

REPUBLIC OF THE PHILIPPINES

S e n a t e

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Journal

SESSION NO. 36

Monday, November 19, 2007

FOURTEENTH CONGRESS

FIRST REGULAR SESSION

SESSION NO. 36
Monday, November 19, 2007

CALL TO ORDER

At 3:13 p.m., the Senate President, Hon. Manny Villar, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

NATIONAL ANTHEM

The Philippine Madrigal Singers led the singing of the national anthem and thereafter rendered the song entitled, *Tagumpay Nating Lahat*.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Emma Lirio-Reyes, called the roll, to which the following senators responded:

Angara, E. J.	Lacson, P. M.
Aquino III, B. S. C	Legarda, L.
Arroyo, J. P.	Pangilinan, F. N.
Cayetano, A. P. C. S.	Revilla Jr., R. B.
Cayetano, C. P. S.	Roxas, M.
Defensor Santiago, M.	Villar, M.
Ejercito Estrada, J.	Zubiri, J. M. F.
Honasan, G. B.	

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

Senators Biazon, Enrile, Lapid, Madrigal and Pimentel arrived after the roll call.

Senators Escudero and Gordon were on official mission, the latter abroad.

Senator Trillanes was unable to attend the session.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 35 and considered it approved.

REFERENCE OF BUSINESS

The Secretary of the Senate, Atty. Emma Lirio-Reyes, read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 1875, entitled

AN ACT REQUIRING ALL GOVERNMENT AND PRIVATE HOSPITALS, MEDICAL CENTERS, CLINICS, INFIRMARIES, PUERICULTURE CENTERS TO EXTEND FREE MEDICAL AND DENTAL ASSISTANCE TO INDIGENT CHILDREN

Introduced by Senator Manny Villar

To the Committees on Health and Demography; Social Justice, Welfare and Rural Development; and Ways and Means

Senate Bill No. 1876, entitled

AN ACT PROVIDING STANDARDS IN THE OPERATION OF TATTOO STUDIOS, PROVIDING PENALTIES FOR VIOLATION THEREOF, AND FOR OTHER PURPOSES

Introduced by Senator Manny Villar *AS*

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To the Committee on Health and Demography

Senate Bill No. 1877, entitled

AN ACT ESTABLISHING A DAY FOR HEARTS: CONGENITAL DEFECT AWARENESS DAY

Introduced by Senator Manny Villar

To the Committee on Health and Demography

Senate Bill No. 1878, entitled

AN ACT GRANTING ALL QUALIFIED FARMERS AND FISHERMEN DISCOUNT ON PETROLEUM PRODUCTS AND FOR OTHER PURPOSES

Introduced by Senator Manny Villar

To the Committees on Agriculture and Food; and Local Government

Senate Bill No. 1879, entitled

AN ACT IMPOSING PENALTIES ON PHILIPPINE CONSULAR OFFICIALS AND OTHER GOVERNMENT PERSONNEL ASSIGNED TO OVERSEAS POSTS FOR FAILURE TO ACT ON COMPLAINTS OF, GIVE ASSISTANCE TO OR RENDER SERVICES TO MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AMENDING FOR THE PURPOSE THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995

Introduced by Senator Manny Villar

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

Senate Bill No. 1880, entitled

AN ACT PROVIDING FOR A MAGNA CARTA OF AGRICULTURAL DEVELOPMENT WORKERS

Introduced by Senator Manny Villar

To the Committees on Civil Service and Government Reorganization; Agriculture and Food; and Finance

RESOLUTIONS

Proposed Senate Resolution No. 206, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON HEALTH AND DEMOGRAPHY TO LOOK INTO, IN AID OF LEGISLATION, THE EXISTING GOVERNMENT PROGRAMS TO ADDRESS THE EMPLOYMENT PROBLEM OF HEPATITIS-B CARRIERS

Introduced by Senator Compañera Pia S. Cayetano

To the Committees on Health and Demography; and Labor, Employment and Human Resources Development

Proposed Senate Resolution No. 207, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE IMPLEMENTATION OF THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003, ALSO KNOWN AS REPUBLIC ACT NO. 9208, DUE TO THE ESCALATING PREVALENCE OF TRAFFICKING IN PERSONS FROM THE PHILIPPINES

Introduced by Senator Loren Legarda

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

Proposed Senate Resolution No. 208, entitled

RESOLUTION ADOPTING THE ALBAY DECLARATION ON CLIMATE CHANGE ADAPTATION AS A FRAMEWORK FOR THE MAINSTREAMING OF GLOBAL WARMING CONCERNS INTO THE NATIONAL

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AND LOCAL PLANNING, ACCOUNTING AND BUDGETING SYSTEMS AND TO SUPPORT LOCAL GOVERNMENT, PRIVATE AND CIVIL SOCIETY INITIATIVES FOR CLIMATE CHANGE ADAPTATION

Introduced by Senator Loren Legarda

To the Committees on Environment and Natural Resources; and Local Government

COMMUNICATION

Letter from Undersecretary Esteban B. Conejos Jr. of the Department of Foreign Affairs, dated 15 October 2007, submitting to the Senate the Report to Congress on Assistance to Nationals for the period January-June 2007, pursuant to Section 33 of Republic Act No. 8042, otherwise known as Migrant Workers and Overseas Filipinos Act of 1995.

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

COMMITTEE REPORT

Committee Report No. 16, prepared and submitted by the Committee on Health and Demography, on Senate Bill No. 1874, with Senators Angara and Compañera Pia S. Cayetano as authors thereof, entitled

AN ACT DECLARING MAY 7 OF EVERY YEAR AS HEALTH WORKERS DAY,

recommending its approval in consolidation with Senate Bill Nos. 894 and 1405.

