

**REPUBLIC OF THE PHILIPPINES**

**S e n a t e**

**Pasay City**

# **Journal**

**SESSION NO. 70**

Monday, March 14, 2005

**THIRTEENTH CONGRESS  
FIRST REGULAR SESSION**

**SESSION NO. 70**  
Monday, March 14, 2005

**CALL TO ORDER**

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

**PRAYER**

Sen. Manuel B. Villar Jr. read the prayer written by Gordon Davidson and Corinne McLaughlin of the Center for Visionary Leadership, to wit:

Let the wounds of separation and division be healed by opening our hearts to listen to the truth on all sides, allowing us to find a higher truth that includes us all;

May we learn to honor and enjoy our diversity and differences as a people, even as we more deeply touch our fundamental unity;

May we, as a people, undergo a transformation that will draw forth individuals to lead our nation who embody courage, compassion and a higher vision;

May we, as a united people, move with clear, directed purpose to take our place within the community of nations to help build a better future for all humankind;

May we, as a nation, rededicate ourselves to truly living as one nation, under one God, indivisible, with liberty and justice for all;

And may God's will be done for our nation, as we, the people, align with that will.

Amen.

**NATIONAL ANTHEM**

The Senate Choir led the singing of the national anthem.

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

With 19 senators present, the Chair declared the presence of a quorum.

Senators Angara, Biazon, Osmeña and Recto arrived after the roll call.

**APPROVAL OF THE  
JOURNAL OF SESSION NO. 69**

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 69 and considered it approved.

**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. 1955, entitled

AN ACT DEFINING AND REGULATING  
DRAG RACING AND PROVIDING  
PENALTIES THEREFOR

Introduced by Senator Ramon "Bong" Revilla Jr.

To the Committee on Public Services #

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## Senate Bill No. 1957, entitled

AN ACT CREATING THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Introduced by Senator M. A. Madrigal

**To the Committees on Environment and Natural Resources; Government Corporations and Public Enterprises; Ways and Means; and Finance**

## Senate Bill No. 1958, entitled

AN ACT EXPANDING THE EXCEPTIONS FROM THE NIGHT WORK PROHIBITION OF WOMEN EMPLOYEES, THEREBY AMENDING ARTICLE 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY TWO (P.D. NO. 442), AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committee on Labor, Employment and Human Resources Development**

## Senate Bill No. 1959, entitled

AN ACT PRESCRIBING WORK ARRANGEMENTS BASED ON SECURITY OF TENURE, AMENDING FOR THIS PURPOSE, ARTICLES 156, 157, 158, 159, 160, 161, 162, 163, 164 AND 165 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY TWO (P.D. NO. 442), AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committee on Labor, Employment and Human Resources Development**

## Senate Bill No. 1960, entitled

AN ACT INSTITUTING THE LABELING OF IMPORTED MEAT AND MEAT FOOD PRODUCTS

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committees on Trade and Commerce; and Agriculture and Food**

## Senate Bill No. 1961, entitled

AN ACT APPROPRIATING THE SUM OF FIVE HUNDRED FORTY-SIX MILLION, SEVEN HUNDRED FORTY-FOUR THOUSAND, FIVE HUNDRED SIXTY-THREE PESOS TO FUND THE ARMM ELECTIONS SET ON 8 AUGUST 2005 PURSUANT TO REPUBLIC ACT NO. 9333

Introduced by Senator Gordon

**To the Committee on Rules**

**RESOLUTIONS**

Proposed Senate Resolution No. 210, entitled

RESOLUTION URGING ALL DEPARTMENTS, OFFICES AND AGENCIES OF THE PHILIPPINE GOVERNMENT TO EARNESTLY, FULLY AND IMMEDIATELY IMPLEMENT THE CONSTITUTIONAL PROVISION AND ALL LAWS RELEVANT TO CITIZENS' ACCESS TO INFORMATION IN CURBING GRAFT AND CORRUPTION

Introduced by Senator Magsaysay Jr.

**To the Committee on Public Information and Mass Media**

Proposed Senate Resolution No. 211, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON CIVIL SERVICE AND GOVERNMENT REORGANIZATION TO CONDUCT AN INVESTIGATION, IN AID OF

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**LEGISLATION, ON THE ALLEGED •  
OPPRESSION OF EMPLOYEES OF  
THE GOVERNMENT SERVICE  
INSURANCE SYSTEM (GSIS)  
UNDER THE LEADERSHIP OF  
ITS PRESIDENT AND GENERAL  
MANAGER, WINSTON F. GARCIA**

Introduced by Senator Jinggoy Ejercito Estrada

**To the Committee on Civil Service and  
Government Reorganization**

**COMMUNICATIONS**

Letter from Secretary Amalia A. Adayo of the Sangguniang Bayan of Sagñay, Camarines Sur, furnishing the Senate a copy of Sangguniang Bayan Resolution No. 2005-12, favorably endorsing to the Senate and the House of Representatives House Bill No. 3398 which seeks to convert the Camarines Sur State Agricultural College into a state university to be known as the Central Bicol State University of Agriculture.

**To the Committee on Education, Arts and  
Culture**

Letter from Ms. Nelia P. Padrigon of the Sangguniang Panlalawigan of Camarines Norte, furnishing the Senate a copy of Sangguniang Panlalawigan Resolution No. 2005-18, favorably endorsing House Bill No. 1127 which seeks to convert the Camarines Norte State College into a state university to be known as the Camarines Norte State University.

**To the Committee on Education, Arts and  
Culture**

Letter from Secretary Leticia T. Agura of the Sangguniang Bayan of Canaman, Camarines Sur, endorsing to the Senate Sangguniang Bayan Resolution No. 2005-007, supporting House Bill No. 3398 which seeks to convert the Camarines Sur State Agricultural College into a state university to be known as the Central Bicol State University of Agriculture.

**To the Committee on Education, Arts and  
Culture**

Letter from Secretary Martin Zamayla of the Sangguniang Panlalawigan of Misamis Oriental, furnishing the Senate a copy of Sangguniang Panlalawigan Resolution No. 40-2005, requesting PHIVEDEC Industrial Estate Authority Central Office to direct PIE-MO, Tagoloan, Misamis Oriental to carry out measures effecting the observance and compliance to existing local tax laws, provincial and municipal revenue ordinances; and labor laws and labor standards by all industries and corporations operating within the industrial estate of Misamis Oriental.

**To the Committees on Local Government;  
and Labor, Employment and Human Resources  
Development**

Letter from Secretary Manuel C. Comota of the Sangguniang Bayan of Ragay, Camarines Sur., furnishing the Senate a copy of Sangguniang Resolution No. 091, s. 2005, endorsing House Bill No. 3398 which seeks to convert the Camarines Sur State Agricultural College into a state university to be known as the Central Bicol State University of Agriculture.

**To the Committee on Education, Arts and  
Culture**

**COMMITTEE REPORT**

Committee Report No. 17, prepared and submitted by the Committee on Urban Planning, Housing and Resettlement on Senate Bill No. 1956, with Senators Recto and Biazon as authors thereof, entitled

**AN ACT ESTABLISHING REFORMS IN  
THE REGULATION OF RENTALS  
OF CERTAIN RESIDENTIAL UNITS,  
PROVIDING THE MECHANISMS  
THEREFOR AND FOR OTHER  
PURPOSES,**

recommending its approval in substitution of Senate Bill No. 1324, taking into consideration House Bill No. 3356.

Sponsors: Senators Biazon and Recto

**To the Calendar for Ordinary Business**

## ADDITIONAL REFERENCE OF BUSINESS

### MESSAGE OF THE PRESIDENT OF THE PHILIPPINES

Letter of Her Excellency, President Gloria Macapagal Arroyo dated March 11, 2005, certifying to the necessity of the immediate enactment of Senate Bill No. 1950, under Committee Report No. 16, entitled

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 125, 148, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES,

to meet the public emergency arising from the urgent need of broadening the tax base by plugging the loopholes in the existing VAT system, simplifying its collection through a uniform rate and expanding its coverage, making its effects more equitable and just on the country's so-called sensitive sectors.

To the Committee on Rules

### RECONSIDERATION OF APPROVAL OF THE JOURNAL OF SESSION NO. 55

Upon motion of Senator Osmeña, there being no objection, the Body reconsidered the approval of the Journal of Session No. 55. He manifested that he would submit editorial corrections on the Journal.

### QUESTION OF PRIVILEGE OF SENATOR OSMEÑA

Rising to a question of personal privilege, Senator Osmeña corrected the report in the *Manila Times* issue of March 10, 2005, that he "appears to have been fed up with the appalling apathy of his colleagues. Osmeña admonished members of the Committee on Ways and Means who had ignored the hearings on VAT."

He clarified that he did not admonish his colleagues; he just requested Senator Recto, the Sponsor, not to rush the bill because several senators had been busy with the budget deliberations. Senator Recto, he noted, called for hearings

every Monday, Wednesday and Friday for two succeeding weeks during the budget deliberations and certainly, most of the senators could not abandon the budget just to attend the hearings on VAT.

Further, he opined that it would be irresponsible on the part of the senators to pass the VAT measure without understanding it since it involves a tax that would affect every man, woman and child in this country. He underscored that it is the responsibility of the senators to explain to their constituents how they voted on the measure which they could not do so unless they understood it first.

### ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

Senator Pangilinan acknowledged the presence of the members of the Group Study Exchange Team from Tamil, Nadu, Republic of India, headed by its team leader, Rotarian A.P. Ramaraj, and accompanied by assistant governor Sam Tocino of the Rotary International District 3800 in the Philippines.

