



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 69

Wednesday, March 9, 2005

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 69
Wednesday, March 9, 2005

CALL TO ORDER

At 3:31 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

DEFERMENT OF ROLL CALL

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the roll call to a later hour.

PRIVILEGE SPEECH OF SENATOR LIM

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

**WARRANTLESS ARREST,
THE NEED TO REVERT TO OLD CONCEPT
IN COMBATING CRIMES**

The dreadful terrorist attacks of 9-11 in New York and the ensuing similar assaults on the hapless and helpless victims worldwide including the Philippines, the latest of which being the ironic Valentine's Day bombing of common carriers that killed innocent civilians and wrought heavy damage to properties in this archipelago, continue to heat up everyone's fervor in enacting an anti-terrorism law. Among the salient features of the bill is the lawful use of warrantless arrests of terrorists. Warrantless arrest used to be an effective and swift tool to cripple and manacle criminals from inflicting further damage or injury to society or from escaping justice.

I recall that in the olden days when I was still with Manila's Finest, we could legally apprehend criminals without warrant by invoking Section 5, Rule 113, of the old Rules of Court which allows peace officers to lawfully arrest a person: "a) when the

person to be arrested has committed, is actually committing, or is about to commit an offense in his presence"; or "(b) when an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it."

However, such was no longer possible in the '80s because under the Rules of Criminal Procedure of 1985, a warrantless arrest was permissible only under the same Section 5, Rule 113.

Now, the rule is more stringent because under the 2000 Rules of Criminal Procedure, although paragraph (a) was retained verbatim, paragraph (b) was modified as follows: "(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it."

Indeed, in the original 1964 Rules of Court, under paragraph (a), Section 5, Rule 113, we could effect a warrantless arrest when victims came to us to complain that a crime was committed or is being committed without having to witness the commission of the offense. It was only when an offense was about to be committed that the same should be done in our presence and under paragraph (b), when we received complaints of the commission of an offense and believed that the person to be arrested has committed it. In other words, there was no personal presence required of us.

On the other hand, now, under paragraph (a), the offense must be committed, or is being committed or about to be committed in the presence of the peace officers. In *People vs. Chu*, 423 SCRA 170 and *People vs. Pendatun*, 434 SCRA 148, warrantless arrests were upheld because the offenses were committed in the presence of the policemen. Of course, these cases involved

buy-bust operations carried out by policemen. But in terrorism, there is no buy-bust operation that will enable our peace officers to gain access to the terrorists, thus, it is improbable for them to personally witness an actual terrorist act.

Under the present rule, therefore, our intelligence operations will be useless and worthless because no PNP nor AFP member can effect an arrest of a terrorist unless terrorist acts are committed in his presence. In this situation, peace officers will then have to wait for the explosion to occur before subduing the terrorists; otherwise, they will be sitting ducks during the clandestine attacks.

The same is true in paragraph (b) because, under the old rules, all that was needed to effect a warrantless arrest was for an offense to be committed and the peace officer has reasonable ground to believe that the person to be arrested has committed it.

On the other hand, under the present paragraph (b), it is necessary that the offense has just been committed and there is probable cause to believe, based on his personal knowledge of facts and circumstances, that the person to be arrested has committed it.

For one, because of the requirement that the act "has just been committed," it would be impossible to arrest a terrorist who keeps on hiding after committing acts of terrorism because, by the time he is arrested, the circumstance that the act "has just been committed" no longer subsists, thereby preventing the police from effecting his arrest.

Worse, the arresting officer must establish "probable cause" based on personal knowledge of facts before effecting a warrantless arrest. But how can he establish probable cause if he does not personally know the facts?

In fine, under this provision, it is impossible, nay, legally futile to lawfully effect a warrantless arrest.

In the meantime, terrorists can continue to roam the streets of the metropolis and strike with impunity because peace officers are unaware of the devastations and murders that they commit.

It is therefore appropriate that notwithstanding the current provisions of the Rules of Court of 2000 on warrantless arrests under paragraphs (a) and (b), Section 5, Rule 113, we should revive the provisions of the Rules of Court of 1964 under paragraphs (a) and (b), Section 5, Rule 113, on warrantless arrests under the proposed anti-terrorism law that we will enact to insure the effectiveness and success of our law enforcement agencies in implementing the law; to immediately put under control a possible terrorist situation before it gets out of control and spare our law enforcement agencies from harassment suits in the guise of questioning the validity of warrantless arrests that they will carry out.

CRIMES are not ACCIDENTS ... these are envisioned ... devised and orchestrated by EVIL and WICKED MINDS ... and they are not insane... but simply brutal and deadly. Never were they so DAUNTLESS... BOLD and DARING in committing crimes but only after the new DOCTRINES on WARRANTLESS ARREST. Beyond cavil... this is now the sanctuary of their vicious and heinous lawlessness.

Let us discard pretense. Not even the legislators could expect the trust of the citizenry in our laws... and their faith in our law enforcers has waned... dwindled... and still declining ... yet, we seem inclined to safeguard the rights of the felons... along with their systematic ruse... rather than the cry to avenge the AGGRIEVED, INNOCENT and HELPLESS victims.

In that golden era prior to 1985, the law enforcers commanded respect ... even from the criminals... criminals who intentionally avoided even the presence of a lowly cop in the vicinity of their wrongdoings ... because they knew and they expected that... after any crime, no matter what... they cannot escape being arrested... absent any warrant,

by virtue of Section 5(b) of Rule 113 of the amended 1964 Rules of Court, which states:

“x x x when an offense has in fact been committed and the law enforcer has reasonable ground to believe that the person to be arrested has committed it”.

WARRANTLESS ARREST under such situation was AUTHORIZED and thus, JUSTIFIED... not only for any law enforcement member but even for the civilians who were sanctioned under CITIZEN'S ARREST. The criminals then were ALWAYS within the reach of laws... anytime... anywhere... but not anymore since the advent of Section 5(b) of Rule 113 of the 1985 Revised Rules on Criminal Procedure. It is now mandated that such warrantless arrest is only VALID when the person to be arrested is actually committing or attempting to commit an offense or has just committed it and that the said person making the arrest has **“personal knowledge of the facts indicating that the person to be arrested had committed it”**.

