



REPUBLIC OF THE PHILIPPINES

**S e n a t e**

**Pasay City**

# **Journal**

**SESSION NO. 80**

Wednesday, May 21, 2008

**FOURTEENTH CONGRESS  
FIRST REGULAR SESSION**

**SESSION NO. 80**  
Wednesday, May 21, 2008

**CALL TO ORDER**

At 3:29 p.m., the Senate President, Hon. Manny Villar, called the session to order.

**PRAYER**

The Body observed a minute of silent prayer.

**ROLL CALL**

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

Aquino III, B. S. C.	Honasan, G. B.
Arroyo, J. P.	Lacson, P. M.
Biazon, R. G.	Lapid, M. L. M.
Ejercito Estrada, J.	Pangilinan, F. N.
Enrile, J. P.	Pimentel Jr., A. Q.
Escudero, F. J. G.	Villar, M.

With 12 senators present, the Chair declared the presence of a quorum.

Senators Cayetano (A), Defensor Santiago, Legarda, Madrigal, Revilla and Zubiri arrived after the roll call.

Senators Angara, Gordon and Roxas were on official mission abroad.

Senator Cayetano (P) was on official mission.

Senator Trillanes was unable to attend the session as he is under detention.

**ACKNOWLEDGMENT  
OF THE PRESENCE OF GUESTS**

Senator Pangilinan acknowledged the presence of officials from Barangay Lapasan, Cagayan de Oro City.

Senate President Villar welcomed the guests to the Senate.

**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. 79 and considered it approved.


**REFERENCE OF BUSINESS**

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

**BILL ON FIRST READING**

Senate Bill No. 2301, entitled

AN ACT PROVIDING LEGAL ASSIST-  
ANCE TO THE POOR AND ENTITL-  
ING LAWYERS AND LAW FIRMS  
TO A TAX CREDIT FOR LEGAL  
SERVICES RENDERED TO PAUPER  
CLIENTS AND FOR OTHER  
PURPOSES

Introduced by Senator Lapid 



**To the Committees on Justice and Human Rights; and Ways and Means**

**RESOLUTIONS**

Proposed Senate Resolution No. 410, entitled

RESOLUTION DIRECTING THE APPROPRIATE COMMITTEES IN THE SENATE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE VIABILITY OF ESTABLISHING AND CREATING A GOVERNMENT-OWNED AND CONTROLLED FERTILIZER MANUFACTURING PLANT, WITH THE END IN VIEW OF PROVIDING QUALITY AND AFFORDABLE ALTERNATIVE SUPPLY OF FERTILIZER IN THE COUNTRY IN ORDER TO ADDRESS THE SOARING PRICES OF IMPORTED FERTILIZERS AND FARM INPUTS WHICH IN TURN AFFECT THE PRICES OF OUR BASIC AGRICULTURAL PRODUCTS SUCH AS RICE AND CORN

Introduced by Senator Lapid

**To the Committees on Agriculture and Food; and Government Corporations and Public Enterprises**

Proposed Senate Resolution No. 411, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ECONOMIC AFFAIRS AND COMMITTEE ON AGRICULTURE AND FOOD TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE COUNTRY'S DOMESTIC RICE PRODUCTION AND SUPPLY, IN LIGHT OF THE IMPENDING GLOBAL RICE CRISIS, WITH THE END IN VIEW OF INSTITUTING REMEDIAL MEASURES TO REFORM THE GOVERNMENT-SUBSIDIZED PROGRAM

Introduced by Senator Legarda

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

Proposed Senate Resolution No. 412, entitled

RESOLUTION CONGRATULATING AND COMMENDING GIAN CARLO DAPUL FOR WINNING FIRST PLACE IN THE RECENTLY CONCLUDED ENGLISH SPEAKING UNION'S (ESU) INTERNATIONAL PUBLIC SPEAKING COMPETITION IN LONDON AND FOR BRINGING PRIDE, HONOR, AND PRESTIGE TO OUR COUNTRY IN THE FIELD OF PUBLIC SPEAKING

Introduced by Senator Revilla

**To the Committee on Rules**

**PARLIAMENTARY INQUIRY OF SENATOR BIAZON**

Upon query of Senator Biazon, Senator Pangilinan confirmed that Senate Bill No. 2301 was referred primarily to the Committee on Justice and Human Rights. However, Senator Biazon believed that the primary committee should be the Committee on Ways and Means.

**SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 3:34 p.m.*

**RESUMPTION OF SESSION**

At 3:35 p.m., the session was resumed.

**REMARKS OF SENATOR ARROYO**

Senator Arroyo said that the question of which is the primary committee does not matter because both committees to which the bill was referred are both chaired by Senator Escudero. However, he posited that since the bill deals with legal assistance and the financial aspect is only incidental to it, then the Committee on Justice and Human Rights should be the primary committee.

**REMARKS OF SENATOR ESCUDERO**

Senator Escudero explained that there is some advantage to referring the bill primarily to the Committee on Justice and Human Rights and considering the tax exemption as secondary so that

it can be discussed in plenary without the need to wait for the House version.

Thereupon, Senator Biazon deferred to Senator Escudero's explanation and forthwith withdrew his inquiry.

**SPECIAL ORDER**

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of Committee Report No. 52 on Senate Joint Resolution No. 12 from the Calendar for Ordinary Business to the Calendar for Special Orders.

**COMMITTEE REPORT NO. 52  
ON SENATE JOINT RESOLUTION NO. 12**

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second Reading, Senate Joint Resolution No. 12 (Committee Report No. 52), entitled

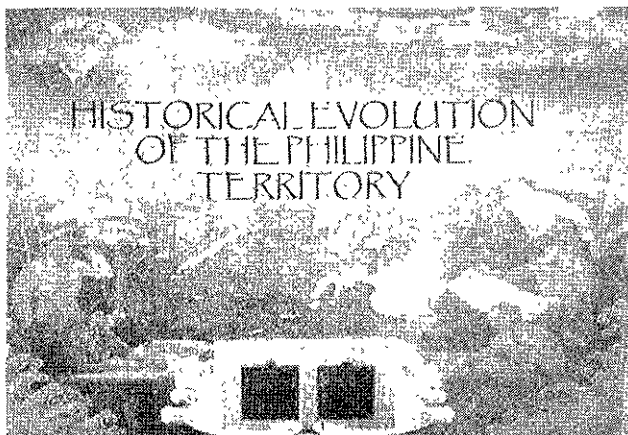
**JOINT RESOLUTION CREATING THE  
CONGRESSIONAL COMMISSION  
ON NATIONAL TERRITORY.**

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.

The Chair recognized Senator Defensor Santiago for the sponsorship.

**SPONSORSHIP SPEECH  
OF SENATOR DEFENSOR SANTIAGO**

Preliminarily, Senator Defensor Santiago showed a slide presentation entitled, "*Historical Evolution of Philippine Territory*":



**Treaty of Peace Between U.S. and Spain  
(Treaty of Paris, 1898)**

**Art. III**

- Spain cedes to the United States the archipelago known as the Philippine Islands and comprehending the islands lying within the following lines.
- A line running from west to east along or near the twentieth parallel of north latitude and through the middle of the navigable channel of Bachi

**Treaty of Peace Between U.S. and Spain  
(Treaty of Paris, 1898)**

**Notes:**

- 20 deg N lat excludes the islands of Batan, Sabtang, Itbayat, Amianan and other smaller islands of Batanes
- Middle of Bashi Channel is 21 deg 25 min
- Lines in the Sulu Sea excludes Cagayan Sulu, Sibutu and Turtle Islands
- Miangas I. (Palmas) is inside the limits of TOP

**Treaty of Peace Between U.S. and Spain  
(Treaty of Paris, 1898)**

**Other Salient Provisions:**

- US to pay \$20M
- Spain to evacuate the islands
- US to admit Spanish ships and merchandize
- US to free Spanish POWs on the capture of Manila
- Spain to release US POWs in the Philippines and Cuba

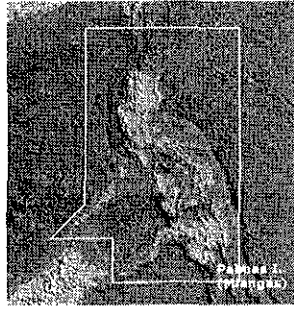
**Treaty of Peace Between U.S. and Spain for Cession of  
Outlying Islands in the Philippines, 1900**

Spain relinquished to the U.S. islands belonging to the Philippine Archipelago, lying outside the lines described in the Treaty of Paris particularly to the islands of Cagayan Sulu and Sibutu and their dependencies . . .

