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SESSION NO. 52

Wednesday, February 6, 2008

**FOURTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 52
Wednesday, February 6, 2008

CALL TO ORDER

At 3:25 p.m., the Senate President, Hon. Manny B. Villar, called the session to order.

PRAYER

Sen. Miriam Defensor Santiago led the prayer, reading *God Means Us To Be Happy*, to wit:

God means us to be happy;
He fills the short-lived years
With loving tender mercies,
With smiles as well as tears.

Flowers blossom by the pathway
Or, withering, they shed
Their sweetest fragrance over
The bosoms of our dead.

God filled the earth with beauty;
He touched the hills with light;
He crowned the waving forest
With living verdure bright.

He taught the bird to carol,
He gave the wind its voice;
And to the smallest insect
Its moment to rejoice.

What life hath not its blessing?
Who hath not songs to sing
Or grateful words to utter
Or wealth of love to bring?

No way is dark and dreary
If God be with us there;
No danger can befall us
When sheltered by His care.

Amen.

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.	Gordon, R. J.
Aquino III, B. S. C.	Honasan, G. B.
Arroyo, J. P.	Lacson, P. M.
Biazon, R. G.	Lapid, M. L. M.
Defensor Santiago, M.	Pangilinan, F. N.
Ejercito Estrada, J.	Revilla Jr., R. B.
Enrile, J. P.	Villar, M.
Escudero, F. J. G.	Zubiri, J. M. F.

With 16 senators present, the Chair declared the presence of a quorum.

Senators Cayetano (A) and Legarda arrived after the roll call.

Senators Cayetano (P), Madrigal and Roxas were on official mission.

Senator Pimentel was on official mission 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. 51 and considered it approved.

REFERENCE OF BUSINESS

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

RESOLUTIONS

Proposed Senate Resolution No. 293, entitled

RESOLUTION DIRECTING THE PROPER
SENATE COMMITTEE TO CONDUCT
AN INQUIRY, IN AID OF LEGISLA-
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TION, ON THE ALLEGED IMPACT OF THE WORSENING CORRUPTION IN THE PHILIPPINES ON ITS ELIGIBILITY FOR UNITED STATES ECONOMIC ASSISTANCE

Introduced by Senator Miriam Defensor Santiago

To the Committees on Economic Affairs; and Finance

Proposed Senate Resolution No. 294, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE RAMPANT TRAFFICKING OF HUMAN ORGANS

Introduced by Senator Miriam Defensor Santiago

To the Committee on Health and Demography

Proposed Senate Resolution No. 295, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON PUBLIC ORDER AND ILLEGAL DRUGS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE COLD BLOODED MURDER OF FORMER MAYOR REY YAP OF SAPANG DALAGA, MISAMIS OCCIDENTAL AND THE INJURING OF TWO CIVILIANS IN THE COURSE OF SHOOTING INSIDE MANILA REGIONAL TRIAL COURT

Introduced by Senator Jinggoy Ejercito Estrada

To the Committees on Justice and Human Rights; and Public Order and Illegal Drugs

Proposed Senate Resolution No. 296, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON HEALTH AND DEMOGRAPHY AND THE COMMITTEE ON LOCAL GOVERNMENT

TO CONDUCT A JOINT INQUIRY, IN AID OF LEGISLATION, INTO THE EFFORTS OF THE DEPARTMENT OF HEALTH AND THE LOCAL GOVERNMENT UNITS IN THE PREVENTION OF MATERNAL AND NEWBORN DEATHS

Introduced by Senator Angara

To the Committees on Health and Demography; and Local Government

ADDITIONAL REFERENCE OF BUSINESS

BILLS ON FIRST READING

Senate Bill No. 2056, entitled

AN ACT PROVIDING A FRAMEWORK FOR THE TRANSFER OF SCIENCE AND TECHNOLOGY AND THE PRACTICE OF PROFESSIONS IN THE PHILIPPINES BY OVERSEAS FILIPINO PROFESSIONALS

Introduced by Senator Manny Villar

To the Committees on Science and Technology; and Labor, Employment and Human Resources Development

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

Senator Pangilinan acknowledged the presence of 30 student-members of the Historical Society of Sienna College, Quezon City, who were accompanied by Mr. Ben Atienza.

Senate President Villar welcomed the guests to the Senate.

QUESTION OF PRIVILEGE OF SENATOR AQUINO

Rising to a question of personal and collective privilege, Senator Aquino delivered the following speech:

Yesterday, this government committed its most brazen act of impunity against this honorable institution, against one of its citizens and his distraught family.

