REPUBLIC OF THE PHILIPPINES

Senate

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SESSION NO. 4

Monday, July 29, 2019

EIGHTEENTH CONGRESS

FIRST REGULAR SESSION

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CALL TO ORDER

At 3:00 p.m., the Senate President, Hon. Vicente C. Sotto III, called the session to order.

PRAYER

Sen. Ronald "Bato" M. Dela Rosa led the prayer, to wit:

Let us bow our heads and put ourselves in the presence of the Lord.

Almighty and eternal God, we thank You for this opportunity to serve our beloved nation as members of this august Chamber.

Bless us, Your public servants, especially the new members of this Chamber, and fill us with Your wisdom, understanding, patience, and discernment as we commence our work today and in the days to come.

Enter our hearts and minds and use us as Your instruments of peace, love, and understanding. Enlighten and strengthen us as we face the challenges of our work, and help us pursue only what is for the common good, in accordance with Your will.

Lord, we offer this day and all the days of our service for Your greater glory.

In Jesus' Name. Amen.

NATIONAL ANTHEM

The Senate Choir led the singing of the national anthem.

ROLL CALL

Upon direction of the Senate President, the Secretary of the Senate, Atty. Myra Marie D. Villarica, called the roll, to which the following senators responded:

Angara, S.	Pacquiao, E. M. D.
Binay, M. L. N. S	Pangilinan, F. N.
Cayetano, P. S.	Poe, G.
Dela Rosa, R. B. M.	Recto, R. G.
Drilon, F. M.	Revilla Jr., R. B.
Gatchalian, W.	Sotto III, V. C.
Go, C. L. T.	Tolentino, F. T. N.
Hontiveros, R.	Villanueva, J.
Lacson, P. M.	Villar, C. A.
Lapid, M. L. M.	Zubiri, J. M. F.

With 20 senators present, the Chair declared the presence of a quorum.

Senators Gordon, Marcos and Pimentel arrived after the roll call.

Senator De Lima was unable to attend the session as she was under detention.

MANIFESTATION OF SENATOR CAYETANO

Senator Cayetano recalled that in 2012, she proposed, and the Body adopted, that they should do their part in saving the environment by not using plastic PET bottles, at least in the session hall, in committee hearings and also in the lounge. She stated that she was unsure if this practice was carried during the 17th Congress. Thus, she again proposed, since July is "No Plastic Month," that the same environmental measure be adopted. To help support the Members in shifting to a more sustainable way of drinking water or whatever beverage they prefer, she said she would give everyone a bamboo thermos on behalf of Senator Villar's birthday and advocacy.

MANIFESTATION OF SENATOR PANGILINAN

Senator Pangilinan thanked Senator Cayetano for her manifestation as he joined her in her advocacy. Relative thereto, he informed the Body that he actually filed a bill on single-use plastics.

GREETINGS

At the instance of Senator Zubiri, the Members greeted Senator Villar on the occasion of her birth anniversary.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 3:05 p.m.

RESUMPTION OF SESSION

At 3:06 p.m., the session was resumed.

GREETINGS

At the instance of Senator Zubiri, the Members greeted Senator Angara on the occasion of his birth anniversary on July 15, 2019.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Zubiri acknowledged the presence in the gallery of the following guests:

- Mayor Noel Luistro, Vice Mayor Jun Villanueva, along with the councilors of Mabini, Batangas;
- Mayor Hadar Hajiri and Vice Mayor Almedzar Hajiri of Lugus, Sulu; and
- Members of Alt Mobility-Philippines, headed by Mr. Ira Cruz and Mr. Jedd Ugay.

Senate President Sotto welcomed the guests to the Senate.

APPROVAL OF THE JOURNAL

Upon motion of Senator Zubiri, there being no objection, the Body dispensed with the reading of the Journal of Session No. 3 (Wednesday, July 24, 2019) and considered it approved.

PRIVILEGE SPEECH OF SENATOR TOLENTINO

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

PROTECT OUR SEAS, PROTECT OUR FISHERMEN

I rise today humbled to offer the first privilege speech for the 18th Congress.

I rise with a deep sense of respect for this institution and to the incumbent Senate leadership.

I rise on behalf of our Filipino fishermen who are struggling to make a living.

I rise to speak on matters of national significance concerning the West Philippine Sea.

This humble Representation will be establishing three important points this afternoon.

First, that President Rodrigo Duterte has the power to enter into legally binding international verbal agreements.

Second, that there is a need to protect the rights and safety of Filipino fishermen and secure for them the benefits of peaceful utilization of available marine resources.

And last, that it is crucial for this august Body to craft legislation to uphold constitutionally and internationally accorded rights over the waters of the country and at the same time ensure that international commitments are honored and complied with.

I. Oral Agreements

Proceeding to the first point, President Duterte can validly enter into legally binding international verbal agreements with other states for and on behalf of the Philippines.

Under international law, states must honor the commitments they take upon themselves under international agreements and treaties regardless of the form used for its execution which may be written, oral, or even implied. There is no restric-tion on either the form or substance of inter-national agreements. The domain of permissible international agreements is simply the domain of possible agreements.

In the case of Passage Through The Great Belt (*Finland v. Denmark*), a 1991 case filed in the International Court of Justice concerning Denmark's construction of a bridge in the Great Belt, a strait between the Danish islands of Zealand and Funen, to which Finland argued to violate its right of free passage, the ICJ dismissed the case on account of an oral agreement between the prime ministers of Denmark and Finland resolving the conflict on their own. The negotiation and eventual oral agreement between the two leaders transpired over a mere telephone call.

The International Court of Justice honored this agreement and dismissed their case.

In a case decided in 1993 involving the Legal Status of Eastern Greenland (*Den. v. Nor.*) filed by Denmark against Norway, the International Court of Justice considered as binding the statements made on July 22, 1919, by Norway's Foreign Minister Mr. Ihlen, in reply to to Denmark's official query.

Ihlen stated that Norway would respect Danish sovereignty over Greenland.

The Court declared this statement as binding on the part of Norway considering that a reply of this nature given by the Minister of Foreign Affairs on behalf of his government is in response to a request by the diplomatic representative of a foreign state.

Informal agreements such as oral agreements are valid under international law because under certain situations, they are the most effective tools to reaching an accord between states. Informal international agreements are used to meet particular needs. They are chosen because they allow governments to act quickly and quietly. States sometimes frame their agreements in informal terms to permit their frequent adjustment. Example is the quota arrangements of the Organization of Petroleum Exporting Countries or OPEC. The informal agreements permit rapid shifts in response to rapidly changing market conditions relative to the supply of crude oil.

Lastly, when security issues must be resolved quickly or quietly to avoid serious conflict, then less formal instruments will be chosen. If the terms are especially sensitive, perhaps because they would humiliate one party or convey unacceptable precedents, then the agreement itself may be hidden from view. For example, the deal to remove missiles from Cuba during the Cuban missile crisis, the most dangerous crisis of the nuclear era, was crafted through an exchange of letters, supplemented by oral promises initiated by then President John F. Kennedy, through his emissary, then Attorney General Robert Kennedy, in dealing with Prime Minister Khrushchev. The Cuban missile crisis ended without firing a single shot.

Hence, oral obligations are binding, as long as it is clear from the language employed that there is an intention to be bound.

News agencies have reported through several articles that President Duterte had entered into an oral agreement with China during his Excellency's bilateral conference meeting with President Xi Jin Ping in 2016. If this indeed was the case, the President was well within his powers to do so.

As the chief architect of the nation's foreign policy, the President can enter into executive agreements with other nations for the execution and implementation of the laws crafted by Congress as well as treaties entered into by the state. These executive agreements do not require Senate concurrence.

As explained in the landmark case of *Saguisag vs. Ochoa* decided on January 12, 2016, the case that ruled that the Enhanced Defense Cooperation Agreement with the United States is a mere executive agreement, if an international agreement is traceable to an express or implied authorization under the Constitution, statutes, or if they involve the implementation of

existing policies, laws, or agreements, or if they are concluded to adjust details of a treaty, pursuant to an act of the Legislature, or if it is simply in the exercise of the President's independent powers under the Constitution, then the agree-ment is a mere executive agreement that does not require the Senate's concurrence.

In the previously mentioned case, Justice Carpio wrote in his separate concurring opinion that the implementation of the Mutual Defense Treaty is a purely executive function since the Senate has already ratified it. And as "chief architect" of the country's relations with foreign countries, the President is constitutionally vested with ample discretion in the implementation of the Mutual Defense Treaty.

In other words, this humble Representation submits that there is no need for this honorable Body to concur to the alleged oral agreement between President Duterte and President Xi Jinping because it is merely in implementation of the provisions of UNCLOS. Secondly, it is merely an implementation of other treaties, such as the Straddling Fish Stocks and Highly Migratory Stocks Agreement and the Food and Agricultural Organization Code of Conduct of Responsible Fisheries, among others, which shall be expounded later on.

Mutual respect for the three equal branches of government must be maintained by avoiding interfering or deciding on matters involving political questions which are those that fall within the exclusive authority and competence of the President.

The conduct of foreign relations is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. It can only be entrusted to that department of government which can act on the basis of the best available information and can act swiftly. It should be entrusted to someone who possesses the most comprehensive and the most confidential information about foreign countries and who has also unlimited access to ultra-sensitive military intelligence data. In our case, the President of the Republic of the Philippines.

II. International Agreements

I rise on behalf of our Filipino fishermen who are struggling to make a living in the West Philippine Sea.

Proceeding to my second point, there is a need to protect the rights and safety of Filipino fishermen and secure for them the benefits of peaceful utilization of available marine resources.

It is a fact that a significant number of Filipinos rely on our seas as a source of livelihood. In order to protect the marine resources vital to this industry, the country has entered into various international agreements all aimed at the conservation of our seas and the management and utilization of its resources.

One of these agreements is the United Nations Convention on the Law of the Sea or UNCLOS. This Convention has granted the country numerous rights for the attainment of economic stability, as well as obligations for environmental conservation and international peace. Among these obligations is the mandate to cooperate with other states in the protection and utilization of our Exclusive Economic Zone or EEZ.

Historically, the EEZ, formerly known as the Exclusive Fishing Zone, is defined as an area beyond and adjacent to the territorial sea which shall not extend beyond 200 nautical miles from the baselines. This was first introduced by the western states in the 1940s.

In 1947, Peru and Chile unilaterally proclaimed a 200-nautical miles EEZ while in 1952, Peru and Chile entered into a treaty called the 1952 Santiago Declaration with the objective and purpose of a coordinated conservation and protection of the natural resources in the parties' extended maritime zones.

On the other hand, following what has already developed into customary international law at that time, the Philippines declared its own EEZ through Presidential Decree No. 1599 in 1978.

The 1987 Constitution also contains a provision on EEZ as part of the section on National Economy and Patrimony, as provided in Article XII, Section 2, paragraph 2 thereof, and I quote:

> "The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens."

The term "EEZ" in our Constitution was adopted from the UNCLOS itself. This can be readily seen from the very deliberations that proclaim the provisions and the fact that it was inexistent in the 1935 and the 1973 Constitutions.

The UNCLOS, the Convention that granted us sovereign rights, not sovereignty over the sea, provides for and promotes the spirit of cooperation among states. From the provisions of sharing the surplus of allowable catch in the EEZ, to managing straddling fish stocks and

highly migratory species, and to sharing with landlocked and geographically disadvantaged states under Articles 69 and 70, the UNCLOS urges, nay, compel states to cooperate with each other for the preservation and utilization of our oceans and seas.

The spirit of the Convention has been befittingly espoused by the Constitution, our Constitution, that adopted its terms.

Looking into the minds of the commissioners who crafted the Philippine Constitution, it is indisputable from the records on August 25, 1986 that, as proposed by former Chief Justice Roberto Concepcion and as adopted by the committee, it was intended that the words "exclusive economic zone" in the cited provision would refer only to the exploitation of the seabed and that the waters above that portion form part of the high seas and are subject to the general principles of international law.