AS

**Arbitration on Palmas Island**

- In 1925, US and The Netherlands submitted to the Permanent Court of Arbitration at the Hague the issue of ownership of Palmas (Miangas) I.
- In 1928, the court ruled in favor of the Dutch Govt.



6

**The 1987 Constitution**

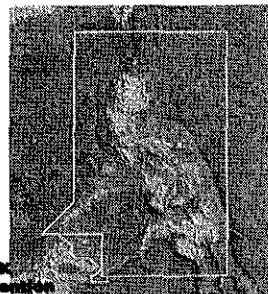
**Article I – The National Territory**

- Section 1 – The national territory comprises the Philippine Archipelago, with all the islands and waters embraced therein, and all the other territories over which the Philippines has sovereignty and jurisdiction consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between and connecting the islands of the Archipelago regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

10

**Convention Between the U.S. and Great Britain Delimiting the Boundary between the Philippine Archipelago and the State of North Borneo, 1930**

- established 10 new lines separating North Borneo (then under British protection) and Philippine Archipelago
- as a consequence, the Turtle Islands and Mangsee Is. were recognized as belonging to the Philippine Islands.
- actual transfer in 1948

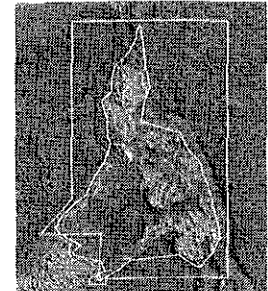


US-UK Convention

7

**RA 3046 (1961) as amended by RA 5446 (1968) Defining the Baselines of the Territorial Sea of the Philippines**

- 80 basepoints
- waters around, between and connecting the various islands form part of the inland and internal waters
- waters beyond the outermost islands of the archipelago but within the limits of Treaty of Paris (1898), Treaty of Washington (1900) and US-UK Convention (1930) comprise the territorial sea
- without prejudice to the delimitation of the baselines of the territorial sea around Sabah



11

**The 1935 Constitution**

**Article I – The National Territory**

- Section 1 – The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight, the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded in Washington between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present government of the Philippine Islands exercises jurisdiction.

8

**PD 1596 - Kalayaan Island Group, 1978**

- KIG comprised by 98 islands/islets, rocks, reefs, shoals, cays, etc.
- Waters, seabed, subsoil, continental margin and air space belong to RP
- Constituted Municipality of "Kalayaan".



12

**The 1973 Constitution**

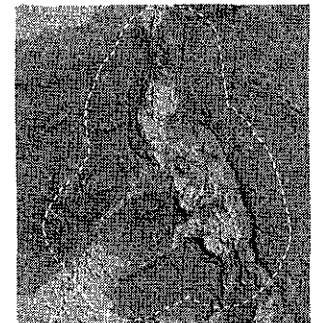
**Article I – The National Territory**

- Section 1 – The national territory comprises the Philippine Archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic right or legal title including the territorial sea, the air space, the subsoil, the seabed, the insular shelves, and the the other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.

9

**PD 1599 - Exclusive Economic Zone (1978)**

- 200 nautical miles from the baselines
- Common boundaries shall be determined by agreement with neighboring States
- RP shall have sovereign rights over all resources




13

po  
etc

**PD 1599 - Exclusive Economic Zone (1978)**

- Exclusive rights over artificial islands, offshore terminals, installations and structures, preservation of marine environment, pollution control, scientific research
- Other States can enjoy freedom of navigation, overflight, laying of submarine cables and pipelines and other lawful uses.



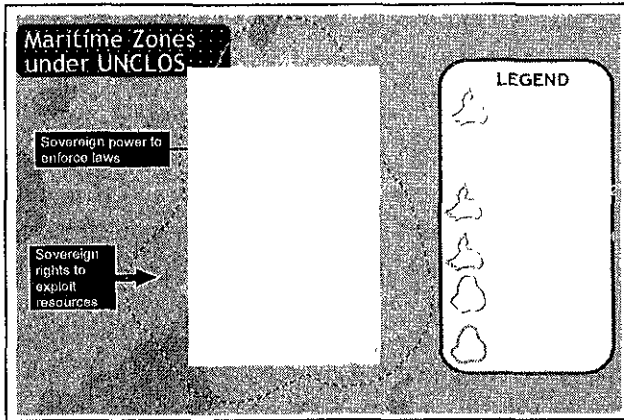
14

**RESOLUTION OF THE BATASANG PAMBANSA CONCURRING IN UNCLOS**  
27 February 1984

- Concur with the understanding embodied in the Declaration filed on behalf of the Republic of the Philippines by the head of the Philippine delegation when he signed the Convention

18

**Maritime Zones under UNCLOS**



16

**OBJECTIONS AND OTHER COMMUNICATIONS CONCERNING THE PHILIPPINE DECLARATION**

- Byelorussian Soviet Socialist Republic (24 June 1985): "declaration contains reservations and exceptions which are not allowed under Art. 309; and inconsistent with Art. 310 which provides that declarations or statements do not purport to exclude or modify the legal effect of the Convention"
- China: "The so-called Kalayaan Islands are part of the Nansha Islands, which have always been Chinese territory".
- Czechoslovakia (29 May 1985): inconsistent with Art. 309 and contravenes Art. 310"

19

**STATEMENT OF THE HEAD OF THE PHILIPPINE DELEGATION**  
"Combined Will of the States"  
Jamaica, 10 December 1982

- Recognition of the Archipelagic Principle as part of public international law
- Unique nature and configuration of the Philippine territorial sea that is defined by historic and legal title
- Concept of the Exclusive Economic Zone

15

**OBJECTIONS AND OTHER COMMUNICATIONS CONCERNING THE PHILIPPINE DECLARATION**

- USSR (25 Feb. 1985) "prohibited under Art. 309 and incompatible with Art. 310"
- Ukrainian Soviet Socialist Republic (8 July 1985): "inconsistent with Art. 309 and 310, does not provide evidence of the intention to harmonize the laws of that State with the Convention, has the purpose of establishing unjustified exceptions, harmful to the unified international legal regimes.
- USA (1985) "the rights and duties of states are defined by international law, both customary and conventional, and cannot be enlarged by domestic legislation. The MDT of 1951 does not constitute a recognition by the US of greater rights than are otherwise recognized in customary international law.

20

**THE PHILIPPINE DECLARATION ON THE SIGNING OF THE CONVENTION ON THE LAW OF THE SEA**  
Montego Bay, Jamaica  
10 December 1982

- Made under Art. 310 of the Convention
- The signing does not in any manner impair or prejudice the sovereign rights arising from the Constitution, Treaty of Paris, US-UK Treaty, 1951 Mutual Defense Treaty with US, Kalayaan Islands, sea lanes and archipelagic waters.

17

**OBJECTIONS AND OTHER COMMUNICATIONS CONCERNING THE PHILIPPINE DECLARATION**

- Vietnam (23 Feb 1987): "The Kalayaan Islands or Nansha Islands are part of Truong Sa Archipelago which has always been under the sovereignty of the Socialist Republic of Vietnam".
- Australia (3 August 1988): "Not consistent with Art. 309 and 310; in effect does not consider that it is obliged to harmonize its laws; rights to innocent passage and archipelagic sea lanes passage over archipelagic waters which the Philippines Constitution defines as internal waters".

21

MB

**PHILIPPINE RESPONSE TO THE  
AUSTRALIAN PROTEST (1988)**

(Read before UN General Assembly)

- ▶ The Philippine Declaration was made in Conformity with Art. 310
- ▶ The Philippine Government intends to harmonize its domestic legislation with the provisions of the Convention
- ▶ Necessary steps are being undertaken to enact legislation dealing with archipelagic sea lanes passage

??

Thereafter, Senator Defensor Santiago delivered her sponsorship speech as follows:

**CONGRESSIONAL COMMISSION  
ON NATIONAL TERRITORY**

**INTRODUCTION**

In the last few months, as dramatized in the tri-media, a wide public has engaged in a debate on issues concerning the national territory. Called into question are the baselines of the Philippine archipelago, the delimitation of the territorial sea, the limits of the continental shelf, the resources of the exclusive economic zone, and the claims of sovereignty over the Kalayaan Island Group and the Scarborough Shoal, to recall some of them.

Expressing a broad public concern on matters affecting no less than the integrity of the Philippines as a state, it is now timely for us to bring this democratic discourse to a higher ground, to the deliberations of the Senate.