A key witness at an ongoing investigation for whom the Senate has issued a warrant of arrest has disappeared. I do not personally know Rodolfo Noel Lozada Jr. I have never met him or even spoken to him in my life. For all I know, he could resurface one of these days and say he was never kidnapped. What I do know is this: At about two o'clock yesterday afternoon, two hours prior to Mr. Lozada's arrival at the Ninoy Aquino International Airport (NAIA), a person in contact with him informed me that he was on his way home to Manila from Hong Kong. We relayed this information to the Office of the Senate Sergeant-at-Arms (OSAA) to give them the opportunity to serve Mr. Lozada his warrant of arrest. Together with the members of the Office of the Senate Sergeant-at-Arms, we made our way to the airport at about 3:30 in the afternoon. We wanted to help forestall any untoward incident that might keep the Senate from doing its job.

Mr. Lozada arrived in Manila via Cathay Pacific Flight 919 at 4:40 yesterday afternoon. However, somewhere between the plane and the tarmac, and proceeding to the arrival section where members of his family, the Office of the Sergeant-at-Arms, and the media were awaiting his arrival, Mr. Lozada mysteriously disappeared. Soon after this, news reports began to circulate that Mr. Lozada was "met by unknown persons as he emerged from the plane" and reportedly "taken down through a side exit of the tunnel that connects the plane and the passengers' arrival area and whisked into a vehicle parked right at the tarmac." Soon after this, members of Mr. Lozada's family began to appeal for his safe and immediate return. After this, I was informed by Colonel Dimacali of the Office of the Senate Sergeant-at-Arms that Arthur Lozada received a text message from his brother saying he was accosted at the airport and taken somewhere "out of town."

Despite this, not a single word of explanation was offered by any official of the NAIA for this apparent breach of airport security procedures. It took NAIA Assistant General Manager for Security and Emergency Services Angel Atutubo five hours to announce that it was not he who took Lozada but a certain SPO4 Roger Valeroso. It took the Philippine National Police over 12 hours to announce that personnel from their Police Security Protection Office had taken Mr. Lozada into custody. He also announced that there was no person named Roger Valeroso in the ranks of the PNP.

As is customary with all of this administration's attempts to explain its actions, these developments have only raised more questions. If SPO4 Valeroso does not exist, then where did Angel Atutubo get his name when he made the announcement yesterday? If SPO4 Valeroso does not exist, then who was the police officer who took custody of Mr. Lozada at the airport yesterday afternoon? By whose authority and on what ground was he given access to the airport tarmac? By whose authority and on what ground did the PNP take Mr. Lozada into their custody? If Mr. Lozada had indeed asked the PNP for protection, how does one explain the sheer confusion, terror and panic in the voices of his family members as they appealed to "please return him whoever is holding him now." If Mr. Lozada is indeed in the custody of his family, why have they filed for a writ of *habeas corpus* with the Supreme Court saying that the "blatant illegal restraint of petitioner is ... still causing the continuous violation of his right to life, liberty and security without due process of law"?

I cannot think of any other explanation for Mr. Atutubo and the PNP's prolonged period of silence other than that those hours were used to concoct what appears to be a badly written official story on the fate of Mr. Lozada.

A key witness in an ongoing Senate investigation has gone missing. He has apparently been denied his freedom without any lawful reason and his family is beside itself with worry.

Today, I fear that Mr. Lozada and his family may go the way of other witnesses, like Vidal Doble, who were placed under duress and threatened with physical harm in order to get them to maintain their silence.

The issue at hand is not whether Mr. Lozada was taken against his will or not by the PNP. The issue at hand is that the PNP has no legal authority to continue to keep him in its custody. To continue to do so constitutes a direct affront to the Senate's power to enforce its institutional authority.

In many cases, the highest tribunal of this land has consistently affirmed the power of this institution to hold in contempt those who blatantly defy its lawful order.

Will the Senate stand by idly and await further developments on the fate of Mr. Lozada?

When my father was murdered on the tarmac of the Manila International Airport 25 years ago, our country was under martial law. With no

institution of government willing to condemn this act, it was left to the people to demand that those responsible be held accountable for their actions. We are not under martial law today. As one of the remaining independent democratic institutions, will the Senate, as an institution, not take a stand to condemn in the strongest possible terms this blatant disregard for the rule of law and the Senate's constitutional authority? In the face of this insolent display of disrespect for a coequal branch of government, I hope that we will be equal to the task of defending our constitutional obligations.

If the Senate does not act now, then it will suffer the fate of many other institutions that this government has managed to emasculate. I challenge the Senate to fully utilize the powers vested in it by the Constitution.