What a painstakingly and impractical imposition on the lawmen... but it has to be obeyed... thus, a number of lawless elements are now scot-free... sneering at justice... deriding the system... and openly defying law enforcers. Personally, I know, experience-wise, that the present is no longer as conducive to criminal hunt and arrest as during our days... our time... when our hands were not tied... as today... to trail the villains of society... for as long as we could endure the rigors of follow-up... the risks of encounter... the pressure of the job. And we did not care about time, for as long as we can persevere and be consoled with the glory of having a captive or captives in manacles... to answer for his or their crimes. Today, cops are denied the right to readily neutralize these evils in our midst... to tail them as far as they can run to elude arrest, to place them behind bars at the soonest possible time. Lamentably, NOW... after a week has lapsed after the crime, the criminals are beyond reach of handcuffs... their crimes would be repulsed for inquest...

so criminals just wait outside jail... for the imperative filing of whatever charge/s will be lodged against them... thus, they will surface from hiding for a week or two... to rejoice in their freedom... freedom to molest victims again... to sow fear... to curtail peace in this society. What a waste of the opportunity to go after these criminals in our midst.

Look at what happened to our heinous and sensational crimes... just like in the ROLDAN-kidnapping case wherein the alleged suspect-mastermind, SUSAN WANG, is on the loose and could not be apprehended, unless a warrant for her arrest is issued... how many vicious criminals are still outside detention cell, despite killings, rape and other abominable crimes because of these legal impositions and technicalities... which deter the expeditious solutions of cases...speedy dispatch of arrests and compelling incarceration behind bars of notorious felons. No doubt, the present system is flawed, hence, it is abused by these criminals as the legitimate tool to commit crimes... and at times to evade conviction and gain acquittal in court... all because of the well-scripted defense of UNLAWFUL warrantless arrest. No wonder ... we cannot rekindle the eroding faith of even the common man in our heralded law, order and justice. These shall remain strangers in our system for as long as we do not revert to our old but effective doctrines.

So we must act... not later, but now. Let us restore those days when a law enforcer is sanctioned by the rules to effect valid arrest... predicated on “reasonable ground to believe that the person to be arrested had committed the offense.” Let us not be hostile with its antagonism, that it will enhance police abuse... corruption... or brutality. Such is not general but occasional happenstance... it can be forestalled... it can be deterred... and stopped. Our subservience must not belong to the masked rights of the criminals but to the loud clamor for justice... and a speedy one... for our INNOCENT VICTIMS of crimes... we cannot afford to remain deaf... at the expense of effective CRIME CONTROL

and CRIME SUPPRESSION if not total CRIME ERADICATION. So... without let-up... without delay... let us revert to that old fashioned but proven effective WARRANTLESS ARREST of fugitives and criminals... NOT tomorrow or some other time. It must be NOW with the passage of my bill.

By the way, no less than the honorable SUPREME COURT explained the rationale behind lawful arrest without warrant in the case of *People vs. Malasugui*, 63 Phil. 221, in the following tenor:

“ To hold that no criminal can, in any case, be arrested and searched without a warrant would be to leave society to a large extent at the MERCY OF THE SHREWDEST, the most EXPERT and the most DEPRAVED of criminals, facilitating their escape in many instances.”

I guess this sagacious behest of our HIGHEST TRIBUNAL is compelling our concurrence to my bill... for the best interest of our people.

Last January 10, 2005, we filed Senate Bill No. 1879 on warrantless arrest. We are requesting the Chairman of the Committee on Public Order and Illegal Drugs to please schedule the committee hearing on this bill in the interest of peace and order.

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.
Defensor Santiago, M.	Lim, A. S.
Drilon, F. M.	Magsaysay Jr., R. B.
Ejercito Estrada, J.	Pangilinan, F. N.
Ejercito Estrada, L. L. P.	Pimentel Jr., A. Q.
Enrile, J. P.	Recto, R. G.
Flavier, J. M.	Revilla Jr., R. B.
Gordon, R. J.	Villar Jr., M. B.

With 18 senators present, the Chair declared the presence of a quorum.

Senators Cayetano, Madrigal, Osmeña and Roxas arrived after the roll call.

Senators Angara and Osmeña were earlier inside the Session Hall before the roll call was made.

REFERRAL OF SPEECH

There being no reservations for interpellation, upon motion of Senator Pangilinan, there being no objection, the Chair referred Senator Lim's speech to the Committee on Public Order and Illegal Drugs.

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. 1952, entitled

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

Introduced by Senators Enrile, M. A. Madrigal and Ramon "Bong" Revilla Jr.

To the Committee on Justice and Human Rights

Senate Bill No. 1953, entitled

AN ACT TO REHABILITATE AND REFORM PRISONERS THROUGH PRISON WORK AND ALLOW THE PRODUCTIVE ENGAGEMENT OF QUALIFIED PRISONERS IN REFORESTATION, INFRASTRUCTURE, AND GOVERNMENT PROJECTS

Introduced by Senator Gordon

To the Committees on Justice and Human Rights; and Finance

Senate Bill No. 1954, entitled

AN ACT INSTITUTING REFORMS IN OUR JUVENILE JUSTICE SYSTEM CREATING FOR THAT PURPOSE THE OFFICE OF JUVENILE JUSTICE

AND DELINQUENCY PREVENTION, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Introduced by Senator Angara

To the Committees on Justice and Human Rights; Youth, Women and Family Relations; and Finance

RESOLUTIONS

Proposed Senate Resolution No. 206, entitled

RESOLUTION DIRECTING THE COMMITTEE ON CULTURAL COMMUNITIES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE WELL BEING OF THE INDIGENOUS PEOPLES IN OCCIDENTAL MINDORO, AND THE ENFORCEMENT OF THEIR RIGHTS ON THEIR ANCESTRAL DOMAIN, IN THE LIGHT OF ALLEGED ILLEGAL AND ABUSIVE MINING OPERATIONS IN THE PROVINCE, WITH THE END IN VIEW OF RECOMMENDING REMEDIAL LEGISLATION THEREIN

Introduced by Senator M.A. Madrigal

To the Committees on Cultural Communities; and Environment and Natural Resources

Proposed Senate Resolution No. 207, entitled

RESOLUTION DIRECTING THE JOINT CONGRESSIONAL OVERSIGHT COMMITTEE ON THE CHAINSAW ACT TO CONVENE

Introduced by Senator M.A. Madrigal

To the Committee on Rules

Proposed Senate Resolution No. 208, entitled

RESOLUTION CALLING FOR AN INVESTIGATION, IN AID OF LEGISLATION, TO EXAMINE THE GOVERNMENT'S EFFORTS TO

GRANT THE BENEFITS DUE TO OUR WORLD WAR II VETERANS AND TO EXPLORE WAYS AND MEANS TO PROVIDE FOR THE SAME

Introduced by Senator Gordon

To the Committees on National Defense and Security; and Finance

Proposed Senate Resolution No. 209, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON AGRICULTURE AND FOOD TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE GOVERNMENT'S PREPAREDNESS FOR POSSIBLE DROUGHT CONDITIONS IN NORTHERN LUZON AND SOME AREAS OF THE VISAYAS IN THE COMING MONTHS DUE TO THE EL NIÑO PHENOMENON, WITH THE END VIEW OF RECOMMENDING POLICY MEASURES TO MITIGATE THE EL NIÑO'S DISASTROUS EFFECTS

Introduced by Senator Villar Jr.