Hence, I have introduced Senate Joint Resolution No. 12, entitled "Joint Resolution Creating the Congressional Commission on National Territory" and hereby submit this for the Body's kind consideration. Exactly the same resolution has been filed in the House of Representatives.

In this joint resolution, the Congress, in a supreme act of statesmanship, addresses itself to the anxiety of the Filipino nation on the troubled state of its territorial baseline, with the commitment toward an enduring resolution to the dilemmas reflected in the current debate.

The *Committee on Foreign Relations* is of the view that so far, the approaches taken in dealing with territorial problems are piecemeal and crisis-oriented, apparently on the assumption that national territory is fragmented into separate issues, each to be resolved by disconnected attempts and, thus, resulting in half-way

and makeshift solutions. We are a nation entire by itself and, metaphorically, we cannot approach our territorial problems island by island.

Some of us seem to be in a state of near-panic these days because barely a year from now, on 13 May 2009, the Philippines has to decide whether to submit our claim for an Extended Continental Shelf (ECS) which is provided for all archipelagic states by the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The apparent prevailing thought is that we should make a submission - and unfortunately, time is running out on us - to an extended continental shelf. *Bakit hindi? Lalong lalaki ang ating national territory.*

But first let us ask ourselves these questions:

**Question 1.** Should we or should we not submit our claim to the UN Commission on the Limits of Continental Shelf? Is it to the best interest of the Philippines to make the claim?

**Question 2.** Are the proposed archipelagic baseline bills, which are pending both in the House and in the Senate, the solution to the need to define our boundary, and settle our long-standing territorial disputes with other Asian states? Or will they simply aggravate the situation?

**Question 3.** If we decide to submit, do we have the capacity, technology, funds, and time to prepare our case before the 2009 deadline?

Nobody has the definitive answers to all these three questions. That fact alone sums up the Committee's arguments for the creation of a Joint Congressional Commission on National Territory.

We need to have the right answers that will convince 192 other states that are members of the United Nations. We need to pursue that path along the principles that are accepted as part of international law, and unfortunately, for us, international law cannot be found in a book or a set of books unlike, for example, the Civil Code or the Penal Code. It is a skill in itself to determine whether a principle has become a norm accepted as part of either conventional or customary international law.

Generally, international law has two sources:

- 1) *A convention or a treaty* -- becomes international law only for those who are parties to the treaty as a general rule;

AKC

JK

- 2) *International customs* – if, for example, a number of states affected by the subject matter have indulged or engaged in that practice for 20 or 30 years, one generation, maybe it would qualify as an international custom.

So, *hindi ganoon kadali ang magsabing* “international law says.” When you say, “according to international law,” you are making a claim. Do you know how to identify international law. Who gave you that authority? Since the experts in the world cannot even answer that question unless they write a highly documented, footnoted paper first?

#### THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)

Let me begin with the United Nations Convention on the Law of the Sea (UNCLOS) and its alleged benefits.

UNCLOS, also called the Law of the Sea Convention or the Law of the Sea Treaty, is the international agreement that resulted from the third United Nations Conference on the Law of the Sea, which took place for all of some 10 years. *Dahil marami ang kanyang signatories that have become parties, we call it a multilateral treaty. Kung dalawang bansa lamang, we call it a bilateral treaty.*

UNCLOS defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The Convention concluded in 1982 replaced four 1958 treaties. UNCLOS came into force in 1994, one year after Guyana became the 60th state to sign the treaty. To date, 155 countries and the European Community have become parties to the Convention.

A treaty is the principal source of international law for those who have become parties to that treaty. *Ngayon, kung isusulong natin itong gusto natin na nakalagay na sa ating batas, kakalabanin natin ang 155 plus all other states that are members of the European Community because they are all parties to the Convention. We see the magnitude of the problem. That is why I have issued repeated warnings: hindi madali itong paksa na ito.*

Under UNCLOS, we are entitled to the following:

- ◆ Territorial sea of 12 nautical miles.
- ◆ Contiguous zone of an additional 12 miles to the territorial sea.

- ◆ Exclusive Economic Zones (EEZs) of 200 miles.
- ◆ Extended Continental Shelf (ECS) up to 350 miles. (*a slide showed the difference between the ECS or the ordinary continental shelf*).

Under the Treaty of Paris *at ngayon* under the UNCLOS, *mas maliit ang ating mga dagat, kaya mamili tayo*

*Kung hindi natin pag-iisipang mabuti, sasabihin nating mas malaki pala ang Treaty of Paris kaysa UNCLOS. Treaty of Paris na lamang ang ipaglaban natin. Hindi ganyan kadali iyan Makakalaban natin ang nearly 200 parties to the UNCLOS kapag ginawa natin iyan.*

Let me differentiate all of these maritime zones:

**Territorial sea:** Up to 12 nautical miles from the baseline, the coastal state is free to set laws, regulate the use, and use any resource. Vessels are given the “right of innocent passage” through any territorial waters, with strategic straits allowing the passage of military craft as “transit passage,” in that naval vessels are allowed to maintain postures that would be illegal in territorial waters.

**Contiguous zone:** Additional 12 nautical miles reckoned from the territorial sea where a state could continue to enforce laws regarding activities such as smuggling or illegal immigration. *Kaya puwedeng dakpin pa rin ng coast guard natin iyong mga smugglers, for example, either of merchandise or of foreign nationals, kahit malayo na sa lupa natin basta huwag lamang lumampas sa 24 miles from the land area.*

**Exclusive Economic Zone (EEZ):** This is beyond and adjacent to the territorial sea which may not extend beyond 200 nautical miles from the baseline. In the EEZ, the coastal state has sovereign rights over natural resources and other economic uses and jurisdiction as specified in the UNCLOS regarding marine scientific research, marine environmental protection, and the establishment and use of artificial islands, installations, and structures.

Imagine, *kung dito sa EEZ natin ay may matutuklasan tayo sa hinaharap na mga oil or gas deposits, magiging mayaman na tayo.*

**Extended Continental Shelf (ECS):** This is defined as the natural prolongation of the land territory to the continental margin's outer edge, or 200 nautical miles from the coastal state's baseline, whichever is greater.

*Kapag sinabi natin na atin iyong hanggang doon sa outer line, hindi lamang ang*



*dagat, pati na ang ilalim ng dagat. Kasi, ang lahat na dagat ay mayroong parang lupa sa ilalim. That is called the seabed. Lahat iyan, iyong dagat at seabed, ay naka-tungtong actually sa solid na part of our land mass. Kaya lamang, hindi natin makita dahil malalim na Doon na siya sa ilalim ng mataas na tubig. That is called the continental shelf which extends as far as the exclusive economic zone. It is 200 nautical miles from the baseline. But it may never exceed 350 nautical if the natural prolongation is farther or longer than 200 nautical miles. Kaya tayo nag-aapply ng Extended Continental Shelf dahil madadagdagan ang ating pag-aari sa ilalim ng dagat.*

In the ECS, states will have the right to harvest mineral and non-living materials in the sub-soil of its continental shelf to the exclusion of others. *Maganda pala itong extended continental shelf dahil magiging atin ang dagdag na espasyo. Nakita ninyo iyong last line na dinagdag natin. Pareho sa dagat at sa ilalim ng dagat. Kaya, ulitin natin, baka mayroon diyang mga natural gas or oil deposits. Malay natin, all of these maritime zones I have just explained are measured from the archipelagic baselines, a continuous line drawn to connect the outmost islands of our archipelago. That is why it is very important that we should first determine where our archipelagic baseline is. It is already determined by Philippine law, but the UNCLOS has a different way of determining it. That is our problem.*

UNCLOS, Article 47, gives us the method of measuring the archipelagic baselines, that is by "joining the outermost islands and drying reefs of an archipelago, provided that within such baselines are included the main island and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1:1 and 9:1. The length of such baselines shall not exceed 100 nautical miles, except that up to three percent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles."

I shall now elaborate on the questions I raised earlier.

**Question 1.** Should we make a submission of the Philippine claim to the UN Commission on the Limits of Continental Shelf? Is it to the best interest of the Philippines to make its claim?

It is important to note that the Philippines is not obligated to submit a claim to the Conti-

mental Shelf Commission. UNCLOS, Article 47, does not compel archipelagic states to draw their archipelagic baselines. That Article provides: "States **may** draw straight archipelagic baselines...." It does not use the word "shall." Moreover, there is no sanction in the UNCLOS for recalcitrant states.