If we are not able effectively to exercise our institutional authority, then, we will be reducing ourselves and the Senate to irrelevance.

I therefore move for the Senate to look into the circumstances surrounding the disappearance of Rodolfo Noel Lozada Jr. and to immediately issue subpoenas to Angel Atutubo, Octavio Lina, Director General Avelino Razon, Jr., and to all accountable officials of the NAIA and the Philippine National Police. These individuals should explain to this Body their participation in preventing the lawful arrest of Rodolfo Noel Lozada Jr. by the Office of the Senate Sergeant-at-Arms. Should they continue to disregard the Senate's authority, then, I call on this Body to immediately cause their arrest and detention until such time that they recognize that we are a coequal branch of government.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

Preliminarily, Senator Defensor Santiago commended Senator Aquino for his vigilance in asserting the authority of the Senate. However, she believed that if the motion of Senator Aquino is to urge the Senate to conduct an inquiry which necessarily would be in aid of legislation, he must first outline the past, present or prospective legislation involved in the matter. The motion, she asserted, asks for an action that is too drastic and confrontational, believing as she did that it might be better if Senate President Villar or the appropriate Senate official instead negotiated a memorandum of understanding with the Director General of the Philippine National Police (PNP).

Senator Defensor Santiago asked whether there is any provision in the Constitution that gives the Senate the power to deputize the PNP or any other law enforcement agency.

SUSPENSION OF SESSION

Upon motion of Senator Aquino, the session was suspended.

It was 3:39 p.m.

RESUMPTION OF SESSION

At 3:40 p.m., the session was resumed.

In answer, Senator Aquino called attention to Section 21, Article VI of the Constitution which states, "The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected." As constitutionally prescribed, he stated that the Senate adopted its Rules of Procedure Governing Inquiries in Aid of Legislation and Section 17 thereof provides, "The Committee shall have the powers of an investigating committee, including the power to summon witnesses and take their testimony and to issue subpoena and subpoena *duces tecum*, signed by its Chairman, or in his absence, by the Acting Chairman, and approved by the President. Within Metro Manila, such process shall be served by the Sergeant-at-Arms or his assistant. Outside of Metro Manila, service may be made by the police of a municipality or city, upon request of the Secretary." He concluded that pursuant to the Rules, the Senate can seek assistance from law enforcement agencies."

Senator Defensor Santiago stated that under the rule on statutory construction, Congress cannot draw any extra power from the language of the law itself. She said that the Rules of the Senate are only internal rules, not a law, that is why the first sentence refers only to the issuance of subpoena and subpoena *duces tecum*; and the second sentence provides only for "such process," limited only to subpoena and subpoena *duces tecum*. She stated that the philosophy of the rule of statutory construction – "where the law does not allow, Congress should not allow" – is that if the framers of the rule wanted to include arrest warrants, they would have done so, but they

did not as they only included subpoena and subpoena *duces tecum*. She believed that no one has the right to expand the meaning of this clause except the lawmaker himself.

Senator Aquino maintained that the service of warrants is part of the investigative power of the Body and when necessary, based on past practices, it can seek the assistance of law enforcement agencies to implement its order.

But Senator Defensor Santiago insisted that under the principle of the rule of law, the basis of the action of the legislature should be the provisions of the law and not mere opinion, hence, every assertion and allegation must have a legal basis.

Senator Aquino argued that the Constitution authorizes the Senate to come up with its rules of procedure that, once published, become part and parcel of the law.

Referring to the Constitution, Senator Defensor Santiago pointed out Section 2 (4) of Article IX (C) thereof which states:

Sec. 2. The Commission on Elections shall exercise the following powers and functions:

- (4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

She stressed that under the Constitution itself, the Comelec has a specific legal basis to deputize the PNP; on the other hand, there is no similar provision in Article VI on the Legislative department. She reiterated that under the rule on statutory construction, legislators are not free to draw conclusions from the language of the law. She pointed out that under Rule VI, Section 8 (d) of the Rules of the Senate, the Sergeant-At-Arms is only given the power, "To execute or serve, personally or through his delegates, the summons which may be issued by the Senate or by the permanent or special committees or by the President himself." The point, she underscored, is that just like the Judiciary, the Senate has to make an arrangement with the PNP director general so that whenever it issues its coercive processes, the Senate would be assured of the PNP's assistance and there would be no conflict of jurisdiction.