Sponsor: Senator Compañera Pia S. Cayetano

To the Calendar for Ordinary Business

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Pangilinan acknowledged the presence of the officers and members of the Philippine Dragon Boat Federation, the Philippine Madrigal Singers, and the officers and representatives of the *Radyo Patrol Balita, DZMM*, all of whom

were honorees of Senate resolutions of commendation, to wit:

- 1) Senate Resolution No. 24 (commending the Philippine Dragon Boat Federation for winning in the 8th International Dragon Boat Championship in Australia);
- 2) Senate Resolution No. 16 (commending the Philippine Madrigal Singers for winning the 2007 European Grand Prix for Choral Singing in Arezzo, Italy); and
- 3) Senate Resolution No. 37 (congratulating *Radyo Patrol Balita* for winning the prestigious and highly competitive *Best News Program for Radio* in the recently concluded 44th Asia-Pacific Broadcasting Union Prizes in Tehran, Iran).

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended to allow Senate President Villar to present the resolutions to the honorees.

It was 3:25 p.m.

RESUMPTION OF SESSION

At 3:33 p.m., the session was resumed.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

Upon resumption, Senator Pangilinan acknowledged the presence in the gallery of participants in the Council of Asian Liberals and Democrats from Myanmar, Cambodia, Hong Kong, Indonesia, Japan, Malaysia, Pakistan, Singapore, Sri Lanka, Taiwan and the Philippines; representatives from the Friedrich Naumann Foundation (FNF); and representatives from the Liberal Party of the Philippines.

Senator Pangilinan also acknowledged the presence in the VIP gallery of the delegates from the European Parliament for Relations with the Countries of Southeast Asia and the Association of Southeast Asian Nations, namely: Hartmut Nassauer, head of delegation; Giovanna Corda, vice-chairwoman; Szabolcs Fazakas, quaestor; Csaba Ory; Jean-Pierre Audy; Barbara Weiler; Glyn Ford; Jules Maaten; and Dariusz Grabowski. ✍

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SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended to enable the senators to greet the guests.

It was 3:35 p.m.

RESUMPTION OF SESSION

At 3:52 p.m., the session was resumed.

ADDITIONAL REFERENCE OF BUSINESS

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

RESOLUTIONS

Proposed Senate Resolution No. 209, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES TO INVESTIGATE, IN AID OF LEGISLATION, THE ALLEGED VIOLATION OF REPUBLIC ACT NO. 7076 OR THE PEOPLE'S SMALL-SCALE MINING ACT OF 1991, PARTICULARLY THE USE OF LARGE-SCALE MINING PRACTICES BY SMALL-SCALE MINING COMPANIES

Introduced by Senator Compañera Pia S. Cayetano

To the Committees on Environment and Natural Resources; and Justice and Human Rights

Proposed Senate Resolution No. 210, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ALLEGED ONEROUS NORTH LUZON RAILWAY CORPORATION (NORTH RAIL) PROJECT, AND TO INSTITUTE MEASURES TO PROTECT GOVERNMENT PROCUREMENT PROCESS

Introduced by Senator Pimentel Jr.

To the Committees on Accountability of Public Officers and Investigations; and Finance

Proposed Senate Resolution No. 211, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED PRESENCE OF HOUSEFLY MAGGOTS IN A CHICKEN DISH SERVED BY A FASTFOOD RESTAURANT, TO IMPOSE STRICTER PRODUCT QUALITY CONTROL AND SAFETY STANDARDS ON RESTAURANTS, FASTFOOD CHAINS, CANTEENS AND OTHER ESTABLISHMENTS SERVING FOOD TO THE PUBLIC

Introduced by Senator Miriam Defensor Santiago

To the Committees on Trade and Commerce; and Health and Demography

COMMITTEE REPORTS

Committee Report No. 17, prepared and submitted by the Committee on Banks, Financial Institutions and Currencies, on Senate Bill No. 1881, with Senator Angara and the members of the Committee on Banks, Financial Institutions and Currencies as authors thereof, entitled

AN ACT ESTABLISHING THE CREDIT INFORMATION SYSTEM AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill No. 62.

Sponsor: Senator Angara

To the Calendar for Ordinary Business

Committee Report No. 18, prepared and submitted by the Committees on Banks, Financial Institutions and Currencies; and Ways and Means, on Senate Bill No. 1882, with Senators Angara, MAR Roxas, Juan Miguel F. Zubiri and the members of the Committees on Banks,

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Financial Institutions and Currencies; and Ways and Means as authors thereof, entitled

AN ACT ESTABLISHING A PROVIDENT PERSONAL SAVINGS PLAN, KNOWN AS THE PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA),

recommending its approval in substitution of Senate Bill Nos. 70, 1194 and 1545.

Sponsor: Senator Angara

To the Calendar for Ordinary Business

Committee Report No. 19, prepared and submitted by the Committee on Foreign Relations, on Proposed Senate Resolution No. 212, entitled

RESOLUTION CONCURRING IN THE RATIFICATION OF THE TREATY ON THE TRANSFER OF SENTENCED PERSONS BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE KINGDOM OF SPAIN,

recommending its adoption without amendment.

Sponsor: Senator Miriam Defensor Santiago

To the Calendar for Ordinary Business

SPECIAL ORDER

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of Proposed Senate Resolution No. 212 (Committee Report No. 19) from the Calendar for Ordinary Business to the Calendar for Special Orders.

COMMITTEE REPORT NO. 19 ON PROPOSED SENATE RESOLUTION NO. 212

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second Reading, Proposed Senate Resolution No. 212 (Committee Report No. 19), entitled

RESOLUTION CONCURRING IN THE RATIFICATION OF THE TREATY ON THE TRANSFER OF SENTENCED PERSONS BETWEEN THE REPUBLIC

OF THE PHILIPPINES AND THE KINGDOM OF SPAIN.

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 full text into the Record of the Senate.