General principles of international law as referred to by former Chief Justice Concepcion are universally accepted principles fundamental to all legal systems and recognized by civilized nations, one of which is *pacta sunt servanda,* which dictates that the international agreements which are legally binding must be performed in good faith.

Following this principle, the country is mandated to ensure that it honors its commitments in the international arena concerning treaties that it has validly entered into, regardless of form.

Justice Isagani Cruz, in his book on International Law, says that the country must always strive to perform its obligation in good faith, despite the hardships such as conflicts with the Constitution, domestic law or national interest.

This principle is emphasized in the Vienna Convention on the Law of Treaties, and I quote Articles 26 and 27 thereof which provides that *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith"* and that *"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."*

An international arbitration case, to cite one worth noting, is the Alabama Claims arbitration case decided in 1872 wherein the British were ordered to pay the United States for breaching their agreement of neutrality by failing to stop the construction of warships in their country that were used in the US war. The arbitrator in that case rejected the United Kingdom's excuse that they only breached the treaty because of the insufficiency of legal means available to them under their domestic law.

The Philippines then must honor its commitments to the international community, especially concerning cooperation between states in the conservation and protection of our marine resources.

In the words of former Chief Justice Artemio Panganiban in the case of *Tañada* vs. *Angara,* GR No. 118295, May 2, 1997: *"The Constitution did not envision a hermit-type isolation of the country from the rest of the world. x x x The Constitution did not intend to pursue an isolationist policy."*

Russia and Norway, through the Barents Sea Fisheries Regime, have decided to grant mutual access to their respective EEZs in light of their shared fish stocks and fishing grounds. Through their collaboration, both countries have established an effective fisheries management system without jeopardizing the competing claims of sovereignty over the area. Their bilateral agreement has facilitated scientific research and has improved compliance control over the area to prevent illegal, unregulated and unauthorized fishing.

In the Pacific, countries such as the Federated States of Micronesia with Kiribati, the Marshall Islands, Papua New Guinea — a classic example having granted 29 fishing rights to Filipino fishing companies — Solomon Islands, among other states, have all realized the need and the benefits of working together. These countries have established a multilateral fisheries management agreement in order to more effectively utilize and manage their shared resources.

Other Pacific island countries such as Cook Islands, Fiji, Gilbert Islands, Nauru, New Zealand, Nieu, Tonga, Tuvalu, and Western Samoa, all share in the sentiment that the best and only way forward to a more ecological and economically feasible fisheries regime is through international cooperation.

The United States of America and Canada, in the management of the Pacific salmon, and Angola, Namibia, and South Africa, in the management of fishery resources in the Benguela Current Large Marine Ecosystem, and near us, New Zealand and Australia, in the management of the South Tasmanian Rise, and more.

The list goes on to include more countries that have made this realization. As a matter of fact, a 2016 study by the World Bank shows that around half of the world's exclusive economic zones are subject to some form of foreign fishing

arrangements, be it through access agreements, joint ventures or even just chartering. The benefits of international cooperation, when properly executed, are limitless.

Another case in point is Morocco, which receives access fees from the European Union countries to fish within its EEZ. Study shows that 75% of the socio-economic impacts of their agreement is for the benefit of Moroccans. They have achieved their objective of sustainable exploitation of resources, generated sustainable employment for the fishing industry, and significantly improved the working conditions of the sector.

Another international commitment the country must honor, with due respect, is the Food and Agriculture Organization (FAO). On October 16, 1945, the Philippines joined the Food and Agriculture Organization, a specialized agency of the United Nations that leads, along with other members of the international community, with the goal of achieving food security, by creating and sharing critical information about food, agriculture and natural resources and by supporting the transition to sustainable agriculture.

Towards this end, regional fishery bodies around the world were created, one of which was a neglected organization called Asia Pacific Fishery Commission that was organized in 1949 in Baguio City, Northern Luzon.

The Asia-Pacific Fishery Commission is an advisory body and coordinating mechanism composed of several states including China, Australia, Bangladesh, Cambodia, Philippines, France, India, Indonesia, New Zealand, among others. They work together. They were envisioned to work together towards the conservation and management of fisheries to promote a fully sustainable utilization of aquatic resources through policies and practices, including finding solutions to regional issues that affect the member states in agreement with the FAO Code of Conduct for Responsible Fisheries.

However, the disputes in the West Philippine Sea caused by overlapping claims of exclusive economic zones have been a continuing hindrance to achieving the aims of the commission. As a result, no institution concerning fisheries has been established to monitor and manage the resources of the West Philippine Sea.

The states fishing in the area, including the Philippines, continuously fail or do not accurately report their catch to the FAO or the APFIC.

While the Bureau of Fisheries and Aquatic Resources (BFAR) of the Department of Agriculture has set a catch ceiling limitation for tuna, the Philippines has not set allowable catch ceilings and has no data regarding the optimal catch in its EEZ. The last data reported, as per my research, was 2012. The failure to set the standards and to report information regarding the resources in the West Philippine Sea is detrimental to the conservation and management of the area.

The conservation of the reefs in the West Philippine Sea is critical to the supply of marine resources not just to the Philippines but to the whole world. In order to achieve this goal of conservation, management and full sustainability, cooperation and coordination with our ASEAN neighbors is imperative.

As a signatory to international agreements, including the 1995 Agreement for the Implementation of the Provision of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, which the country ratified on September 24, 2014, the Philippines is bound to pursue cooperation through bilateral, sub-regional and regional fisheries arrangements to avoid overfishing, promote responsible fishing, conserve the biodiversity of aquatic habitats and ecosystems and protect endangered species, and restore depleted stocks. Though running late, the Philippines has made the initial steps for these endeavor.

Last June 3, 2019, this august Chamber gave its concurrence to the Philippines - Indonesia EEZ Delimitation Agreement that the country ratified on February 15, 2017. This is a major step as the resolution of this dispute through peaceful means will be the start of a possible future joint cooperative endeavors with Indonesia in managing our very close and adjacent waters.

As we strengthen ties with other ASEAN nations which share in the abundant resources of the West Philippine Sea, we take advantage of cooperation through access to scientific eco-marine data, as well as the protection of resources from illegal, unregulated and unauthorized fishing.

The journey towards sustainable development is still long and winding. The seas to be traversed are rough. But what is important is that the country keeps on sailing forward.

III. Challenge for the Senate

Having emphasized the need to honor our commitments to the international community, it

behooves upon us to rise up to the challenge of navigating through the unchartered realm of international law in order to protect our resources and uphold the rights of every Filipino.

While cooperation with the international community is important, the welfare and benefit of the Filipino people should always be a priority. Of all the country's resources, it is the people that are most treasured, protected and must be served.

Hence, may the 18th Congress endeavor to enact more meaningful legislation to fortify, defend and uphold the rights and satisfy our obligations for the benefit of our countrymen as well as our dignity.

Taking cue from other nations that have found it essential to protect their resources and uphold their people's rights, may the 18th Congress enact similar legislation such as the United States Outer Continental Shelf Lands Act, among others, wherein the United States has declared that their Constitution, civil and political laws, as well as criminal and federal regulatory laws, are extended and applicable to their subsoil, seabed, and all artificial islands and all other installations attached thereon.

The protection and safety of our people require our foresight in drafting laws as we tread towards further utilization of both living and non-living resources in our seas.

This humble Representation calls on this Chamber's support in the passage of this Representation's proposed Senate Bill No. 209, the Good Samaritan at Sea Law, that aims to implement the provisions of the International Convention for the Safety of Life at Sea. With this law, Filipino fishermen will be afforded additional safety as they pursue their way of life.

This Representation has likewise filed Proposed Senate Resolution No. 12 or the resolution in support of the prohibition of fisheries subsidies in the World Trade Organization. To lessen the perceived disadvantage of Filipino fishermen against foreign entities and to protect the resources in the sea against illegal, unreported, unregulated or IUU fishing, overcapacity and overfishing, fisheries subsidies that contribute to these problems must be eradicated internationally.

The United Nations Conference on Trade and Development's Sustainable Development Goal Target 14.6 targets that by 2020, the United Nations member-states should prohibit certain forms of fisheries subsidies that contribute to the aforementioned problems and refrain from introducing new subsidies by 2020. The realization of this goal would level the playing field for the Filipino fishermen as they will be able to perform at the same level as their foreign counterparts. Resources will be more equitably exploited and protected from over-utilization while enhancing the lives of the Filipinos.

The need to stay true to our international commitments is not just to maintain our international standing but, most importantly, in order to uphold the rights and dignity of our people and protect the nations' honor.

This humble Representation wishes to end this speech with the words of Gat Andres Bonifacio in his work, "*Ang Dapat Mabatid ng mga Tagalog*," circa 1896, and I quote:

> *"Kaya O mga kababayan! Ating idilat ang bulag na kaisipan at kusang igugol sa kagalingan ang ating lakas, sa tunay at lubos na pag-asa na magtatagumpay sa nilalayong kaginhawahan ng ating bayang tinubuan."*

INTERPELLATION OF SENATOR DRILON

Preliminarily, Senator Drilon commended Senator Tolentino for raising such an important and critical issue that the nation faces, not only at present but in the future, in terms of the welfare of the people and the fate of the country, the issue involving the West Philippine Sea and the provisions of the Constitution which explicitly mandate the protection of the nation's national resources.

Adverting to the agreement between the President and President Xi Jinping of China, Senator Drilon asked what exactly was agreed upon verbally by the two presidents. Senator Tolentino admitted that the basis of his proposition was related to several anecdotal reports on the apparent verbal agreement made in 2016. He stated that he was not exactly sure of when the President allowed Chinese fishermen to fish within the West Philippine Sea since the agreement was verbal and no records of the product of that "salivatic" agreement existed.

Senator Drilon then questioned how the Senate can determine the validity of the oral agreement with respect to international law and the Philippine Constitution without knowing the exact parameters of it.

In reply, Senator Tolentino stated that his premise stemmed from calls, including that from an incumbent justice of the Supreme Court, that the said oral

agreement would require the concurrence of the Senate.

Senator Drilon stated that since the Body does not know what to ratify or revoke in the verbal agreement, it would be incumbent upon Senator Tolentino, who brought the issue on the floor, to divulge what exactly was agreed upon so that it can be debated whether or not it is a valid agreement under the Constitution and whether it requires Senate concurrence. He said that given the access of Senator Tolentino to the President, it is not much to ask the Office of the President to officially inform Senator Tolentino of the details of the agreement so that the Senate could have something in writing to rely upon in the debates.

Senator Tolentino referred Senator Drilon to a similar issue laid before the Senate concerning the availability of an agreement and the decision of the Supreme Court in *Pimentel vs. the Executive Secretary*, involving the Rome Statute that no governmental entity can force the Office of the President to produce a treaty for ratification. He reiterated that part of the decision of the Supreme Court stated that a Chief Executive cannot be compelled by Congress to produce a treaty, especially that of an oral or verbal-informal agreement, which would still be effective as he pointed out in his speech.

Senator Drilon disagreed as he pointed out that the issue there was whether or not the President can be compelled to submit the Rome Statute to the Senate for concurrence. He explained that the first step in a treaty ratification is for the President to ratify, after which the ratification is referred to the Senate for its concurrence, but in the case of Rome Statute, the President did not want to ratify it and, therefore, without the ratification of the Rome Statute, there was nothing for the Senate to concur in. Thus, he believed that the Supreme Court correctly said that the Senate could not compel the President to ratify a particular treaty because ratifying a treaty is the sole prerogative of the President as the chief architect of the country's foreign policy.

Senator Drilon stated that the verbal agreement between President Duterte and President Xi Jinping of China was a completely different case because there was an asserted agreement entered into by no less than the President himself, albeit verbally. He maintained that the basis for the debate should be a definition of the parameters of the verbal agreement without which they would not know whether or not it is consistent with the Constitution and international law, whether or not it can be ratified, and whether the Senate, as the Executive's partner in setting up foreign policy, could exercise its judgement. He commended Senator Tolentino for asserting that the issue is within the jurisdiction of the Senate in terms of the examination of the parameters of the power of the President. However, he questioned what the country was being bound to if the agreement was not known.