Senator Defensor Santiago recalled that when she was an RTC Judge, she had a court sheriff who, upon the issuance of a writ, sought the assistance of the local chief of police and the duly deputized police arrested the person or individual or took into possession certain properties subject to litigation. She said that the Senate can only request the PNP director general to enter into an MOU on the unspoken implication that if he does not respond positively to the request, the PNP would not have a budget next year.

INTERPELLATION OF SENATOR EJERCITO ESTRADA

Asked by Senator Ejercito Estrada on the proper procedure that an arriving passenger has to go through at the airport, Senator Aquino replied that the passenger or even a VIP goes through immigration where he presents his passport; then he goes through customs where his luggage is inspected; and then he goes to the arrival area where he meets his relatives.

As to who provides security to arriving VIPs, Senator Aquino stated that different agencies can provide security to VIPs but internally, it is the Manila International Airport Authority.

As regards the claim of NAIA General Manager Alfonso Cusi that the OSAA did not coordinate with his office, Senator Aquino believed that the OSAA coordinated with NAIA in order to have access to the area where it intended to serve the warrant of arrest on Mr. Lozada. He clarified that he does not know Mr. Octavio "Bing" Lina but he has probably met retired General Atutubo.

As regards the actuations of Mr. Lina and retired General Atutubo upon Mr. Lozada's arrival, Senator Aquino stated that according to the statement of retired General Atutubo, he was present when a certain SPO4 Roger Valeroso fetched Mr. Lozada from the tube. However, he noted that earlier this day, PNP Director General Razon denied that SPO4 Valeroso is in the PNP roster.

Senator Aquino believed that if a passenger failed to appear after a certain length of time, those who went to the airport to meet him would presume he was missing. As regards allegations that Mr. Lozada has been kidnapped to prevent him from testifying before the Senate, he stated that he has not talked to Mr. Lozada about his testimony but

there is no clear reason why he had been taken into custody.

Senator Ejercito Estrada recalled that in 2004, Odong Mahusay, a vital witness in the Jose Pidal case, was reportedly kidnapped in Tagaytay City by a former high-ranking Malacañang official. He asked if the case of Mr. Mahusay has any similarity to that of Mr. Lozada. Senator Aquino recalled that in the wiretapping scandal, Sergeant Doble, a witness, was taken into custody in Camp Aguinaldo and eventually he retracted his testimony.

Senator Aquino stressed that the Supreme Court, in a number of cases, has upheld the right of the Senate to compel a witness in an inquiry, in aid of legislation, to appear before it, but he noted that another branch of government seemed determined to block the Senate from exercising its rights.

In closing, Senator Ejercito Estrada appealed to the PNP to produce Mr. Lozada and turn him over to the Senate.

INTERPELLATION OF SENATOR CAYETANO (A)

At the onset, Senator Cayetano (A) gave a brief report on what happened at the airport yesterday. He informed the Body that before 12:00 noon, he received a call that Mr. Lozada would be arriving at 4:40 p.m. on board Cathay Pacific Flight CX-919. He stated that the caller requested that the information be kept confidential since the family and relatives of Mr. Lozada feared for his life, but he advised the caller that it would be best if the information is given to a limited number of media personalities for transparency in the operation of arresting Mr. Lozada. He said that the caller informed him that the Senate Sergeant-At-Arms would be accompanied to the NAIA by the family's representative, a certain Fr. Jess Malit, to assure Mr. Lozada that his family is safe and that the Senate meant him no harm.

Senator Cayetano (A) narrated that he met with the Sergeant-at-Arms to plan out the operation but the problem, he said, was that two weeks ago, the PNP publicly pronounced that it was adopting a hands-off policy on the matter of serving arrest warrants issued by the Senate, about which, it must first seek the opinion of the DOJ. He recalled that in the past, the NAIA gave Senate personnel passes

that allowed access inside the NAIA but this time, the Sergeant-at-Arms himself was denied such a pass. He disclosed that the Sergeant-at-Arms communicated with retired General Atutubo but still he was not allowed to enter the tunnel and unbeknownst to him, the two members of the PNP had already retrieved Mr. Lozada, brought him to a vehicle and whisked him away. He bared that in a text message received by Art Lozada, his brother had been brought to Camp Villamor. Later that evening, he said that Senate President Villar informed him that Mrs. Violeta Cruz-Lozada in a phone conversation had asked the Senate for legal assistance. He stated that upon instruction of the Senate President, he got in touch with the Ateneo Human Rights Center, and so, at one o'clock that afternoon, Atty. Carlos Medina filed the petition for the issuance of a writ of *habeas corpus* before the Supreme Court in behalf of Mrs. Violeta Lozada who has yet to hear from her husband.