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

SPONSORSHIP SPEECH OF SENATOR DEFENSOR SANTIAGO

In her sponsorship of Proposed Senate Resolution No. 212, Senator Defensor Santiago delivered the following speech:

THE RP-SPAIN TREATY ON THE TRANSFER OF SENTENCED PERSONS

Your Committee on Foreign Relations respectfully recommends early concurrence in the ratification of the RP-Spain Treaty on the Transfer of Sentenced Persons, or TSPA, signed on May 18 this year.

Like most TSPAs in the world, it has been substantially copied from the 1983 Strasbourg Convention on Transfer of Sentenced Persons, promulgated by the Council of Europe.

Background of the treaty

The treaty aims to bring back a foreign prisoner into his or her country of nationality, and to serve the sentence there. For example, a Filipino convicted of a violation of Spanish law and imprisoned in Spain would be allowed to request for his physical transfer to a Philippine jail, so that he or she could serve the sentence in a penitentiary where he could communicate in his own native language, and receive the visits of family and friends.

This treaty has a laudable humanitarian objective. It does not aim to give special treatment to foreign detainees. It is not a relief from imprisonment. It is not a means for escape. It is intended to protect and promote the welfare of Filipinos overseas. It aims to ensure the reformation and rehabilitation of Filipinos detained in Spain.

This treaty creates a relationship based on cooperation. It does not impose a legal obligation to consent to the request for transfer. This is ^{AS}

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why the treaty does not list any grounds for requesting a transfer. Neither does the treaty provide sanctions for noncompliance. In short, this treaty is purely consensual.

Hence, your Committee makes of record the understanding that a violation of this treaty will not authorize the sentencing State to exercise jurisdiction over the administering State, by ordering it to comply. Your Committee also understands that in case of noncompliance by the administering State, the officials or agents of the sentencing State have no authority to enter the territory of the latter to enforce compliance. The only remedy of the sentencing State would be to send a notice of termination of the treaty to the administering State, under Article 23.

This Senate has already concurred with other similar TSPA treaties with Hong Kong and Thailand. *Nagawa na natin ito*. Two other TSPA treaties – with Cuba and Canada – are awaiting our concurrence. Our country has already signed the RP-Spain Treaty on Extradition and the RP-Spain Treaty on Mutual Legal Assistance in Criminal Matters. Both treaties also await our concurrence. Your Committee chose to give priority to this particular TSPA because we hope to secure concurrence before President Arroyo pays her state visit to Spain in 3 December, just two weeks from now.

Main provisions

Under the treaty, Article 1, “sentencing State” means the state in which the sentence was imposed. “Administering State” means the state to which the sentenced prisoner may be transferred.

The treaty has 23 articles, but the most basic is Article 4, entitled “Conditions for Transfer.” It provides that the treaty shall apply only on the following conditions:

1. If the acts or omissions on account of which the sentence has been imposed are punish-able in the administering State, although the definition thereof may not be identical;
2. If the sentenced person is a national of the administering State at the time of the request for transfer;
3. If the judgment is final and there are no other legal proceedings relating to the offense or any other offense pending in the sentencing State;
4. If the transfer is consented to by the sentenced person or, in the event of incapacity, by his legal representative;

5. If the part of the sentence still to be served at the time of the receipt of the request referred to in Article 6 is at least one year. In exceptional cases, as determined by both States, a request may be accepted even if part of the sentence still to be served is less than one (1) year;

6. If the sentenced person has satisfied payment of fines, court costs, civil indemnities and/or pecuniary sanctions of all kinds for which he is liable under the terms of the sentence, or has provided sufficient security to ensure payment thereof to the satisfaction of the sentencing State, unless the sentenced person has been declared insolvent.

Implementing rules and regulations

The treaty, Article 3, provides that the central authority shall be the Department of Justice for both States. Accordingly, our committee report attaches a draft joint resolution of the Congress authorizing the Department of Justice to issue implementing rules and regulations for the treaty, and appropriating the sum of ₱5 million for its implementation.

The appropriation is necessary because under Article 16, paragraph (2): “The transit costs for the sentenced person shall be borne by the administering State as of the time that the sentenced person is in its custody.”

The Implementing Rules and Regulations, or IRR, shall amplify certain legal points that are either not covered by the treaty because they are too technical, or are not fully clarified by the treaty. Our Committee has taken pains to identify such legal points and to put on record now, our Committee’s understanding of certain legal points as follows:

- ♦ Whether standards and guarantees concerning treatment of prisoners under the Philippine Constitution, Penal Code, and other Philippine laws, have similar equivalents in Spanish law;
- ♦ Whether the request for transfer can only be initiated by the sentenced person, as provided by Article 6; or under Article 3, can be initiated by the requesting State, subject to the required consent to be given at a later time;
- ♦ The Committee understands that the definition of nationality, as to whether it refers to citizenship, domicile, habitual residence, or all of the above, lies solely within the discretion of the administering State. This *AS*

includes cases of prisoners with dual nationality.

So, in other words, only the Philippines will determine who are our Philippine nationals because that is an exclusive function of sovereignty and no other country can tell us who our nationals should be.