Responding thereto, Senator Tolentino clarified that one of the propositions he laid was that if indeed there was an oral agreement according to anecdotal news reports, such oral agreement would not need the concurrence of the Senate because like the EDCA which, according to the Supreme Court decision, is part of the Mutual Defense Treaty concurred in by the Senate in 1952, the oral agreement is an implementation of UNCLOS which the Senate ratified. He said that part of his privilege speech would be a challenge to the Senate to craft the needed legislation so that when confronted with a similar situation in the future, the lines would already be clearly drawn in pursuit of the concurrence power of the Senate. He cited Public Law 92-403 of the United States requiring the Secretary of State to transmit to Congress any oral agreement or even a summary thereof for scrutiny of the United States Senate. He pointed out that there are a lot of uncharted waters which the Philippine Senate is yet to navigate.

But Senator Drilon pointed out that in the case of EDCA, the Senate knew what the EDCA was all about, and on the basis of that knowledge, the Supreme Court ruled that the concurrence of the Senate was not needed because it simply implements the Mutual Defense Treaty. Senator Tolentino agreed.

Asked how they could possibly conclude that the Duterte-Xi Jinping Agreement does not need the concurrence of the Senate when they do not know what it was all about, Senator Tolentino stated since they do not know the parameters, the metes and bounds and the contents of the oral agreement, they have to rely on the political judgment of the President to fulfill in good faith his duty on what is good for the country as what was precisely stated in the *Angara* case wherein the Supreme Court ruled that it will not dwell, it will not put into scrutiny the wisdom, the judgment, of the Chief Executive in entering into the World Trade Organization Agreement several years ago.

Asked whether any agreement, written or otherwise, must conform with the Constitution, Senator Tolentino answered in the affirmative.

Asked whether it would be logical that the Senate should know what the agreement is all about in order to judge as to whether the agreement is consistent with or contrary to the Constitution, Senator Tolentino answered in the affirmative.

Asked whether it would be logical to place on official record the agreement between the two heads of state in 2016, including its parameters, Senator Tolentino admitted that he did not have in his possession the content of the verbal agreement. However, he explained that the difference between a verbal or informal treaty, and a treaty concurred in by the Senate is that a verbal informal treaty is of short-term duration and that it implements a bigger treaty to answer the exigencies of the times.

Senator Drilon gave the assurance that nobody was casting aspersion on the aspiration of the President to protect the Filipino people. He stated that what he was looking at was whether the agreement promotes national interest and is consistent with the Constitution and international obligations, but he argued that unless there is a reference point on what the agreement was all about, nobody would know whether or not the agreement is contrary to or consistent with the Constitution. He then pleaded with Senator Tolentino to help the Senate performs its task by spreading into the record what the agreement was all about so that they could debate as to whether it is binding and whether or not it needs the concurrence of the Senate. He stated that until the Senate has a definite pronouncement or at least a record of what the agreement was all about, it is extremely difficult to come up with the proper policy formulation. Senator Tolentino agreed, but he reiterated that he did not have in his possession nor does he have the capacity to secure agreements "coming from mere saliva." He believed that the proper agency that would have to report, if indeed there was an agreement, would be the Department of Foreign Affairs considering that they are the official repository of all treaties and international agreements entered into by the government.

To Senator Drilon's observation that he seemed to doubt the existence of the agreement, Senator Tolentino pointed out that consequent events like the opening of the Scarborough Shoal to Filipino fishermen after it was allegedly closed, and the recent vessel collision incident in Mindoro showed that Chinese vessels were indeed present in the country's exclusive economic zone, and that the Secretary of Foreign Affairs was quoted as saying that the accommodation was by virtue of an agreement relative to the "sharing" provision allowed under the UNCLOS. He said that what he mentioned earlier would simply serve as guidepost for future administration when the Senate's power to concur is put to question. Thus, he proposed that the Body craft a legislation that would require the Department of Foreign Affairs to put all agreements—whether informal, formal, verbal, oral, or implied—in writing not only to comply with the Vienna Convention on the Law of Treaties.

Asked if he was calling upon the Department of Foreign Affairs to specifically put into writing the agreement between President Duterte and the president of China, Senator Tolentino replied in the negative. He clarified that he only wanted to craft a law similar to P.L. No. 92-403 of the United States which required the Secretary of the State to transmit to Congress any verbal agreement to which the United States is a party as soon as practicable "after such an agreement has been entered into," because there could be gaps in the country's statute books concerning oral agreements. He reasoned that secret agreements were banned and a law requiring oral agreements to be put into in writing was crafted because of the secret agreement concerning the invasion of Poland and other European countries during the Hitler-Stalin days. However, he clarified that there are instances that would require swift executive action that do not need the usual rigorous negotiations in the treaty-making process and lengthy deliberations. Still, he said that there ought to be a law requiring any oral agreement to be put in writing.

Senator Drilon stated that pursuant to the Rules of the Senate, the privilege speech of Senator Tolentino would be referred to the Committee on Foreign Relations. Therefore, he asked if the chairperson of the committee can issue a subpoena to the Secretary of Foreign Affairs and require him to come before the committee and testify under oath what this verbal agreement between President Duterte and the president of China was all about. Senator Tolentino believed that Senator Pimentel would accede to the suggestion of Senator Drilon.

As to whether he agrees that the verbal agreement be put into scrutiny by putting it in the Record of the

Senate, at least through the Committee on Foreign Relations, Senator Tolentino replied that there is still no law requiring verbal, oral, implied or informal agreements to be placed in writing.

But Senator Drilon pointed out that it is an inherent power of the Senate and its committees to issue a subpoena, and he argued that compelling the Department of Foreign Affairs to come to the Senate to testify before a legitimate congressional inquiry on the said alleged agreement needed no legislation; otherwise, failure to comply would expose the witnesses to contempt and deprivation of liberty.

At this juncture, Senator Pimentel assured the Body that the Committee on Foreign Relations, as soon as it is constituted, would conduct a hearing on the privilege speech with the view to enacting the needed legislation that would govern verbal agreements such as the alleged verbal agreement between President Duterte and President Xi Jinping.

Senator Drilon clarified that he was just citing the power of the committee to issue subpoena in response to the assertion that there is a need for a law requiring the production of such agreement. He reiterated that under the said power, the alleged agreement can be debated upon and produced because of the committee's inherent power to issue subpoenas. Agreeing with Senator Drilon, Senator Pimentel stated that the hearing in cooperation with the Executive branch will precisely shed light on the executive department's position on the nature of the agreement. But Senator Drilon questioned how the Body could determine the nature of the agreement if they do not know what the agreement was all about.

Senator Pimentel concluded his intervention by informing the Body that he met with the chairman of the Committee on External Relations of the Communist Party of Vietnam to whom he extended his thanks to the Vietnamese people, in behalf of the Filipino people, for saving those who were in distress at sea when they were abandoned after the ramming incident.

Asked by Senate President Sotto what are the treaties that should be submitted to the Senate for concurrence based on the Constitution, Senator Drilon said that the answer depends on knowing first what the agreement was all about. He stated that if the agreement seeks to change certain domestic laws, then ratification of the President and concurrence therein by the Senate is needed. He cited as example tax treaties where earnings of foreigners in the country are exempted from income tax and since the government under such agreement is bound to do certain acts to certain policies, said agreement needs ratification and the concurrence of the Senate. He stated that there must be determination on a case-to-case basis whether a document or an agreement is an executive agreement or a treaty that requires ratification, but to be able to tell whether the document imposes an obligation or is merely an executive agreement, they must know the agreement first.

Agreeing with Senator Drilon, Senate President Sotto noted that there must be a definition of what a verbal agreement should be because the Senate is supposed to ratify conventions, treaties and agreements.

Senator Drilon reiterated that it depends on what the agreement provides because there is a need to determine first the obligation of the parties under the agreement before they could tell whether it is simply an international agreement which does not need ratification of the Senate. For instance, he said that cultural exchanges such as dance troupes with other countries like Russia no longer need to be ratified by the Senate.

At this point, Senator Drilon informed the Body that he still has a number of questions but would raise them in another time before the speech would be referred to the appropriate committee.

INTERPELLATION OF SENATOR CAYETANO

At the outset, Senator Cayetano commended Senator Tolentino for delivering an informative and educational speech that not only gave the Chamber an overview on jurisprudence but also a very well-researched picture of international practices. She admitted that whenever she reads the newspapers the only angle she would see was that the Filipinos allow themselves to be exploited by China and by other countries; thus, to her, it is important to highlight the importance of international cooperation — a perspective that is very seldom mentioned or recognized and which she hoped the media would also highlight. She commended the Pacific countries that were mentioned in the speech for recognizing the importance of international cooperation by entering into agreements such as multilateral fisheries management agreement in order to effectively utilize and manage shared resources. Likewise, she lauded other countries such

as the United States and Canada that entered into an agreement on the management of Pacific salmon; other countries in Africa that entered into agreements on the management of fishery resources, particularly in the Benguela Large Marine Ecosystem; and New Zealand and Australia in the management of the South Tasmanian Rise, among others. She also expressed interest in the World Bank 2016 study that showed that half of the world's exclusive economic zones are subject to some form of foreign fishing agreement, be it through access agreement, joint ventures, and even just chartering. She said that the topic on international verbal agreements was interesting and must be placed on record considering that it is rarely heard of, read in the news or commented upon by opinion makers.

To add as a sidelight, Senator Tolentino cited United Kingdom's newly-elected prime minister, Mr. Boris Johnson, who won because of the Brexit policy issue, among other things. Currently, he noted that the fishing practice in the United Kingdom allows foreign fishing vessels to fish as near as six to 12 nautical miles within English waters such that they could go near the baseline of London, a practice that is not considered a threat to security or economy; but instead, it encourages a heightened level of cooperation. However, in view of the UK's withdrawal from the European Union (EU), he said that the fishing rights might revert to the exclusive jurisdiction of English authorities.

Similarly, Senator Tolentino believed that only a heightened sense of cooperation is what the country needs to assert ownership over the West Philippine Sea.

Senator Cayetano stated that the government recognizes the importance of international cooperation precisely to protect the country's interest including the rights of the Filipino fishermen. She noted that while the Philippines is a signatory to various international agreements including the Food and Agriculture Organization (FAO) which requires certain reports like the BFAR to set a catch ceiling for tuna, the Philippine government has not set allowable limitations yet and has no data regarding the optimal catch in the EEZ. She lamented that the failure to set these standards and report the information regarding the resources in the West Philippine Sea would be detrimental to the conservation and management of the area. She commended Senator Tolentino for addressing the concerns in the EEZ, saying that she is supporting the latter's efforts to ensure BFAR's immediate action thereon.

Asked what the statement "BFAR has set a catch ceiling limitation but the Philippines has not set allowable catch ceilings and no data on optimal catch in the EEZ" meant, Senator Tolentino replied that the details were not optimal and sustainable inasmuch as the last survey done by BFAR was in 2012 which focused only on tuna and that all other fish stocks were listed in the Annex of UNCLOS. He disclosed that BFAR's failure to report to the Food and Agriculture Organization created lapses in the reporting system considering that the profiling of allowable catch was stopped in 2012 when it should be done annually.

Senator Cayetano supposed that what Senator Tolentino was raising was that there are other fish stocks that people are not aware of and that she finds it interesting as she is predominantly a pescetarian. Notwithstanding the number of overfishing reports *vis-à-vis* more people becoming health-conscious and were shifting to just eat fish, she hoped that the fish supply in the country could be determined through her soon-to-be committee, the Sustainable Goals Committee, specifically as it concerns Sustainable Development Goal No. 14: Life Below the Water.

Lastly, Senator Cayetano thanked Senator Tolentino for bringing the matter of the country's food sustainability to the forefront and enjoined the Body to look into the various bills and resolutions filed by the latter, saying that it is essential to explore the potential of becoming a middle-income or high middle-income country by having food security that Filipinos could rely on.