To the Committees on Agriculture and Food; and Environment and Natural Resources

COMMUNICATION

Letter from Acting Secretary Jose S. Brillantes of the Department of Foreign Affairs, submitting to the Senate a copy of Report to Congress covering the period January to June 2004, pursuant to Section 33 of Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995).

To the Committees on Labor, Employment and Human Resources Development; and Foreign Relations

APPROVAL OF THE JOURNAL AS CORRECTED

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 68 and considered it

Handwritten initials and a star symbol at the bottom right of the page.

approved subject to the correction made by Senator Lapid on page 731, under the caption ROLL CALL, to reflect that he responded to the roll call.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 3:53 p.m.

RESUMPTION OF SESSION

At 3:53 p.m., the session was resumed.

RECONSIDERATION OF THE APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body reconsidered the approval of the Journal of Session No. 68.

APPROVAL OF THE JOURNAL AS CORRECTED

Upon motion of Senator Pangilinan, there being no objection, the Body approved the Journal of Session No. 68 subject to the correction made by Senator Pangilinan on page 731, under the caption ROLL CALL, to reflect that Senators Lacson and Lim, who were on official mission, also arrived after the roll call.

PROPOSED SENATE RESOLUTION NO. 194

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Resolution No. 194, entitled

RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT THE PHILIPPINES SHOULD GIVE NEW IMPETUS TO ITS ECONOMIC RELATIONS WITH THE EUROPEAN UNION AND ITS MEMBER STATES, IN PARTICULAR IN THE POLITICAL AND ECONOMIC AREAS, AND TO STUDY FOR THAT PURPOSE THE POSSIBILITY OF FORMALIZING IN AN APPROPRIATE FORM THE RELATIONS BETWEEN THE EUROPEAN UNION AND THE PHILIPPINES.

Thereupon, the Chair recognized Senator Defensor Santiago for the sponsorship.

SPONSORSHIP SPEECH OF SENATOR DEFENSOR SANTIAGO

In sponsoring Proposed Senate Resolution No. 194, Senator Defensor Santiago delivered the following speech:

R.P.-E.U. RELATIONS IN 2005 AND BEYOND

Your Committee on Foreign Relations is humbly pleased to present this report recommending approval of Proposed Senate Resolution No. 194, entitled "Resolution Expressing the Sense of the Senate that the Philippines Should Give a New Impetus to its Economic Relations with the European Union and its Member States, in Particular in the Political and Economic Areas, and to Study for that Purpose the Possibility of Formalizing in an Appropriate Form the Relations Between the European Union and the Philippines."

This resolution on RP-EU relations seeks to obey the Constitution which provides in Article II, Section 7: "The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be national sovereignty, territorial integrity, national interest and the right to self-determination."

The respective meanings of national sovereignty, territorial integrity, national interest and the right to self-determination have always been clear. However, the definition of Philippine national interest reflects changing realities. At present, the government considers our national interest as consisting of the following factors:

- (1) The preservation and enhancement of national security;
- (2) The promotion and attainment of economic security through the mobilization of external resources for economic advancement and social development; and

(3) The protection of rights and the promotion of welfare and interests of Filipinos overseas.

Your Committee on Foreign Relations conducted public hearings on 8 and 22 of September 2004 where Secretary of Foreign Affairs Alberto Romulo, one DFA official representing the Office of American Affairs, and another DFA official representing the Office of European Affairs, served as resource persons. The purpose of the hearings was to determine whether the Philippines should give a new impetus to its relations with the European Union (EU) and its member-states, in particular, in the political and economic areas, and to study for that purpose the possibility of formalizing in an appropriate form the relations between the European Union and the Philippines.

We are told that there are eight national and international realities that the Philippines recognizes in the conduct of its foreign relations. These realities include geo-political-security considerations, socio-economic labor factors of the international environment as well as the domestic environment, and their continuing impact on each other. These realities are:

(1) That China, Japan, and the United States have a determining influence on the security situation and economic evolution of East Asia. I will not talk much about China and Japan today, some other time, but today I will talk about the United States;

(2) That more and more Philippine foreign policy decisions have to be made in the context of ASEAN;

(3) That the international Islamic community will become more and more important to the Philippines;

(4) That the coming years will see the redefinition of the role of multilateral and inter-regional organizations in promoting common interests: Organizations like the UN, the WTO, APEC, ASEM, ASEAN;

(5) That the defense of national sovereignty, the protection of its environ-

ment and natural resources can be called out only to the extent that we get others to respect our rights over our maritime territory;

(6) That the country's economic growth will continue to require direct foreign investment;

(7) That a country like the Philippines can benefit most quickly from international tourism; and

(8) That Filipinos overseas will continue to play a critical role in the country's economic and social stability.

These realities reflect the international environment in which we live. It can be acknowledged that our foreign policy has kept abreast with the changing world.

The world that we inhabit has been fundamentally altered by the end of the Cold War which saw the disintegration of the Soviet Union and the emergence of the United States as the only superpower.

It was predicted at that time that the bipolar world that was the Cold War period would be replaced by a multipolar world. This prediction has still to become a reality. But the world seems to be going there.

We have recently been reminded by the U.S. invasion of Iraq that the U.S. is the only remaining superpower. It may or may not be our fortune that this superpower has been a security ally and leading trade and economic partner of the Philippines. It may arguably be in our common interest to have joined the international "Coalition of the Willing." But as the Angelo dela Cruz case would show, our national interests do not always necessarily coincide with U.S. foreign policy.

Reason and practicality dictate that it makes no sense in foreign relations to rely on the friendship of one power alone. It is to our long-term advantage to prepare ourselves for life in a multipolar world and if we can, to help bring it about. More poles

of power are emerging. One is China. I commend the attention that we are now giving to our relations with China and the direction in which these relations are going. The other emerging power is the EU which grows stronger by its increasing integration and enlargement extending to the Baltic and Eastern European states that were once part of the Soviet sphere of influence. The EU has been one of the success stories of the 20th century. By pooling their national sovereignties and transferring limited power to common institutions, the countries of the EU created opportunities for growth and secured peace between long-time rivals on a continent which was the center stage of two world wars. The European model of integration has inspired other regions throughout the world, such as our own ASEAN, to intensify functional cooperation and increase the coordination of national policies.