- ◆ Which state shall determine the duration of the penalty when the sentence imposed is shorter in the administering State than in the sentencing State. This falls under Article 4 on dual criminality;
- ◆ The mechanism to be used so that if the sentencing State, after final judgment, reviews the case, the same person could be brought back to the sentencing State. The international law expert Candido Cunha, Head of Division of the Council of Europe, has observed: "The condition that the judgment must be final and enforceable, does not preclude the possibility of a later review of the judgment in the light of fresh evidence. In such cases, the sentencing State alone has the right to take decisions on applications for review of the judgment;"
- ◆ Whether our Penal Code provision on evasion of service of sentence (Penal Code, Articles 157 and 158) and quasi-recidivism (Article 160) can be made applicable to sentenced persons;
- ◆ The Committee understands that requests for transfer shall be available to sentenced persons not undergoing imprisonment, but who are under probation or subject to the penalty of *destierro*, meaning exile. Your Committee's position is supported by Article 1 paragraph (c), which uses the broad phrase "deprivation of liberty."
- ◆ Whether the Philippine Indeterminate Sentence Law (Act No. 4103, as amended) shall apply, in view of the provision in Article 7 on "the duration and dates of commencement and termination of the sentence";
- ◆ Which state shall exercise authority over a sentenced person in a case where, after transfer, he or she is granted parole or conditional pardon;
- ◆ Whether a minor entitled to avail of a suspended sentence under Philippine law may avail of transfer;
- ◆ Whether the treaty allows for the option of so-called conversion of sentence, which occurs when the sanction is converted into a sanction of the administering State, with the result that the sentence enforced is no longer directly based on the sanction imposed in the sentencing State. We have to consider that Article 10 of the treaty allows only "continued enforcement" after the transfer;
- ◆ Whether a person can be forced to be transferred, if he or she does not want to go back to the country of nationality;
- ◆ Whether one of the States parties has an option to refuse, if it does not want to receive the transfer;
- ◆ The Committee understands that the request for transfer should be accompanied by advice to the sentenced person of the possibility of the application of the principle of speciality in criminal law. This principle provides that under certain conditions, he or she may be prosecuted for acts committed other than those resulting from his or her transfer by the administering State;
- ◆ The effect of the abolition of the penal law in the administering State, considering the maxim "*nullum crimen sine lege, nullum poena sine lege*," meaning "no crime without law, and no penalty without law." Under Article 10: "the enforcement of the sentence shall be governed by the law of the administering State."
- ◆ The Committee understands that the subsequent abolition of the penal law in the administering State shall have no effect on the continued enforcement of the sentence, since the prisoner was not convicted under the laws of the administering State. This is supported by Article 10, which provides that "the enforcement of the sentence shall be governed by the law of the administering State."

Need early concurrence

Your Committee appeals to this august Chamber to concur immediately with the ratification, for the following reasons:

1. President Arroyo will pay a state visit to Spain on 3 and 4 December 2007. Since the Spanish Senate already approved the treaty last 6 November, concurrence by this Senate would enable the President to make an announcement which will be one of the key highlights of her state visit.
2. This Senate has already concurred with similar treaties with other states parties, namely, Hong Kong and Thailand. But so far, these

two treaties have not been implemented for lack of funding. There are two other similar treaties with Cuba and Canada, which are still awaiting Senate concurrence.

3. Under the Spanish plan of action for Asia and the Pacific for the period 2006 to 2008, the Philippines is the biggest recipient of Spanish Official Development Assistance (ODA) in Asia. The ODA amounts to €9.5 million every year, and for the two-year period, it would amount to €19 million. This would be about 50 percent of total Spanish ODA to Asia.
4. As of June 2007, there are about 50,600 Filipinos in Spain, of whom nine are in detention. Seven Filipinos have been convicted; one is awaiting trial; one is under investigation; while one is a fugitive who has violated the conditions of prison furlough. Three Filipinos have been convicted, while four others are awaiting trial.

I beg indulgence to make a personal explanation on the need for urgency. I appeal to our colleagues to go directly to Second Reading today because tomorrow I have to join President Arroyo at the Asean Summit in Singapore, to meet with Chinese Premier Wen Jiabao for my national candidature to the International Court of Justice. I shall return immediately on Wednesday, but on Sunday, I shall leave again for a 10-day campaign in Asean capitals. Hence, I appeal that Second Reading should be closed today, so that maybe Third Reading could be scheduled for next Monday, 26 November.

I will no longer be here on that date, but I wish to enter into the record that if I were present, I would certainly vote in favor of this treaty.

Conclusion

Bearing in mind that this committee report attaches a draft joint resolution for the IRR and the appropriation of P5 million, your Committee respectfully and urgently appeals that the Senate concur in the ratification of the RP-Spanish Treaty on the Transfer of Sentenced Persons.

COSPONSORSHIP SPEECH OF SENATOR ANGARA

In his cosponsorship of Proposed Senate Resolution No. 212, Senator Angara delivered the following speech:

TREATY ON THE TRANSFER OF SENTENCED PERSONS BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE KINGDOM OF SPAIN

In 2003, Congress passed, through my initiative, the Philippine-Spanish Friendship Day Act, celebrated on June 30 of every year to commemorate the long-standing friendship between our two countries borne out of a shared past, a shared culture, a shared civilization, and a shared religion.

With the aid of modern historical studies and the healing power of time, we are now better able to appreciate our Spanish heritage with more objectivity and understanding: our education, language, literature, architecture and the arts. Today, we see Spain – what was then our former mother country – now as our sister country.

Spain, on the other hand, regards the Philippines as “the Asian country with the greatest political relevance.” It considers the Philippines its gateway to Asia, given our historical and cultural ties.

Our country is considered a priority country by the Spanish government in terms of overseas assistance. In fact, the Philippines receives the biggest chunk of Spanish Official Development Assistance (ODA) in Asia.

In the span of 60 years of friendship between the Philippines and Spain, diplomatic relations have been reinforced by some 20 agreements in various areas such as extradition, legal assistance, economic cooperation, tourism and investment.

Treaty on the Transfer of Sentenced Persons

Before us, as our distinguished Chair of the Committee on Foreign Relations has very eloquently stated, is the Treaty on the Transfer of Sentenced Persons between the Republic of the Philippines and the Kingdom of Spain.

I will not go into the details which have already been explained, but in essence, the objective of this treaty is the rehabilitation of the sentenced persons. This can be achieved if nationals who are deprived of their liberty abroad were given the opportunity to serve their sentences in their own countries.