INTERPELLATION OF SENATOR GORDON

Prefatorily, Senator Gordon also congratulated Senator Tolentino for bringing the topic of food supply to the forefront as it is a concern which is suitable for public appreciation and knowledge.

Asked if he came across the idiom, "the devil is in the detail" and what it meant, Senator Tolentino clarified that his speech was never intended to be construed as a hubris of the oral agreement that would be placed under Senate scrutiny and public appreciation. He elucidated that what he propounded was the idea that if there was indeed an oral

agreement, it is akin to an executive agreement which does not need Senate concurrence. In fact, he said that he proposed several recommendations and legislative measures which could be enacted by the 18th Congress to forestall similar incidents, especially agreements concerning the West Philippine Sea and other similar agreements that would affect the concurrent powers of the Senate and the right of every Filipino.

Asked if he was recommending that the Senate should not exercise the power to review (congressional oversight) oral agreements involving national patrimony, national resources or national security, Senator Tolentino replied in the negative. He explained that his speech pertains to oral agreements to execute a mother treaty or the UNCLOS which does not require the concurrence of the Senate. As to other verbal agreements or informal treaties that would arise in the future on matters concerning OFWs, taxation or national security, he said that the Senate has the right to inquire into the terms of such treaties in the exercise of its oversight powers.

Asked if the last paragraph of Article XII, Section 2 - National Economy and Patrimony which states that "The President shall notify the Congress of every contract entered into in accordance with this provision within 30 days from its execution," has ever been implemented, Senator Tolentino noted that Senator Gordon might be referring to the first provision which covers the utilization of natural resources through joint venture agreements with foreign-owned corporations relative to energy but not fishing right agreements provided under the UNCLOS. He believed that the second paragraph of Section 2 which refers to the exclusive economic zone is *sui generis* or a stand alone provision and does not depart from the whole article concerning joint venture agreements with other countries as it refers to the sovereign rights of the Philippines to manage, conserve, and protect the resources of territorial sea, contiguous zone and exclusive economic zone. He maintained that while commercial agreements and economic treaties would have to be reported to the President, a verbal agreement has nothing to do with any commercial transactions and should not fall within the purview of the clause previously cited.

Asked if fishery is part of the country's national resources, Senator Tolentino replied in the affirmative.

Asked if the President is duty-bound to inform the Senate within 30 days regarding the agreement made concerning the country's national resources in case the President enters into a verbal agreement with China, allowing the latter to fish with the country's fishing area pursuant to UNCLOS, Senator Tolentino proposed to lift the second paragraph of Article XII and disregard other provisions therein so that pronouncements relative to the portion which states that "The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens," could be read together with other provisions starting from the first paragraph of the said section.

Regardless of Article XII's lengthy provision, Senator Gordon asserted that the objective of the founding fathers of the Constitution is to preserve the natural resources including fisheries from exploitation, especially in this time where food security is an issue, and that it must be given by way of a formal notice by the President to the Senate. With respect to the UNCLOS, he stated that it is a treaty which is certainly ratified but subordinate to the Constitution such that when there is a disagreement, the Constitution should prevail.

At this juncture, at the instance of Senator Tolentino and duly moved by Senator Gordon, Senate President Sotto directed that certain remarks made by Senator Tolentino be stricken off the record.

Referring to the UNCLOS and the Constitution, Senator Tolentino stated that the phrase "exclusive economic zone" was derived from the UNCLOS; it was nonexistent in both the 1935 and 1973 Constitutions and it was only placed in the 1987 Constitution, after the 1982 UNCLOS was ratified, precisely the reason he cited former Chief Justice Roberto R. Concepcion who, during the deliberations of the Constitutional Commission, qualified that the use and enjoyment exclusively to Filipino citizens of the EEZ must be subject to the general principles of international law. He admitted that he did not have a concrete basis regarding the parameters of the verbal agreement but he believed that the Coast Guard must follow the President's instructions to protect the nation's marine wealth within its archipelagic waters and be present within the country's exclusive economic zone.

Considering that the Coast Guard is already duty-bound to protect the country's EEC, Senator Gordon believed that the instruction should include the protection of lives in danger of storms or ramming

of vessels. He asked if Senator Tolentino was saying that there was already an agreement between China and the Philippines based on President Duterte's earlier statement. Senator Tolentino explained that his statement was based on anecdotal news reports. However, he believed that it is high time for the Senate to forestall the repetition of any informal agreements that would necessitate its concurrence by legislating the appropriate enabling measure that will protect the rights of the Senate as an institution and those of the Filipino fishermen. It was in this context, he said, that he filed the proposed Good Samaritan At Sea Law precisely to address similar maritime incidents.

However, Senator Gordon pointed out that such a law already exists, citing "The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation." He expressed concern that the recent incident in the West Philippine Sea was being exempted from the law and those culpable for it would not be held accountable. He underscored the importance of clarifying the parameters of the fishing rights that the supposed agreement had granted to China in order to protect the Philippines' EEZ and ensure that local fisherfolk themselves do no lose out on their catch since studies by the University of the Philippines revealed that the area is currently a fishing ground by Chinese fishermen. He thanked Senator Tolentino for bringing up the issue so that the President's actual intentions would be clarified. He stressed the importance of knowing the details and scope of his agreement with the Chinese president, including whether Filipino fishermen are allowed to fish in Chinese waters and whether the Philippines could invoke the enforcement of the law on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation in the recent incident.

Senator Gordon also believed that the Philippines should demand the extradition of those responsible for the sinking of the Philippine vessel since the act is akin to an attempted or frustrated homicide on the part of the Chinese fishermen and that China, as an ally, ought to identify the parties who rammed the Philippine fishing boat. He pointed out that such clashes are expected between the Philippines and other claimants of the area such as Vietnam and China whose fishermen are guarded by their respective militia.

He noted that the Senate, as the legislative body with the authority to approve international treaties, has the right to know the boundaries of the supposed agreement. He also suggested that the President's liaison to the Senate must be present during plenary deliberations and relay the discussions to the Chief Executive.

For his part, Senator Tolentino explained that there is a need to distinguish whether the Convention for the Suppression of Unlawful Acts (SUA) Against the Safety of Maritime Navigation is an international law that is self-executing or is being implemented by local legislation. He said that his bill would even provide for court jurisdiction relative to the incident that transpired last June. He posited that the president can enter into oral agreements as provided for by international customary law and that the verbal pact, if being implemented under the United Nations Convention on the Law of the Sea (UNCLOS), is considered an executive agreement that is akin to the ruling in the Enhanced Defense Cooperation Agreement (EDCA) case which should not be subjected to Senate scrutiny. However, he believed that the Department of Foreign Affairs should provide the Senate with the details, scope and parameters of the oral agreement should there be a need for a complementary or supplementary legislation to buttress the same.

Senator Gordon agreed that President Duterte has the power to enter into international agreements on behalf of the country, but he underscored that the Senate also has the right to know the details of the agreements involving national security, commercial rights or other issues. He noted that the Department of Justice was unable to pursue the case against the Chinese fishermen because their identities had not been stated. He opined that the leaders of the two nations should be more candid in handling such problems. He adverted to Section 4, Article XVIII of the Constitution which states that "All existing treaties or international agreements which have not been ratified shall not be renewed or extended without the concurrence of at least two-thirds of all the members of the Senate." He enjoined the DFA to keep the Senate abreast of the current international agreements that have been formulated by the executive branch.

At this point, Senator Gordon said that he would suspend his interpellation for the meantime.

At this juncture, Senate President Sotto stated that Senator Drilon had also manifested his intention to continue his interpellation at a later time.

SUSPENSION OF CONSIDERATION OF THE PRIVILEGE SPEECH

Upon motion of Senator Zubiri, there being no objection, the Body suspended consideration of the privilege speech of Senator Tolentino.

PRIVILEGE SPEECH OF SENATOR LACSON

Likewise availing himself of the privilege hour, Senator Lacson adverted to reports of widespread corruption besetting the Philippine Health Insurance Corporation (PhilHealth) and the Department of Health.

The full text of his speech follows:

"PhilWealth and Department of Wealth"

During his fourth State of the Nation Address, we heard Pres. Rodrigo Roa Duterte loud and clear, "*You are free to investigate. I don't take offense. If there is anything wrong with my department, the Executive, you are free to investigate. Feel free to expose anything.*"

In all of my years as a public servant and as a member of this revered institution, I have been unflinching in my fight against corruption and wrongdoings, blowing the lid off anomalous activities in the government from the money laundering scheme by one Jose Pidal; the diversion of P728 million in fertilizer funds engineered by one Jocjoc Bolante; Comelec Commissioner Virgilio Garcillano's "Hello Garci" tapes; the boched US$329 million contract between the Philippine government and China's ZTE for a National Broadband Network Project, the "chopper scam" where second-hand helicopters were sold as brand-new to the Philippine National Police; the "Tara List" or *payola* in the Bureau of Customs; and the cholesterol-rich pork barrel, to name a few.

Hearing what we all heard from no less than the Chief Executive when he issued words of encouragement to us in a Joint Session of Congress last July 22, I could not help but respond to his call by talking to myself: Say no more, Mr. President. I did it many times before and I will do it again as I do now. I will be presenting incontrovertible evidence. I leave it up to you to act in the same way that you have acted many times before swiftly and firmly.

We know for sure that we are on the right side of the fence when no less than the President of the Republic calls for the eradication of corruption and vows no sanctuary to sacred cows in the government.

In corrupted offices, we tend to refuse to see the sacred cows but when sacred cows become intolerable "mad cows" that bring transmissible, infectious, progressive and fatal disease that continues to plague our country, an alert must be issued in no time.

Hence, with the same unwavering tenacity as before, I round up the herd, find the mad cow, chop its flanks, cut off its horns, and, hopefully, lay it to rest.

Lately, I discovered one that is ill and disgusting.

I speak of the disease that besets our health sectors starting off from the state-run firm that provides public health insurance and health care services for all Filipino citizens—the corrupt and corrupting system of the Philippine Health Insurance Corporation (PhilHealth).

And while President Duterte has acted with firmness and dispatched by assigning retired Army Major General Ricardo "Dick" Morales whose reputation as a no-nonsense and principled military officer precedes him, this humble Representation still finds the need to expose shenanigans within PhilHealth, most of which were not covered by a recent series of jolting news reports in the *Philippine Daily Inquirer* and other media outlets.

PhilHealth is bleeding dry and the Commission on Audit has raised red flags to call our attention.

It seems to me that year in, year out, its financial deficit spirals out of control. From 2013 to 2017, the net operating income of PhilHealth continues to be at the negative level: P5 billion in 2013; P1.8 billion in 2014; P5.7 billion in 2015; P6.1 billion in 2016; and P10.5 billion in 2017.

The fund viability, membership, collections, and investments of the agency are not looking good. And the PhilHealth's Actuarial Valuation Report of 2016 shows us a clear picture. The report exhorts "PhilHealth will go through difficult times and will encounter crisis if the recommendations will not be implemented."

The agency's performance is also dismal: 2017's Performance Scorecard shows that it gained an overall score of only 47.82% from the Governance Commission for Government-Owned and Controlled Corporation's scoreboard. This is disturbingly lower than the target score of at least 90% for its appointive members to be granted performance-based incentives.

More disturbing is the fact that the GCG scored PhilHealth's prosecution rate at zero

percent; arbitration rate at 0.14%; and claims processing rate at zero percent. Ironically, PhilHealth's collection efficiency rate, meaning its ability to collect contributions from its members, is quite impressive at 79%.

What gives?

This is pain in the chest especially of paying members of PhilHealth and that would include people in this hall and the gallery, and the rest of the 18,207,555 Filipinos who pay mandatory contributions every month. Meanwhile, more than one-third of the population still have no access to any form of PhilHealth insurance.

PhilHealth is already operating at a loss, spending beyond its means. But where does the money go?

Here is the paradox: The financial health of PhilHealth is fast deteriorating and, in fact, in a state of coma. The policies in place engender fraud and corruption and the crooks exploit the system. There are several telling signs showing how PhilHealth wantonly drains the public coffers but those in the highest echelons of power in the agency seem to turn a blind eye aggravating the generate state of the agency.