*Kaya, nasa interpretasyon natin itong treaty na ito. Ano ang ibig sabihin ng "the State may draw" lalo na sa paggamit ng salitang "may" at hindi "shall"? Actional pala iyan. Pag-aralan natin.*

Second, the Philippines' territorial sea will shrink considerably to only 12 nautical miles from the baselines if the archipelagic doctrine of the UNCLOS is used. The Philippines already has a vast maritime area described by R.A. No. 3046 as, "all our territorial sea includes the waters beyond the outermost islands of the archipelago but within the limits of the boundaries set forth in" the 1898 Treaty of Paris and others, known as the International Treaty Limits. This concept is adopted in the 1935, 1973, and also in the 1987 Constitutions.

If we accept that the Philippines is an archipelagic state under UNCLOS, then our waters around, between, and connecting our islands will no longer be internal waters over which we have complete sovereignty. Where are our internal waters? The waters inside our archipelagic land area. *Ngayon, bago ang UNCLOS, atin lahat iyan at walang makakagamit niyan kung hindi tayo papayag. Ngayon, sa UNCLOS, hindi na atin iyan kasi our internal waters become archipelagic waters. Una, pinalitan ang pangalan from "internal waters" to "archipelagic waters" and there would be a right of innocent passage by foreign vessels. Kanina ay pinag-aralan natin na ang right of innocent passage by foreign ships extends only to the territorial sea, lampas na sa lupa natin o puwede silang magdaan doon basta wala silang ginagawang masama. Pero ngayon, kung susundin natin ang UNCLOS, pati pala ang tubig sa loob ng ating archipelago ay maaaring daanan na ng mga barko. Kaya, kung nagsi-swimming ka sa malalim-lalim na area ng ating dagat, makaka-wave ka sa mga dumadaan na dayuhan sa kanilang mga cruise ships kung susundin natin ito. At hindi lamang iyan, may right of innocent passage na sila. May dagdag pa.*

There would be a right of archipelagic sea lanes passage also by foreign vessels, perhaps of a military nature. *Puwede pala silang dumaan sa ating tubig sa loob ng ating bansa. Kung*

rb

*ngayon, kung warship iyan ng Amerika o iba pang makapangyarihang mga bansa at may mga kanyon sila na madaling ituro sa ating land area, payag din ang UNCLOS ng ganoon. And suppose iyong foreign warship na iyon, dahil sabi ng UNCLOS kaulangan padaanin natin sa ating tubig, ay hindi lamang pangkaraniwang barko ng military kundi aircraft carrier na ang dala ay mga eroplano o rockets o missiles at doon nila ilulunsad sa barko nila na nasa ating tubig? Bubombahin tayo kaagad ng kalaban nila maski wala tayong pakialam. Iyon ang sinasabi ng UNCLOS*

We would also have to allow in our archipelagic waters the right of our immediate neighbors to engage in fishing, if that was their practice before.

*Alam ninyo naman na ang coast guard natin ay underpaid and undermanned kaya naging kaugalian na ng ibang mga barkong dayuhan ng ating mga kapit-bansa na mangisda sa ating mga tubig, sa gitna ng ating mga lupa. Ngayon, kung matagal na nilang ginagawa iyan, sa ilalim ng UNCLOS, may karapatan sila mangisda doon. Mas maganda ang teknolohiya ng kanilang mga barko kaya mauubos ang isda natin. Noong Immigration Commissioner ako, natuklasan ko na ang mga barkong dayuhan na iyon ay nanghuhuli ng ating mga galunggong na buhay na buhay pa. Pagdating nila sa pinanggalingan nilang dayuhang bansa ay de-lata na dahil iyong barko pala nila ay kayang gumawa ng mga lata, nagiging sardinas na. Philippine galunggong for Filipinos, dapat ganoon. Foreign galunggong for foreigners. Hindi naman mangyayari iyon sa ilalim ng UNCLOS.*

Third, as regards the Exclusive Economic Zone (EEZ), we must also remember that it is not really "exclusive." Coastal states are given the privilege to explore marine biodiversity within the 200-nautical mile limit; but other states may enjoy the same marine resources found there if the former cannot optimize their use.

*Akala ko atin iyong exclusive economic zone dahil sabi nito "exclusive." Iyon pala, kung sapat na raw o kaya kulang tayo at hindi natin nahuli ang isda kaagad, o hindi natin nadiskubre kaagad ang perlas doon, o hindi natin napa-kinabangan, o hindi tayo naglagay ng makinarya para kunin natin iyong natural gas o oil doon, puwede palang gawin ng ibang bansa.*

UNCLOS, Article 62, Paragraph 1, states that: "The coastal state shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal state does not

have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other states access to the surplus of the allowable catch, having particular regard to the provisions of Articles 69 and 70, especially in relation to the developing states mentioned therein."

Notice that the law says, "it shall." *Wala pala tayong choice. Pag nag-apply sila, kailangang pagbigyan*

If we allow other states to harvest our marine resources, this might violate the Constitution, Article XII, Section 2, that mandates the protection by the state of the nation's marine wealth in the archipelagic waters, territorial sea, and the exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens. This is another illustration of the conflict between UNCLOS to which we are purportedly a party, and our own local laws.

Fourth, UNCLOS compliance will conflict with the Constitution, Article I, on National Territory, which does not characterize the Philippines as an archipelagic state in the UNCLOS sense. Article I is patterned after the same articles of the 1935 and 1973 Constitutions, which include "...all other territories belonging to the Philippines by historic or legal title..."

In the recent past, former Senator Arturo Tolentino, a member of this Chamber who has since passed away, who was the Philippine representative to the negotiations of the UNCLOS, made the reservation to protect Philippine territory when he signed the UNCLOS on 10 December 1982. This reservation was reaffirmed when the Philippine Government ratified the Convention on 8 May 1984. The reservation reads:

1. The signing of the Convention by the Government of the Republic of the Philippines shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines.

2. Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of 10 December 1898, and the Treaty of Washington between the United States of America and Great Britain of 2 January 1930.

3. Such signing shall not diminish or in any manner affect the rights and obligations of the contracting parties under the Mutual Defence Treaty between the Philippines and the United States of America of 30 August 1951 and its related interpretative instruments; nor those under any other pertinent bilateral or multilateral treaty or agreement to which the Philippines is a party.

4. Such signing shall not in any manner impair or prejudice the sovereignty of the Republic of the Philippines over any territory over which it exercises sovereign authority, such as the Kalayaan Islands, and the waters appurtenant thereto.

5. The Convention shall not be construed as amending in any manner any pertinent laws and presidential decrees or proclamation of the Republic of the Philippines; the Government of the Republic of the Philippines maintains and reserves the right and authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippine Constitution.

6. The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic State over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence and security.

7. The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation.

8. The agreement of the Republic of the Philippines to the submission for peaceful resolution, under any of the procedures provided in the Convention ... shall not be considered as a derogation of Philippines sovereignty."

The question is: Should we submit our claim to the Continental Shelf Commission? My humble submission is, let the Joint Congressional Commission help us find the answer to that question.

**Question 2:** Are the proposed archipelagic baseline bills the solution to the need to define our boundary, and settle our long-standing territorial disputes with other Asian states? Or will they aggravate the situation?

The baselines options that I mentioned earlier have excluded our claim to Sabah. Until now, the Sultan of Sulu is protesting the exclusion of Sabah as part of the Philippine territory. He is claiming Sabah based not only on historical and legal titles but also on the doctrines of *imperium* and of *dominium*.

And there is more. Should we not also be talking of our historical and legal rights to claim the Orchid Island, Mariana Islands, Caroline Islands, Palmas or Miangas Island, and Benham Rise?

As we discuss our national territory, we must also take into account our disputes with our neighboring Asian states. The Philippines has long-standing claims on the Spratly Islands together with China, Vietnam, Malaysia, Taiwan, and Brunei. For Sabah, we have to deal with Malaysia. And for the Scarborough Shoal, we must deal with China and Taiwan.

No, it is not easy to draw our archipelagic baselines. We must sit down, together with experts, to study exhaustively our options, since our decision will affect the future of our country in significant ways.

That is your future, young people who are sitting in the gallery.

**Question 3:** If we decide to submit our claim, does the Philippines have the capacity, technology, funds, and time to prepare our case before the 2009 deadline?

The Philippines is an archipelago with 7,100 islands, 36,289 kilometers of coastlines and currently has 579, 938 square nautical miles of archipelagic waters and EEZ, using measurements under R. A. No. 5446. Do we still have the time to conduct hydrographic and geoscientific studies given the large areas that have to be surveyed? Do we have the funds? That one we can answer. No, we never have any fund. The technology? Let us ask the National Mapping and Resource Information Authority, or NAMRIA, and the Commission on Maritime and Ocean Affairs, or CMOA, under the Office of the President because concerns are raised by a certain report carried in a national broadsheet.