This treaty allows the physical transfer of Filipinos incarcerated in Spanish prison back to the Philippines, and vice versa, so that they can be closer to their support system of family and friends in their own country. *AS*

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Allowing Filipino nationals to serve their sentences in correctional institutions where the other inmates speak the same language, have the same traditions and functions, and where members of their families can visit him or her regularly, will advance the progress of reformation and rehabilitation. Upon completing their service of sentence, they may be integrated sooner into mainstream society and again become useful and productive citizens.

The Philippines, as already pointed out, has signed four similar other treaties on the transfer of sentenced persons with Canada, Cuba, Hong Kong and Thailand. And of these four, two have been ratified, namely, the Treaty with Hong Kong and Thailand.

Filipinos are generally law-abiding people. There are presently 57,000 Filipinos in Spain. Of this number, only seven have conflict with the law – three are serving sentence and four are awaiting trial. A ratio of seven to 56,000 is 0.01%, a minuscule number. To me, that provides a sound commentary on the good behavior of Filipinos abroad.

Strengthening RP-Spain relations

The ratification of this treaty should usher in more investments, trade and tourism between the two countries. I am happy that right behind us in the VIP gallery is Ambassador Luis Arias of the Kingdom of Spain.

First, trade activities between Spain and the Philippines have declined. Spain is now only our 29th trading partner, which amounts to a mere 0.18% of our total trade. The historic Manila-Acapulco galleon trade of the 16th century marked the first trade globalization. We have no reason why we cannot blaze this route again.

Second, Spain has recently issued a new migration policy to open up their country to more and more people from their former colonies in North Africa and Latin America.

Is the Philippines taking advantage of that policy? Is Spain giving us that opportunity?

Third, we face a deep void in cultural and educational exchange.

One valuable asset we threw away was the Spanish language. The Philippines is the only former Spanish colony that no longer speaks Spanish. Yet, the desire and demand for it here is overwhelming. The *Instituto Cervantes* is a veritable university with an enrolment of 6,000 Filipino students.

Only 50 years ago, many of our national leaders were beneficiaries of Spanish education. Today, the United States, United Kingdom and Japan have become the Philippines' main sources of education and training. Why should not Spain, our historical *madre patria*, become more involved in educating our people like it did hundreds of years ago when they built the first schools in the country? Why is there no significant number of academic exchanges and scholarships between these two countries?

The Philippines, too, has several irreplaceable Spanish colonial documents that Spanish scholars visit to do research on. These documents are poorly stored in the National Archives, and in danger of perishing.

True, Spain has provided us valuable assistance and we are grateful for that. But while they give us nine million euros a year, which is already 50% of their ODA to Asia, this amount is really more symbolic. More important than money is the enhanced exchange of trade in goods and ideas.

I join Senator Defensor Santiago in persuading our colleagues that ratification of this Treaty is in our national interest.

INTERPELLATION OF SENATOR EJERCITO ESTRADA

Asked by Senator Ejercito Estrada how many Spanish nationals are living in the Philippines, Senator Defensor Santiago said that there are 12,000 to 14,000 Spanish nationals in the country at present. She noted that there are ten Filipinos in Spain who would fall under the Treaty, while in the Philippines there are only two Spaniards, one of them of dual nationality, who would fall under the treaty.

Asked whether she is aware of the case of Mr. Francisco "Paco" Larrañaga, a Filipino-Spanish national, Senator Defensor Santiago said Mr. Larrañaga is presently under detention following his conviction of murder in Cebu.

Senator Ejercito Estrada stated that he signed the committee report concurring in the ratification of the Treaty on the Transfer of Sentenced Persons between the Philippines and the Kingdom of Spain for the sake of Spanish friendship and for the benefit of Filipinos convicted in Spain. However, he indicated that he would object to the ratification of the treaty if it shall be ratified only to benefit Mr. Larrañaga, *Asc*

who was convicted of the heinous crime of rape and murder of the Chiong sisters in Cebu five years ago.

Senator Defensor Santiago informed the Body that Mr. Larrañaga's motion for reconsideration was denied by the Supreme Court and the decision became final on April 11, 2006. Nonetheless, she instructed the panel from the Department of Foreign Affairs to make it officially of record in their department that Senator Ejercito Estrada has objections to any request for transfer of Mr. Larrañaga to the Spanish authority since the discretion lies solely within the Philippine government. She underscored the three-fold consent procedure that must be followed, namely: 1) the consent of Spain; 2) the consent of the Philippine government; and 3) the consent of the sentenced person.

INTERPELLATION OF SENATOR ENRILE

Citing the principle, "No crime without a law, no penalty without a law, and no crime without a penalty," Senator Enrile asked whether the Treaty would apply in case the Spanish law under which a Filipino has been convicted does not have a comparable law in the Philippines. Senator Defensor Santiago replied that it would not because one of the conditions under which the Treaty shall apply is that the person must have been convicted of crime in the requesting State that has a comparable law under the administering State.

On whether the grant of a pardon by the sentencing State to the convicted person who is serving a portion of his sentence in the administering State would authorize his release, Senator Defensor Santiago affirmed as she clarified that as the administering State, the Philippines is charged with the enforcement of the judgment and any other proceedings of the sentencing State. Specifically, she cited Article 11 which provides that, "Only the sentencing State may grant pardon, amnesty or commutation of the sentence pursuant to its Constitution and laws. The administering State, however, may request the sentencing State to grant pardon, amnesty or commutation of the sentence by submitting an application with sufficient grounds."

Asked on the effect of the repeal of the law under which the person was convicted in the sentencing State if the comparable law has not been

repealed in the administering State, Senator Defensor Santiago replied that if the repealing law provides that the person may avail of its provisions, the same should be communicated in writing to the Philippines which would then be bound to carry out the release of the person pursuant to Spanish law. The philosophy of the Treaty, she clarified, is that, in effect, jurisdiction over all of the criminal aspects of the sentenced person's behavior shall belong to the sentencing State and the administering State merely enforces the measures.