We see various culprits and incarnates. One is the highly contentious and untenable policy called "All Case Rates" or ACR payment scheme. Simply put, PhilHealth pays per case and not by actual expenses. These case rates are the new reimbursement rates for all cases specified as professional fees and serve as package payment for health interventions to be paid to the health care providers or health care institutions. It is a complete departure from the prior free-for-service payment scheme.

Per PhilHealth Circular 31, s. 2013 (All Case Rates Policy No. 1), the payment scheme is founded on one underlying objective: increase support value to members.

The data from the 2014 Audit Observation Memorandum of the COA for Northern Mindanao shows us how the new case rate works: for example, in Bukidnon Provincial Hospital-Manolo Fortich, one patient treated for Pneumonia I registered actual hospital charges of only P4,820 but PhilHealth paid out P15,000 or an excess of P10,180; in a PhilHealth-accredited private hospital, Bongcas Holy Child Hospital also in Bukidnon, a patient with typhoid fever incurred P5,763, but PhilHealth paid out P14,000, or an overpayment of P8,237; a case of caesarean section surgery in Lanao del Norte Provincial Hospital incurred hospital charges of P9,057.95, but PhilHealth reimbursed with P19,000 – a difference of P9,942.05.

From the said COA audit alone, of the 6,128 cases recorded, an appalling 20% accounts to overpayment. Hence, when PhilHealth's benefit claims reached unprecedented high levels from 2013 to 2018 using the All Case Rate payment method, without an iota of doubt, something does not add up.

In fact, the Corporation paid P512.6 billion in benefit claims from 2013 to 2018, of which the overpayment, if conservatively pegged at 20% based on COA estimates, would amount to P102.5 billion. If we are to include the global estimates on losses to fraud due to improper payments computed at 10% or P51.2 billion, we get an estimated PhilHealth loss to overpayment and fraud at P153.7 billion!

PhilHealth officials belatedly justify over-payments as nothing but "efficiency gains," that is – hospitals that receive amounts in excess of their actual charges may use the funds to offset the losses they incur from other patients. In fact, former PhilHealth President and Officer-In-Charge, Dr. Roy Ferrer, casually dismissed the issue and said the case rates are so designed so that health facilities can "win some and lose some."

Let me ask: Win some for whom, and lose some for whom?

Between you and me, this justification is nothing but an afterthought and it insults our common sense. By "winning some" for some hospitals, do they expect us to accept it to mean that PhilHealth is "losing some" in billions of funds looted from the Corporation?

Let me indulge everyone with these findings:

On pneumonia cases alone, the Bondoc Peninsula District Hospital's actual charges are at a meager sum of P200,397, but PhilHealth has recorded a payment of P5,025,000 – easily, a 2,508% incremental difference. In the far-flung town in Sulu, the Siasi District Hospital only charged a total of P67,459, but as per Philhealth records, it paid out P430,500 to Siasi District Hospital, or a 638% increase. In the National Capital Region, Gat Andres Bonifacio Memorial Medical Center charged around P5.2 million but the PhilHealth's recorded reimbursements reached P28.8 million, or a difference of P23.6 million or overpayment of 556%.

The 2013 to 2018 data culled from PhilHealth Dashboard shows us that overpayments on pneumonia cases alone can balloon from a low of

387% to a high of 2,508% in government hospitals.

They can call it any name, fancy or otherwise. Common sense will tell us, these are not "efficiency gains" but flagrant pillage of public monies as well as hard-earned contributions from the more than 18 million paying members.

Private hospitals are likewise "winning some." In fact, we found overpayments ranging from 100-fold to 700-fold higher than their actual hospital charges.

All right, let us assume for a while that "efficiency gains" is a sound and reasonable scheme to justify the PhilHealth's "win some, lose some" formula. Let us stretch our understanding that "efficiency gains" can benefit government hospitals as these overpayments, if actually received by them, may trickle down to the general public who are mostly poor and vulnerable, or for procurement of additional hospital facilities, or for other noble purposes. Granting without accepting, are there parameters or guidelines, and accounting of those overpayments? We tried hard to look, and we cannot find any.

And why would private hospitals be accorded the same "efficiency gains" or benefits and incentives they claim to be given to government hospitals? Again, we have some representative samples of private hospitals under the same "efficiency gains" scheme.

Sa Region X, *ang* Olegario General Hospital *ay nakatanggap diumano (iyun ay kung papaniwalaan natin ang* PhilHealth) *ng* P38.2 million *mula sa* PhilHealth, *samantalang* P5.04 million *lamang ang ginasta at siningil nito. Nangangahulugang pumapalo sa* 758% *ang* overpayment. *Sa* National Capital Region, *ang* Dr. Sabili Health Services *ay gumasta at naningil ng* P3.08 million *lamang, subali't sa* record *ng* Philhealth, P20.7 million *ang sabi nila ay naibayad, kaya* 673% *naman ang naging* overpayment. *Samantala, ang* Eastern Sun Medical and Diagnostic Center, Inc. *ay may gastos na siningil sa* PhilHealth *na* P4.7 million *lamang pero ang* PhilHealth *naman, base sa* record, *ay nagbayad ng* P29.6 million, *kaya higit sa* 628% *naman ang sobrang bayad.*

We can go on and on with our list. *Kaya lang,* it may be hazardous to our health. *Baka ma-*high blood *lamang tayong lahat.*

PhilHealth boldly claims that these health institutions actually received these abnormally high overpayments. But I couldn't help but wonder, with nothing but words from PhilHealth officials, how can we take those words when there is no showing that these hospitals actually received the overpayments? Overpayments are monies that invite fraud and corruption. No one keeps track where it goes, which health programs it funds, which PhilHealth members it benefits.

We already heard of the massive fraud perpetrated by the "modus operandi" of Well-Med Dialysis & Laboratory Center Corporation.

Ang mga lumantad na whistleblowers *ay nagpahayag na nagsusumite ang* WellMed *ng pekeng* benefit claims *at ang pinaka-nakakagalit pa sa lahat – ang paniningil ng* Wellmed *sa* PhilHealth *ng gastos para sa* dialysis *ng mga pasyenteng nangamatay na.* In response, PhilHealth officers claimed that payment to WellMed was cut as early as January 2019, following reports of anomalies. *Pero binobola lang pala tayo.* Business-as-usual *pa rin ang* WellMed *sa pagkubra ng* reimbursements. *Sa katunayan, base sa nakuha naming datos sa* PhilHealth Dashboard *ng* Central Office, *mula Enero hanggang Hunyo* 2019, *ang kabuuang* reimbursements *ng* WellMed *ay pumalo pa rin sa* P4.24 million. *Noong nakaraang buwan lamang, kumita pa rin ang* WellMed *ng* P1,224,600 *mula sa* PhilHealth.

Ang saya-saya nila! Not only did Wellmed continue to receive payments, it was also paid in record speed, with turn-around time as short as two days at the time when the fraud was already made public. *Kanino ba nagmamano itong may-ari ng* WellMed *at tila napakalakas? Marahil kung makakabangon lamang ang mga* dialysis patients *na namatay at nailibing na, at kung hindi pa nabuko ay patuloy pa ring pinag-kakakitaan ng* WellMed, *ewan ko na lang kung sinu-sino ang una nilang dadalawin para pagsasasakalin.*

Hindi lamang ghost patients *mayroon ang* PhilHealth. *Mayroon din silang* "overstaying patients" *o mga pasyenteng pinapauwi na ng doktor, bakit ayaw pang pauwiin ng ospital para lang mapagkakitaan pa ang* PhilHealth. *Ang masama, tila kinukunsinti pa ng ahensya ang ilang mga ospital sa mga kalokohan nito.*

A case in point is the Perpetual Succour Hospital based in Cebu, which was found guilty of extending confinement to siphon PhilHealth funds. In 2011, the hospital filed benefit claims extending the period of confinement of two patients with the intent to defraud PhilHealth. For one, instead of recording the hospital doctor's "May Go Home" order on 22 July 2011 for patient, (let's call her Maria), Perpetual Succour Hospital filed for her confinement a day

longer. Meanwhile, another patient (let's refer to him as Jose), whose confinement covered inclusive dates of December 25, 2010 to February 3, 2011, was reported to be confined until February 7, or a four-day confinement extension. Due to this, the PhilHealth Arbitration Office adjudged Perpetual Succour Hospital guilty of "extending period of confinement" and meted the penalty of three months suspension and a fine of P10,000.

As part of due process, the hospital filed a motion for reconsideration with the PhilHealth Board of Directors which, in the exercise of its quasi-judicial powers, denied the motion and upheld the Arbitrator's decision.

Consequently, a petition for review was filed by the hospital with the Court of Appeals. Finding no merit, the CA Division dismissed the petition, and the Motion for Reconsideration filed by the hospital was likewise denied. An Entry of Judgment was made by the Court of Appeals on April 19, 2018, which means that the petition has become final and executory and recorded in the Court of Appeal's Book of Entry of Judgments.

Despite this, the PhilHealth Board, acting on a letter-request for reconsideration filed by Perpetual Succour, in a brazen display of grave abuse of discretion, set aside the Final Executory Judgment of the Court of Appeals and instead imposed the penalty of P100,000 fine in lieu of the penalty of three months suspension and a fine of P10,000.

Imagine this: *para sa isang ospital tulad ng* Perpetual Succour *na kumokolekta sa* PhilHealth *ng hindi bababa sa* P30 *milyong* monthly average *na* koleksyon, *ano na lang ang halaga ng* P100,000 *na multa? Ako na rin ang sasagot: barya. Dahil sa tatlong buwan na dapat ay suspendido ang* Perpetual Succour Hospital, *halos* P100 *milyon ang malamang na nakolekta nila sa* PhilHealth. Perpetually lucky.

One may ask: Can the Board legally do it? What is its legal basis and authority in overturning a final executory judgment rendered by no less than the Court of Appeals? Why would the PhilHealth board even do that? Maybe, the better question is: *Magkano*?

I know that PhilHealth has so much on its plate, the issues of overpayments and fraud are just a prelude to its tell-tale chronicle of shenanigans and corruption.

Speaking of a tale of woe, PhilHealth faces another fiasco as plunder raps were filed against Health Secretary Francisco Duque III and his brother Atty. Gonzalo Duque. The case involves lease contracts that PhilHealth entered into with the Educational and Medical Development Corp. (EMDC) where the Duque brothers own shares.

Frankly, when I tripped on this anomaly in June of this year and called it a clear case of "conflict of interest," I never thought I would hit a nerve so bad that Gonzalo Duque, a lawyer, would call me names after dismissing the issue of "conflict of interest." It was a banter of poor taste borne out of anxiety – and how anxious he must be.

Documents show that PhilHealth's Region I office had rented a building owned by the EMDC on Francisco Duque Jr. Street, Tapuac District in Dagupan City, from June 2012 to December 2018. The lease payments of the Duque-owned building with a total floor area of 1,853 square meters steadily increased through the years: from monthly lease of P368,500 in 2012 to P432,305 in 2016. The contract for the year 2018 was amended to cover 2,051.4 square meters and the monthly rental was set at P529,261.04.

Copies of EMDC's General Information Sheets (GIS) in our possession show that Secretary Duque was among the eight stockholders of the company, all of whom are from the Duque clan. His siblings, Atty. Gonzalo Duque and Dr. Luz T. Duque-Hammershaimb, held the position of EMDC president, exhibited in various lease contracts with PhilHealth. Clearly, at the time PhilHealth was paying sums for lease payments to the Duque-owned building, Dr. Francisco Duque directly held concurrent positions in their family corporation and high-rank government posts which created an undeniable conflict of interest.

Noong 2012, *habang siya ang nakaupong* executive vice president *ng* EMDC, *siya rin ang* Chairman *ng* Civil Service Commission *na kasabay na naglingkod bilang ex-officio* member *ng* PhilHealth Board of Directors. *Bukod pa rito, habang siya ay* consultant *ng* Department of Health *mula* May 2015 *hanggang* June 2016, *tumayo rin siya bilang presidente ng* EMDC.