The report claims that the funds to conduct hydrographic and geoscientific studies to draw the country's archipelagic baselines would probably be not enough. NAMRIA reportedly asked for ₱10 billion to do the study but was only given ₱1.7 billion. The government's failure to provide the required money has reportedly slowed down projects needed to revise the

baseline law and identify the Extended Continental Shelf.

The report further claims that there is "infighting among agencies wanting to take the lead and subsequently controlling the billions of pesos of government fund for that undertaking, including a \$250,000 grant from the Norwegian government." Further, "interagency coordination (of the Maritime and Ocean Affairs Center) was saddled allegedly by its not being Cabinet level; thus, no policy decisions could be made." The infighting is reportedly slowing down the technical and scientific studies and the drawing of the new baseline law.

#### OBJECTIVES OF THE COMMISSION

By creating a Congressional Commission on National Territory, the Joint Resolution aims to centralize and integrate all legislative work on the national territory through the expertise and facilities which the Commission will organize in aid of legislation in order to give the Congress a totality of outlook in crafting approaches to our predicaments.

To serve this objective, the Commission, to be composed of ten (10) members of equal representation from both Houses of the Congress, is given the responsibility "to submit a scholarly background paper from experts in international law, geology, hydrography, and geophysics, among others, as an authoritative reference for use in public hearings and plenary debates on the existing bills."

This assignment is spelled out in greater detail in the Joint Resolution. The Commission is tasked to meet a specified deadline. Not later than 31 December 2008, the Commission is required to submit to the Congress a printed *Report on National Territory* which will set out the results of its study and recommendations on the following problem areas in their interconnections:

- (a) Full impact of the UNCLOS, with priority treatment to be given to constitutional issues, together with recommendations on the terms of its implementation;
- (b) Areas of possible conflict or incompatibility between the Treaty of Paris together with companion agreements, and the UNCLOS;
- (c) Identification of the boundaries of the Philippine state;
- (d) Legal status and effectiveness of Resolution No. 121 of Batasang Pambansa concurring in the UNCLOS;

(e) Prospect for a Philippine claim to an Extended Continental Shelf; and

(f) Assessment of Philippine sovereignty over the Kalayaan Island Group and over the Scarborough Shoal, vis-à-vis competing claims.

This coverage does not exhaust matters within the scope of the Commission's responsibility. It is expected to exercise the broadest discretion in defining the scope of its work. For example, it would be most instructive in aid of legislation for the Commission to build a central store of documents, together with a master bibliographic collection, in preparation for the requirements of legislative proceedings at any given time.

#### COMMISSION IMPERATIVE BECAUSE OF LEGAL ISSUES

It would be useful for our own proceedings on the Joint Resolution today to sketch out the general contours of problems and dilemmas concerning the national territory, if only to suggest their complexity and interconnection.

#### 1. *Issue of constitutionalization*

As a starting point, we must begin with the 1935 Constitution, Section 1, Article I which identifies the Treaty of Paris, Article III, together with two companion treaties, as setting forth the limits of Philippine territory; in other words, the boundaries of the Philippines. The 1973 and the present Constitutions define the national territory on the basis of this 1935 constitutional provision. The Jones Law, the Tydings-McDuffie Law and a number of other legislative enactments of the U.S. Congress affirmed the Treaty of Paris as establishing the boundaries of the Philippine archipelago.

However, the advent of the UNCLOS has the effect of radically departing from this constitutional framework of defining the boundaries. UNCLOS sets the limit of the 12 nautical-mile territorial sea as the outer limit of Philippine sovereignty. In other words, it shifts the basis of defining our boundaries from the limits set by the Treaty of Paris, to only 12 nautical miles from the baselines. It would appear that the UNCLOS has eliminated the legal function of the Treaty of Paris in determining the boundaries of the Philippine state. Our territorial sea is much, much wider than the territorial sea under the UNCLOS.

Subsequent to the effectivity of the present Constitution, the UNCLOS entered into force on 16 November 1994, the date when UNCLOS became binding law on the Philippines. <sup>AS</sup>

This leaves us the bedeviling problem as to where the country's boundaries are to be established. *Pumayag kasi tayo sa UNCLOS, pagkatapos hindi natin pinag-aralan kung ano ang sundin natin, kung iyong UNCLOS or iyong Treaty of Paris.*

### 2. Issue of Philippine reservation to UNCLOS

By any standard, the UNCLOS is a landmark development of international law. At the moment of its binding effect on the Philippines, owing to the prevailing martial-law conditions at the time, its totalizing consequences on national territory were never the subject of assessment in any significant democratic forum. How the UNCLOS has the impact of reorganizing the national territory did not have the benefit of public awareness.

And yet, when the Batasang Pambansa expressed concurrence in the UNCLOS, its Resolution No. 121 appeared to be subject to the understanding embodied in the Declaration filed on behalf of the Republic of the Philippines by the head of the Philippine delegation when he signed the said Convention. A copy of the Declaration is attached to Resolution No. 121 as "Annex A." This Declaration, part of which I have read to you, now seems to have become an integral part of it. So considered, it would appear that the resolution concurring in the UNCLOS becomes effective for so long as the UNCLOS is in conformity with the Declaration under which the Constitution and laws of the Philippines prevail over the UNCLOS. *At natural lamang na gusto naman ng mga dayuhang bansa na UNCLOS ang mangibabaw dahil nababawasan nga iyong ating mga pag-aaring lupa at dagat.* Since, in certain respects, it can be shown that the UNCLOS apparently derogates from constitutional requirements, does the concurrence resolution become effective at all? And, consequently, how are we to assess the constitutional status of the UNCLOS?

### 3. Issue of breadth of territorial sea

Based on the Treaty of Paris and related treaties, the present Baseline Law - Republic Act No. 3046, as amended by Republic Act No. 5446 -- embodies the national law on the territorial sea pursuant to the Constitution. Thus, the territorial sea consists of "all waters beyond the outermost islands of the archipelago but within the limits of the boundaries set forth in the aforementioned treaties."

However, the application of the UNCLOS will inevitably reduce the breadth of the Philippine territorial sea to not exceeding 12

nautical miles from the baselines, resulting in a discrepancy of vast proportion.

The question of the breadth of the territory I have just pointed out is one point of contradiction between the Constitution and the UNCLOS. Without intending to be exhaustive, two other fundamental points of discrepancy deserve attention.

### 4. Issue of archipelagic waters

The Constitution is clear in characterizing "[t]he waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions" as internal waters over which the sovereignty in land territory extends. Navigation by ships of all states in those waters is not allowed except with the consent of the Philippine authorities.

By contrast, under the UNCLOS, these waters are transformed into archipelagic waters and are subject to the right of innocent passage on the part of ships of all states. The required consent under the Constitution is replaced by a duty on the part of the Philippines under the UNCLOS.

### 5. Issue of Exclusive Economic Zone (EEZ)

Under the Constitution, the marine resources in the Exclusive Economic Zone (EEZ) are subject to the mandate that they shall be reserved for the exclusive use and benefit of Filipino citizens. On the other hand, the UNCLOS provides for the concept of surplus from the allowable catch of the living resources in the EEZ, which the Philippines shall give to other states through agreements.

### CONCLUSION

Even as I have tried to indicate the general outline of the territorial problems confronting us, certainly I am far from giving you a complete picture. *Ang daming problema ng ating territorial baseline, kaya kailangang matulungan tayo ng mga experts.* But I trust this will suffice to show the complexity and depth of our dilemmas which at once will strike us as requiring holistic perspective.

Above all, it is out of a sense of urgency that I humbly request your approval of this Joint Resolution.

### SUSPENSION OF CONSIDERATION OF SENATE JOINT RESOLUTION NO. 12

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

*r*

## CHAIRMANSHIP IN THE COMMITTEE ON CIVIL SERVICE AND GOVERNMENT REORGANIZATION

Senator Pangilinan manifested that according to the Minority Leader, Senator Legarda has agreed to relinquish the chairmanship, in an acting capacity, of the Committee on Civil Service and Government Reorganization.

Thereupon, nominated by Senator Pimentel, and upon motion of Senator Pangilinan, there being no objection, Senator Lacson was elected acting chair of the Committee on Civil Service and Government Reorganization.

## SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

*It was 4:50 p.m.*

## RESUMPTION OF SESSION

At 4:50 p.m., the session was resumed.