As to which law would apply in case the sentencing State decriminalizes the aberrant act of the person but the administering State does not, Senator Defensor Santiago stated that Article 10(1) of the Treaty provides that, "Once the transfer has been carried out, the enforcement of the sentence shall be governed by the law of the administering State." She further cited the opinion of Candido Cunha, an international law expert in the Council of Europe, who has written an extensive paper on the prototype of the Treaty, that when that happens, the condition for dual criminality no longer applies. She suggested that the concerns of Senator Enrile about the proper implementation of that article of the Treaty be communicated to the Department of Justice (DOJ) which shall be issuing the implementing rules and regulations, hoping that this would also prevent a misinterpretation of the article.

Senator Enrile stated that he raised the question because the basic principle of criminal law is that one's sovereign shall not enforce the criminal laws of another, so that if the sentencing State, the sovereign whose very law was violated, has decriminalized the law, there is no reason to detain the convicted person further.

Asked what the effect would be on the convicted person in case the administering State decriminalizes the law but the sentencing State does not, Senator Defensor Santiago replied that it would have no effect since the administering State only enforces the measures imposed by the sentencing State.

Supposing the sentence imposed by the sentencing State runs shorter than the sentence imposed by the administering State, Senator Enrile asked what would happen when the convicted person shall have served out his sentence under Spanish law. Senator Defensor Santiago stated that the person would have to be

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released because the Treaty provides that when enforcing the sentence, the administering State shall be bound by the duration of the sentence imposed by the sentencing State.

INTERPELLATION OF SENATOR AQUINO

Citing a case of a person convicted of a crime in Spain and transferred to Philippine jurisdiction, Senator Aquino asked under what authority the Philippine courts can remand him to jail. Senator Defensor Santiago replied that under the Constitution, a treaty has the same status and binding nature as a law passed by Congress. She expressed the view that the Treaty would be favorable to the Philippines as she agreed with the possible benefits cited by Senator Angara as a consequence of the Treaty.

Asked who initiated the Treaty negotiations, Senator Defensor Santiago stated that it was Spain that initiated the Treaty as she recalled that Spain proposed an extradition treaty with the Philippines in 1998 which the latter has not yet concurred in, and in 1993, the proposal was reactivated, accompanied this time by the instant treaty.

As to the citizenship of Mr. Larrañaga, Senator Defensor Santiago replied that both parents of Mr. Larrañaga are Spanish citizens, so at the time of his birth, he had dual citizenship.

Considering the different modes of treating convicted persons in different countries such as house arrest in the United States, asked what effect such modes would have on the deterrent aspects of Philippine laws, Senator Defensor Santiago replied that for the Treaty to apply under the requirements of dual criminality, a person must have been convicted and jailed under the law of the sentencing State for a crime which, in the administering State, is also crime regardless of its name and definition. She said that in Europe, the concept of conversion of sentence is applied and this involves the power of the administering State to convert the sentence imposed by the sentencing State to its nearest equivalent. She added that if the Body so decides, this could be provided for in the IRR.

INTERPELLATION OF SENATOR ARROYO

Asked by Senator Arroyo if Filipino prisoners serving sentences in Spanish jails in 2009 could avail

of the Treaty's provisions if, on the other hand, there is no Spanish prisoner in a Philippine jail, Senator Defensor Santiago replied in the affirmative, clarifying that the Treaty would apply in any event because Article 23 provides that "this Treaty shall have an indefinite duration." Moreover, she said that nine Filipinos who are currently in Spanish jails would be covered by the Treaty, besides, the article on the conditions for transfer does not include reciprocity.

On whether there is a free-willing exchange of convicts regardless of the disparity in their crimes, Senator Defensor Santiago replied in the affirmative.

INTERPELLATION OF SENATOR BIAZON

Asked by Senator Biazon if post-imprisonment punishments in Spain like deprivation of certain rights would be applied to a transferred Filipino who has served out his sentence in a Philippine jail, Senator Defensor Santiago replied that the administering State would be bound by all the terms and conditions of the judgment of the sentencing State.

Senator Defensor Santiago clarified that the conversion of a sentence—a concept applicable in the Strasbourg prototype treaty, or TSPA—is sometimes called an *exequatur* procedure governed by the law of the administering State under certain conditions, but the Treaty has no such provision. She said that if Senator Biazon feels that this should be expressly covered by the IRR, then the Proposed Joint Resolution of Congress could provide so, which would then bind the Department of Justice.

Asked if there would be specific details on the manner of detention, for instance, whether or not an individual sentenced for murder in Spain should be put in a maximum security facility or a minimum security facility or a rehabilitation colony like those in Iwahig and San Ramon, Senator Defensor Santiago stressed that the Philippines is bound by the terms of judgment issued by the Spanish court. Unless there is any specific provision in the judgment, she said that the Philippines cannot amend its intention as regards duration of the sentence or the measure of deprivation of liberty and it is also bound by the findings of facts indicated in the judgment. She added that the sentence or deprivation of liberty could not be converted into pecuniary sanction. Once the transfer has been carried out, she reiterated, the enforcement of the sentence shall be governed by the law of the administering State. *af* *pb*

Asked if the Senate could examine the IRRs to determine whether or not these are in harmony with the intent of the Chamber, Senator Defensor Santiago stated that while this is possible, it would defeat the purpose of the delegation of power to an agency of government. She explained that under Philippine jurisprudence, the legislature is authorized to delegate its legislative power to administrative agencies such as the Department of Justice, but it also has the authority to withdraw the same. Nonetheless, she expressed willingness to include the concern as a provision in the resolution by making it a condition that the IRR should first be approved by Congress. She emphasized, however, that IRRs are very technical, detailed and specific in nature for the Senate to pay attention to them.