A Supreme Court ruling, *Funa vs. Duque*, Executive Secretary, Office of the President (G.R. No 191672, Nov. 25, 2014), declaring as unconstitutional Civil Service Commission Chairman Duque's designation as *ex-officio* member of the PhilHealth Board notwithstanding, the effects of his acts prior to the declaration of the unconstitutionality of the Executive Order, "cannot be erased, ignored or disregarded," applying the doctrine of operative fact.

Ang pinakalantarang paglabag sa mga umiiral na batas ay ang pagpapatuloy ng kontrata sa pagitan ng EMDC *at* PhilHealth *sa kabila ng pag-upo ni* Dr. Duque *bilang kalihim ng* Department of Health *at kasabay nito, bilang* chairperson *ng* PhilHealth *simula noong Oktubre* 2017.

Ang EMDC *ay nagpahayag noong Hunyo* 2019 *na wala na itong intensyong palawigin ang kontrata ng pag-upa ng* PhilHealth *na magtatapos sa Disyembre* 2019; *pero ginawa lamang ito pagkatapos na mabulgar ang isyu ng* "conflict of interest" *na nakapaloob sa kontratang ito. Ang gusto ba nilang sabihin, utang na loob pa ba natin sa pamilya nila na hanggang Disyembre* 2019 *na lamang magbabayad ang* PhilHealth *sa* EMDC? *Kaya naman hanggang sa mga sandaling ito, ay nagaganap pa rin ang* "conflict of interest." *Pakisagot nga*, Attorney.

I wish to reiterate: under Sec. 3(i) of RA 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, and I quote: *"Conflict of interest arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty."*

Under Section 7 (*Prohibited Acts and Transactions*) of the same Republic Act:

(a) Financial and material interest – Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

In the case of the Duque family-owned EMDC, if the case of family-owned EMDC is not a case of "conflict of interest," I do not know what else to call it.

Going back to Atty. Gonzalo Duque's anxiety, I will quote his unwise and reckless words, directly referring to this Representation. He said, without mincing words: *"Hindi mo magigising iyong may* purpose *o nagtatangatangahan. Walang ospital para sa tanga."*

I could not agree more with Gonzalo Duque. *Totoo namang walang ospital na makakagamot sa isang katulad ni* Gonzalo.

The discovery of the ownership of the building in Dagupan being leased by PhilHealth has opened up yet another Duque-owned can of worms. It is called, Doctor's Pharmaceuticals Inc.

This time, I invite your attention to another "lucky" business entity that is the Doctors Pharmaceuticals Inc. – a drug manufacturing company located at Number 8 Veterans Center West Bicutan, Taguig City owned by... who else but the family of the Secretary of Health himself, Francisco T. Duque III.

Based on our data sourced from the Philippine Government Electronic Procurement System or PhilGEPS, Doctors Pharmaceuticals Inc., with active Platinum membership, is an accredited corporation that bids for government contracts primarily with the Department of Health since year 2005.

Ask a moron if there is something wrong with this situation, and surely, that moron will give you the correct answer.

That said, my office was able to acquire the General Information Sheet of the company covering a 10-year period from 2008 to 2018. Under the list of Directors, Officers and Stockholders of Doctors Pharmaceuticals Inc. are very familiar surnames: Cesar T. Duque, chairman with 60 percent shares; Joyce Ma Duque, treasurer with 20 percent; Dr. Luz Duque-Hammershaimb, president with 10 percent; a certain Leon Guerrero, corporate secretary with eight percent; and Ma. Theresa SP Castro, chief accountant with two percent.

Evidently, only 10 percent of the total shares belong to the non-Duque personalities from the list provided.

First, we ask: Is it just a mere coincidence that Doctors Pharmaceuticals, Inc. became an accredited government contractor and supplier on the same year that Secretary Duque was confirmed by the Commission on Appointments as Secretary of Health during the Arroyo administration in 2005?

Further, we have noted a number of suspension and product recall orders released by the FDA or the Food and Drug Administration to Doctors Pharmaceuticals, Inc.

This was during the incumbency of former Health Secretary Janette Garin, who was also Acting Director-General of the Food and Drug Administration in concurrent capacity. In fact, I asked her if she knew at that time that she was suspending a Duque family-owned corporation. She did not.

Based on a routine inspection conducted between March 10 to 12, 2015, the FDA reported non-conformance to GMP or Good Manufacturing Practice of Doctors Pharmaceuticals, Inc.,

hence, ordering the company to immediately cease and desist from further manufacturing, distributing, and offering for sale all concerned products for not complying with good manufacturing practice. The FDA also discovered that Doctors Pharmaceuticals Inc. was also manufacturing for other companies. Hence, the June 23, 2015 cease and desist order and the "recall of all drug products from March 14 up to the present" or on June 23, 2015.

However, the FDA noted in January 2016, through an investigation prompted by an anonymous complainant, that Doctors Pharmaceuticals continued its production line despite the cease and desist order. The same inspection report recommended, thereafter, that the company stop production and distribution of pharmaceutical products until sufficient data was presented to prove that there was no contamination, and that the same were safe for consumption as in the case of amoxicillin, an antibiotic that the Doctors Pharmaceuticals was manufacturing with the same machines which they used to manufacture supplements such as Garcinia, a supplement used for weight loss. Hence, if consumers took the supplement, they might also be unknowingly taking antibiotics. The danger lies in that persons allergic to amoxicillin could be put in danger. Worse, if the antibiotic was consumed in sub-optimal amounts, it could contribute to serious problem of antibiotic resistance. Antibiotic resistance has been identified by the World Health Organization as one of the most serious and dangerous issues the world is facing.

Halimbawa, isang kasama natin dito sa Senado, si Senator Bato dela Rosa, *ay gustong magpapayat kaya umiinom siya ng* juice *na may* Garcinia supplement. *Pero lingid sa kaalaman niya, iisang makina lang ang ginagamit ng kumpanya na nagsu-*supply *sa* DOH *ng pag-timpla ng* Garcinia food supplement *at* amoxicillin *na isang* antibiotic. *Nagkataong* allergic *pala sa* antibiotic *si* Senator Bato. *Napaka-delikado po nito. Baka sa halip pumayat si* Senator Bato, *baka hindi na siya tubuan ng buhok. Pasensya ka na,* Senator Dela Rosa, *wala na ang mistah ko nasa* DICT *na, ikaw lang ang kaya ko rito.*

Levity aside, *yan ang naging* violation *ng* Doctors Pharmaceuticals *kaya sinuspindi noong Marso* 2015.

Despite the recorded violations of the company as food supplement manufacturer, it still managed to apply and acquire automatic renewal of its license to operate in 2016. This is a case of setting aside health for wealth.

When the pharmaceutical company that is awarded contract to supply medicines to the Department of Health does not observe good manufacturing practice in the manufacture of its medicines, does this not pose a threat to the health and safety of our public?

Bear with me, I could not help my investigative instincts. Was Doctors Pharmaceuticals actually setting aside health for wealth?

In our efforts to dig deeper and convince ourselves with evidence involving this corporation, we referred to the PhilGeps database to see and examine the contracts granted to Doctors Pharmaceuticals. Strangely, we were able to extract only five notices of awards from December 2016 to July 2017 because PhilGeps' website went offline for an unusually long period of time.

Examples of such Award Notices are as follows:

- Award Notice Abstract Reference No. 1555775 and Award Notice Abstract Reference No. 15557777 awarded to Doctors Pharmaceuticals Incorporated; Contact Person: Cesar T. Duque, President, for Procurement of Clozaphine, with a contract amount of P395,040.00 and P3,102,000.00 respectively; with Contract Award Date: 24 July 2017, both under Contract Number: GOP-2017-06-0193; with Contract Effectivity Date: 13-Sep-2017 and Contract End Date: 13-Nov-2017.
- Another Award Notice Abstract Reference No 1377959 has an Award Date: 08-December 2016 and Contract End date: 31 December 2017. Take note that Sec. Duque was appointed DOH Secretary last October of 2017.

As a former chairman of the Civil Service Commission, Secretary Duque, more than many of us, should know by heart the Code of Conduct and Ethical Standards for Public Officials.

Is it not incumbent upon Secretary Duque to exercise professionalism and ethical standards by stopping all dealings of his family's corporation with the very government agency that he heads?

Even the Supreme Court itself has made clear that the observance of professionalism, in the context of Section 4 paragraphs (a) and (b) of R.A. No. 6713 or Code of Conduct and Ethical Standards for Public Officials and Employees, means *upholding the integrity of public office by endeavoring "to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage."*

Thus, a public official or employee should avoid any appearance of impropriety affecting the integrity of government services.

Another standard set forth by the same law through Section 4 paragraph (c) provides that public officials "must act with justness and sincerity." It further expounds that:

> *"They [Public Officials] shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs."*

In a speech by then Civil Service Commissioner Chair Francisco Duque III, during the Good Governance forum on July of 2014, he said:

> "In government, it is important to care enough so as to stop or stem unethical practices before they become ingrained or systemic. The more we let things pass, the more ethical standards get lowered." Secretary Duque's words, not mine.

Let me make it clear and put on record – *walang personalan*. I raise these questions to ensure that public funds are not misused and abused, and that the health and safety of the public are not put at risk for personal or family interest.

We are about to fully implement Republic Act No. 11223 or the Universal Health Care Act, which will give a full spectrum of health services to all Filipinos.

With it, comes a big chunk of our annual budget. The budget appropriated for this law is pegged at P257 billion for this year. In fact, the National Health Insurance Program or (NHIP,) in which every Filipino shall be a member under the UHC, had appropriations of P52.2 billion and P60.6 billion in 2017 and 2018, respectively. And for this year, P67.35 billion has been allocated for the program.

We cannot afford to lose one peso from policy failures, insurance frauds, and conflict of interests. Besides, these are the country's PhilHealth and Department of Health that we are talking about, not PhilWealth and Department of Wealth.

Be that as it may, I refuse to believe that the Agency is rotten to the core. In fact, I have heard of many honest and well-meaning PhilHealth officers and employees who braved the odds and blew the whistle on these various anomalies in the Corporation. But, they all found themselves thrown under the bus and harassed with concocted, fabricated offenses. They may now find comfort under the new leadership. I urge them to report everything they know and present their evidence to their new PhilHealth President.

From all these accounts, we see that like a biological organism, machinations on the misuse of public power for private gain continue to evolve, thrive, and linger.

Amid these shenanigans, it behooves public servants, let alone the Secretary of Health, to rid himself of conflict of interest and put the interest of the people above everybody else. Nothing else will suffice. Falling short of this will compromise his office, principles, and integrity.

Someone once said: "Greed is a bottomless pit which exhausts the person in an endless effort to satisfy the need without ever reaching satisfaction." Sadly, greed in this country has reached new, greater heights. It is now at the expense of the people's health, one that is considered a fundamental part of our basic human rights.

Finally, I say with no reservation: "corrupt public officials have no place on earth. But corrupt officials stealing health funds deserve an upgraded and super special suite in hell."

Having said all that, I move that my privilege speech be referred to the Committee on Health and Demography and the Committee on Public Accountability of Public Officers and Investigations.

INTERPELLATION OF SENATOR ZUBIRI

Senator Zubiri said that he also saw overpayments in hospitals in the Province of Bukidnon and in other hospitals in Mindanao. He agreed that overpayment is clearly unethical and illegal, and he asked if the alleged corrupt PhilHealth officials took advantage of the overpayments through a rebate scheme.

Senator Lacson shared the same guess but stated the fact that there were unconscionable overpayments in the amount of 2,500 percent incremental difference.

Asked if the whistleblowers gave a hint on how overpayments were done, Senator Lacson replied that it is a big challenge for Retired Army General Ricardo "Dick" Morales, the new PhilHealth President, to discover.

(At this juncture, Sen. Lacson acknowledged the presence in the gallery of General Morales.)