### REPORT OF SENATOR PIMENTEL

Upon motion of Senator Pimentel, there being no objection, the Body approved the insertion of his speech on the International Conference on Federalism in Brussels, the full text of which follows:

Upon invitation of the Belgian government that was extended through its Ambassador, Christiaan Tanghe, I attended – at no expense of the Senate - the 3-day international conference on federalism in Brussels that started on the morning of March 3 and ended on the afternoon of March 5. The conference was a part of the celebration of the 175<sup>th</sup> year of the creation of the State of Belgium and of the 25<sup>th</sup> year of its federalism.

Delegates from 60 nations participated in the conference. Ten delegates from our country including Speaker Jose de Venecia, Secretary Florencio Abad of the Department of Education; Ms. Preciosa Soliven, UNESCO Philippines representative; Chit Pedrosa of the Philippine Star; Rey Teves of Davao; and Dr. Clarita Carlos of the University of the Philippines joined the conference.

*Breakfast with de Croo*

Before the 9:30 a.m., schedule of the opening of the plenary sessions on March 3, I joined a

breakfast meeting with Hermann de Croo, president of the Belgian House of Representatives upon invitation of Speaker Jose de Venecia. It turned out that Speaker Joe was awarding de Croo with the House of Representatives Medal of Honor and wanted me to witness it. I did.

Over coffee and sandwiches, De Croo told us of the difficulties which the federal system of Belgium has encountered over the 25 years of its existence. Yet, he said, by and large, it has successfully harmonized conflicts among its language and cultural communities peacefully.

From the breakfast with de Croo, we rushed to attend the opening session of the Conference at the European Parliament building. Traffic was so bad, we had to walk a block - under light snow falling like dandruff from the darkened sky - to get to the site of the conference.

De Croo was going to the same conference in his black limo with police escorts that elbowed cars out of the way like Moses's wand parting the Red Sea but he did not invite Joe de V to ride with him. The omission was, of course, not an intended slight. It just was not a part of De Croo's habit to do so. I point this out because if the roles were reversed, I am sure that the Filipino hospitality in Joe would impel him to invite De Croo to ride with him.

#### *King present*

Even with the Belgian King, Albert II, in attendance, the conference started roughly an hour late with welcome addresses delivered by Ms. Annemie Nyts-Uytebroeck, President of the Conference and Josep Borrel, President of the European Parliament.

Guy Verhofstadt, Prime Minister of Belgium; Ms. Marie Arena, Minister President of the French-Speaking Community of Belgium; and Yves Leterme, Minister President of the Flemish-Speaking Community of Belgium made the opening statements.

Unlike our politicians, the Belgians just made the slightest of nods to the King, briefly acknowledged the "Excellencies and Other Distinguished Delegates" attending the conference and thereafter proceeded to discuss the issues they were assigned to do.

#### *Unity in diversity*

Verhofstadt emphasized that Belgium is a federal state (10 m population) that recognizes the rights not only of the French (32%) and the Flemish (58%) communities but also the

distinctive characters of Brussels (9.3%) as the capital of the nation and of the German-Speaking minority (0.7%) in the kingdom.

The Belgian prime minister said that their federal system has for the last 25 years been able to keep the various ethnic and cultural groups together by committing themselves to the principle that there can be "unity even in diversity." Yet, he also cautioned the participants to the conference that *Belgian federalism might not be "transplantable" to other climes*. In any case, he said that "managing cultural diversity (was) one of the central challenges of our time."

Elaborating on his thesis, Verhofstadt said that "federalism was not the solution for all the problems of Belgium. In our country, federalism is a method to prevent and solve conflicts. For Belgium, federalism is not a permanent solution, it is a movement."

#### *Permanent quest for right balance*

The prime minister added that "there is a permanent quest of the right balance between unity and diversity (but) as a whole, the system has proved efficient."

The same theme was repeated by Laterme and Arena.

Laterme said that Belgians as a people found federalism as a working device that put "limits to the powers of a single State". A new level of power was inserted between the national state and the provinces. By that, he meant that the Flemish people have their own Flemish Parliament with Flemish government for regional, educational, and cultural affairs; the Walloons have their own Walloon Regional Council and government for Walloon Regional Affairs; the Francophone Community has its own Francophone Community Council and government for Francophone cultural and educational affairs; and Brussels has its own Brussels Regional Council and government for Brussels Regional Affairs; and the German-Speaking community has its own Community Council and government for cultural and educational affairs.

#### *Power sharing*

Simply put, the different levels of authority complement one another in Belgium, namely, the Federal Government, the Communities, the Regions, the Provinces and the Municipalities. The net effect of the creation of various layers of authority is that "the power of decision no longer lies exclusively in the hands of a national government and a national parliament" as it is

now shared with the Communities, the Regions, the Provinces and the Municipalities.

Through constant dialogues among the various language and cultural groups, he said that in Belgium, they now have a functioning "modern model" of a federal state.

### *Flexibility*

Arena emphasized that despite differences in language or culture, the people of Belgium considered themselves as Belgians who iron out their differences through constant dialogue and negotiation.

She said that mutual respect for the rights of others was vital to the construction of a "balanced diversity" in the State of Belgium.

In the experience of Belgium, Laterme and Arena said that federalism as a system of government was not just the product of a school of thought. They said that federalism was a process that needed refinement as the days go by. In their view, flexibility was a most important characteristic of the Belgian federalism.

The welcome and opening addresses were followed by the keynote addresses of James D. Wolfensohn, President of the World Bank; Olusegun Obasanjo, President of Nigeria and President of the African Union; Tassos Papadopoulos, President of Cyprus; Micheline Calmy-Rey, Minister of Foreign Affairs of Switzerland; and Lucienne Robillard, Minister of Intergovernmental Affairs of Canada.

### *World Bank & Nations*

Wolfensohn's keynote address was a big disappointment. He obviously did not prepare for it. He extemporized and there was hardly any substantial connection between what he said and the subject of the conference: federalism. In essence, he said that whatever be the system of government of a nation, he hoped that the World Bank could work with it efficiently and well.

It was important, he said, that corruption be stamped out or minimized and good governance be instituted to combat poverty because poverty and stability of governments were "interdependent."

He also cited rather vaguely that city-states are now recognized as "engines of growth".

### *Nigeria*

Obasanjo was a little better. He spoke of the experience of Nigeria in federalism. As the

current president of the nation, he spoke of Nigeria's ability to manage its affairs despite the diversity of the ethnic populations of the country. He gave tribute to federalism as a way by which various cultures may be melded not as one uniform entity but as many fabrics that make up the cultural diversity of the nation.

The Nigerian president said that federalism in his country "limited State power" and gave expression to "unity in diversity" in his country. He cited the work of the Ministry of Intergovernmental Relations of the government as vital to carrying out the mandate of federalism in his country.

Incidentally, a *New York Times* editorial of March 7 compliments Obasanjo for his government's fight against corruption:

"Hard as it is to believe, there are hopeful signs in Nigeria. The Nigerians, through two, albeit flawed, democratic elections, have given themselves a reformist government with the right intentions. President Olusegun Obasanjo has taken up the mantle of anticorruption - or, at least, slightly reduced corruption. He established an Economic and Financial Crimes Commission, whose chairman, Alhaji Nuhu Ribadu, at risk to his life, has been terrifying current and former officials with his investigations. Already, two rear admirals have been convicted of helping to steal 11,000 barrels of oil. Some 130 customs officials have been fired.

"Bunkering, the quaint term Nigerians use to describe outright stealing of crude oil by members of the armed forces or the government, has been reduced to a mere 20,000 barrels a day from 100,000 barrels a day, according to Dr. Okonjo-Iweala. And finally - this should please all of us who have received e-mail supposedly from Idi Amin's son or Charles Taylor's wife offering untold riches if we'd only provide our checking account numbers - three purported e-mail crime leaders have been arrested. [THE NAME OF SEN. LOI ESTRADA HAS BEEN USED BY THESE UNSCRUPULOUS E-MAIL CRIMINALS IN SEVERAL EMAILS IN THE RECENT PAST. PERHAPS OUR GOVERNMENT CAN DO SOMETHING ABOUT IT. UP TO NOW, OUR EMAILS REGULARLY RECEIVE UNSOLICITED OFFERS OF RICHES OF THE KIND MENTIONED IN THE EDITORIAL CITED ABOVE].

"Beyond the fight against corruption, Nigeria has made huge strides in promoting regional security. Nigerian peacekeepers are in Liberia, Sudan and Sierra Leone. Last

month, when Togo installed the son of the country's longtime strongman as president, it was Nigeria's Mr. Obasanjo who led the fight that ultimately forced Faure Gnassingbé to step down. We can't help but notice the difference between Mr. Obasanjo and the leader of black Africa's other regional power, South Africa. Thabo Mbeki has largely thrown up his hands in the struggle to force Zimbabwe to hold honest elections that could rid it of the odious despot Robert Mugabe."

#### *Greece*

Papadopoulos said that Greek Cypriots are trying to get the Turkish Cypriots to agree to a federal proposal where the latter may retain their culture and language in a united Federal Republic of Cyprus. The proportion of the population of Cyprus, he said, is 82% Greek Cypriots and 18% Turkish Cypriots.

Despite the overwhelming majority of Greek Cypriots over the Turkish Cypriots, Papadopoulos pushes for the adoption of the federal system that he hopes would provide the "emotional glue" that will keep the Greek and the Turkish Cypriots together as Cypriots one and all under a Rule of Law. The negotiations are still ongoing, he said.

#### *Switzerland*

Calmy-Rey discussed Switzerland's successful federal government. She said that the Swiss model has been there for centuries with the cantonal local governments as the basis of the government. Again, the theme of unity in diversity that is anchored on respect for the rights of minorities was emphasized.

#### *Canada*

Robillard discussed the Canadian federal system. She said that Canada looks at the diverse culture of its people who come from many parts of the globe as a source of strength. By respecting the diversity of their ethnic and religious backgrounds, the people of Canada stand united.