In the 21st century, it is likely that we will see a steady transformation of the world order. More regional associations may approximate the likeness and functions of the EU. A world of powerful regional entities will be formed, creating a tripartite balance between America, Europe and Asia. Thus, we need to engage our friends from Europe more comprehensively, and more strategically, in our country's development thrusts.

The EU now comprises 25 countries with a total population of roughly 455 million. The EU today is the biggest single economic leader in the world, with its international trade relations accounting for twenty percent (20%) of global imports and exports. It is therefore a significant economic factor in its own right on account of its sheer size in economic, trade, and financial terms, and its progressive adoption of a Common Foreign and Security Policy (CFSP). It is also an international factor that has built a web of bilateral and multilateral agreements covering most countries and regions of the globe.

What can the EU offer the Philippines? You might be surprised that the EU has mattered more and more to the Philippines.

The EU is the country's third largest export market. Total Philippine trade with the EU in 2003 amounted to \$8.8 billion, with export at \$5.8 billion, and imports at \$3 billion. The balance of trade was in favor of the Philippines by \$2.868 billion. It is also the number one source of foreign direct investments in the Philippines, even more than the U.S. and Japan. In 2003, the EU was the top source of Official Development Assistance (ODA) grant commitments to the Philippines.

The EU is home to approximately 470,000 to 500,000 overseas Filipino workers in critical service sectors such as healthcare and nursing, education, information technology; food, restaurant and hotel industries; construction; tourism; retail; business; domestic health and engineering. Their employment abroad directly and significantly contributes to the Philippine economy through their remittances. Conversely, the services rendered by our Filipinos have proved beneficial to our countries. Notably, our country's formal relations with the EU have thrived over the years through participation in various multilateral dialogues and implementation of trade-related projects and development assistance programs in 2003.

Philippine economic growth and development continue to require foreign direct investments from outside sources, and from a robust trade partnership with other countries. Our traditional partners and our traditional commercial business activities have to be retuned, refined, and expanded. Business opportunities with the EU are now tapped not only by the Philippine businessmen, but by their own competitors from other ASEAN countries. Unfortunately, many of our partners in ASEAN have been more successful compared to the Philippines in promoting their trade transactions, and attracting FDI from Europe. It is time for our businesses to review and reassess their strategies and courses of action to improve the commercial situation between the RP and the EU countries.

Substantial increases in Official Development Assistance flows from member-states and the EU are not very likely. Philippine

companies, which are less competitive than companies from other Asean countries, must take full advantage of EU schemes for promoting trade with Europe and European investments in the Philippines. The Philippine government must learn from the experiences of other ASEAN countries that have been more successful in increasing their exports to Europe and stimulating European investment in their countries. There are severe constraints to the access of Filipinos to high-skilled, high-paying jobs in Europe.

EU countries represent a huge area where a knowledge-based economy will demand highly skilled workers, both in the information and communications sector, as well in the traditional service sector of medical, health and allied services. With an aging European population and despite its recent enlargement in May 2004, it is expected that there will still remain a comfortable, though competition-filled, employment opportunity in the healthcare and information technology sectors. On the other hand, given a very young Philippine population and the need to provide employment to an ever-growing labor market, the government and Filipinos in general should carefully consider all these presented opportunities and thereby, plan and project their targets accordingly.

I hope I have presented the reasons why it is in our national interest to further develop our relations with the European Union. We must therefore first send a clear and strong message that we are determined to solidify Philippine-EU relations for greater European presence in the Philippines mutually beneficial cooperation.

The accompanying this resolution seeks to be that message and provide a new impetus to our relations with the EU.

REQUEST OF SENATOR DEFENSOR SANTIAGO

At this juncture, Senator Defensor Santiago said that she would wait for Senator Pangilinan to inform her when she should make herself available for interpellations on the three resolutions she sponsored,

namely, Proposed Resolution No. 191 (Burma), Proposed Resolution No. 194 (European Union) and Proposed Resolution No. 195 (framework convention); however, she requested that she be given at least a 24-hour notice so she could bring all her references.

Senator Pangilinan gave assurance that he would do so.

SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 194

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

COMMITTEE REPORT NO. 16 ON SENATE BILL NO. 1950

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1950 (Committee Report No. 16), entitled

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 108, 109, 110, 111, 112, 113, 116, 117, 118, 119, 125, 148, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Thereupon, the Chair recognized Senator Recto, Sponsor of the measure, and Senator Revilla for his interpellation.

INTERPELLATION OF SENATOR REVILLA

Initially, Senator Revilla congratulated Senator Recto for opposing the proposed 2% VAT rate increase as he believed that it is better to reduce VAT exemptions than to increase the VAT rate.

Asked to explain the concept of the VAT chain, Senator Recto replied that VAT is a consumption tax and "value-added" refers to the additional inputs on a product so that when a P1.00 leather becomes a P2.00 wallet, the added value is P1.00 from which a net value-added tax of 10% is collected.

Asked if the person who bears the full impact of the VAT is the last person in the VAT chain,

Senator Recto replied in the affirmative, saying it is the final consumer or the non-VAT registered person.

To the observation that lifting several exemptions would result in an increase in prices of goods and services, Senator Recto agreed as he maintained that a 10% increase is a better option than a 12% increase with the exemptions lifted.

Senator Revilla stated that he wanted to make it clear to the Filipino people that there would be tougher times ahead. Senator Recto asserted that it would even be tougher with a 12% rate increase and no reduction in the excise tax on petroleum and in the franchise tax on electricity. He explained that the VAT bill would make the collection of taxes more efficient, and it is taxation with a "heart."

As to the basis for selecting the items that are to be exempted and those that are to be subject to VAT, Senator Recto recalled that in his sponsorship speech, he asked why big industries like the petroleum and the power industries are exempted considering that in the VAT chain, these are the upstream industries from which the government earns its biggest collection; and why a small store with P550,000 gross sales is subject to VAT and is liable to remit 10% of its gross sales to the government, otherwise, it would be required to show proof it had VAT inputs or purchases. He observed that the foremost sectors in the VAT chain are the ones exempted. He cautioned that an efficient VAT system would not be realized unless the upstream industries are included in the VAT coverage.

Senator Recto maintained that when these sectors are subjected to VAT along with the others, an increase in the collection is expected, making the VAT chain efficient. By completing the chain, he posited that the present leakage of P100 billion to P140 billion would be reduced.