Senator Lacson then enjoined the members of PhilHealth who braved the odds to provide most of the information to report with their evidence to the new PhilHealth president.

Senator Zubiri congratulated Senator Lacson for raising the matter, saying that there is a need for an efficient dispensation of PhilHealth funds sourced from the revenue-generating measures that the Body approved in the last two years that beefed up the coffers of PhilHealth. He expressed support for Senator Lacson's crusade to rid the PhilHealth and the Department of Health of corrupt practices.

REFERRAL OF SPEECH TO COMMITTEES

Thereupon Senator Zubiri moved to refer the privilege speech of Senator Lacson and the interpellations thereon to the Committee on Accountability of Public Officers and Investigations and the Committee on Health and Demography.

But Senate President Sotto recalled that the original motion of Senator Lacson was for his speech to be referred primarily to the Committee on Health and secondarily to the Committee on Accountability of Public Officers.

At this juncture, Senator Drilon stressed that the referral of speeches, bills, and resolutions must be governed by the jurisdiction defined in the Rules to avoid exercise of discretion and misunderstanding. He stated that it was not a question of the permission or concurrence of anyone, but a question of what is stated in the Rules. Thus, he submitted that Senator Lacson's speech should be referred primarily to the Blue Ribbon Committee and secondarily to the Committee on Health and Demography since the principal thrust of the speech was on the anomalies in PhilHealth.

Agreeing with Senator Drilon, Senator Zubiri noted that under the Rules, the Blue Ribbon Committee has jurisdiction over all matters relating to investigation of malfeasance, misfeasance and nonfeasance.

Senate President Sotto stated that the manifestation of Senator Lacson should be treated as a suggestion and that the Body act on the motion of Senator Zubiri to refer the speech to the Blue Ribbon Committee as the primary committee, and to the Committee on Health and Demography as the secondary committee.

Senate President Sotto reiterated the call of Senator Lacson for a speedy action on the matter in view of the appointment of a new PhilHealth president. He recalled that sometime during the deliberations on the budget of the Department of Health, he brought to the Body's attention the alleged anomalies committed by a certain neurologist in Koronadal City, Dr. Mark Dennis Menguita of Region XII. He said that the Senate has not received any report from PhilHealth since then. He requested that the same be also included in the investigation to be conducted by the Blue Ribbon Committee and the Committee on Health and Demography.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Zubiri, there being no objection, the Chair referred the privilege speech of Senator Lacson and the interpellations thereon to the Committee on Accountability of Public Officers and Investigations as the primary committee and to the Committee on Health and Demography as the secondary committee.

PRIVILEGE SPEECH OF SENATOR VILLANUEVA

Availing himself of the privilege hour, Senator Villanueva delivered the following speech expressing his disappointment over the veto by President Duterte of the Security of Tenure bill:

> The book of Proverbs 21:15 says, "When justice is done, it brings joy to the righteous but terror to the evildoers."
>
> *Mga ginagalang kong mga kasamahan dito sa Senado, naantala po ang inaasam na tagumpay ng manggagawang Pilipino laban sa* ENDO. *Noon pong ika-26 ng Hulyo ay urong-sulong na ipinahayag ni* Secretary Panelo *ang pag-*veto *ng Pangulo sa ating* Security of Tenure bill.
>
> Let me spread into the record that we are not here to question the right and the prerogative of the President to veto the measure. However, I lament the rejection of the Security of Tenure bill on account of the President's veto message.

Ang dalawang pahina pong mensahe ng Pangulo tungkol sa pagpapawalang-bisa ng Security of Tenure bill *ang pinakamatagal ko na po yatang binasang liham. Ito po ay dahil sa labis kong kalungkutan at panghihinayang at sa kakahanap din po ng partikular na probisyong nagtulak sa pag-*veto *nito.*

I share the observation of our Senate President Pro Tempore Sen. Ralph Recto that the veto message failed to specify the provisions that prompted the rejection of the Security of Tenure bill. *Sa halip po na ituro ang mga ni-*reject *na probisyon sa* SOT bill, *ang nakita lamang po natin ay ang pagbibigay ng pangkalahatang dahilan kung bakit na-*veto *ang panukalang batas na inaprubahan ng buong Kongreso.*

Una po, nakasaad po rito na labis daw pong pinalawig ng Security of Tenure bill *ang katuturan at sakop ng* labor-only contracting *at* security of tenure *na katumbas ng pagbabawal sa kontraktuwalisasyon.*

Mali po ito! Mas naging malinaw pa nga po kung ano ang mga pupuwede nating gampanan na mga lehitimong job contractors *sa panukalang batas na ipinasa ng Kongreso noong* Seventeenth Congress. *Ito po ay kumpara sa nangyayari sa ngayon. Ito rin po, at nais kong bigyang-diin, ang* definition ng "labor-only contracting" *na sinertipikahan ng ating mahal na Pangulo noong* 2018.

Pangalawa, bagamat kinikilala po na dapat ipagbawal ang labor-only contracting, *dapat pa ring payagan ang lehitimong pagkokontrata ng trabaho, ito man ay* directly *o hindi* directly-related *sa negosyo.*

Tumugon po tayo at nauunawaan natin kung gaano kahalaga ang work flexibility *sa ngayon. Kaya nga po binigyan natin ng kapangyarihan ng panukalang batas na inaprubahan ng Kongreso ang mga* industry tripartite council *upang sila po ang magsabi kung anong mga trabaho ang* directly-related *at kung ano naman ang mga trabahong puwedeng i-*contract out.

This is in recognition of the fact that what might be directly related now may not be directly related in the future in the light of rapidly changing technologies. *Naglagay pa nga po tayo sa* SOT Bill *natin ng klarong basehan para limitahan ang diskresyon ng mga* labor inspectors *at korapsyon. Bentahe po ito sa mga mamumuhunan at negosyo at ito rin po ang* request *nila.*

Pangatlo po, at huli, sisirain daw po ng Security of Tenure bill *ang* "delicate balance" *sa pagitan ng* labor *at* management. *Kalaunan, magdudulot daw po ito ng negatibong konsekwensiya sa kapakanan ng mga manggagawang Pilipino.*

Kailanman, hindi po ito ang naging intensyon ng ating panukalang batas na inaprubahan ng buong Kongreso. Bakit kailangan po nating isakripisyo ang kapakanan ng ating mga manggagawa at pahintulutan ang patuloy na pang-aabuso sa kanila ng mga mapagsamantalang negosyante?

Ayaw lamang po natin ng fly-by-night contractors. *Ayaw lamang po natin na walang responsibilidad o* accountability *ang mga* contractors.

I lament the veto message on account of the legislative process. Let me also agree with the good Majority Leader when he reminded everyone that the Senate leadership was being pressured, claiming that we have not acted on the SOT bill after the House of Representatives has passed its version and the Palace has come out with a certification that it was a priority measure, alleging further that we in the Senate have been sitting on it. *Nakaka-*pressure *naman po talaga dahil paulit-ulit itong binabanggit ng ating Pangulo sa mga* events, *sa* Labor Day celebration, *sa nakaraang* SONA, *at ang pinakamatindi po sa lahat, ito po mismo ang sinertipika ng ating Pangulo* as "urgent and priority."

Like the Senate President, I am totally bewildered on this new development. Does it mean now that the certification from the Palace is actually meaningless? If that is the case, then we have been misled as we have dedicated so much time, in this case, not only time, resources, energy, *et cetera*. We worked on this particular measure for more than three years to actually deliver the priority measure—*ito pong* Security of Tenure bill. *At hindi lamang po ito; kasama na rin ang* Coco Levy bill, only to be told that they are not necessary. *Ganito rin po ang sentimiyento kanina ng mga miyembro ng* Committee on Rules *sa pagpupulong. Naroon po sina* Senator Drilon, Senator Lacson, Senator Gatchalian, Senator Pacquiao, Senator Angara, at Senator Gordon.

Bigo na naman po si Carlos Miguel Francisco, *ang mukha ng* "ENDO" *at kontraktuwalisasyon. Magpapatuloy po ang kuwento niya na tuwing matatapos ang kaniyang kontrata,* jobless *at wala siyang kaseguruhan kung kailan siya ulit makakakuha ng trabaho. Isa lamang po siya sa halos dalawang milyong manggagawang nangangarap na mawakasan na ang* "endo."

At simula pa lamang ng pagbukas ng Seventeenth Congress, *inasahan na po natin na maraming haharang sa panukalang ito. Subalit hindi po tayo natinag, lalo na po at maraming manggagawa ang umaasa rito na tutuldok sa "*ENDO.*" Ngayon, pansamantalang naantala ito.*

Ang isyu ng "ENDO" *at pang-aabuso sa kontraktuwalisasyon ay parang butas na tubo. Tuloy-tuloy na sisirit ang tubig hangga't hindi tuluyang nakukumpuni ang* leak *o tagas nito. Kaya muli po nating isinumite kanina ang* Senate Bill No. 806 *para masawata ang pagsasamantala at hindi makataong pagtrato sa ating mga manggagawa. Patuloy po nating isusulong ang panukalang batas na ito hangga't hindi nawawakasan ang pang-aabuso sa kontraktuwalisasyon at hindi ganap na tinatamasa ng mga manggagawang Pilipino ang tunay na seguridad sa trabaho.*

Tuloy po ang laban sa "ENDO." *Muli, maraming salamat at sa lahat ng kasama natin na nagsulong ng panukalang batas na ito.* May God bless us all.

INTERPELLATION OF SENATOR DRILON

Senator Drilon asked whether the certification of Malacañang, dated September 21, 2018, certifying to the necessity and immediate enactment of Senate Bill No. 1826, was issued when the Committee Report containing the said Senate bill came out.

Senator Villanueva replied in the affirmative, adding that the report was signed by all the members of the Committee on Labor, Employment and Human Resources Development. He likewise affirmed that the Senate passed the bill on Third Reading following the principles outlined in the certification, at least in substance.

Asked why the bill was vetoed, Senator Villanueva stated that precisely he rose to ask the same question in the hope of finding out what exactly the veto message was all about. He said that even Senate President Pro Tempore Recto has noted that Malacañang has not pointed out any particular provision as to why the measure was vetoed.

On whether the veto message specified the reasons that prompted the President to veto Senate Bill No. 1826, actually an administration bill that was certified as urgent, Senator Villanueva replied that the message was only in general form. He pointed out that the definition of labor-only contracting in the bill was the same definition that the President used in his certification dated September 21, 2018. He agreed with Senator Drilon that in accordance with Section 26, Article VI of the Constitution, the certification dispensed with the three-day rule, which meant that the requirement for a bill to be presented to the Members in printed form three days before the Third Reading was dispensed with. He said that the standard message would read that the necessity of immediate enactment was to meet a public calamity or emergency.

Asked whether there was a public calamity or emergency which was the basis of the presidential certification, Senator Villanueva admitted that there was none.

Senator Drilon noted that while the Senate did not see any public calamity or emergency, it gave due respect to the certification and out of departmental courtesy accepted the view of the President that there was a public calamity or emergency.

Senator Villanueva agreed that as a matter of courtesy, the Senate complied with the President's request as contained in his certification.

Senator Drilon believed that as a matter of policy, if the President certifies a bill as found in the committee report, he agrees with it and adopts it as an urgent administration measure.

Senator Villanueva agreed with Senator Drilon, as he informed the Body that he had filed that day Senate Bill No. 806, as he expressed hope that he could elicit the reasons from Malacañang officials as to why they influenced the President to veto it.

At this point, he lamented how meaningless it became when Congress was misled for three years. He reminded the Body that even Senator Drilon, in his capacity as the Minority Leader, attended the very first hearing on the measure conducted by the Committee on Labor, Employment and Human Resources Development.

Senator Drilon opined that it would be too much to say that the Senate has been misled, as they assumed that everything was done in good faith.

Asked on the difference between Senate Bill No. 806 and Senate Bill No. 1826, Senator Villanueva stated that he filed the same bill which the President certified as urgent.