Beverly McLachlin, Chief Justice of Canada, later amplified Robilliard's thesis by explaining that her country's federal system has held together because Canadians resolve their internal disputes peacefully through negotiations and they manage changes in the country through dialogues. "Flexibility," she said, "is the genius of the federal model that recognizes people in their distinctiveness."

The lady jurist underscored the fact that Canada is governed by: 1. the Rule of Law; 2. the democratic principle of "fair elections" (which, of course, is not true in our country, where elections have ALWAYS been marred by anomalies precipitated by the anomaly-laden Commission on Elections); 3. power-sharing between the Federal State and the Provinces (States), and 4. by a recognition of the equality of individuals, no matter of what ethnic, linguistic, religious or cultural background they may be coming from.

As a result, she said, they have "integrated" the Federal State of Canada and ensured the legitimacy of its government.

#### *Other interventions*

The morning opening session ended with interventions from Musa Xhaferri, Deputy Prime Minister of Macedonia; Prithviraj Chavan, Minister of State of India; Ciro Ferreira Gomes, Minister of National Integration of Brazil; Zola Disney Themba Skweyiya, Minister of Social Development of South Africa, Mulatu Teshome, Speaker of the House of the Federation of Ethiopia, and Jose de Venecia, Speaker of the House of Representatives.

The intervenors spoke of the problems their countries have encountered through the years. Chavan of India and Skweyiya of South Africa, I think, presented the more positive views on federalism borne out of the national experiences of their respective countries.

#### *India*

India, despite its huge Muslim population (over 100 million) has managed to prevent the latter from waging an outright rebellion against the government. Federalism based on respect for the rights of minorities and adherence to the rule of law appears to be the formula for the success of the Indian democratic experiment.

India's treatment of the Muslim minorities is something that we can learn from.

#### *South Africa*

South Africa, too, despite its having been only recently freed from British colonial rule, appears successful in its democratic governance of diverse tribes and ethnic communities. Again, federalism seems to be the reason why.

The country has a central government and nine provincial (or State) governments. It has a Constitutional Court that decides on the consti-

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tutionality of legislative enactments. Incidentally, the Constitutional Court is in addition to the Supreme Court of Appeals and other courts of high jurisdiction.

Should we amend our Constitution, perhaps, it might be a good idea to create a Constitutional Court that will decide questions of constitutionality of legislative enactments and other issues that impact on the Constitution.

#### *Lunch w/ Jouanjean*

In his intervention shortly before the lunch break, Joe de Venecia spoke of our aspirations to adopt the federal system but I did not get to hear the rest of his talk as I had to rush to a lunch appointment with the Deputy Director General Herve Jouanjean of the European Commission; Ambassador Jan de Kok, head of the European Union in the Philippines; and EC's Pierre Amilhat and Danielle Dal-Molin.

At our late lunch which Joe joined even later, Jouanjean and his colleagues talked favorably of using dialogue and discussion as a means of easing tensions among ethnic and linguistic communities.

#### *Workshops*

After lunch, we broke up for the workshops.

I chaired the workshop on federalism and the protection of minorities.

The main discussant was Prof. Jose Woerhling of Canada and the reactors were Prof. Athanasia Spiliopoulou-Akerman of Sweden; Prof. Arshi Khan of India; Speaker Mulatu Teshome of the Ethiopian parliament; and Prof. Wouter Pas.

Woerhling discussed in French the ramifications of federalism in general.

Much of what he said escaped me because the translator had difficulty translating Woerhling's thesis. In any case, the participants who spoke French found the discussion quite interesting judging from their vigorous interventions – also in French.

Akerman discussed some points on the Canadian federal system. The federal state of Canada, despite Quebec's separatist tendencies, has succeeded to keep its unity by ensuring that the people may freely engage in dialogue over issues that concern them and assuring them that their rights will be respected pursuant to the Rule of Law.

#### *India*

Prof. Arshi Khan of the Center of Federal Studies, Hamdard University, New Delhi, India discussed the federal and federated policies of affirmative action in favor of the minorities in India.

Khan emphasized that if India has fairly good relations with its minorities, it is due largely to the policies adopted by the federal government that respect the cultural and religious differences among the people.

The Indian experience may be instructive and useful to us because we also have a sizeable Muslim minority in Mindanao. And there is no way that the recurrent Moro rebellions there will be dissipated by resorting to the use of force that has been the way governments – Spanish, American and our own – have responded to those armed challenges in the past.

#### *Ethiopia*

Mulatu Teshome, Speaker of the Parliament of Ethiopia discussed the federal system in his country, Ethiopia. It was a very interesting session as Teshome walked us through the labyrinthine ways taken by Ethiopia's authoritarian rulers in the past.

Now, he said, Ethiopia is embarking on the path of federalism as a means of dissipating tensions among its various ethnic and cultural groups.

While he was talking, I thought to myself how lucky we are in that we only had one authoritarian ruler in the recent past.

#### *Day Two*

The plenary sessions on the morning the 2<sup>nd</sup> day featured the following as speakers: 1. Armand de Decker, Minister of Development Cooperation of Belgium; 2. Wolfgang Schussel, Chancellor of Austria; 3. Margot Wallstrom, Vice President of the European Commission; 4. Jean Charest, Premier of Quebec; 5. Jo Leinen, Chair of the Commission for Foreign Affairs, European Parliament; and 6. Peter Straub, Chair, Committee of Regions of Belgium.

The keynote intervenors included: 1. Marie Dominique Simonet, Minister for International Relations of the French Speaking Community and Waloon Region of Belgium; 2. Labaran Maku, Vice Governor of Nasarawa, Nigeria; 3. Prince Mangosuthu Buthelezi, South Africa; 4. Milo Djukanovic, Premier of Montenegro; 5. Peter Schonenberger, Conseiller d'Etat, Canton

de St. Gail, Switzerland; and 6. Josep Maria Valles y Casadevall, Minister of Justice, Catalonia, Spain.

By and large, the speakers told the participants that there is no one model of the federal system that applies to all countries desirous of adopting it. Every nation must adapt the system to its own needs. However, the basic principle of respect for the language, religion and cultural rights of the peoples that make up a particular state or country; the necessity of holding dialogues among the peoples concerned on issues that divide them; and the need to uphold the Rule of Law as the final arbiter of disputed matters are essential points that must be embedded in the federal system that any country may wish to adopt if it is to succeed.

In the Belgian federal system, for instance, treaties that are entered into by the federal government need to be ratified by the federal states and by the Communities also.

After the lunch break, we went to our respective workshops.

#### *Chairing workshop on Federalism & Human Rights*

I chaired the workshop on Federalism and Human Rights. The main resource person was Prof. Woehrling of Canada who discussed in French the importance of protecting the human rights of people in a regime of federalism.

Luzius Wildhaber, President of the European Court of Human Rights in Strasbur gave the main reaction also in French to Woehrling's presentation.

Despite the English interpretation, much of what they said was lost on me. I guess I was just disturbed by what I thought were irritating transliterations like calling a person of mixed blood "a mongrel" or making the speaker appear as if he or she was quoting him or herself by prefacing a statement with the phrase "according to me" when what the speaker probably had in mind was to say: "in my opinion" or "in my view." Anyway, it is actually my fault that I do not know French.

#### *U.S. experience*

Prof. Edward Swain discussed the ratification of international instruments by federal states: the American doctrine.

Swain said that in the U.S. experience, it is the president who is the main formulator, negotiator and implementor of foreign policy.

The U.S. Senate, he said, ratifies or rejects treaties that the U.S. president negotiates. But it has no power to engage in the negotiation of any treaty.

I understood Swain's talk first because it was in English and second because the U.S. experience in treaty making and ratification is like ours.

#### *Human Rights in Nigeria*

Lawyer Chinoye Obiagwu, National Coordinator of the Legal Defense and Assistance Project of Nigeria, spoke of the application of Shari'a in his country.

He said that Shari'a is applied to Muslims in the northern part of Nigeria. He said that in his experience as a legal advocate, he found some practices sanctioned by the Sharia as oppressive like stoning female adulterers and cruel like cutting off the hand of a thief.

Obiagwu's observations only go to show that Shari'a needs modification so that its harsh features are not perpetuated upon the people.

#### *Day 3*

On Saturday, March 5, at 9:30 a.m., we heard the keynote address of Charles Picque, Minister-President of the Brussels Capital Region; Ali Osman Taha, 1<sup>st</sup> Vice President, Sudan; John Garang, Chair, Sudan People's Liberation Movement/Army (SPLM/A), and Olivier Kamitatu, Speaker of the National Assembly of Congo, and Karel de Gutch, Minister of Foreign Affairs of Belgium.

Prince Philippe of Belgium attended the closing ceremonies.

Picque underscored the success of Belgium's federal institutions for peacefully resolving the linguistic and territorial conflicts among the people.

#### *Sudan*

The most interesting presentations were made by two protagonists in the Sudan civil war: Ali Osman Taha, 1<sup>st</sup> Vice President of Sudan and John Garang, the leader of the Sudanese People's Liberation Movement/Army.

Taha discussed the events that led to the Sudanese civil wars and the peaceful resolution of the most recent conflict. He was the government's representative to the negotiations that led to the Kenya-sponsored peace agreement in January of this year between the government and the rebels led principally by Garang. #

One important feature of the agreement was the setting up of a federal government for Sudan's 26 provinces.

Garang was the more engaging of the two probably because he was an authentic rebel leader now talking of trying the ways of peace and development. He also spoke English with hardly a trace of accent and had some eloquent phrases that caught the attention of the participants.

For instance, he said that he agreed to sign the Kenya-brokered peace agreement because he wanted to "see what was behind the hill". The elite in Nigeria, he said, "distorted the trajectory of Sudanese development" by refusing to recognize that the minorities had equal rights with them to fair and just treatment by the government. In effect, he said, the elite of Sudan "killed the goose that laid the golden egg" for the nation. Echoing Thomas Hobbes, John Locke and Jean-Jacques Rousseau, he also spoke of a "social contract" between and among the peoples of Sudan that led to the creation of the State which would now have the power to govern them pursuant to their consensual understanding.