Noting the National Statistics Office data that 46% of the 14 million households earn less than P80,000 a year, Senator Revilla asked about the current daily minimum wage in Metro Manila. Senator Recto replied that he did not have the information at the moment; however, he averred that the daily wage earners would be the sector greatly affected by the increase in petroleum prices, more than any increase in electricity prices, because petroleum is widely used in the provinces. He pointed out that an

ordinary employee spends more on petroleum products than on electricity for which reason, the bill seeks to reduce the excise taxes on socially sensitive products like diesel, LPG and bunker fuel. To lessen the burden on minimum wage earners, he stressed that exemptions from VAT for these items are being proposed in the bill.

Asked if the Committee made a study on how much a minimum wage earner spends on basic necessities like food, shelter, clothing and utilities, Senator Recto bared that a working paper written by Kevin Fletcher on the expenditure pattern of the poorest 1% and the richest 1% showed that the former spends 64% of income on food, 1.1% on electricity; whereas, the latter spends only 19.8% on food and 3.6% on electricity. He explained that the rich spends more on electricity while the poor spends more on petroleum products. He said that he could provide Senator Revilla a copy of the report.

Asked how much money would be left to the average Filipino after all exemptions are lifted and VAT is imposed, Senator Recto replied that the government would take 41% of his savings and those who do not have any savings to begin with, would have a deficit.

Replying to further queries, Senator Recto said that a 10% to 12% VAT would increase the country's inflation rate four times, according to the Senate Economic Planning Office (SEPO) and NSCB.

Asked if the income of an average Filipino is enough to take in all price increases after the expansion of the VAT base, Senator Recto replied in the negative, as he pointed out that it is the sector that would be greatly affected, more so if a higher VAT is imposed.

On another matter, Senator Revilla asked on the accuracy of the figures relative to the projected increase in power rates. Senator Recto replied that the Committee has the same figures as that of the Department of Finance. He stated that according to the latest data, based on 10% VAT with the franchise tax already reduced, a 48-centavo increase in power rate is expected; under the DoF proposal, the power rate is expected to go up as high as P0.70 or P0.80.

Asked to explain the "no-pass on" provision, Senator Recto maintained that said provision is not

found in the bill as it may raise false hopes among the people.

Asked if there would be no impairment of contract as far as the IPP contracts with Napocor are concerned, Senator Recto asserted that there would be no impairment. Further, he affirmed that as provided for in the contracts, the Napocor shall bear the additional taxes as he pointed out that the bill seeks to take away all the tax-free privileges of Napocor. He explained that IPPs would be subject to VAT and Meralco or the electric cooperative would collect the charges from consumers and after retaining a portion thereof, they will pay the gencos or Napocor. He said that if the IPPs have VAT inputs, they can reduce these with their VAT outputs and pay net VAT to the BIR. He stated that it is possible Napocor would do all the accounting.

Asked if the Committee made a study of the effects of a power rate increase in case the ERC approved the petition of Napocor, Senator Recto replied that the matter was also considered by the Committee but it focused more on its primary concerns which are to raise revenues for the national government and to have an efficient VAT system without raising rates. Further, he said that none of the 125 countries implementing the VAT system have exempted the power or petroleum industries. He maintained that taxes should be levied on power to reflect its true cost.

Senator Revilla observed that subjecting Napocor to VAT would increase electricity prices by 14% in Luzon, P0.32 in Visayas and P0.22 in Mindanao; and a 10% VAT would also result in higher electricity prices for small power utilities – P0.70 in Luzon, P0.88 in the Visayas and P0.77 in Mindanao. He asked whether such increases were included in the projected increase in Napocor's generation charge as he stressed that the public should be made aware of how much power rates would increase with VAT. Senator Recto replied that on the average, power rates would go up by P0.48 nationwide.

Asked to confirm the accuracy of the figures on the projected increase in government revenues with the imposition of VAT on petroleum products, Senator Recto said that he has projections from both the Department of Finance and the Committee on Ways and Means, to wit:

	<i>At 10% increase</i>	<i>At 10%-12% increase</i>	<i>At 12% increase</i>
DoF	P73 billion	P50 billion	P89 billion
Committee	P83 billion	P28 billion	P77 billion

Senator Recto said that he had questioned the DoF's assumption that a 12% VAT would generate P89 billion, as he believed that the DoF's projected P50 billion incremental revenue with 10%-12% VAT is actually only P28 billion given the fact that the combined revenue collection of P80 billion (BIR) and P58 billion (BOC) was P138 billion in 2004 from which 20% was deducted.

Moreover, Senator Recto stated that projected revenues from the sin taxes (P15 billion) and the lateral attrition (P10 billion) as well as the planned P9 billion reduction in the pork barrel of Congress would yield a total of P34 billion. Deducting these revenues/savings from the estimated P80 billion deficit, he noted, would result in a balance of P46 billion which is the amount that government needed to raise, not P80 billion. Given the DoF's assumption that the Committee's proposal of 10% VAT would yield P73 billion, he averred that the Members should be willing to give away P11.8 billion in excise tax reduction on petroleum products and P5.7 billion in franchise tax and still come out with P55 billion in net revenues. He pointed out that there is only a P10 billion difference between the DoF's projection and that of the Committee because the bill would capture P10 billion from the current P100 billion to P140 billion revenue leakage. Further, he asserted that under the VAT's input-output single rate system, more revenues would be generated and coporations would become more transparent; it would also lessen incentives for smuggling.

Upon further queries, Senator Recto stated that under the bill, diesel price is projected to go up by P0.63 if the current P1.63 excise tax would be replaced with 10% VAT; if the excise tax is retained, at 10% VAT, the price would go up by more than P2.00 which is favored by the Executive. He noted, however, that the projection was based on petroleum price as of February 26, 2005, which is expected to change as world oil prices are also on the rise. Moreover, he argued that compared to the 12% VAT proposed by the DoF, the Committee's proposal would only result in a 2.9% increase in the P5.50 minimum jeepney fare. On the other hand, he clarified that the Committee has not recommended the removal of the excise tax on aviation

fuel since most airline passengers are financially well-off. Further, he said that the Committee recommended the removal of the excise tax on bunker fuel to lessen the VAT's impact on ship passengers, most of whom come from the lower income bracket. Senator Revilla agreed as he noted that expanding the VAT base would result in an increase in transportation and freight costs.

Asked how the bill would impact the cost of production, Senator Recto conceded that production cost would go up as he stressed that the Committee's proposal would result in a lower increase compared to the DoF version under which, production cost would go up by 12% depending on the method of transport. He reiterated that the bill would hike production cost by 2.9% for goods transported by land; and 6% for goods ferried by ship.