Senator Cayetano (A) stated that while Director General Razon claimed that Mr. Lozada was under the custody of the PSPO in Camp Crame, along with his family, his wife could not have been with him in Camp Crame because she personally signed the affidavit attached to the petition for a writ of *habeas corpus*. Further, he disclosed that according to General Hilomen of PSPO, Mr. Lozada was not under his custody at Camp Crame but somewhere under guard by PSPO personnel.

Confirming Senator Aquino's assertion that the Senate did not deputize the PNP, Senator Cayetano (A) pointed out that the Supreme Court in *Sabio vs. Gordon* upheld the action of the Senate in the matter of the arrest of Chairman Sabio by the Sergeant-at-Arms on September 12, 2006, at his office in Mandaluyong City. He said that contrary to the assertion of Secretary Neri's lawyers, nowhere in that decision did it say that the Sergeant-at-Arms can only arrest people in the Senate premises. He said that after the arrest, Mr. Sabio was brought to the Senate premises where he was detained. He clarified that the Senate has not asked help from the police because personally, he believed that it has not been upholding the Constitution. He also said that the three committee chairs would confer on how to proceed with this case as the Supreme Court is expected to act on the petition within 48 hours.

Upon queries of Senator Cayetano (A), Senator Aquino stated that aside from the Senate, the courts

also issue warrants of arrest which are enforced by the sheriff of the court together with the appropriate law enforcement agencies. He affirmed that most cities and municipalities have a PNP warrant division that serves warrants.

As regards the powers which are implied or inherent in the Constitution and therefore do not have to be spelled out, Senator Aquino cited *Arnault vs. Nazareno* wherein the Supreme Court made it clear that since the Senate has contempt power, it also has the power to enforce it.

Even as he expressed agreement with Senator Defensor Santiago that in the exercise of discretion and for better coordination, it would be better for the Senate to forge a memorandum of agreement with certain agencies, Senator Cayetano (A) asserted nonetheless that it is not necessary or essential in certain situations when the Senate can ask law enforcement agencies to perform acts in furtherance of its orders. He cited Article 150 of the Revised Penal Code, to wit:

Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees or subcommittees or divisions. -- The penalty of arresto mayor or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly (Congress), its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions, or before any commission or committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions....

Thus, he underscored, disobedience to congressional summons is punishable under the Revised Penal Code.

Asked whether those who are detaining Mr. Lozada are violating Article 150 as well as the illegal detention or anti-kidnapping law, Senator Aquino replied in the affirmative.

In closing, Senator Cayetano (A) stated that in view of a standing order of arrest against Mr. Lozada, it is the obligation of anyone detaining him to bring him to the Senate so that the order of arrest may be effected and that he may be put under the custody of the Senate.

INTERPELLATION OF SENATOR BIAZON

Upon queries of Senator Biazon, Senator Aquino clarified that Mr. Lozada was taken from the airplane directly to an awaiting vehicle without going through Immigration and Customs and according to the text message of Mr. Art Lozada, he was taken to an unknown location outside Metro Manila.

Senator Biazon noted that only three individuals were authorized in the restricted area, namely, Alfonso Cusi, General Manager of NAIA, retired General Atutubo, Assistant General Manager for Security, and a PSG personnel.

Asked if the Office of the Sergeant-at-Arms (OSAA) had deputized any PNP personnel to serve the warrant of arrest, Senator Aquino replied that only personnel from the office tried to serve the warrant on Mr. Lozada. He affirmed that the Sergeant-at-Arms tried to serve the warrant of arrest to Mr. Lozada at the airport premises.

On the reason for the OSAA's failure to serve the warrant of arrest, Senator Aquino said that the pass given to the OSAA personnel allowed them access only up to the Custom's area.

Senator Biazon said that according to newspaper reports, Mr. Lozada was grabbed by somebody at the airport and whisked away to be taken to an undisclosed place. He noted that there have been different attempts to prevent the appearance in the Senate of invited or potential witnesses: initially through Executive Order No. 464, and when it did not work, the invocation of executive privilege; in some instances, potential witnesses were prevented from testifying on the very day they are supposed to appear as they purportedly had been sent on missions abroad; and in some cases, retired senior public officials are reappointed to positions so that they would still be covered by EO 464 and, at the same time, they would be able to invoke executive privilege. Likewise, he said that promotions are also used to prevent potential witnesses from testifying before the Senate.

Senator Biazon wondered whether the persons responsible for Mr. Lozada's disappearance should be charged with the crime of abduction, illegal detention or kidnapping, adding that their actions were a direct challenge to the authority of the Senate. He said that he would support the motion for an inquiry.