#### *Ph.D. in Agricultural Economics*

As Garang discussed his points, I could not help but wonder how come a rebel leader like him spoke the way he did. I found out later that Garang has a Ph.D. in Agricultural Economics from a U.S. university. If I were a Sudanese, I told myself, I would have been an avid follower of Garang.

In any case, Taha and Garang showed that protagonists to a civil war (that has taken more than 2 million lives) may still compose their differences through dialogue and negotiation. Despite the carnage, the destruction, and the seemingly insurmountable difficulties, the major protagonists in the Sudan civil war, the SPLM/A and the government have come to an agreement to live together in peace even as they are still working on the final terms of the settlement of their violent conflict.

Garang, the rebel leader, has been a model of restraint since the peace agreement was signed by the SPLM/A and the government in January of this year. On March 5, for example, the day the Federalism Conference ended in Brussels, Garang gave a statement to the Voice of America wherein he "called on the government to apply a recently signed north-south peace deal to the separate conflict in Sudan's western Darfur region." He said that, "the Darfur crisis

can only be solved through dialogue." Darfur is a region in West Sudan where the government and its militia allies were accused of having committed genocide last year and early this year.

#### *Main features Sudan peace pact*

The agreement between the SPLM/A and the government "gives the south greater autonomy" and the right to self determination in six years." In the meantime, (1) the Sharia will not be applied during the 6-year transition period; (2) there will be a power-sharing between the central government and the autonomous government in the south under the principle of One Country, Two Systems (secular and theocratic); (3) there will be two armies in the meantime with joint integrated units and a common military ideology; (4) there will also be wealth-sharing (especially on oil); (5) Islamic banking will be allowed but there will only be one currency.

#### *Problems remain*

There are still serious obstacles to overcome in Sudan. For one thing, there is another rebel group, the Justice and Equality Movement, which was also fighting the government in the Darfur area. For another, there is much poverty in the land. And corruption in government appears to be endemic.

While there is no guarantee that the peace agreement will hold, the main parties to the pact are determined to hang on to it in good faith. And that might just spell the difference between installing a lasting peace in Sudan and provoking another fratricidal war there.

I think that the contents of the peace agreement mentioned a few paragraphs up may be of use to us in our search for peace in Mindanao.

#### *Rapporteurs sum up*

Four rapporteurs summarized the output of the workshops. They were Ousmane Sy, former Interior Minister of Mali; R.K. Mishra, President of the Observer Research Foundation of India; Beverly McLachlin, Chief Justice of Canada; Arnold Koller, former President of Switzerland;

In essence, the summaries reiterated the points that had been raised either in plenary or in the committees that: 1. federalism is a "process" that takes time to mature; 2. federalism needs constant dialogue and negotiation ("flexibility") between and among the various ethnic, cultural and power blocs in a state; 3. federalism rests on respect for the rights of individuals and the

"otherness" of peoples and on the application of the Rule of Law; 4. federalism provides transparent institutional responses to conflict situations; and 5. federalism has no one model to recommend itself for adoption by others.

### *Conclusion*

Federalism is not a sure fire guarantee that a country that adopts it will automatically become more developed than others that do not.

Nonetheless, the countries in Europe that have adopted it are indeed among the nations that are doing well in terms of economic development. The nations in Europe which have adopted the federal system and which are now members of the European Union have enjoyed more than 26 years of peace and continuous development. In fact, today, the Euro has outpaced the dollar in value as a global currency.

It appears also that *in general* countries in America, Africa, Asia and other continents that are federalized are outpacing countries that are not in terms of economic development.

Respectfully, I reiterate the submission that I have been making through the years that we should adopt the federal system of government for two reasons: 1. to speed up the economic development of the nation; and 2. to lay down the foundations for lasting peace not only in Mindanao but also for the rest of the Republic.

### *Economic move also*

It is not correct to say that the proposal to shift from the present unitary system of government to the federal system is merely a political move. It is not. It is an economic move.

With a federal system of government, we automatically increase the centers of finance and development from the present one center which is Metro-Manila to 10 more centers if we are to have 10 federal states.

### *Dissipate causes of Moro unrest*

The federal system will also dissipate the causes of Moro rebellions in Mindanao. Once the Moros of Mindanao are given the opportunity to run their own area as a federal state, we will see peace settle down in that unfortunate part of our land. I have the commitment of Moro leaders – rebels, religious, civic, political, and NGOs to that effect.

I can only hope that we do not lose time in effecting the change from the unitary to the federal system of government.

### *The way to go*

Belgium has shown the way. Europe has shown the way. The U.S. has shown the way. Canada has shown the way. India has shown the way. Malaysia has shown the way.

We need not reinvent the path to economic development and lasting peace. We should take the way being shown to us by the countries, communities, regions, and states that have successfully adopted the federal system.

We need not adopt every facet of their federal system. We must adapt the best features of the federal systems in the world today and come up with our own.

That is the way to go. The earlier we do it the better for all of us.

### *Postscript:*

This report won't be complete without expressing our gratitude to: 1. Belgian government that made our participation possible; 2. Bob Rae and the Forum of Federations; 3. the Charges d' Affaires and the staff of our Embassy in Brussels especially Moi, Faith, Joy and Paul who gave their all to make our participation in the conference fruitful; and 4. to the spouses Eric and Jacqueline Borghijs who had very kindly hosted a sumptuous lunch at their house in Breendonck on the day of our arrival.

## **PRIVILEGE SPEECH OF SENATOR PIMENTEL**

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

### **NORMA LASALA: A VICTIM OF A GOLDEN PARACHUTE PLOT**

Recently, the mass media reported the ouster of the National Treasurer, Ms. Norma L. Lasala, barely four (4) months after she assumed the office. It was the shortest term ever served by a treasurer. Her dismissal was so efficiently executed that before the appointment papers of her successor were signed, the major dailies already announced her replacement with certainty.

What triggered her unceremonious removal from office?

### *Outright Injustice*

Her superior, Secretary Cesar Purisima, had insinuated to the press that the Department of Finance "had something against her" as the reason for her departure from office. That was grossly unfair. If that were true, fairness dictates that the Secretary should reveal what wrong had she done. But to simply imply that she had done something wrong without backing it up with proof is to my mind not only malicious but an outright injustice to Ms. Lasala who was merely trying to do her duty as best she could.

What, then, has she done to merit her removal?

### *Denouncing BS Circulars*

The thing that apparently triggered the dismissal of Miss Lasala from office was her objection to *Bangko Sentral* Circulars Nos. 392 and 428 which created the so-called Third Party Custodians in the securities market.

On the day she took her oath of office, she was instructed to implement these circulars even before she had the time to study their merits. Prudence, however, dictated that she make an in depth study of the implications of the Circulars. And what did her study uncover? She learned that Circulars 392 and 428 were intended (1) to unduly favor a private entity, the Philippine Depository & Trust Corporation (PDTC) and (2) that their implementation would be grossly disadvantageous to the government and to the people.

The reasons for her conclusions follow:

#### *Increase costs*

1. Their implementation would increase the costs of investing in government securities that in turn would raise the country's debt burden.

The very creation of the so-called third party custodians will cause the increase in the country's debt burden. How?

Selling of government securities is one of the means by which the government borrows domestically from the public. Right now the investors who buy government securities do so without having to pay any amount other than the cost of the government security. The buyer simply instructs his bank to submit a bid for a government security. With the bid made, the transaction is done and recorded in the Registry of Scripless Securities in a matter of minutes.

If the investor has to course his purchase through a custodian, the custodian will charge him fees for its services.

### *Billions in additional costs*

How much would such custodian fees amount to? According to Vicente Castillo, President and Chief Executive Officer of the Philippine Dealing System and Holdings Corporation (PDS, for short), a third party custodian, those fees would amount to half a billion pesos on an P800-billion transaction.

P800 billion is a conservative estimate given that a government security is turned over several times, say twenty times, in a year. The cost could easily soar up P20 billion. Please note that the estimate was made by just one of six private custodians. To complete our discussion, the six are: four foreign banks, namely, Standard and Chartered Bank, the practices of which were denounced by Senator Enrile a few days ago, Hong Kong and Shanghai Bank, Deutch Bank and Citibank; one local bank, Bank of the Philippine Islands, and a non-bank, PDTC.

The country has some P2 trillion worth of government scripless (that means without paper certificates) securities in a given year. That is the magnitude of the transactions in scripless securities that normally pass through the RoSS annually. On the basis of the estimate, the costs of transactions in scripless securities – if private custodians were involved – would more or less be P20 billion.

If private custodians are allowed to lay their hands, as it were, on the scripless securities transactions, additional costs will

have to be borne initially by the investor when he bids for the government security. The government, in turn, would have to increase the interest rate it pays on the scripless security to enable the investor to recover the added cost. In the end, the people would have to ultimately bear the added cost.

#### *Foreign-aided facility*

2. The implementation of BSP Circulars 392 and 428 would also mean awarding a government infrastructure worth millions of pesos that the country has obtained from foreign aid and grants to a private entity without just compensation – for free! How will this be done?

For the PDTC (Philippine Depository and Trust Corporation) to function as third party custodian, it will have to connect its computer system to the computer system of the government operated by the Bureau of the Treasury. By making such a connection, PDTC will gain access to sensitive and vital debt data of the government and the sophisticated system that maintains such data. This system, which is called the Registry of Scripless Securities or the RoSS, was developed in 1996. RoSS has capabilities parallel to the advanced systems in the United States and Canada. In fact, I was told that there is nothing like it in Asia.

It looks, therefore, like only the PDTC will benefit from the implementation of the circulars in question. PDTC apparently wants to access, infiltrate and use the RoSS system of the Bureau of Treasury and for free!