Senator Defensor Santiago said that what Congress can do is to comply with two conditions set forth by the Supreme Court: first, the Joint Resolution must be complete—it must tell the agency exactly what the limits of its power are and what it should include in the IRR; and second, it must set sufficient standards. She also cautioned strongly against Congress exercising power to approve IRRs as it does not possess such power; rather, Congress could impose standards for the IRR to comply with, failing which it could be declared illegal by a court.

In the course of Senator Biazon's interpellation, Senate President Villar relinquished the Chair to Senate President Pro Tempore Ejercito Estrada.

Senator Biazon said that he was raising the issue for two reasons: 1) there is a problem concerning the detention of Daniel Smith because of contradictory interpretations as to the place of detention after conviction; and 2) there is a provision in the IRR of the Office of the Ombudsman granting it power to disqualify an elected official from running for public office, as in the case of Governor Tupas. He said that while senators and congressmen are exempted from the coverage of the provision, the governors and mayors are not. In fact, he said, he was contemplating a legislative scrutiny of the IRR issued by the Office of the Ombudsman. Senator Defensor Santiago said that the Ombudsman is constitutionally compelled to comply with a standard that has been set by Congress but absent such standard, the agency might indeed abuse its limits. She added that the question becomes a judicial one unless the legislature amends or repeals the provision delegating its power to an agency to issue IRRs. Indeed, she

said, the case of the confinement of Daniel Smith raises a judicial question which only the sentencing Philippine court could decide, as it is not a matter that the U.S. Ambassador and the Secretary of Foreign Affairs or even the President of the Philippines could decide between themselves as this is a usurpation of judicial function.

In the case of the Ombudsman, Senator Defensor Santiago said that the legislative authority to issue IRRs must clearly imply that it has the power to recommend suspension from office; however, if the Ombudsman recommends to the court that has proper jurisdiction that certain officials like governors and mayors should be disqualified from public office in the future, but not senators and congressmen, and this violates the context of the provision of law which gives it the power to issue IRRs, the legislature could choose either to amend or even to withdraw outright the power of the agency to issue the IRR or the government may raise the question in a judicial court of justice.

PARLIAMENTARY INQUIRY OF SENATOR BIAZON

Asked by Senator Biazon if the two-thirds vote requirement also applies to Second Reading, Senator Pangilinan replied that this only applies to Third Reading. He said that by practice, a resolution on a treaty is unanimously approved by the Body on Second Reading if there is no objection thereto.

INTERPELLATION OF SENATOR LEGARDA

Citing a hypothetical case of a sentenced person in the Philippines who is brought to Spain but escapes from prison while in Spain, Senator Legarda asked whether it is the responsibility of the administering State to apprehend or search for the sentenced person. Senator Defensor Santiago pointed out that the Treaty, being purely consensual, imposes no sanctions; thus, when it happens, unless there is suspicion that the Spanish government colluded with the national in his escape, which could be extremely rare, if not impossible, under the Treaty, Spain has the duty to communicate the fact to the Philippine government so that the latter could request through diplomatic channels to recapture the person. However, she said that if Spain, for example, does not pay heed to the request of the Philippine government, or if the latter suspects that Spain does not want to implement

the recapture, then at most and at worst, it could give notice of termination of the Treaty six months before termination. She believed that a notice of termination could be given if the Philippines suspects that the Spanish government does not wish to fulfill its obligations in good faith under the Treaty which is a very rare circumstance, if not impossible, because a State definitely would not undertake such behavior knowing how much is at stake—goodwill, friendship, and institutions between the two countries.

On the dual criminality clause, Senator Legarda asked if the administering State would release a sentenced person if the law, by act or omission, under which he was sentenced has been abolished by the administering State. Senator Defensor Santiago replied that if a Filipino has been transferred from Spain to the Philippines pursuant to the Philippine request, with the consent of the prisoner, and then subsequently Spain repeals the law under which that Filipino was convicted, then, under the Treaty, Spain should simply inform the Philippine government which has the duty to comply with the measures undertaken by the Spanish court. For instance, she explained that if the court or the proper authority has announced that the law would benefit all prisoners, then the Philippine government would be bound by that declaration and would have to release the Filipino, or vice versa.

As regards the treaties with Hong Kong and Thailand that have yet to see implementation for lack of funding, Senator Defensor Santiago said that they have not been implemented because Congress failed to give the Department of Justice additional money to buy tickets, usually airplane fares, for the prisoners to be transferred to the Philippines. Relative thereto, she disclosed that DFA records would show separate letters from Senators Jinggoy Ejercito Estrada and Loi Ejercito Estrada endorsing requests for transfer of Filipinos imprisoned in Hong Kong. Despite the endorsements of the letters to the Department of Justice, she said that no action was taken because there was no money to buy tickets for the prisoners; in fact, some of them just eventually served the sentence and were discharged on that basis. She stated that said treaties were already of long standing although dormant as she added that the Senate concurred in the ratification of both treaties on April 23, 2002.

Senator Legarda asked on the number of Filipinos who sought to avail of the Treaty but had not been

transferred for lack of funds and how much Congress has to appropriate for that program. Senator Defensor Santiago replied that there are five requests for transfer from Hong Kong, and the Department of Justice requested P5 million as it anticipates requests from Hong Kong, Thailand and Spain, in case the Treaty with the latter is ratified.

Asked whether the other parties to the treaties have not availed of them, Senator Defensor Santiago replied that according to the Department of Foreign Affairs, there was no request from Hong Kong and Thailand during the five-year period 2002-2007.