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:30 p.m.

RESUMPTION OF SESSION

At 4:31 p.m., the session was resumed.

REFERRAL OF SPEECH TO COMMITTEES

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the speech of Senator Aquino and the interpellations thereon primarily to the Committee on Accountability of Public Officers and Investigations, and secondarily to the Committees on National Defense and Security; and Trade and Commerce.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:32 p.m.

RESUMPTION OF SESSION

At 4:33 p.m., the session was resumed.

COMMITTEE REPORT NO. 8 ON SENATE BILL NO. 31

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 31 (Committee Report No. 8), entitled

AN ACT PRESCRIBING A FIXED TERM FOR THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIP- PINES AND FOR OTHER PURPOSES.

Senator Pangilinan stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Biazon, Sponsor of the measure, and Senator Aquino for his interpellation.

INTERPELLATION OF SENATOR AQUINO

Adverting to the provision in the bill which states that no chief of staff with less than one year of service may be appointed to the same position which is envisioned to have a tenure of three years, Senator Aquino asked whether it does not violate Section 5(5), Article XVI of the Constitution which prohibits the extension of service of military officers, particularly since their tour of duty would effectively be extended.

Replying in the negative, Senator Biazon said that the law is envisioned for the AFP corps of officers. Relative thereto, he read pertinent portions of the deliberations of the 1986 Constitutional Commission on the matter:

Commissioner Suarez. Let us give this a little thought. If we can institutionalize the Office of the Chief of Staff and give him or her tenure for that matter, by way of equalizing men and women in the military, we are saying that they will have a constitutional term of three years. We are not giving the President, the Commander-in-Chief, the right to terminate the three-year constitutional term. Is that the implication of the Commissioner's proposal?

Commissioner De Castro. So I will say, the tour of duty shall not be more than three years so that the President can relieve the Chief of Staff any time before three years.

Commissioner Davide. Instead of "not more than," it should be "shall in no case exceed three years."

Commissioner de Castro. That is acceptable.

Thus, Senator Biazon pointed out that the intent of the framers of the Constitution was to grant broad discretionary authority to the President to decide on the continuation of the tour of duty of the chief of staff as long as the three-year limit is not exceeded. *AK*

Considering the intent of the framers, as well as the silence in the Constitution, on the matter of the termination of the tour of duty upon reaching the compulsory retirement age, Senator Biazon opined that the President has the discretion to allow the chief of staff to continue his tour of duty even beyond his compulsory retirement age. He pointed out that the rule is well-settled that when the intent of a constitutional provision is ambiguous or doubtful, recourse may be had to the *Record of the 1986 Constitutional Commission* to shed light on the matter.

Senator Biazon again quoted from the *Record of the 1986 Constitutional Commission*, to wit:

Commissioner De Castro. We have so provided that the tour of duty of the Chief of Staff is for three years.

Relative thereto, Senator Biazon acknowledged that there is a gray area in the interpretation of the constitutional provision as regards "three years," as some interpret it as "tenure" and others as a "limitation."

To illustrate, Senator Biazon said that there had been 17 chiefs of staff since 1986, to name some:

- 1) **Gen. Fidel V. Ramos** – served an extended term under President Aquino for two years; since the transition to 1987 Constitution occurred during that period, the extension of his term could not be questioned;
- 2) **Gen. Renato S. De Villa** – who served for three years but retired even before he reached age 56; since the 1987 Constitution was already operational during his term, he retired five or six months before reaching the mandatory age requirement;
- 3) **Gen. Arturo Enrile** – his term was extended by President Ramos by 161 days;
- 4) **Gen. Arturo Acedera** – was extended by 131 days;
- 5) **Gen. Clemente P. Mariano** – was extended by 131 days;
- 6) **Gen. Jocelyn B. Nazareno** – extended by 90 days;
- 7) **Gen. Roy Cimatu** – extended by 65 days;

8) **Gen. Benjamin P. Defensor Jr.** – extended by 77 days;

9) **Gen. Efren L. Abu** – extended by 52 days; and

10) **Gen. Hermogenes C. Esperon** – his term was extended by 90 days.

Senator Biazon pointed out that based on the list, eight chiefs of staff were extended by their respective Commanders-in-Chief since the adoption of the 1987 Constitution. If indeed the interpretation that the term of the chief of staff could not be extended were correct, he said that the presidents who made these extensions could be held liable for violating the law.