It is said that the government wants to privatize the RoSS. If that is so, would not the proper way be to go through a public bidding? If RoSS is sold to private parties through public bidding, it will, no doubt, fetch a good sum equivalent to tens of billions of pesos given its superior quality and capacity. We have been at wit's end on how to raise much needed revenues that up to today, we are still discussing VAT. Why give away such a valuable asset for free to a private company?

#### *Imperils debt data*

3. Implementation of Circulars 392 and 428 will endanger the integrity of the country's debt data and the government's ability to manage its debts.

The RoSS contains vital debt data which form the bases for the preparation of reports and the culling of statistics used by the government in crafting the budget and timing its borrowing efforts. It maintains detailed records down to the level of individual beneficial owners and is able to give the government fast information on who it owes money to, how much is owed and the terms of such obligations.

The third party custodians, as designed by Circulars 392 and 428 will maintain a general account of the investors buying the government securities, the details of which will be known only to them and no longer to the Bureau. It will create a ridiculous situation where in order to determine who the government owes any amount to and how much it owes, the Bureau would now have to ask six different private entities, namely, Standard Chartered Bank, Hong Kong Shanghai Bank, Citibank, Bank of the Philippine Islands and Deutch Bank and PDTC and, thereafter, do a reconciliation with each one. Coming up with reliable debt figures will be tedious, if not impossible.

#### *Risky implementation*

4. Implementation of Circulars 392 and 428 would be extremely risky for the government.

PDTC is an accredited third party custodian by the *Bangko Sentral*. But it is capitalized at a mere P500 million pesos. Given the trillions of pesos worth of securities it will handle, what protection can it offer the investors and the government for the scripless securities that will pass through its hands? While the comparison may be odious, let me say that, at least, a savings bank is capitalized for more – at least P2.5 billion.

### *No sweat private gain*

5. Implementation of Circulars 392 and 428 would mean the use of government assets for private gain.

Using government securities as a staple and connecting to the government's computer, third party custodians will charge custodian and other fees. Meanwhile, it is the government which has to reconfigure the RoSS system to accommodate the custodians and continue to maintain and operate it so that the third party custodians can make a living! This is what the Tagalogs would call "*sinisuerte talaga!*"

### *Unnecessary circulars*

6. Implementation of Circulars 392 and 428 is unnecessary.

Implementing the circulars gives no added value to the securities market or to the government. The circulars would only allow private custodian companies to intervene in a market that already functions efficiently with hardly a cost to the investor or the government. The market and the Bureau are being disrupted to accommodate and sustain the creations of Circulars 392 and 428. In fact, it is very noteworthy that objections were raised by the Investment Houses Association of the Philippines, the Bankers Association of the Philippines and Insurance companies. But like other well-meaning complaints, the objections all went unheeded by the Department of Finance and the *Bangko Sentral* for reasons of their own.

Whenever the proponents of Circulars 392 and 428 are asked what advantage would there be in the creation of third party custodians, they answer that it will prevent a recurrence of a scam similar to the Bancap scam of 1994.

### *Bancap scam before RoSS*

The answer is neither good nor honest. Everyone knows that the Bank of Commerce was involved in that scam in 1994. In fact, sad to say, the Bank's

Treasurer, Rey Feliciano, later took his own life. The perpetrators of the scam, Ms. Marilyn Nite and her colleagues, defrauded several banks, Planters Bank, among other banks, by selling a government security worth P450 million several times resulting in multiple claimants over it.

When the Bancap scam occurred in 1994, the RoSS was not yet organized; therefore, it cannot be blamed for the scam. As a matter of fact, at that time, government securities were evidenced by certificates. The lag time between the printing of the certificate of a government security and the sale of the security made possible multiple selling such that by the time the certificate was printed, more than two parties could claim ownership of the same security. At that time, it was the Central Bank which was charged with the function of issuing government securities.

Since 1996, however, with the development of the RoSS, government securities have become paperless or what is now called "scripless." This means that they begun to exist as electronic entries in the RoSS in 1996. Recording of transfers of ownership are done on "real time," as soon as they transpire.

### *Undisclosed facts*

Now, private custodians would have a significant role to play only if government securities were still evidenced by certificates. But in a regime of a paperless or scripless environment, what is there to take custody of?

Benchmarks, price transparency, price discovery, etc. – these are services that the RoSS is or is capable of rendering at no cost to the investor or to the government. In fact, investment rates are now available via short messaging system or text messages, and an investor can know the value of his or her securities practically anywhere in the world he or she might in a given moment.

These facts have not been disclosed to the public and to the authorities when Circulars 392 and 428 were issued.

*Who benefits?*

I wonder why the proponents are, as a newspaper has put it, "in such a murderous haste" to implement the Circulars? Who are the powers behind these Circulars? Who stands to benefit from them? If this so called "capital market reform" is so good, why then was the country still downgraded by the credit raters in spite of the fact that Circular 392 was issued on July 2, 2003 and Circular 428 was issued in April, 2004?

Why had the *Bangko Sentral* refused to disclose to the Bureau the criteria with which they accredited the private custodians who would now take over the functions of the RoSS? Why is the BSP forcing the Bureau to simply allow the connection of the systems of the custodians with the RoSS without asking any questions?

How odd that the very government agency – the Bureau of the Treasury – that is expected to implement the circulars and which is in a position to understand the consequences of their implementation has not been previously consulted. How can the issuance of mere bank circulars nullify existing laws that gave the Bureau of the Treasury its mandate? The *Bangko Sentral* cannot alter laws.

Why did the Department of Finance merely stand aside and allow an agency under it to be divested of its core function by the *Bangko Sentral*? Why this "short arms" deal? Did anyone in the Department of Finance and the *Bangko Sentral* benefit from this arrangement?

These questions need urgent answers.

*Summing up*

To sum up, implementing BSP Circulars Nos. 392 and 428 is wrong. It is harmful to the country and to the people. It should be stopped. The brains behind the idea of the circulars in question include BSP Governor Rafael Buenventura and the PDTC officials, Vicente Castillo, Cesar Crisol, Topper Coronel, Terry Montecillo, William Ferguson, Ms. Flor Tarriela and Roy Lacsamana.

There is a common thread that binds the lady and the gentlemen mentioned. They were all incorporators of PCD, the forerunner of the PDTC, and they were all former Citibankers – aside from Mr. Castillo – about 15 to 20 years ago and worked in the Trust Division of the bank.

It is also interesting to note that the Articles of Incorporation of the Philippine Depository & Trust Corporation (formerly Philippine Central Depository, Inc) listed BSP Governor Rafael Buenventura as a former member of its Board of Directors and one of its incorporators.

These are obviously powerful people who could cause the removal of honest and hardworking public servants who oppose their plans even if the latter acted out of a sincere belief that those plans would be disadvantageous to the government. It looks like the power they wield is practically limitless so that it needs to be checked by the Senate of the country.

*Golden parachute?*

The transfer of the RoSS from the Bureau is apparently being used to provide a golden parachute for some people to land a sinecure or even a lucrative position in the private sector once they retire from the public service. I hope I am wrong but the questions I have raised, I think, demand forthright and honest answers.

In fairness, the people who are named in this speech or who think that they are alluded to should be given the chance to respond before the proper Senate Committee which may be authorized to conduct an investigation relative to the questions raised in this speech.

*Example worthy of emulation*

In closing, let me say that the example set by Ms Norma Lasala in standing up against the wishes of her superiors for what she, after serious study, believed would be bad for the country, deserves emulation – not condemnation – by other public servants. The insensitive manner by which she



was removed as head of the Bureau of the Treasury speaks volumes of the way this government is being run: hellish to the honest and faithful public servant but heavenly to the corrupt and wayward public officials.

### SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

*It was 4:07 p.m.*

### RESUMPTION OF SESSION

At 4:09 p.m., the session was resumed with Senate President Pro Tempore Flavio Reyes presiding.

### INTERPELLATION OF SENATOR OSMEÑA

Asked by Senator Osmeña who dismissed Ms. Norma Lasala, Senator Pimentel replied that in all likelihood, it was Secretary Cesar Purisima since the National Treasury is under the Department of Finance.

Senator Osmeña surmised that while it was Secretary Purisima who caused her dismissal, the actual order might have come from Malacañang because she was a presidential appointee. Senator Pimentel agreed.

As to the stockholders of the PDTC, Senator Pimentel stated that the people behind the corporation are Mr. Vicente Castillo, Cesar Crisol, Topper Coronel, Terry Montecillo, William Ferguson, Ms. Flor Tarriela and Roy Lacsamana.

Upon further query, Senator Pimentel said that as far as he has ascertained, PDTC is a quasi-bank. However, Senator Osmeña believed that PDTC is a quasi-public corporation in the sense that it is owned by the Bankers Association of the Philippines and certain groups. He recalled that the Securitization Act precisely encourages the formation of the Securities Mortgage and Insurance Company (SMIC), hopefully, with the participation of the World Bank, Asian Development Bank, Development Bank of the Philippines and other private banks to make the mortgage securitization sector more liquid.

As regards the total amount of government securities traded, Senator Pimentel said that the more accurate estimate is P4 trillion a year.

On whether the loopholes in the system which led to the Bancap scam have been plugged, Senator Pimentel replied that since the Registry of Scripless Security was put in place in 1996, there had been no repetition of the scam.

Senator Osmeña noted that when an investor wants to purchase a security, he instructs his bank, which has to be a government securities dealer, to buy and hold the securities for him but the government does not know who actually owns them, thus, the bank could sell them twice or thrice to different people without the investor or the government knowing about it.