On nonfood agricultural and marine products that would be affected by VAT, Senator Recto said that lumber and tobacco leaves would be covered by the VAT while organic fertilizer is VAT exempt since it is used as an input for agricultural products. He stressed that the inclusion of more items under VAT would help reduce the deficit as well as the government's penchant for borrowing.

Asked whether the bill would plug revenue leakages and make for a more efficient VAT collection, Senator Recto replied in the affirmative. He said that the bill aims to make such transactions transparent and easier for the BIR to manage. He explained that the Committee has, in effect, designed the type of document to be used for the purchase of goods wherein items which are covered and not covered by VAT are identified for the benefit of both the taxpayer and the BIR. Moreover, he underscored that the VAT system would make it harder for a taxpayer to cheat since he would be unable to get the input credit if his receipts are incomplete. He said that the VAT system is expected to be implemented in January 2006 to give businesses enough lead time to change their systems and for the BIR to plan and educate the taxpayers. Further, he disclosed that there is a proposal to put up a fund to educate taxpayers on the mechanics and benefits of VAT.

Upon further queries, Senator Recto said that there are provisions in the Code that penalize businesses that do not issue VAT receipts aside from their being not allowed to claim VAT inputs.

He expressed willingness to listen to suggestions for an increase in the penalties at the proper time.

Asked for the current VAT collection efficiency rate, Senator Recto replied that in general terms, the inefficiency rate is about 71% if the government is collecting 2.9% of GDP. However, he noted that if it is the efficiency of the VAT base, it is roughly 50% to 60% of the economy, meaning that if the GDP is P5 trillion for 2005, the inefficiency rate is 44% based on the following computation:

$$\begin{aligned} & \text{P5 trillion} \times .50 = \text{P2.5 trillion} \\ & \text{and } \text{P2.5 trillion} \times .10 = \text{P250 billion} \\ & \text{such that } \frac{\text{P140 billion}}{\text{P250 billion}} = 56\% \text{ efficiency} \end{aligned}$$

where P5 trillion is the GDP; P2.5 trillion is the VAT base; P250 billion is the targeted collection; and P140 billion is the actual collection.

As to what steps are needed to increase the VAT collection, Senator Recto said that these have been incorporated in the report.

Asked if the 10% allocation for education and health expenditures could be increased to improve primary and secondary education, Senator Recto agreed, saying that the provision was inserted in the bill so it could be discussed.

Asked whether more funds from VAT collection could be allocated to address the lack of classrooms and computers, Senator Recto replied in the affirmative.

As regards the benefits to the economy, Senator Recto said that the revenues generated from the VAT would help reduce the country's financial deficit as well as its borrowings. However, he clarified that it is not certain whether the additional revenues would redound to more government projects. He explained that a reduction in both the country's fiscal deficit and its borrowings could lead to a stronger currency and lower interest rates, which, in turn, would mean that VAT payments would eventually be recovered since consumer prices would go down in view of the reduced dependence on imports. Additionally, he pointed out that lower interest rates would make it easier to engage in business, which would generate employment and keep the economy moving. He believed that the bill would not have as much

inflationary impact as the other proposals that, in fact, might stunt economic growth and bring about social unrest if inflation is too high. Moreover, he said that the Committee had a conservative proposal to keep the economy from being stifled by a high VAT rate.

Asked what would happen if Senate Bill No. 1950 is not passed into law, Senator Recto said that the peso would continue to depreciate, prices of consumer goods would continue to rise, the government would not be able to generate additional revenues, and the interest rates would go up, making it more difficult to engage in business.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:50 p.m.

RESUMPTION OF SESSION

At 4:51 p.m., the session was resumed.

INTERPELLATION OF SENATOR ROXAS

Senator Roxas congratulated Senator Recto for sponsoring a very difficult piece of legislation. He said that in all things related to money, outcomes are mutually exclusive—one side gains, the other side loses. In this instance, he said, it is the government that is supposed to gain. He agreed that the country is in a debt-trap, suffering from a “deficit” or a “debt-discount,” where the values are reduced by a certain amount to reflect the uncertainty of the investing and the lending communities as to how the country is going to manage its resources. He said that such deficit or debt-discount hampers the efforts to build a strong economic foundation from which the people can derive income and livelihood. He observed that the critical parameter that would determine the success of the measure is its credibility. Senator Recto agreed, saying that credibility and confidence are the issues at stake.

Asked what the threshold is to attain credibility, Senator Recto replied that the Executive and the members of the Majority in the Senate and in the House of Representatives have agreed at a LEDAC meeting that P80 billion must be raised for the country to attain a reasonable degree of credibility.

Considering that the Philippines has only attained 13% GDP revenue effort, Senator Roxas asked where the P80 billion would bring the country. Senator Recto replied that P80 billion revenue target would mean a 1.52% increase in the government’s tax effort for 2005.

Senator Roxas observed that credibility, which is the more important parameter for success, has three elements: 1) the revenue estimates are reasonably arrived at; 2) these estimates are recurring in nature; and 3) these estimates are administratively viable. Adverting to the estimated revenue impact of each element in the package that was presented in the sponsorship speech, Senator Roxas asked whether the revenue estimates were reasonably arrived at.

Senator Recto replied that what he presented were projections of the Committee at a 100% collection efficiency, even the DoF has been proposing 70% or 60% efficiency. He maintained that it should be 100%, otherwise, the government would be given the leeway not to collect 30% to 40% in taxes. He disclosed that during the committee deliberations, consumers insisted that the government collect first the old taxes before raising new ones. He explained that Congress considers the full impact of the revenues that could be collected from a particular measure it passes. He believed that the problem of credibility lies not in Congress but in the administrative ability of the BIR, the BOC and the DoF to collect taxes. He believed that the P100 billion to P140 billion leakage in VAT alone can be attributed to the government’s failure to (1) include in the first chain of the VAT two very important basic industries; and (2) educate the taxpayers on how the VAT works and how it should be paid.

As regards projections, Senator Recto disclosed that DoF projects that increasing the VAT rate from 10% to 12% would generate P50 billion but the total VAT collections as of December 31, 2004, was only P138 billion. Assuming that the present VAT-registered establishments would pay 20% more and without any leakage, he said that the total VAT collections would only amount to P28 billion, P22 billion short of the P50 billion DoF projection, in effect, reducing the government’s projection of P89 billion to P77 billion at 100% efficiency. He cited the following DoF assumptions: 1) petroleum consumed by non-VAT registered final consumers is 55%; and 2) the power consumed by non-VAT

registered persons or the final consumers with no VAT input is 35%.