Moreover, Senator Biazon stated that the Constitution clearly provides for the possibility of the extension of the term of any chief of staff, to wit: 1) when there is war; 2) when there is widespread rebellion; and 3) when Congress declares a state of national emergency. He believed that the three conditions prescribed by the Constitution did not exist when the terms of the chiefs of staff were extended. He again quoted Commissioner de Castro during the deliberation of the 1986 Constitutional Commission, to wit:

Commissioner de Castro: We have so provided that the tour of duty of the Chief of Staff is for three years. Assuming that he is retireable at the age of 56, tomorrow he will be 56, and today he is appointed or designated Chief of Staff, then he will have to finish his tour of duty, and to include the exceptions, the continuation under the national emergency. This is one officer who will have to be exempted from that rule of retireable age at age 56.

Commissioner Davide: In that respect, I would propose an amendment to read, officers of the military, except the chief of staff.

Commissioner Bernas: That probably is not necessary. That is taken care of by the paragraph we approved yesterday.

Commissioner Davide: That is correct.

Commissioner Bernas: That understanding would be that the chief of staff must be allowed to finish his tour of duty even if his service goes beyond 30 years of his age beyond 56 years.... *AB*

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Clearly, he pointed out that based on the deliberation of the 1986 Constitutional Commission, the chief of staff was exempted from the coverage of the law and the constitutional provision that there should be no extension of the tour of duty of the chief of staff.

Senator Aquino argued that there was no ambiguity in Section 5(5), Article XVI of the Constitution as it clearly provides that, "Laws on retirement of military officers shall not allow extension of their service," and in Section 5(7) of the same article which provides that, "The tour of duty of the Chief of Staff of the armed forces shall not exceed three years except in times of war or other national emergency...." However, he pointed out that based on the provision in the proposed measure, the statutory compulsory retirement of the chief of staff shall be deferred until the completion of the prescribed three-year term, which is an extension not envisioned by the Constitution.

Senator Aquino asked if Senator Biazon would consider an amendment to ensure that the bill shall have no constitutional infirmity by adding a provision that appointees to the position of chief of staff should have at least three years remaining in their service. Senator Biazon stated that he would consider the proposal at the proper time. Nonetheless, he said that he would like to limit the selection pool and obviate the possibility of junior officers bypassing senior officers. He said that perhaps a year remaining in the service would address such a concern.

Senator Aquino believed that such a provision would bring back the problem experienced during martial law where there were no vacancies at the top level of the Armed Forces to the detriment of the low-ranking officers who were hoping that their term would be finished at the age of 56. He asked whether it is a prudent policy to favor some more than the others and therefore reinstitute the very ground that gave rise to the RAM and YOU movements.

Senator Biazon reasoned that the recent appointments in the AFP cannot be compared to those during the martial law years because at that time, 65% of the generals were extendees.

MANIFESTATION OF SENATOR PANGILINAN

Senator Pangilinan manifested that Senator Arroyo has requested that he be given more time to prepare for his interpellation on the bill.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 31

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

COMMITTEE REPORT NO. 12 ON SENATE BILL NO. 233

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 233 (Committee Report No. 12), entitled

AN ACT AMENDING THE ADMINISTRATIVE CODE OF 1987 BY PROHIBITING A PERSON FROM BEING APPOINTED AS THE SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE WITHIN THREE (3) YEARS AFTER RETIREMENT FROM ACTIVE DUTY AS A COMMISSIONED OFFICER OF A REGULAR COMPONENT OF THE ARMED FORCES OF THE PHILIPPINES (AFP).

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:53 p.m.

RESUMPTION OF SESSION

At 4:54 p.m., the session was suspended.

Upon resumption, the Chair recognized Senator Biazon, Sponsor of the measure, and Senator Enrile for his interpellation.

INTERPELLATION OF SENATOR ENRILE

Asked by Senator Enrile what the proposed measure seeks to change in the Administrative Code of 1987, Senator Biazon replied that the bill seeks to add a provision prescribing a qualification for an

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appointee to the position of the Secretary of National Defense. He reasoned that since there are no prescribed qualifications for the said position, the President can appoint anyone, whether a civilian or a newly retired AFP officer. He explained that the amendment does not disqualify a retired military officer but he has to wait some time before being appointed.

As to the rationale for the amendment, Senator Biazon replied that it seeks to uphold the basic principle of civilian supremacy over military authority. Senator Enrile argued that said principle has always been upheld because the defense secretary is under the supervision and control of the President who is a civilian. Moreover, he contended that "civilian authority" does not mean that the head of the department ought to be civilian; otherwise, following the rationale of the measure, a military officer should also be disqualified from becoming President.