Senator Pimentel explained that under the RoSS, the buyer need not rely on his bank only to get data on his investments in scripless securities; he can directly communicate with RoSS the amount and time he expected to be repaid on his investments. He noted that since RoSS was put in place in 1996, there has been no multiple selling of securities. In response, Senator Osmeña believed that this simply implies that there has not been a repetition of the Bancap scam but no indication that the loopholes in the system have been plugged.

To the observation that the use of a third party custodian is voluntary on the part of the investor, Senator Pimentel asserted that BSP Circular Nos. 392 and 428 undermine the primary function of the National Treasury in maintaining the public debt records of the government.

But Senator Osmeña pointed out that at present, a GSED security dealer is not required to report the name of the buyer of the security to the National Treasury, thus, there is no difference in the practice between then and now.

Senator Pimentel believed that if the circulars would be adopted, the Bureau of Treasury would not be in a position to know the exact obligation of the national government.

At this juncture, Senator Osmeña informed the Body that the Bankers Association of the Philippines, which is in favor of the circulars, has invited Senator Pimentel to a meeting on Thursday,

during which Treasurer Omar Cruz would explain the side of the Bureau.

Senator Pimentel stated that he has interpreted the stand of the BAP on the BSP circulars as published in the newspapers but he was unaware if it has modified.

In closing, Senator Osmeña thanked Senator Pimentel for bringing the matter to the attention of the Senate as he expressed hope that it would be referred to the Committee on Banks, Financial Institutions and Currencies to determine whether said circulars would bring greater benefit to the people or not.

#### **INTERPELLATION OF SENATOR ROXAS**

Senator Roxas asked what the rationale was for the decision to transfer the custodial securities function of the Bureau of the Treasury to the PDTC. In reply, Senator Pimentel explained that basically, the PDTC would have free access to the Registry of Scriptless Securities and all other data on the public debt that are being maintained by the National Treasury. He expressed the view that if the intention is to allow the private sector to use such facility, it would be better to privatize it.

Asked if under the new system, the fees which should otherwise go to the government would now be paid to the PDTC, Senator Pimentel replied that at present, an investor who buys scripless securities from the government is not required to pay custodial fees at all, but if the custodial function would be transferred to a private entity like the PDTC, a fee would be imposed. He assumed that if the total amount of scripless securities being traded is P4 trillion in a year, about P20 billion in fees could be imposed by the PDTC which would be passed on as an additional burden to the national government.

On whether through a regulatory fiat, several agencies decided that a particular entity would be allowed to make money in securities trading, Senator Pimentel replied in the affirmative. He also affirmed that this money-making activity would not be the product of competition but the sole activity of the PDTC.

In closing, Senator Roxas associated himself with the call of Senator Pimentel for an inquiry into the matter.

#### **SUSPENSION OF INTERPELLATIONS ON SENATOR PIMENTEL'S SPEECH**

At this juncture, the Body suspended the interpellation on the speech of Senator Pimentel considering that a number of senators have made reservations to interpellate at a later date.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 4:29 p.m.*

#### **RESUMPTION OF SESSION**

At 4:30 p.m., the session was resumed.

#### **COMMITTEE REPORT NO. 12 ON PROPOSED SENATE RESOLUTION NO. 195**

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second Reading, Proposed Senate Resolution No. 195 (Committee Report No. 12), entitled

#### **RESOLUTION CONCURRING IN THE RATIFICATION OF THE FRAMEWORK CONVENTION ON TOBACCO CONTROL.**

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, with the permission of the Body, upon motion of Senator Pangilinan, only the title of the resolution was read without prejudice to the insertion of its text into the Record of the Senate.

The Chair recognized Senator Defensor Santiago for the sponsorship.

#### **SPONSORSHIP SPEECH OF SENATOR DEFENSOR SANTIAGO**

In sponsoring Proposed Senate Resolution No. 195, Senator Defensor Santiago delivered the following speech:

#### **FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)**

Your Committee on Foreign Relations is humbly pleased to present this report

recommending approval of Proposed Senate Resolution No. 195 entitled "Resolution Concurring in the Ratification of the Framework Convention on Tobacco Control."

Advocates of public health have long expressed their concern about the impact of tobacco use on current and future health of populations, especially in developing countries. The alarm raised by these advocates is not unfounded for tobacco use is the leading cause of preventable death in the world today. It has been reported that tobacco kills 4.9 million people each year, and this toll is expected to double in the next 20 years. Plainly, tobacco will prematurely end the lives of 10 million people every year if the current trends are to continue.

While the contribution of tobacco to premature death and disease is well-documented, little attention has been paid to the link between tobacco and poverty. Records indicate that tobacco tends to be consumed by those who are poor. Tobacco consumption thus contributes to poverty through loss of income, loss of productivity, disease, and death. There is indeed an inextricable link between tobacco and poverty, and the use of tobacco, especially by poorer people, causes harmful consequences to their already precarious economies and income.

It was against this backdrop that the World Health Organization (WHO) actively worked towards the adoption of the Framework Convention on Tobacco Control. The Convention is the first treaty negotiated under the auspices of the WHO and is the first legal agreement designed to reduce tobacco-related deaths and diseases around the world. It is essentially an evidence-based instrument that reaffirms the right of all people to the highest standard of health.

Among its many measures, the treaty requires countries to impose restrictions on tobacco advertising, sponsorship and promotion; establish new packaging and labeling of tobacco products; establish clean indoor air controls; and strengthen legislation to clamp down on tobacco smuggling.

In fine, the Convention requires each party to develop and implement comprehensive multisectoral national tobacco control strategies, plans, and programs designed to control the devastating impact of tobacco consumption.

The Framework Convention was adopted by the World Health Assembly on 21 May 2003. Since its adoption, the momentum growing around the Convention seems unstoppable. So far, 168 countries, including the European Community, have signed the Convention, while 57 member-states have ratified it. In less than a year-and-a-half, more than 50 countries from all the regions of the world have taken the necessary step to become contracting parties to the treaty, making it one of the most rapidly embraced UN treaties of all time. This more than demonstrates the importance placed by the international community on responding to the threat posed by tobacco use to health and welfare.

The Philippines signed the Framework Convention on Tobacco Control on 23 September 2003. On 5 October 2004, President Gloria Arroyo signed the Instrument of Ratification. The salient features of the FCTC are embodied in Republic Act No. 9211 "An Act Regulating the Packaging, Use, Sale, Distribution and Advertisements of Tobacco Products and for Other Purposes" and its Implementing Rules and Regulations, otherwise known as the "Tobacco Regulation Act of 2003."

It has been said that international acceptance of the Convention will translate into public health gains for all of humankind. Let us now join the international community in its efforts to respond to this man-made catastrophe by cementing our commitment to the Framework Convention.

#### **REMARKS OF SENATOR DEFENSOR SANTIAGO**

Senator Defensor Santiago stated that as agreed upon, interpellations on all three resolutions she had sponsored would be scheduled after the Lenten break.

## SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 195

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.

Senator Pangilinan stated that the parliamentary status was the period of interpellations. He announced that the following have expressed their desire to interpellate on the bill: Senators Lim, Defensor Santiago, Madrigal, Lacson, Lapid, Ejercito Estrada (L), Enrile, Osmeña, Roxas and Ejercito Estrada (J).

## SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

*It was 4:36 p.m.*

## RESUMPTION OF SESSION

At 4:42 p.m., the session was resumed.

The Chair stated that the March 14, 2005 version of the bill would be used as the reference.

## CLARIFICATION OF SENATOR RECTO

Senator Recto clarified that the March 14 version contains all the sections in the NIRC which includes those that are sought to be amended under the proposed Act and, for reference, also sections that are not being amended. This, he said, is to

enable the Members to understand the intent of the different sections and how they relate to one another.

## INTERPELLATION OF SENATOR LIM

Asked by Senator Lim why the bill seeks to amend certain sections of the National Internal Revenue Code of 1987, Senator Recto replied that said sections relate to income taxes, corporate income taxes and the VAT. Since a single VAT rate is being proposed to temper the impact on consumers, he said certain sections of the NIRC that are related to the corporate income tax rate, the VAT and some excise taxes would have to be amended; all in all, twenty sections are proposed to be amended, covering five titles and six chapters of the Code.

Asked what Section 27 is all about and the actual amount it would generate, Senator Recto replied that about P130 billion in corporate income tax was collected as of December 31, 2004, so that if the tax rate is increased from 32% to 35%, about P12.3 billion is expected to be generated. He noted that Sections 27, 28 and 34 are also related to corporate income tax. He affirmed that Sections 106, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, and 288 are related to the VAT, along with certain administrative issues.

Replying to further queries, Senator Recto stated that the bill is expected to generate P70 billion in gross revenues. On the other hand, he explained that the proposed reduction in excise taxes on petroleum products and in franchise tax is expected to bring down government revenues by roughly P17.5 billion for an estimated yield of P66 billion at 100% efficiency of the implementation of the proposed Act.

Asked if the government needed P80 billion to address the fiscal deficit, Senator Recto said that such was the understanding of the administration members of the two Houses of Congress with the Executive department that initially proposed eight tax measures. However, he hoped that the same amount could be generated from the implementation of the sin tax, lateral attrition and the expanded VAT.

On the suggestion to amend certain sections of the National Internal Revenue Code, Senator Recto affirmed that it is within the power of Congress to do so.

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Senator Lim noted that Chapter IV, Section 145(c), seventh paragraph, of R. A. 8424 or the Tax Reform Act of 1997 states that, "The classification of each brand of cigarettes as of October 1, 1996, as set forth in Annex 'D,' shall remain in force until revised by Congress," and Annex D lists cigarette brands and their prices which have remained stable due to the fixed net retail price established by said law. Relative thereto, he suggested that the provision be repealed to allow government to collect P22 billion to P28 billion in taxes. However, Senator Recto recalled that a *similar amendment* was defeated during the deliberations on the sin tax bill. He said that while he disagreed that removing the "poison pill" provision would generate P22 billion for the government, it is up to the Members whether or not to accept the suggestion.

