations* on lines 18 to 20; and
2. Renumber the subsequent sections accordingly.

**BIAZON AMENDMENT**

Still on page 2, as proposed by Senator Biazon, there being no objection, the Body approved the deletion of the first sentence of Section 4 on lines 21 to 23.

**DRILON AMENDMENT**

On page 2, line 24, as proposed by Senate President Drilon and accepted by the Sponsor, there being no objection, the Body approved the deletion of the word "other," as a matter of style.

**DEFENSOR SANTIAGO AMENDMENTS**

As proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

1. On page 1, line 4, between the acronym "(AFP)" and the period (.), insert the clause AND TO PROMOTE THE

**STABILITY OF THE INSTITUTION OF THE AFP;**

Senator Defensor Santiago posited that the deleted provision on lines 3 to 6 of page 2, "The term shall commence on the date of appointment by the President. No extension shall be allowed, except for the position of the Chief of Staff, which may be extended in cases of war or national emergencies as declared by Congress," reflects what is mandated in Article XVI, Section 5 (7) of the Constitution that, "The tour of duty of the Chief of Staff of the armed forces shall not exceed three years. However, in times of war or other national emergency declared by the Congress, the President may extend such tour of duty." She stated that the retention of the provision would avoid any confusion as to the intention of the proposed Act which is to limit the term of office of the Chief of Staff to three years, unless extended by the President in times or war or other national emergency as declared by Congress.

2. Restore lines 4 to 6 of page 2 as the fourth paragraph of Section 2, to wit:

NO EXTENSION OF TERM SHALL BE ALLOWED EXCEPT THAT IN CASES OF WAR OR NATIONAL EMERGENCIES AS DECLARED BY CONGRESS, THE PRESIDENT MAY EXTEND SUCH TERM.

**SUSPENSION OF SESSION**

Upon motion of Senator Gordon, the session was suspended.

*It was 5:35 p.m.*

**RESUMPTION OF SESSION**

At 5:39 p.m., the session was resumed.

**GORDON AMENDMENT**

On page 1, line 17, after the word "CONFIDENCE," Senator Gordon proposed the insertion of the phrase AS DETERMINED SOLELY BY THE PRESIDENT.

Senator Arroyo proposed the deletion of the proviso on lines 15 to 18 because it puts a condition that even the Constitution does not provide. Under

the Constitution, he pointed out, the President can remove the Chief of Staff anytime.

The Chair stated that if lines 15 to 18 were deleted, the term of the Chief of Staff would be fixed to three years and he could not be removed before the end of his term. Precisely, it pointed out, lines 15 to 17 would allow the removal for loss of confidence to be determined solely by the President.

Senator Arroyo said that the provision should simply state that "the Chief of Staff shall be removed by the President anytime." But Senator Gordon pointed out that Senator Arroyo's proposed amendment would practically defeat the purpose of having a fixed term for the Chief of Staff.

Senator Biazon recalled that the Goldwater-Nichols Act provides a term of office of four years for the Chairman of the Joints Chief of Staff.

Accepted by the Sponsor, there being no objection, the Body approved the Gordon amendment.

#### **TERMINATION OF THE PERIOD OF INDIVIDUAL AMENDMENTS**

There being no other individual amendment, upon motion of Senator Pangilinan, there being no objection, the Body closed the period of individual amendments.

#### **APPROVAL OF SENATE BILL NO. 1862 ON SECOND READING**

Submitted to a vote, and with the majority of the senators voting in favor and one against, Senate Bill No. 1862 was approved on Second Reading.

Senator Arroyo manifested a negative vote.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1862**

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

#### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 5:46 p.m.*

#### **RESUMPTION OF SESSION**

At 5:46 p.m., the session was resumed.

#### **SECOND ADDITIONAL REFERENCE OF BUSINESS**

The Deputy Secretary for Legislation read Committee Report No. 14 which the Chair referred to the Calendar for Ordinary Business:

Committee Report No. 14, prepared and submitted by the Committee on Banks, Financial Institutions and Currencies on Senate Bill No. 1943 with Senators Serge Osmeña, Angara and the members of the Committee as authors thereof, entitled

AN ACT AMENDING REPUBLIC ACT NUMBERED SEVENTY-SIX HUNDRED AND FIFTY-THREE ENTITLED "THE NEW CENTRAL BANK ACT" AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill Nos. 557 and 1822.

Sponsors: Senators Angara and Enrile

**To the Calendar for Ordinary Business**

#### **CHANGE OF REFERRAL**

Upon motion of Senator Pangilinan, there being no objection, the Chair referred Senate Bill No. 1825 to the Committee on Tourism as the primary committee, and to the Committee on Games, Amusement and Sports as the secondary committee.

#### **REFERRAL OF SPEECHES**

Senator Pangilinan manifested that Senator Lacson had withdrawn his reservation to interpellate Senator Defensor Santiago on her privilege speech on the Cavite Coastal Road project.

In view thereof, upon motion of Senator Pangilinan, there being no objection, the Chair referred Senator Defensor Santiago's speech to the Committee on Government Corporations and Public Enterprises as the primary committee, and the Committee on Accountability of Public Officers and Investigations as the secondary committee. ✓

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On another matter, Senator Pangilinan stated that the reservations to interpellate Senator Defensor Santiago on her privilege speech entitled "Illegal Logging," which was delivered on January 31, 2005, had been withdrawn.

Thereafter, upon motion of Senator Pangilinan, there being no objection, the Chair referred Senator Defensor Santiago's speech to the Committee on Environment and Natural Resources.

#### MANIFESTATION OF SENATOR PANGILINAN


Senator Pangilinan manifested that Senator Ejercito Estrada (J) would take the floor on a matter of personal privilege on Monday.

#### • ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until two-thirty in the afternoon of Monday, March 7, 2005.

*It was 5:49 p.m.*

I hereby certify to the correctness of the foregoing.

  
OSCAR G. YABES  
Secretary of the Senate  
*HS / by* *Elu* *↑*

Approved on March 7, 2005