Asked whether the P5 million request in the resolution is part of the DOJ budget for the program, Senator Defensor Santiago replied in the negative. However, she said, in case it is deemed necessary, the DFA has expressed its willingness to fund the program from its fund for assistance to Filipinos abroad. Although the DFA budget would not be further reduced by Congress as it is already inadequate, she opined that the joint resolution would suffice as the initiative came from the House of Representatives. She disclosed that the DOJ pleaded for the inclusion of the P5 million allocation in the proposed 2008 budget but the DBM failed to do just that, hence, it is not part of the budget submission of the Executive.

INTERPELLATION OF SENATOR LACSON

At the outset, Senator Lacson indicated his full support for the Treaty but expressed concern about the disparity in the living conditions between Philippine prisons and the Spanish prisons that would make the Treaty unimplementable. He said that it is unimaginable that a Filipino national detained in Spain, enjoying *paella* and other amenities, might want to be transferred to the National Penitentiary.

Senator Defensor Santiago said that the Filipino might still want to be transferred but he would not be transferred against his consent because it is guarded by a three-fold-consent-requirement: the consent of the two States and the sentenced person as he may not be able to speak and understand Spanish; he might want to be visited by his family and friends; and he might want to socialize in a manner that is not be prohibited by culture or religion. She added that as reported by the DFA, based on the Human Rights Watch Report for 2002, Spanish prisons are also crowded and are encountering

problems with detained illegal immigrants. She disclosed that there are Filipinos who do want to avail of the transfer like Hermenigildo Encarnacion, a 68-year old Filipino convicted for drug-trafficking in Spain.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

There being no further interpellation, upon motion of Senator Pangilinan, there being no objection, the Body closed the period of interpellations.

TERMINATION OF THE PERIOD OF AMENDMENTS

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

APPROVAL OF PROPOSED SENATE RESOLUTION NO. 212 ON SECOND READING

Submitted to a vote, there being no objection, Proposed Senate Resolution No. 212 was approved on Second Reading.

SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 212

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

MEMBERSHIP IN THE JOINT CONGRESSIONAL POWER COMMISSION

Upon motion of Senator Pangilinan, there being no objection, Senators Pimentel and Lacson were designated as *members of the Joint Congressional Power Commission*, on the part of the Minority.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:27 p.m.

RESUMPTION OF SESSION

At 5:28 p.m., the session was resumed.

SECOND ADDITIONAL REFERENCE OF BUSINESS

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

RESOLUTION

Proposed Senate Resolution No. 213, entitled

RESOLUTION DIRECTING THE COMMITTEE ON CULTURAL COMMUNITIES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE CONTINUING DISPLACEMENT AND HARASSMENT OF INDIGENOUS PEOPLES IN THE PROVINCES OF SURIGAO DEL SUR, AGUSAN DEL SUR, DAVAO ORIENTAL AND COMPOSTELA VALLEY DUE TO THE RAMPANT LOGGING OPERATIONS OF PICOP RESOURCES INC., WITH THE END IN VIEW OF ENACTING REMEDIAL LEGISLATION

Introduced by Senator M. A. Madrigal

To the Committee on Cultural Communities

PARLIAMENTARY INQUIRY OF SENATOR ARROYO

Senator Arroyo asked on the status of Proposed Senate Resolution No. 203 on the PNOC-EDC bidding.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:29 p.m.

RESUMPTION OF SESSION

At 5:31 p.m., the session was resumed.

Senator Pangilinan stated that the resolution was referred primarily to the Committee on Government Corporations and Public Enterprises and secondarily to the Committee on Energy. He added that the Body has suspended the interpellations on Senator Arroyo's speech. *AS*

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Senator Arroyo expressed concern that with Senator Gordon, the committee chair, not around, the resolution might not be acted upon in time since the PNOC-EDC bidding would take place on November 21.

Senator Pangilinan explained that the Committee on Government Corporations and Public Enterprises has to act on the resolution before it can be taken up in plenary.

Senator Arroyo reiterated the urgency of passing the resolution. Senator Pangilinan gave assurance that he would look into the matter and report to the Body in the next day's session.

At this point, Senate President Pro Tempore Ejercito Estrada announced that Senator Gordon was on official mission.

THIRD ADDITIONAL REFERENCE OF BUSINESS

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

RESOLUTIONS

Proposed Senate Resolution No. 214, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON HEALTH AND DEMOGRAPHY AND OTHER APPROPRIATE COMMITTEES IN THE SENATE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE RISING PROLIFERATION OF ILLEGAL HUMAN ORGAN TRADE IN THE PHILIPPINES WITH THE END IN VIEW OF PROTECTING THE HEALTH AND WELL BEING OF THE GENERAL PUBLIC

Introduced by Senator Manuel "Lito" M. Lapid

To the Committee on Health and Demography

Proposed Senate Resolution No. 215, entitled

RESOLUTION DIRECTING THE COMMITTEE ON CULTURAL COMMU-

NITIES TO INVESTIGATE, IN AID OF LEGISLATION, THE IMPENDING DISPLACEMENT OF THE MANOBO CULTURAL COMMUNITY FROM SAMAR ISLAND BY REASON OF THE RECENT EXTENSION OF THE TIMBER LICENSING AGREEMENT OF BASEY WOOD INDUSTRIES INC. COVERING PORTIONS OF THE DECLARED PROTECTED AREA OF SAMAR ISLAND NATURAL PARK

Introduced by Senator M. A. Madrigal

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

REMARKS OF THE CHAIR

Senate President Pro Tempore Ejercito Estrada announced that Senator Gordon was currently in Geneva until November 28, 2007.


At this juncture, Senator Pangilinan stated that the office of the Majority Leader would contact Senator Gordon or his staff and report on the matter the following day.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the President Pro Tempore declared the session adjourned until three o' clock in the afternoon of the following day.

It was 5:37 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Secretary of the Senate

Approved on November 20, 2007