Senator Recto said that he used the same assumptions in his projections, except that in his version, only P10 billion would be the incremental revenue with increase efficiencies along the VAT chain. He expressed willingness to work on the numbers of the DoF subject to his request to take into consideration his observation that the more accurate projection is roughly P28 billion, not P50 billion. He believed that when the government negotiates with its creditors or investors, it should tell them how much it can really collect year after year.

Adverting to the portion of the sponsorship speech that says P48.71 billion would be derived from lifting the VAT exemptions, Senator Roxas proposed that P11.8 billion representing the reduction in excise tax on socially sensitive products and P5.69 billion representing the repeal of franchise tax on IPPs be deducted from the P48.71 billion because, presumably, these are already being collected and should be removed from the receivables by the government.

Senator Recto informed the Body that the P10.5 billion corporate income tax, at 10% to 12% VAT, was computed on the basis of 2003 data. He said that based on the income of P131 billion for 2004, the corporate income tax is P12.3 billion at 10% to 12% VAT.

Senator Roxas requested that the latest data be made available so he could prepare his questions based thereon.

Senator Recto explained that the figure of P10.5 billion was given by the DoF, while the BIR provided the P12.3 billion figure that was computed by multiplying P131 billion by 9.4%.

Noting that a provision of the bill reduces the income tax rate to 30% after three years, Senator Roxas manifested that at the proper time, he would propose to delete it. He argued that if the financial condition of the country is corrected by the second or third or seventh year, the sunset provision would hobble the financial reform package. He suggested that the tax rate remain at 35% and that the future Congress be allowed to propose its reduction to 30%. That way, he stated, buyers, investors and creditors would not question the reduction of 5% in income tax after four years.

Senator Recto stated that initially, he shared the same position but he found out that the Philippines has the highest corporate tax rate, 35%, in the region, for which reason he wanted to reduce it at the proper time. He opined that four years from now would be the proper time to get a fresh perspective of a long-term tax policy. He gave assurance that he would work with Senator Roxas on this issue.

As regards the VAT on the power sector, Senator Recto clarified that the computations were made by the DoF based on certain assumptions submitted by the Committee. He stated that with the inclusion of the power sector in the VAT system, the DoF came up with the P6.35 billion additional efficiency that he had wanted to place in another column of the DoF matrix.

He explained that the computations were based on the 1994 DoF data and methodology. However, he pointed out, 65% of adjusted gross sales of VAT-registered entities are not subject to 10% VAT.

To illustrate, Senator Recto said that according to the DoF, for gross sales of P284 billion, the input subject to VAT is P37 billion (13%); deduct P37 billion from P284 billion to get the adjusted gross sales of P247 billion; multiply P247 billion by 35% and it would yield P86.5 billion which is net sales. He stated that the VAT is P8.65 billion or 10% of P86.5 billion.

Senator Recto clarified that the computations were based on certain assumptions: the VAT system is 100% efficient; everyone follows the input/output mechanism; and everyone understands the rules and how VAT works. He said that the DoF presented a scenario where, with an assumed inefficiency rate of 40%, entities subject to VAT would not increase their prices or have VAT input credits. He added that this is how the DoF arrived at the figure of P15 billion. He argued, however, that entities subject to VAT would increase their prices but would not reduce their VAT inputs because very few of them understand the VAT system. He opined that the proper way of doing it is to add another column for projected increase due to efficiencies.

Asked whether he does not dispute the DoF projection of P15 billion — P8.6 billion plus P6.4 billion, Senator Recto stated that the computations

were made to determine the improvements that could be achieved with efficiencies.

Senator Recto stated that although in theory, VAT-registered entities should not raise their prices, experience shows that with VAT, prices did increase. He said that the theory on the table is different from applied economics. He recalled that yesterday, he cited the example of the North Expressway project that some economists believe would not raise prices because it would save travelers time and costs.

Recalling the interpellation of Senator Osmeña on the semi-conductor industry, Senator Recto said that the industry players should be sophisticated enough to understand that they would actually benefit from the VAT since they now have VAT credits and power consumption would actually go down, especially when the franchise tax on the power sector is removed. However, he observed that judging from their interviews on television, these investors think otherwise. Based on experience, he posited that no consumer believes that entities subject to VAT, particularly in the power and petroleum industries, would not increase their prices.

Senator Roxas stated that prices would definitely go up, not necessarily as the cause and effect of certain measures but because people take advantage of market opportunities and market inefficiencies. Assuming that prices would go up by P28 billion to reflect the 10% increase in VAT all along the chain, he pointed out that since the government collects only 10% of the value added every step of the way, its net collection would only be between P8 billion and P15 billion. The VAT, he said, may not be a very effective way of raising the P15 billion because the cost to the economy would be an added P28 billion power cost that shall impact factories and work places and possibly jeopardize existing and future jobs.

However, Senator Recto argued that the high cost of power cannot be blamed on VAT as it is not yet in place. He pointed out that there are other factors attendant to the power problem like the IPP contracts and too much dependence on imported fuel, among others. Further, he noted that many countries in the region have cheaper power rates because they use indigenous resources. Underscoring his concern about an efficient VAT system, he related that he has yet to come across any readings about countries, with best VAT experiences, that exempt power or petroleum.

• Senator Recto maintained that power and petroleum are not hard to tax because the user or consumer of power cannot negotiate with the power utility. He explained that on the part of the producer, failure to issue a receipt would mean a 10% discount on the bill of the consumer; and on the part of the consumer, nonpayment would mean disconnection of service. He agreed that the true prices of electricity, including taxes, should be reflected.

Senator Roxas argued that the high cost of power is one of the reasons the country is unable to attract investments that create jobs and generate income; however, he stressed it should not be made even more expensive by VAT. He reasoned that when businessmen raise prices, they charge the customer the cost of electricity plus 10% VAT. He reiterated that of the P28 billion additional power cost, government would only collect P11 billion – the undisputed P8 billion and half or P3 billion of the disputed P5 billion – because not all taxes find their way into the economy.

Senator Recto observed that it is the contention of those who are in favor of exempting the upstream industries. Using a chart to explain the flow of the VAT, he noted that the liability of paying the VAT is not with the consumer but with the seller of the goods or services. At 10%, he pointed out, the consumer pays the final price of P341 and the government gets P31, so that with all the values added, the VAT base is P310. He said that the seller has to pay 10% of his gross sales to the government unless he has invoices to prove he had VAT inputs.

Senator Recto disclosed that most of the 125 countries that have the VAT system experienced similar problems and some are more efficient than others. He stated that there is no way of finding out how much would be collected from the power sector unless it is included in the VAT system and such payments can only be deducted if they can show receipts that they have VAT inputs.