## COMMITTEE REPORT NO. 53 ON SENATE BILL NO. 2293 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2293 (Committee Report No. 53), entitled

AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51, AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997.

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

Thereupon, the Chair recognized Senator Escudero, Sponsor of the measure, and Senator Arroyo for his interpellation.

## REMARKS OF SENATOR ZUBIRI

At this juncture, Senator Zubiri sought assurance from the Majority Leader that the Body would

resume consideration of Senate Bill No. 2264 (Cooperative Code) as he has waited three days to defend it. He said that he was promised the bill would be the first item in today's agenda but he gave way to Senator Defensor Santiago. He expressed the hope that the bill would be called after the interpellation of Senator Arroyo.

Senator Pangilinan gave assurance that the bill would be called next as some adjustments have been made upon the request of Senators Arroyo and Escudero.

## INTERPELLATION OF SENATOR ARROYO

Upon request of Senator Arroyo, Senator Escudero gave the highlights of the bill, to wit:

1. It provides for exemptions on compensation income, holiday pay, overtime pay and night-shift differential of minimum wage earners;
2. It increases personal exemptions, as follows:
  - ◆ For a single individual  
– from P20,00 to P50,000;
  - ◆ For a head of family  
– from P25,000 to P50,000;
  - ◆ For a married individual  
– from P32,000 to P50,000; and,
3. It increases the additional exemption from P8,000 to P25,000 per dependent not exceeding four.

Asked if there would be a revenue loss to the government if the personal and additional exemptions of individual taxpayers are increased, Senator Escudero replied that if the exemptions would be given to minimum wage earners, there would be a revenue loss in the amount of P3.16 billion and P11.09 billion with higher exemptions, or a total of P14.25 billion. However, he pointed out that with a provision on a 40% Optional Standard Deduction (OSD) on gross receipts or gross sales of individual taxpayers and 40% OSD on the gross income of corporations, there would be a net gain of P0.78 billion for government.

On whether the idea is to put a little more burden on some individual taxpayers to compensate for the loss from taxpayers who would be benefited by the proposed Act, Senator Escudero explained that it would not necessarily put a higher burden on the

self-employed, professionals, and corporations because they have the option to avail themselves of the OSD that would increase their taxable income but still allow them to enjoy the benefit of an administrative amnesty offered by the BIR.

Senator Escudero assured Senator Arroyo that the Department of Finance (DOF) had agreed to the proposed amendments to the National Internal Revenue Code (NIRC). Senator Arroyo remarked that the proposal is good as long as it does not result in revenue loss to government.

Asked whether the Committee obtained the views of those who would be affected by the bill, Senator Escudero recalled that in the hearing last year, the business sector did not object to the proposal because the OSD would be optional and some small corporations could avail of the scheme to avoid a BIR audit.

Upon further query, Senator Escudero stated that the net gain would be from a low of P0.78 billion to a high of P18 billion.

Asked about the counterpart bill of the House of Representatives, Senator Escudero replied that it is essentially the same except that in the Senate version, the computation of revenue loss is higher by P1 billion because of the inclusion of overtime pay, holiday pay, night-shift differential and hazard pay of minimum wage earners. He pointed out, however, that the House bill's computation of revenue loss is slightly lower because it used the simplified net income tax scheme (SNITS), so the net gain is P0.9 billion. He noted that in the Senate bill, with the OSD, there is a net gain of P0.78 billion.

In closing, Senator Arroyo said that he would accept the assurance of Senator Escudero that there would be no revenue loss to the government.

Senator Escudero disclosed that there were several proposals for higher exemptions from VAT not only for minimum wage earners but also for other taxpayers but the Committee believed that limits had to be put in place given the potential revenue losses to the government.

## SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

*It was 5:03 p.m.*

## RESUMPTION OF SESSION

*At 5:06 p.m., the session was resumed.*

## INTERPELLATION OF SENATOR MADRIGAL

At the onset, Senator Madrigal asked if the maximum OSD was increased from 10% to 40% under the bill. Senator Escudero replied that only individual taxpayers, which include the self-employed, single proprietors and professionals, could avail of it.

As to how the increase in exemptions would compensate for the revenue losses from minimum wage earners, Senator Escudero reiterated that the revenue loss from minimum wage earners would be P3.16 billion and P11.09 billion from the higher compensation groups, or a total of P14.25 billion. However, he pointed out that with the increase in the OSD for individual taxpayers from 10% to 40%, there would be a net gain of P7.85 billion based on a conservative availment rate of 10%; and with the provision for OSD for corporations of 40%, there would be a net gain of P7.18 billion with a conservative availment rate of 3.67%; all-in-all a net gain of P15.3 billion. He stated that subtracting the projected revenue gain from the projected revenue loss would result in a conservative net gain of P0.78 billion.

On the observation that individual and corporate taxpayers might opt to apply for a higher percentage of deduction which might decrease the revenue of government, Senator Escudero stated that the DOF has estimated a conservative rate of 10% availment for individuals and a 3% availment for corporations, and the 40% OSD for individual or corporate taxpayers is in the nature of administrative amnesty that the BIR has to accept without any question or even an examination of the book of accounts. He stated that the deduction for an individual ranges between 35% and 70% but for the corporation, it can go to as high as 79% thereby lowering the taxable income for an individual to 30% of gross income and for a corporation, 21% of gross revenue receipts. He stated that while the taxpayer has to pay a higher tax, he foregoes the additional obligation of documenting and justifying his deductions.

Asked how the BIR came up with the 10% availment, Senator Escudero stated that it was based on the 2003 database, and the 10% is a conservative rate because even now, the OSD is only 10% of gross income.

*AP*

*JK*

On the assumption that availment would probably increase because of the increase in OSD, Senator Escudero agreed, noting that the DOF and the BIR decided to adopt a conservative availment rate of 10% so as to avoid a mistake in the projection of revenue loss or revenue gain.

Asked what the revenue loss would be if the availment rate is more than 10%, Senator Escudero stated that, in fact, there would be net gain of about P7.85 at 10% availment, and a net gain of P12.77 billion, at 15% availment. As regards the OSD, he said that if less than 10% avail, it would either be revenue neutral or negative for government; and if more than 10% avail, it would be a net gain for government.

On whether a lower availment would result in no gain, Senator Escudero described the conservative estimates as quite safe given the fact that the availment has been 10% of gross income in the past.

Upon further query, Senator Escudero clarified that under the law, a corporation cannot avail of the OSD but it can claim up to 79% deduction as allowed under the NIRC.

Asked whether under the bill, an individual taxpayer with a gross income of P10 million could avail of 40% OSD which is P4 million, so that his taxable income is P6 million, Senator Escudero replied in the affirmative, citing that under the law, the individual taxpayer can only claim 10% or P1 million and the taxable income is P9 million.

Asked how many salaried wage earners would benefit from the new law, Senator Escudero stated that based on the 2004 figures, a total of 2,855,550 salaried wage earners would benefit — 492,859 in the private sector and 94,672 in government receiving Salary Grade V, Step V in the NCR, or a total of 587,531 individuals.

Upon further queries, Senator Escudero said that salaried wage earners would benefit from an increase in their personal exemptions and additional exemptions but the self-employed individuals could still enjoy additional or higher exemptions. He noted that a married individual, for instance, could claim a maximum personal exemption of P50,000 and personal additional exemption of P25,000 per dependent not exceeding four.

On the concern that pegging the ceiling at P144,000 might be discriminatory to small entrepreneurs who are just starting their business, Senator Escudero opined that it would not be discriminatory to pass a social legislation to benefit those in the lower income bracket, following the adage, "Those who have less in life should have more in law."

Asked why Section 4 proposes to delete the classification of individual taxpayers in the NIRC, Senator Escudero said that under the law, a single taxpayer is entitled to only P20,000 exemption; the head of the family, P25,000; and a married individual, P32,000. But under the bill, he stressed, an individual taxpayer, whether single, head of the family or married, is entitled to a personal exemption of P50,000. The logic behind this, he clarified, is to put money in the pockets of people so they will have the purchasing power to address the rising cost of living, and whatever was given to them by way of the exemptions, would be spent on basic necessities from which government would derive taxes.

Still on Section 4, Senator Madrigal asked why the personal exemption was increased to P50,000 and whether a husband and a wife can each avail of the P50,000 exemption, thus having a personal exemption of P100,000. Senator Escudero said that each spouse could, as long as he/she is earning. As for the large increase in personal exemption, he stated that the House proposal even reached P130,000 but the Committee tried to match what the government can part with by way of lost revenue and came up with the figure of P50,000 which matches the House's proposal of P50,000.