Senator Enrile recalled that in the history of the Department of National Defense, there were only five instances when civilians were appointed to head the Department: 1) Teofilo Sison; 2) Juan Ponce Enrile; 3) Orlando Mercado; 4) Avelino Cruz; and 5) Gilbert Teodoro. He stated that Basilio J. Valdez, Ruperto Kangleon, Eulogio B. Balao, Alejo Santos, Macario Peralta, Jr., and Ernesto Mata were all retired military men, and the Department functioned properly under these secretaries. Thus, he wondered why the Senate should put a restriction of three years before a retired military officer could be appointed to the position of secretary of national defense. Senator Biazon stated that the other consideration for the proposed amendment is to prevent the DND secretary from micromanaging the AFP.

Asked who among the secretaries of the DND had micromanaged the military, Senator Biazon replied that it was common knowledge that DND Secretary Angelo Reyes bypassed the AFP chief of staff. Senator Enrile argued that the case of Secretary Reyes was an exception because it was the error of the appointing power and not of the system; therefore, the system or practice should not be changed.

As a former secretary of the DND, Senator Enrile believed that someone from the AFP or the DND would be better equipped to manage the defense establishment than an outsider.

Senator Biazon reiterated that the bill does not completely disqualify retired military officers but merely recommends a period of adjustment before one is appointed to the position. Senator Enrile said that three years could not change the training and mindset of a military officer, pointing out that graduates of the Philippine Military Academy would analyze situations in military terms as against a legal mind who challenges situations based on his learning and discipline as a lawyer.

Senator Biazon said that it could happen that while serving his term, the chief of staff would try to gain the good graces of the President only for the purpose of being appointed as DND secretary immediately after retirement. He said that this is bad for the professionalism within the service.

Senator Enrile said that he would agree with Senator Biazon if he was zeroing in only on the chief of staff and not on all military men, pointing out that he was only a sergeant when he was appointed as DND secretary. He said that the President should be given the leeway to select the best men to sit in his cabinet, which is being restricted by the proposed measure. Senator Biazon clarified that the Committee only seeks to ensure that a soldier shall be made to go through an adjustment period before he is given the position of defense secretary.

Senator Enrile stated that there is no rational basis for the proposal because, in effect, it disqualifies all military men and deprive the nation of well-trained leaders, as he recalled that Dwight Eisenhower was a colonel when he was tasked to head the expeditionary force. Likewise, he cautioned that soldiers can easily toy around with a DND secretary who is a civilian and does not know anything about military organization. He recalled that it took him at least one year to put his foot down when he was defense secretary.

Senator Biazon cited former Defense Secretary Nonong Cruz, a civilian who was instrumental in initiating the Philippine Defense Reform (PDR) program which proposed changes in the management of logistic lines and activities. Senator Enrile said that it was during the former defense secretary's post when the situation in the military deteriorated because he failed to decide on the matter of acquisition of equipment. He maintained that between a former chief of staff and a civilian, it is the former who can easily prepare a defense plan for the country in one month. He believed that even a civilian would

have his favorites whom he would promote ahead of time and that very few could say no to the chief of staff.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:14 p.m.

RESUMPTION OF SESSION

At 5:15 p.m., the session was resumed.

Upon resumption, Senator Enrile said that he would propose amendments at the proper time.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 233

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:16 p.m.

RESUMPTION OF SESSION

At 5:16 p.m., the session was resumed.

SECOND ADDITIONAL REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Edwin B. Bellen, read Proposed Senate Resolution No. 297, introduced by Senator Lapid, which the Chair referred

to the Committees on Public Order and Illegal Drugs; and Education, Arts and Culture, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEES ON PUBLIC ORDER AND ILLEGAL DRUGS; EDUCATION, ARTS AND CULTURE AND OTHER APPROPRIATE COMMITTEES IN THE SENATE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE REPORTED PREVALENCE OF DRUG USE AMONG HIGH SCHOOL STUDENTS IN OUR PUBLIC SCHOOLS, WITH THE END IN VIEW OF PROVIDING THE NEEDED POLICY INTERVENTIONS THAT WOULD ADDRESS THE DRUG USE MENACE.

COAUTHOR

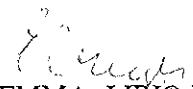
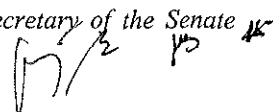
Upon his request, Senator Lapid was made coauthor of Senate Bill Nos. 1895, 1978 and 1987.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Senate President Pro Tempore declared the session adjourned until three o'clock in the afternoon of Monday, February 11, 2008.

It was 5:18 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Secretary of the Senate 

Approved on February 12, 2008