For his part, Senator Lim appealed to the Members to consider his suggestion as he insisted that the provision protects cigarette manufacturers. Moreover, he posited that repealing the provision would obviate the need to amend other sections of the NIRC.

### SUSPENSION OF SESSION

Upon motion of Senator Madrigal, the session was suspended.

*It was 4:58 p.m.*

### RESUMPTION OF SESSION

At 5:04 p.m., the session was resumed.

### INTERPELLATION OF SENATOR MADRIGAL

At the outset, Senator Madrigal recalled that in the manifestation of her negative vote on the sin tax measure, she underscored that the Members would have to be convinced that the long-term importance of fiscal measures should not be sacrificed for short-term considerations. Relative thereto, she noted that the VAT theoretically originated in the United States when Professor T. S. Adams published a concept paper in 1911. She added that France adopted the VAT in 1954, and that most other European countries have done so as well. For his part, Senator Recto said that the VAT was first introduced as a concept in 1919 by German businessman Wilhelm von Siemens and was adopted in France in 1948.

Relative thereto, Senator Madrigal pointed out that the VAT concept is difficult to explain although it has been called different names. Additionally, she said that the Hansard debates in the British parliament have become a guide on the VAT issue. She explained that her review of Senate Bill No. 1950 was guided by the following questions – first, whether the law is necessary; second, whether it would redound to the collective benefit of the poor; and third, whether it would really introduce meaningful long-term reforms in the current system.

To get a macroeconomic view of the matter, Senator Madrigal stated that she had reviewed various related papers especially the extensive debates in the British House of Commons on the value-added tax strategy priorities, and she had also consulted a few economists. She expressed hope that the bill would have a long-term positive effect not only on big businesses but also on the poor who could not understand why they have to carry the burden of the value-added tax.

Senator Madrigal believed that the bill is more of a palliative measure to the fiscal crisis considering that the government has been in fiscal deficit for some time and would be in fiscal deficit for four more years. She said that based on the 2005 Analysis of the President's Budget conducted by the Congressional Planning and Budget Office, there is a great widening gap between what the government targets to borrow and what it actually borrows, hence, the deficit grows. For instance, for the year 2001, she said that the government deficit was estimated at P85 billion but the government ended up borrowing P143 billion.

While the measure does not really fight for an increase in VAT, Senator Madrigal realized that there are certain provisions that may not be so collectively positive for the great majority of the people. However, the Senate having accepted the 10% VAT, she said that there is already a skewed bias towards certain interest groups that would be benefiting from the measure. She asked on the net effect of the measure in terms of lowering the debt burden.

Senator Recto replied that if the consolidated public sector deficit (CPSD) for this year is P250 billion, as expected, and assuming Congress passed the three bills and government generated P80 billion revenues starting January 1, then the government

would reduce the P253 billion by P80 billion or to roughly P170 billion. However, he said that since it is near the end of the first quarter and realizing that the government should provide business establishments some leeway, and the BIR, some time to draft the implementing rules and regulations for the measure, the Committee proposes that the law be made effective on July 1, 2005.

Assuming that the proposed Act could generate P66 billion in 2005, or half of it which is P33 billion, plus the revenues from other measures, say another P10 billion, Senator Recto said that the P256 billion CPSD would be reduced by P40 billion plus and, therefore, the government need not borrow an additional P40 billion. He affirmed that the measure is a work-in-progress, and, at this point, he has already seen nine possible committee amendments which he would introduce at the proper time.

On whether the VAT bill would enable the government to shift from borrowings to self-reliance, Senator Recto replied that he could not guarantee that the government would not spend more than what it collects; and to what extent is still a question. But realizing the macro-implications of the bill, he believed that the government apparently has the duty to raise revenues so that hopefully, it would be able to finance its own development. He noted that based on the Medium-Term Philippine Development Plan, the government apparently has the political will to have a balanced budget by 2010 or even earlier, through the enactment of tax revenue measures. That being the case, he posited that it is no longer necessary to have a balanced budget but an acceptable 1 percent to 1.5 percent CPSD over GDP.

Upon further queries, Senator Recto affirmed that he had considered the long-term implications of the bill, the reason he accepted a 10% VAT rate, and the lifting of many exemptions particularly of big industries that are first in the VAT chain such as power and petroleum, even reluctantly, in order to make the system work more effectively and efficiently. He believed that reducing the deficit would necessitate raising revenues, reducing the expenditures and reducing graft and corruption.

Asked about the disposition of incremental revenues and the revenue from total VAT collections, Senator Recto admitted that there is a need to refine the provisions; however, the intention

is to use part of those amounts for the educational and health programs that would benefit the taxpayers. He expressed openness to accept proposals that would improve the provisions. He believed that the taxpayers should know exactly what portion of the VAT should be used for the purpose.

Senator Madrigal underscored the need to clarify the provisions because incremental revenues and revenues from the total VAT collection are two different terms. She said that Congress should be able to justify the amendments to exemptions to ensure that a large portion of raised revenues would go to debt payment and not only to infrastructure projects of a government that cannot even collect its taxes properly. She said that it makes economic sense to pass these fiscal measures only if the bulk of revenues to be collected would go to debt payment, not to infrastructure. Senator Recto agreed as he said that he would be willing to accept amendments at the proper time.

Noting that 10% of total value added tax was allocated to public elementary and secondary education and health services and public information and education program of the BIR, Senator Madrigal asked whether 90% of the total VAT collections are still unallocated. Senator Recto replied in the affirmative. He stated that in concept, he would agree that 90% should be used to pay for debt payment; however, he expressed doubt if other Members would agree to it. He opined that a significant percentage of revenues should be used for debt payment.

Asked on the proposal to allot funds for public elementary and secondary education and public health that the Sin Tax Law already provides for, Senator Recto replied that studies have shown that the government needs to spend more on human capital development. He stated that he was willing to accept suggestions on how to appropriate the revenues to be generated.

Queried about the amount needed for the national health program, Senator Recto stated that he was not aware of any studies or the administration policy as to the amount needed for the program. He said that the Executive department did not request any allocation for education and health but he included it in the bill as a personal choice. He underscored that it is up to the Body whether to spend more, spend less or not spend at all on anything.

As to the amount needed for the National Health Insurance Program, the Chair stated that the 2005 health allocation represents 1.9% of the national budget while the World Health Organization is recommending 5%. It added that the budget allocation of Thailand for health is 12%. Senator Recto added that based on the WHO recommendation, an additional P150 billion allocation is needed to fund the health program.

On the proposal to lift exemptions on several sectors and impose VAT on others like power, fuel, airline and shipping, Senator Madrigal said that a 1998 study done by the Fiscal Policy Analysis Activity (FPAA), a joint DOF and BIR project, revealed that the VAT burden is felt most by those in the income brackets of P50,000 to P59,000 and P80,000 to P99,000 annually.

Asked if there would be a shift in the tax burden, Senator Recto replied that the VAT is a consumer tax so that when power rates are increased or the base is expanded, it would involve the middle class. He added that precisely, the Committee suggested tempering the effect on consumers by reducing the excise taxes on socially sensitive products and removing the franchise tax on electricity. Moreover, he pointed out that based on studies, it appears that the rich consume more electricity than the poor while it is the opposite for petroleum products.

On the proposal to include airlines in the VAT chain, Senator Recto explained that at present, airlines and shipping are VAT-exempt both domestically and internationally, except for cargo. He noted that being non-VAT registered entities, airlines and shipping do not pay VAT on their imports. He said that the bill seeks to impose VAT on domestic passengers and on the purchases of airlines and shipping whose sales shall remain zero-rated. The same treatment is given to exporters who sell their goods or services abroad, he added. He underscored that under the VAT concept, countries with the VAT system impose VAT on domestic passengers and cargoes.

As regards the proposal to impose VAT on the transport of passenger and cargo by air or sea vessels, Senator Recto clarified that overseas transport is zero-rated but domestic transport is subject to 10% VAT. He stated that it is hard to imagine a situation wherein government would

impose VAT on overseas shipping or overseas airlines. He observed that when a person exports goods and services, it is VAT-free because of the destination principle of the VAT system. It is upon entry in the port, he said, that the good is taxed.

Senator Madrigal disagreed, saying that if the transaction involving the transport of passengers overseas by ship or by air would be 0% VAT or neutral VAT, it means that no VAT would be levied on airlines and shipping companies. In addition, she said, government would have to refund the VAT that these companies paid on their inputs. She cautioned that government might end up owing these companies money.

Senator Madrigal stated that the calculation of VAT as being 10% of the value-added is not as simple as presented by Senator Recto. She agreed that it is rather complicated because it is the percentage of net of output minus input. She asked if the government would refund the VAT that shipping companies and airlines paid on their inputs – supplies, engines, spare parts, and services.

Senator Recto stated that it is the same situation as that of the exporters whose sale is zero-rated; however, when an exporter imports or purchases domestically, he pays a VAT input. He added that under the bill, a refund or tax credit on the VAT input is given to exporters. He explained that VAT input is an advance payment of taxes, so the government does not lose anything and that, in fact, it has gained from the advance payment of tax. Further-more, he noted that while the exporter charges his customers through VAT output, the difference of the VAT output and input results in the net VAT that the exporter pays.

As regards the airlines, Senator Recto explained that if spare parts are imported, they are VAT-exempt; however, airlines pay VAT on the cargo they carry. He stated that if the Members want to delete the provision subjecting airlines and shipping to VAT, then so be it. However, he opined that there is no reason why domestic cargo should be subject to VAT, while passengers are not.

On the repeal of provisions on franchise taxes, Senator Recto said that committee amendments would be introduced at the proper time. He said that repealing clauses need to be refined and the Committee is working on it with the help of the DoF.