Asked how housewives doing business at home could avail of this exemption, Senator Escudero replied that they would fall under the classification of "self-employed" but if their businesses are not registered, they would find it very difficult to declare their income. To address this problem, he said that the Committee proposes a reversal of the requirement that a mayor's permit is required before the issuance of a BIR registration since barangay officials are fully aware of businesses being set up within their territory as compared to BIR agents who only inspect establishments.

Asked on the justification for the increase of the additional exemption for each dependent from P8,000 to P25,000, Senator Escudero replied that



this is in accordance with the House proposal on the maximum amount that government can afford.

Noting that the bill is based on the assumption of at least 10% availment, Senator Madrigal asked on the repercussions should the availment be very much lower at 5%. Senator Escudero replied that this would entail a loss of P2.3 billion to the government.

#### **INTERPELLATION OF SENATOR PIMENTEL**

Asked by Senator Pimentel if a provision could be inserted in the bill to provide a bigger exemption for the parents of handicapped children, Senator Escudero replied that he would consider this at the proper time, although the insertion of such a provision might go beyond the constitutional mandate that, "Every bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof." He bared that there is a pending bill on this matter before the Committee on Ways and Means which would be reported out at the soonest possible time.

#### **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 and proceeded to the period of amendments.

#### **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 SENATE BILL NO. 2293 ON SECOND READING**

Submitted to a vote, there being no objection, Senate Bill No. 2293 was approved on Second Reading.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2293**

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

#### **CHANGE OF REFERRAL**

As requested by Senator Legarda, with Senator Pangilinan interposing no objection, Proposed Senate Resolution No. 411, which was earlier referred to the Committees on Agriculture and Food, and Trade and Commerce, was referred primarily to the Committee on Economic Affairs.

#### **COMMITTEE REPORT NO. 51 ON SENATE BILL NO. 2264**

*(Continuation)*

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on *Second Reading*, of Senate Bill No. 2264 (Committee Report No. 51), entitled

AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008."

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

Thereupon, the Chair recognized Senator Zubiri, Sponsor of the measure, and Senator Pimentel for his interpellation.

#### **INTERPELLATION OF SENATOR PIMENTEL**

At the outset, Senator Pimentel recalled that it was the *San Dionisio Credit Cooperative of Parañaque City* that requested him to sponsor the first Cooperative Code in the country. He said that the passage of the years has demonstrated that the Cooperative Code of the Philippines could stand a lot of improvement to promote the basic principle of cooperativism which is to help people help themselves. He noted that this captures the very philosophy behind the reason why cooperatives are deemed to be a very democratic device that promotes the development of people to free them from dependence.

Senator Pimentel pointed out that as of June 2007, the Cooperative Development Authority (CDA) has registered about 74,000 cooperatives of all types but those really serving their members could be very much lower than 69,000, and there are 45 cooperative banks with a combined asset of P9.8 billion, combined deposit of P6.1 billion, and accumulated capital of

*AS*

P1.4 billion. He noted that there are a lot more savings, credit and multipurpose cooperatives than cooperative banks. He underscored that cooperatives service their members with more urgency than banks, as a member's collateral is his personal credit, trustworthiness and credibility and confidence that he has built over the years and this spells the big difference. He said that the cooperative is the most democratic way of spreading wealth much more than the established banking institutions which cater to people who have something to offer other than their names and personal credits when availing of services.

Senator Pimentel pointed out that there are many cooperatives in the Philippines today with a capital base of billions of pesos and if their assets were combined, the sum would be staggering. He asked whether Senator Zubiri could cite some of these cooperatives. In reply, Senator Zubiri cited First Community Cooperative (FICCO), the largest cooperative in the Philippines with an asset base of P1.6 billion; Philippine Army Finance Center and Producer's Integrated Cooperative, P3.663 billion; ACIDI Credit Cooperative Group, P2.4 billion; PLDT Employees' Cooperative, P1.3 billion; the Soro Soro Ibaba Development Cooperative, P600 million; and San Dionisio Credit Cooperative, 400 million. He agreed with Senator Pimentel that these cooperatives service not just the poorest of the poor but many Filipinos who could not avail of the services of the government or other financial institutions. He pointed out that the Paco Credit Cooperative, which was spearheaded by a former Catholic priest, gave out soft loans to mothers in the community.

Senator Pimentel stated that the Ateneo Students' Credit Cooperative in Cagayan de Oro City, which was pioneered by Fr. William Masterson, began as a small cooperative and gradually grew into the FICCO which is now a billion-peso cooperative engaged not only in credit cooperatives but also in buying-and-selling of lots and that it is planning to go into housing and transportation cooperatives. He stressed that with proper management, a cooperative could flourish because the contributors are made aware that they are part and parcel of the cooperative and they grow along with that organization and enjoy benefits like cooperative rebates or patronage refunds.

Senator Pimentel stated that the main principle of a cooperative business is not to make money but to serve the members of the community and, at the same time, make some profit on the side for the

salary of the personnel running the cooperatives. Senator Zubiri added that aside from offering patronage discounts, cooperatives give members a feeling of ownership, so that when a member applies for a loan with the credit cooperative, the default risk is very slim because the member, being part and parcel of the organization, would make a conscious effort to pay back his loan and the minimal interest charged by the cooperative is rolled again for the use of other members. He agreed that these advantages are different from those of a regular business establishment. Government, he said, should strengthen the cooperative sector all the way down to the grassroots level, pointing out that some cooperatives function even better than local government units in delivering public service or even healthcare to their members.

Senator Pimentel stated that the cooperative is a very democratic organization because the member's ability or capacity to influence the running of the cooperative does not depend on the money that he has but on the fact that he is a member who is entitled to only one vote. He noted that the people in Cagayan de Oro City have become more independent because their training in cooperativism has also influenced their outlook in politics and their involvement in the political life of the city. He pointed out that one of the cooperatives in the city is the Southern Philippines Educational Cooperative Center (SPEC) which requires a prospective member to attend a series of training seminars where he is taught all aspects of cooperativism, including the duties, responsibilities and rights of members. He asked whether this is being required under the proposed measure, the original law or the rules of the Cooperative Development Authority (CDA). Senator Zubiri replied that the original law requires all cooperatives to make a provision for the education of their members, officers, employees and the general public based on the principles of cooperation, and the bill seeks to amend this particular provision by requiring all cooperatives to provide education and training for their members, elected and appointed representatives, and managers and employees so that they can contribute effectively and efficiently to the development of cooperatives. He agreed that many cooperatives failed because they were set up without proper education on the cooperative movement and the management of cooperatives.

Further, Senator Zubiri pointed out that Article 10 (*Organizing a Primary Cooperative*) of the bill provides that Filipino citizens may organize a primary

cooperative under the Code provided that a prospective member of a primary cooperative must have completed a pre-membership education seminar (PMES) conducted by institutions with cooperative development programs accredited by the CDA.

Senator Pimentel stated that people who are going to organize and become members of cooperatives must understand what they are going into, otherwise, cooperatives would be created only in names. He stated that cooperativism, as provided for in the law, stresses the need to have an organization that is voluntarily organized by people having a common bond and economic concerns especially if they reside and work in the same area. He pointed out the need to compel the members to know one another which is the basis of trust for without it, there would be no cooperative. He said that the word "cooperative" connotes that the bond is one of trust. He agreed that education and training are necessary for this purpose. He asked whether the proposed amendments spell out how education and training would be undertaken. Senator Zubiri replied that the CDA would accredit the institutions, universities and cooperative organizations that can offer cooperative training.

Senator Pimentel said that the basic concept of cooperativism is that the members shall contribute a fund from which they can borrow in time of need, always for the purpose of not only helping themselves but also others. He clarified that members of a primary cooperative are ordinary persons, not companies or corporations. He opined that the essence of cooperativism is undermined when people come to politicians to ask for funds for their cooperatives. He underscored that the CDA was created precisely to promulgate the rules that thresh out the intent of the law. Further, he pointed out that cooperatives are organizations of people that are voluntarily undertaken by the cooperators from below; genuine cooperatives come from the voluntary agreement between the cooperators to organize cooperatives which, under the bill, should be at least 15 in number.

On a related matter, Senator Pimentel noted that electric cooperatives have long been a problem because these are formed not from below but from the top. He stated that these are not the genuine cooperatives but the products of decrees issued by then President Marcos, the reason for the phase-out period provided for in the original law that allows electric cooperatives to convert themselves

into genuine cooperatives by parceling out their holdings to their members in a manner that conform to the ideal and the spirit of the old cooperative law. He asked what would be done with electric cooperatives in the amendments being proposed by the bill.