Senator Roxas argued that VAT on power would affect the economy and its players differently from VAT on goods and services. He said that if power rates are not increased, the input/output mechanism from the source all the way to the consumer would negate all pass-throughs down the line, thus, revenue collection would not reach P15 billion.

16

There can be no single assumption for one calculation and a different assumption for the same calculation, he pointed out. He asserted that power rates are more pervasive as they affect everyone.

Asked whether simulations had been made on the impact on the economy of the P28 billion power rate increase, Senator Recto stated that in the DoF scenario, with the removal of the nonVAT-registered entities, the P8 billion is not contestable assuming that power rates would go up by P28 billion. The problem, he said, is with the DoF's position that power rates would not go up by P20 million because there is an input-output mechanism for VAT-registered entities.

On the economists' view that power rates should go up by only P20 billion because government would collect P8 billion, Senator Recto said that following the VAT chain, it is still the value added that is taxed, and at the end of the chain, it is still the consumer who pays, so the P8 billion collection is guaranteed. He remarked that in other countries that have the VAT system, power and petroleum are not treated differently even if they are different commodities. Exempting any sector would mean a review of the threshold to decide whether it should be P550,000 or P750,000, he said. He added that retail outlets and agricultural products with smaller threshold are harder to tax under the VAT.

On the issue that power is more pervasive than petroleum as far as consumption is concerned, Senator Recto stated that his data show that the poor consume more petroleum than power. He pointed out that petroleum is more inflationary for which reason, he was willing to reduce the excise tax on petroleum. He explained that the revenue target of the bill is P55 billion and the Committee looked at how much it could afford to "give away" in order to temper the impact of the VAT on consumers.

Senator Roxas argued that while the Body wants to cushion the impact of the VAT measure on the middle and lower classes, still, there is need to create jobs and maintain business operations. But if high power cost would make the country uncompetitive for business and investments, he averred that the passage of the VAT bill would be a pyrrhic victory. He asked whether the impact of raising power rates could be sustained by the business environment.

Senator Recto said that he shares the same concern, that is why he was reducing the franchise tax on the power sector. He believed that petroleum is more pervasive than power as petroleum is used for power, for lighting far-flung barangays, for cooking and for transporting goods and services. He conceded that both petroleum and power are important basic industries but these should not be exempt from VAT. He expressed the view that tax exemptions should be discussed when the Body starts the debate on the fiscal incentives bill.

On the observation that the fiscal incentives bill would corrode the Body's credibility as it would take away what the VAT bill would impose, Senator Recto clarified that the proper time to discuss which industry should be given what exemption is when the fiscal incentives bill is on the floor. He argued that the VAT bill should not grant exemptions as much as possible because the 10% VAT is the one tax imposed on the rich and the poor.

Senator Roxas explained that his concern was that the fiscal incentives bill might tie the hands of the country's tax administrators should the power sector be included in the VAT bill and then exempted from VAT in the fiscal incentives bill, so that, in effect, the only incentive that could be given to corporations and factories is a reduction of their VAT. At any rate, he agreed that everyone should pay VAT because it is a consumption tax. But he pointed out that the tax might leave Juan de la Cruz with a limited choice between using electricity on a daily basis and deferring the purchase of other products which are not so urgent. Moreover, he stressed that there is need to ensure a hospitable investment climate to create and maintain jobs in the country for Juan de la Cruz. He underscored that the issue is not what sector to exempt from VAT but what is the bigger impact of the tax on the rest of the economy.

Senator Recto disagreed that the cost of power is the be-all and end-all for investing in the country. He believed that if the Body would exempt the power sector from VAT, the same argument should be applied to petroleum and to other basic sectors. He conceded that prices would go up with the passage of the VAT bill but not by P28 billion as suggested by Senator Roxas. He believed that the prudent way would be first, to take a look at who are exempted and why; next, to raise the rates; then, to give some consumers a break.

Senator Roxas presented the actual situation of a real estate company to illustrate his point that imposing VAT on power might not result in an actual increase in revenues for the government. Senator Recto contended that in the case cited by Senator Roxas, the company actually benefited from the VAT on power. He pointed out that many companies do not understand the VAT system, resulting in a wide leakage. Additionally, he stressed that although VAT is a pass-on tax, the consumer is not liable to pay it; instead, the liability is on the seller of goods or the service provider who has to pay 10% of gross sales or prove to the BIR why he deserves to pay less tax.

Senator Recto stated that while the VAT system would enable the government to reap more benefits from business since all enterprises would be subject to audit by the BIR, it is unfair to a mom-and-pop store owner with gross sales of only P550,000 to pay 10% VAT when big corporations that make more money are exempt from VAT. He argued that giving an exemption to one sector would open the floodgate to exemptions for the other sectors. Everyone, he stressed, should be subject to VAT.

Senator Roxas said that the contention that the poor man is placed at a disadvantage because power companies are exempt from tax is an incorrect syllogism. He feared that the impact of the inclusion of the power sector in the VAT chain would cause harm that is even larger than the benefits government would derive.

Senator Recto stated that power costs increase owing to many reasons – the bad contracts, peso depreciation and the fiscal crisis, among others. The VAT system, he said, is designed to reduce the national government's fiscal deficit but it would never be improved if industries are exempt. He argued that under the existing law, an individual who earns P550,000 a year has to go through the administrative hassle of hiring an accountant and submitting periodic reports to the BIR; on the other hand, a big corporation is sophisticated enough to be exempt from that. He urged the members to give incentives, if they must, through other tax measures, not the VAT bill. He underscored that it is an issue of fairness.

Senator Roxas maintained that while the cumulative effect of including the entire power sector in the VAT system would be worse because each segment of the chain – gencos, Napocor,

electric cooperatives and Meralco – would be reflecting the increase in power charges on its own billing. He said that it is not a good bargain for government which would be collecting only a portion – P15 billion or as low as P8 billion – of the P28 billion.

At this point, Senator Roxas made reservation to continue his interpellation at a later date.

Senator Recto stated that the concerns and issues raised by Senator Roxas would help the Members decide on the measure at the proper time. Senator Roxas said that it is all in the matter of establishing the credibility of the package.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:24 p.m.

RESUMPTION OF SESSION

At 6:27 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1950

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

ANNOUNCEMENT OF SENATOR PANGILINAN

Senator Pangilinan announced that there would be a caucus in the Office of the Senate President on Monday at 12:00 noon.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Monday, March 14, 2005.

It was 6:28 p.m.

I hereby certify to the correctness of the foregoing.

OSCAR G. YABES
Secretary of the Senate
OS *lln* *N*

Approved on March 14, 2005