Asked how much input tax airlines\* would be entitled to, Senator Recto replied that there is no amount to be discussed at the moment since there is no collection as far as VAT output is concerned. He said that it would depend on the number of aircraft that the airline companies import. He added that at present, airline companies do not pay VAT on their imports since their franchises provide, "Pay a franchise tax or income tax whichever is lower." Furthermore, he noted that there is an *ipso facto* clause that all franchise grantees shall have equal footing, meaning, they enjoy the same benefits. He believed that the exemption of the airlines and shipping from VAT on domestic passengers should be removed — which the DOF estimates to generate P1.5 billion in revenues — but not on overseas shipping or international airlines as practiced in many countries. However, he stated that he would leave the decision to the Body whether or not to exempt both industries from VAT.

Senator Madrigal feared that there could be a negative VAT due if it is deducted from the tax liabilities of sellers and, at the end of the day, more VAT is deducted than paid. She added that the provision would again be subject to misinterpretation and abuse. She said that precisely, a study should be made on the effects of VAT on international airlines because there is only one or two owned by the same man who benefited from the sin taxes.

Senator Recto expressed fear that imposing VAT on overseas shipping and overseas airlines carrying passengers and cargoes would make both industries uncompetitive because there is no VAT imposed on international shipping and airlines that carry passengers from the Philippines. Stating that he was merely making his recommendations, he said that the Body could maintain the status quo if it so desired. However, he disclosed that he has never come across any readings that other countries exempt airlines, power and petroleum from VAT. He observed that many countries, in fact, would want to VAT-exempt the so-called hard-to-VAT sectors such as farmers, small retail outlets, and financial transactions.

Senator Recto said that the bill provides a long-term system for the country. Thus, he opined that it would be more prudent and wise to start by lifting exemptions for certain sectors and applying to them the same VAT base of 10%.

Given the problems of enforcement in the country, Senator Madrigal said that she would rather continue charging franchise taxes because big accounting firms could become magicians, thus, in the long run, all the tax inputs could be used as tax credits and would redound to the benefit of only a few. Noting the absence of adequate safeguards and studies on the workability of the proposal, she would rather recommend maintaining the status quo than jumping into something on which no empirical studies were done.

Senator Recto explained that he does not want to destroy the provisions of the Tax Code—such as Section 106 relating to goods, Section 108 relating to services, and Section 109 relating to exemptions—that is why new sections that are related to goods and services were being introduced to make the administration of VAT more transparent and easier for the VAT-registered person and for government. He added that the Committee even took time out to determine what invoices and receipts are—the former actually relate to goods, and the latter to services, without which one could not claim a VAT input.

On the concern that there could be avoidance and abuse, Senator Recto admitted that unlike other countries, the Philippines fails on two things: first, there should be a VAT education program wherein taxpayers would be informed and educated on how the VAT system works and how they could benefit from it; second, by and large, there should be no exemptions. Thus, he said, subcontractors of export-oriented enterprises earning foreign exchange should also be zero-rated. To illustrate, he said that a call center in Makati is zero-rated because, like exports, it offers a service that is consumed outside the Philippines—it also has tax inputs and could get a tax credit to be deducted from its other tax liabilities as provided for in existing law.

Senator Madrigal contended that if VAT would be imposed on airline passengers but the airlines remain zero-rated, there would be no neutrality in the VAT because zero-rating entitles the latter to tax credits. Senator Recto disagreed, stating that there is no VAT if a passenger is going overseas; however, he maintained that there should be VAT on a passenger traveling domestically because he pays what is really a consumption tax on domestic goods and services. For instance, he said, a foreigner who bought goods in a department store or a retail outlet in Italy could claim a refund in cash,



or he could have it credited to his credit card upon presentation of the receipt or invoice to the revenue desk in the airport.

On a related issue, Senator Recto said that the United States does not like the imposition of VAT because, as a federal government, it has its own local and state taxes; on the other hand, European countries have a VAT system.

At this point, Senator Madrigal bared that in his book, *A New Federal Tax System*, economist Richard Lindholm contended two things: 1) referring to the VAT as a "consumption tax wrongly implies that the VAT is simply a national retail sales tax rather than a tax on all sales both retail and pre-retail;" and 2) "a broad-based tax such as the VAT is just as much a tax on production as it is a tax on consumption the VAT applies just as much to raw materials and capital goods as it does to goods and services intended for consumption. The VAT is essentially a broad-based tax on economic activity." Moreover, she said that according to Lindholm, "calling a broad-based tax, such as a VAT, merely a consumption tax as opposed to production tax, is equivalent to calling a half-filled glass of water half empty or half full." She said that the nuances on export and other classifications do not really hold water when it concerns airline passengers. Further, she noted that the Philippines is a unique country because what works in other countries might not work here.

Senator Recto reiterated that imposing a 10% VAT on international passengers would make the airlines uncompetitive because passengers would opt not to take national carriers given the additional cost. In terms of collecting the franchise tax, he said that government does not collect a single centavo. Senator Madrigal stated that she would rather not collect something than let some people get away with it, especially since there are no studies that illustrate the proposal would do the country good.

To the observation that the DoF has projected that the measure would generate P1.5 billion, Senator Madrigal countered that there is no guarantee that the P2 billion in input taxes this year and next year would not be written off. Senator Recto reiterated that today there are no input taxes to begin with.

On Senator Recto's contention that the input tax is an advance payment of tax, for which a refund

would need receipts and invoices, Senator Madrigal argued that it is very easy to show receipts and invoices. Besides, she pointed out that accountants are very creative and will find ways to avoid payment of tax.

Senator Recto believed that BIR should only concentrate on the top 20% decile of economic activity where collection comes from. He informed the Body that out of 140,000 VAT-registered entities, the top 1,000 corporations contribute about 50% of total VAT collections. He denied that a zero-rated industry like airlines would receive a tax break under the bill. He reiterated that the VAT is an advance payment of tax, so there is nothing wrong with paying a VAT input, getting zero-rated and claiming back the VAT input

On the observation that the VAT system is subject to avoidance and abuse, Senator Recto believed that it is better than the status quo where the airlines are VAT-exempt and have nothing to advance. At present, he said, the airlines are not paying franchise tax or income tax. He cited PAL whose franchise provides a franchise tax of 2% or an income tax, whichever is lower, in lieu of all other taxes but PAL is under rehabilitation because of its losses. As a consequence of the *ipso facto* clause that the privilege of one is given to all, he pointed out that all the other airlines enjoy the same privilege and are also not paying franchise tax or income tax. He requested the DoF to provide each senator a copy of the franchise and income taxes paid by all the airlines as well as the DoF simulations that imposing VAT on these airlines would generate an incremental revenue of P1.5 billion.

Replying to Senator Madrigal's further queries, Senator Recto stated that no study was needed as the Tax Code precisely exempts airlines and shipping industries from VAT. He reiterated that the bill proposes a VAT for these sectors except that international airlines and overseas shipping lines should be zero-VAT as practiced in all other countries. He noted that the alternative to his proposal is to maintain the status quo where almost no amount of taxes is being collected from these sectors.

Senator Madrigal suggested that the measure be recommitted as the whole scenario was not mapped out. She made reservation to continue her interpellation until such time the DoF shall submit the reports she requested.

Senator Recto disclosed that cabarets and bars are presently exempt from VAT but the BIR is also having difficulty collecting the 18% amusement tax, which is why the Committee proposed instead a 10% VAT based on receipts at a threshold of P750,000 gross annual sales. He suggested that the BIR focus its VAT collection on establishments and persons within this threshold although he would prefer a higher threshold so that the BIR will collect more efficiently from those who can afford to pay the VAT

Finally, Senator Recto mentioned that among the nine committee amendments would be the retention of the common carrier's tax paid by foreign airlines and the abolition of the 2% excise tax on natural gas in order to temper the effect of the VAT on consumers. Upon query, he explained that the committee amendments were based on issues raised during the interpellations.

Quoting British statesman William Pitt that, "Necessity is the plea for every infringement of human freedom, the argument of tyrants, and the creed of slaves," Senator Madrigal stressed that just because the country needs to address the budget deficit, the Body need not be slaves to what is expedient at present but which later on will sell the patrimony of the country.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:23 p.m.

#### **RESUMPTION OF SESSION**

At 6:24 p.m., the session was resumed.

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

The Secretary of the Senate read Proposed Senate Resolution No. 212 which the Chair referred to the Committees on Youth, Women and Family Relations; and Health and Demography:

Proposed Senate Resolution No. 212, entitled

**RESOLUTION DIRECTING THE COMMITTEE ON YOUTH, WOMEN**

**AND FAMILY RELATIONS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE CAUSE OF DEATH OF AT LEAST TWENTY-SEVEN (27) ELEMENTARY SCHOOL CHILDREN AND THE ONE HUNDRED THIRTY-ONE (131) REPORTED CASES OF FOOD POISONING IN MABINI, BOHOL, TO INCREASE CHILD PROTECTION FROM HAZARDOUS SUBSTANCES AND TO ENSURE THEIR RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH**

Introduced by Senator M. A. Madrigal

#### **RESERVATIONS TO INTERPELLATE**

Senator Pangilinan stated that the following senators made reservations to interpellate on the VAT bill: Senators Defensor Santiago, Lacson, Lapid, Ejercito Estrada (L), Enrile, Osmena and Roxas.

Moreover, Senator Pangilinan informed the Body of another caucus to discuss the VAT measure at 12:30 p.m. of the following day at the Office of the Senate President.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1950**

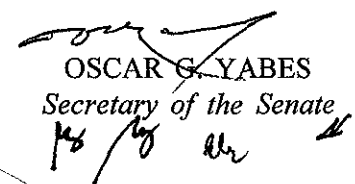
Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

#### **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 the following day.

*It was 6:27 p.m.*

I hereby certify to the correctness of the foregoing.

  
OSCAR G. YABES  
Secretary of the Senate

Approved on March 15, 2005