Senator Zubiri shared the views of Senator Pimentel, noting that the general manager of an electric cooperative is appointed by the National Electrification Administration (NEA). He believed that electric cooperatives should be given their powers and mandate not from NEA but from their members through general assemblies. He noted that the lobby against the movement of electric cooperatives to register with the CDA is so intense to the extent that they threaten withdrawal of future loan development packages for expansion areas of these cooperatives. He said that many of them want to convert into true registered cooperatives and enjoy the tax incentives of a true cooperative under the law. For this purpose, he said, the Committee put certain provisions in Article 115 of the bill, which applies to all electric cooperatives, including those registered under NEA's authority and those new electric cooperatives which may undertake power generation, transmission and distribution.

Under Article 116 of the bill, Senator Zubiri explained that the registration of an electric cooperative with the CDA shall be submitted for approval to the members of the general assembly; however, the board of directors may initially approve the registration with the CDA but are required to seek confirmation through a special general assembly called for this purpose. Moreover, he said, Article 118 provides for the registration of documents to be submitted. While the bill encourages electric cooperatives to get involved in this movement, he lamented that there are some that do not want to leave the auspices of the NEA because they are being held by the neck. He said that the bill leaves to electric cooperatives the choice which process to follow; but there is a provision putting a ban on the use of the word "cooperative" in the name of the organization for those that do not register with the CDA.

Senator Pimentel recognized the need to make the electric groups servicing the rural areas understand that it is incongruous of them to use the word "cooperatives" when they are not cooperatives. He expressed hope that the Committee would push for that provision and get it through at the soonest time

possible. Senator Zubiri thanked Senator Pimentel for his valuable inputs as he urged the Body to pass the measure during the Fourteenth Congress.

**SUSPENSION OF CONSIDERATION  
OF SENATE BILL NO. 2264**

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

**ADDITIONAL REFERENCE OF BUSINESS**

The Deputy Secretary for Legislation, Atty. Edwin B. Bellen, read the following matters and the Chair made the corresponding referrals:

**BILLS ON FIRST READING**

Senate Bill No. 2302, entitled

AN ACT SETTING LIMITS ON THE POWER  
OF THE PRESIDENT TO REAPPOINT  
BY-PASSED NOMINEES

Introduced by Senator Antonio "Sonny" F.  
Trillanes IV

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

Senate Bill No. 2303, entitled

AN ACT TO ESTABLISH THE NATIONAL  
RESEARCH, DEVELOPMENT AND  
EXTENSION CENTER FOR BANANA,  
AUTHORIZING THE APPROPRIA-  
TION OF FUNDS THEREFOR, AND  
FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F.  
Trillanes IV

**To the Committees on Agriculture and Food;  
Trade and Commerce; Ways and Means; and  
Finance**

Senate Bill No. 2304, entitled

AN ACT REQUIRING ALL PROVINCES  
AND HIGHLY URBANIZED CITIES  
TO ESTABLISH A SCIENCE HIGH  
SCHOOL

Introduced by Senator Antonio "Sonny" F.  
Trillanes IV

**To the Committees on Education, Arts and  
Culture; Local Government; and Finance**

Senate Bill No. 2305, entitled

AN ACT ESTABLISHING AN ICT HUB  
IN EVERY PROVINCE AND FOR  
OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F.  
Trillanes IV

**To the Committees on Public Services;  
Local Government; and Finance**

Senate Bill No. 2306, entitled

AN ACT GRANTING THE MAGNA  
CARTA FOR DAY CARE WORKERS,  
PROVIDING FUNDS THEREFOR  
AND FOR OTHER PURPOSES

Introduced by Senator Manny Villar

**To the Committees on Social Justice,  
Welfare and Rural Development; Civil Service  
and Government Reorganization; and Finance**

Senate Bill No. 2307, entitled

AN ACT PROHIBITING THE IMPORT-  
ATION, DOMESTIC SALE OR USE  
OF GOODS, THE MANUFACTURE,  
SALE OR USE OF WHICH IS  
BANNED IN THE COUNTRY OF  
ORIGIN

Introduced by Senator Manny Villar

**To the Committees on Trade and  
Commerce; Health and Demography; and Ways  
and Means**

Senate Bill No. 2308, entitled

AN ACT INTEGRATING EDUCATION  
ON WOMEN, GIRLS AND GENDER  
RIGHTS, EQUALITY AND WELFARE  
IN ALL LEVELS OF PUBLIC AND  
PRIVATE SCHOOLS

Introduced by Senator Manny Villar

**To the Committees on Education, Arts and Culture; Youth, Women and Family Relations; and Finance**

Senate Bill No. 2309, entitled

AN ACT AMENDING SECTION 4 OF REPUBLIC ACT NO. 7432, AS AMENDED BY REPUBLIC ACT NO. 9257, TO COMPENSATE THE NEGATIVE EFFECTS OF REPUBLIC ACT NO. 9337 ON THE DISCOUNT PRIVILEGE OF SENIOR CITIZENS PROVIDED THEREUNDER AND FOR OTHER PURPOSES

Introduced by Senator Manny Villar

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

Senate Bill No. 2310, entitled

AN ACT GRANTING TRAVEL ALLOWANCES TO BARANGAY HEALTH WORKERS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7883, OTHERWISE KNOWN AS "THE BARANGAY HEALTH WORKERS' BENEFITS AND INCENTIVES ACT OF 1995" AND PROVIDING FUNDS THEREFOR

Introduced by Senator Manny Villar

**To the Committees on Health and Demography; Local Government; and Finance**

Senate Bill No. 2311, entitled

AN ACT PROVIDING FOR A SECURED AND SEPARATE PRISON CELL FOR FEMALE PRISONERS IN EVERY DISTRICT, CITY AND MUNICIPAL JAIL, AMENDING FOR THE PURPOSE SECTION 63 OF REPUBLIC ACT NO. 6975

Introduced by Senator Manny Villar

**To the Committees on Public Order and Illegal Drugs; Youth, Women and Family Relations; and Finance**

Senate Bill No. 2312, entitled

AN ACT GRANTING FIXED MONTHLY HONORARIA AND OTHER BENEFITS TO ACCREDITED BARANGAY HEALTH WORKERS, AMENDING FOR THE PURPOSE SECTION 6 OF REPUBLIC ACT 7883 OTHERWISE KNOWN AS THE BARANGAY HEALTH WORKERS INCENTIVES AND BENEFITS ACT OF 1995

Introduced by Senator Manny Villar

**To the Committees on Health and Demography; Government Corporations and Public Enterprises; and Finance**

**SECOND ADDITIONAL REFERENCE OF BUSINESS**

**BILLS ON FIRST READING**

Senate Bill No. 2313, entitled

AN ACT CREATING THE PERSONS WITH DISABILITIES AFFAIRS OFFICE IN EVERY PROVINCE, CITY AND MUNICIPALITY, AMENDING SECTION 40 OF REPUBLIC ACT NO. 7277 OTHERWISE KNOWN AS "AN ACT PROVIDING FOR THE REHABILITATION, SELF-DEVELOPMENT AND SELF-RELIANCE OF DISABLED PERSONS AND THEIR INTEGRATION INTO THE MAINSTREAM OF SOCIETY AND FOR OTHER PURPOSES"

Introduced by Senator Pangilinan

**To the Committees on Social Justice, Welfare and Rural Development; Local Government; and Finance**

Senate Bill No. 2314, entitled

AN ACT AMENDING SECTION 10 OF REPUBLIC ACT 7832 OTHERWISE

ms

KNOWN AS AN ACT PENALIZING  
THE PILFERAGE OF ELECTRICITY  
AND THEFT OF POWER TRANS-  
MISSION LINES/MATERIALS, RATION-  
ALIZING SYSTEM LOSSES BY  
PHASING OUT PILFERAGE LOSSES  
AS A COMPONENT THEREOF, AND  
FOR OTHER PURPOSES

Introduced by Senator Pimentel Jr.

**To the Committees on Public Services; and  
Energy**


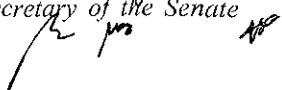
**ADJOURNMENT OF SESSION**

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, May 26, 2008.

*It was 6.31 p m.*

I hereby certify to the correctness of the  
foregoing.

  
EMMA LIRIO REYES  
Secretary of the Senate  


Approved on May 26, 2008