To the possibility that Senate Bill No. 806 could suffer the same fate as Senate Bill No. 1826, Senator Villanueva expressed hope that the Senate would be able to convince the Cabinet officials who were against the old bill. He, however, pointed out that both the Department of Labor and Employment and the Department of Trade and Industry overwhelmingly supported the measure. He said that as a consolation to the Body and to give it more hope, Senator Go could probably help in explaining the measures properly to the Executive Department.

On whether another veto by the President of the new bill would be too much to take, Senator Villanueva replied that he would cross the bridge when he gets there.

On whether he would consider overriding the veto should it happen again, Senator Villanueva confessed that it was actually the Senate President who advised him to refile the vetoed Security of Tenure bill.

On whether it was the first time that a certified bill in the 17th Congress was vetoed, Senator Villanueva replied that according to Senator Zubiri during the hearing of the Committee on Rules earlier that afternoon, it was the second time, with the Coco Levy measure being the first one.

Asked by Senate President Sotto whether there were other uncertified vetoed bills, Senator Zubiri replied that there were three measures authored by Senator Gordon, two measures by Senator Villar and one measure by Senator Hontiveros.

MANIFESTATION OF SENATOR GORDON

Senator Gordon said the he found it abhorrent that a certified bill would be vetoed. He believed that it is not the fault of the President but of the people around him who keep on trying to give him the "last touch treatment." As an example, he mentioned the Office of the Solicitor General bill which he did not initially file but was lobbied upon by some Cabinet officials. He stated that he and Senator Drilon worked very hard to make the bill better but when it did not come out the way they wanted it, it was vetoed. He lamented such sad state of affairs because the Senate, along with the House of Representatives, is a coequal branch of government. He said that it is very important to let the Office of the President know that they should not treat Congress in such a manner as it would render the lawmakers' enthusiasm in crafting good legislation practically inutile.

Agreeing with Senator Gordon, Senator Drilon said that a closer coordination with the Office of the President could have prevented the situation from happening. He believed that in measures that are not certified as urgent and are administration bills, the system of check and balance would empower the President to veto them if he disagrees with the policy that Congress proposes. He said that the Body, however, is just raising the issue where the President has agreed on a certain policy by certifying the bill but afterwards veto it, which the Body thought he agreed with from the start.

Citing the Coco Levy bill, Senator Drilon said that it was the first time he witnessed such an episode in his 21 years in Congress wherein after the Senate and the House of Representatives ratified the Bicameral Conference Committee Report, and sent the enrolled copy of the bill to the President, the measure was returned when he did not agree with some provisions of the bill, so that both Chambers reconvened the Bicameral Conference Committee to correct the objectionable portion. He said that Senator Villar worked so hard to recast the bill and after the bill was passed for the second time and sent to Malacañang, it was vetoed again. He believed that such happened due to lack of proper coordination. He reiterated that the Body was not questioning the power of the President to veto but was only raising an issue of vetoing a measure which was certified as urgent and as an administration measure after it was returned and corrected by Congress. He hoped that such thing should not happen, and that they should have a better PLLO coordinator.

Senator Zubiri concurred with Senator Drilon that the Body was not questioning the veto power of the President since he is allowed under the Constitution. He said that what boggles him are the certified measures, especially the Security of Tenure bill. He believed that the Body should seek clarification from Malacañang on the purpose of such certification.

Senator Zubiri informed the Body that he would meet with Secretary Dominguez on August 5 to discuss the "Trabaho bill," which will bring down the corporate income tax to a lower rate but will remove incentives of several industries thus affecting hundreds of thousands of Filipinos. He said that if

such measure is certified once again, it would then take several months to pass it; and then if another lobby group would approach the President to have it vetoed, then it is something that the Body should be wary of. Thus, he said that Congress should get proper coordination with Malacañang so that vetoing a certified bill would not happen again in the future.

He also informed the Body that in his discussion with Sen. Bong Go earlier that day, the latter pointed out that on August 5, in the mini-LEDAC, he would point out what happened to the vetoed ENDO bill to the members of the Cabinet.

Senator Zubiri suggested that the Body wait for Malacañang to write the new Security of Tenure measure just to be sure, considering that they used to do it in the previous Congresses wherein sponsored measures were actually given by Malacañang for the senators to study further, amend and file them. He then reiterated that the Body should refile the measure with the hope that it would not be vetoed again.

Senator Drilon suggested that the Body express their sentiment that presidential certifications should adhere strictly to the constitutional mandate, which is to address emergency or public calamity and unless these standards are present, to refrain from issuing a certification so that it would not be embarrassing that after they heed the certification and pass the measure, it would be vetoed. At the least, he noted that if the measure is certified and the President vetoes it, it is simply in exercise of his power under the Constitution without entangling himself with an inconsistent position.

MANIFESTATION OF SENATOR VILLANUEVA

Senator Villanueva thanked Senator Drilon for his support. He said that he rose not only for himself or the Committee on Labor, Employment and Human Resources Development, but more importantly for the more than two million workers who are abused by the evils of contractualization.

He also thanked his colleagues who helped him out in the 17th Congress and hoped that he would be given the same support in the 18th Congress.

Senator Villanueva said that Congress is more than willing to walk the extra mile to help the people. He expressed hope that the anti-ENDO bill will be able to see the light at the end of the tunnel.

MANIFESTATION OF SENATOR GORDON

Senator Gordon suggested that individual companies practicing ENDO be put under the light of public scrutiny so that the public would be more aware of the injustice of the situation. He surmised that there are hidden faces or spectre in the Cabinet who are trying to ruin the efforts of Congress and thus might drive away business or investors. He opined that there might be basis for the fear of investors to go into business in the country because it is becoming less predictable.

On the other hand, Senator Gordon stated that if Senator Villanueva would focus on certain companies that are doing such malpractice, there is a long way in letting the public understand because half the problem is letting the public understand how perseverative and how pervasive this practice is.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Zubiri, there being no objection, the Chair referred the privilege speech of Senator Villanueva and the interpellation thereon to the Committee on Labor, Employment and Human Resources Development.

CHANGE OF REFERRAL

Upon motion of Senator Zubiri, there being no objection, the Body approved the change of referral of Proposed Senate Resolution No. 6 from the Committee on Social Justice, Welfare and Rural Development to the Committee on Economic Affairs.

COMMITTEE MEMBERSHIP

Nominated by Senator Zubiri, the following senators were elected members to the committee hereunder indicated:

Committee on Civil Service, Government Reorganization and Professional Regulation

Members :

Majority

Villanueva	Tolentino
Go	Cayetano
Dela Rosa	

Minority

Hontiveros

Committee on Constitutional Amendments and Revision of Codes

Vice Chairperson : Lacson

Members :

Majority

Angara	Tolentino
Poe	Go
Pacquiao	Villar
Gordon	Binay

Minority

Hontiveros

Committee on Cooperatives

Members :

Majority

Gatchalian	Tolentino
Villar	Lapid
Go	Gordon

Minority

Hontiveros	Pangilinan

Committee on Economic Affairs

Members :

Majority

Angara	Lapid
Cayetano	Revilla
Gatchalian	Tolentino

Minority

Hontiveros	Pangilinan

Committee on Electoral Reforms and People's Participation

Vice Chairperson : Lacson

Members:

Majority

Binay	Revilla
Dela Rosa	Tolentino
Go	Villar
Pimentel	

Minority

Hontiveros	Pangilinan

Committee on Environment and Natural Resources

Vice Chairpersons :

Tolentino	Cayetano

Members :

Majority

Binay	Lapid
Dela Rosa	Gordon
Marcos	Go
Pacquiao	Gatchalian
Villanueva	

Minority

Pangilinan	De Lima
Hontiveros	

Committee on Games and Amusement

Members :

Majority

Lacson	Revilla
Go	Tolentino
Pacquiao	Marcos

Minority

De Lima	Pangilinan

Committee on Health and Demography

Vice Chairpersons:

Cayetano	Binay

Members :

Majority

Dela Rosa	Gordon
Tolentino	Lacson
Marcos	Pimentel

Minority

Hontiveros	Pangilinan

Committee on Labor, Employment and Human Resources Development

Vice Chairperson : Binay

Members :

Majority

Go	Pacquiao
Gatchalian	Dela Rosa
Angara	Lacson
Revilla	Pimentel
Tolentino	

Minority

Hontiveros	Pangilinan

Committee on Public Works

Vice Chairpersons :

Revilla	Angara

Members :

Majority

Lacson	Villanueva
Lapid	Poe
Dela Rosa	Go
Tolentino	Gordon

Minority

De Lima	Pangilinan

Committee on Social Justice, Welfare and Rural Development

Vice Chairpersons:

Binay	Marcos

Members:

Majority

Villanueva	Dela Rosa
Cayetano	Revilla

Committee on Sports

Vice chairperson : Pacquiao

Members :

Majority

Cayetano	Villanueva
Dela Rosa	Revilla
Tolentino	

Minority

De Lima	Hontiveros

Committee on Youth

Vice Chairperson : Marcos

Members :

Majority

Binay	Pacquiao
Go	Villanueva

Minority

De Lima

Committee on Trade, Commerce and Entrepreneurship

Vice Chairperson : Gatchalian

Members :

Majority

Poe	Angara
Gordon	Binay
Villar	

Minority

Pangilinan	De Lima

Committee on Foreign Relations

Vice Chairpersons:

Gordon	Dela Rosa
Tolentino	Pacquiao

Members :

Majority

Go	Binay
Lacson	Revilla
Lapid	Poe
Villanueva	

Minority

Hontiveros	De Lima
Pangilinan	

PROPOSED SENATE RESOLUTION NO. 37

With the consent of the Body, upon motion of Senator Zubiri, the Body considered Proposed Senate Resolution No. 37, entitled

RESOLUTION COMMEMORATING THE 105TH FOUNDING ANNIVERSARY OF THE IGLESIA NI CRISTO (INC), COMMENDING THE LEADERSHIP OF KA EDUARDO V. MANALO, AND RECOGNIZING ITS CONTRIBUTION TO THE FILIPINO AND THE WORLD.

With the permission of the Body, only the title of the resolution was read without prejudice to the insertion of its full text into the Record of the Senate.

SPONSORSHIP SPEECH OF SENATOR ZUBIRI

In sponsoring Proposed Senate Resolution No. 37, Senator Zubiri commended Iglesia Ni Cristo for the valuable contribution in shaping the country's moral fiber and spiritual integrity.

The full text of Senator Zubiri's sponsorship speech follows:

> Let me take this moment to recognize an astounding milestone for the Iglesia ni Cristo as they celebrate their 105th Anniversary.
>
> For 105 years now, and with around three million members here and abroad, the Iglesia ni Cristo has been a stalwart religious umbrella that has been influential in shaping the country's moral fiber and spiritual integrity. Aside from sharing the teachings of Christ, the INC has spearheaded large-scale social work by extending assistance to those in need through missions such as the *Lingap sa Mamamayan* or Aid to Humanity Program, an integrated socio-civic service that offers medical and dental services as well as blood donation drives and provides reinforcement in times of calamity and disaster.
>
> With the spiritual, material and cultural contributions, the Iglesia ni Cristo's nation-building influence really cannot be denied. We would be a different nation had it not been for the enduring presence of the INC for the past 105 years. So, Mr. President, let me congratulate the INC and wish them centuries more of success and several programs and projects for the good of our country and their institution.

ALL SENATORS AS COAUTHORS

Upon motion of Senator Zubiri, all senators were made coauthors of Proposed Senate Resolution No. 37.

ADOPTION OF PROPOSED SENATE RESOLUTION NO. 37

Upon motion of Senator Zubiri, there being no objection, Proposed Senate Resolution No. 37 was adopted by the Body, subject to style.

COMMITTEE MEMBERSHIPS

Nominated by Senator Zubiri, the following senators were elected members to the committees hereunder indicated:

Committee on Agriculture and Food

Members :

Minority

Pangilinan Hontiveros

Committee on Energy

Tolentino in lieu of Villanueva

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 6:35 p.m.

RESUMPTION OF SESSION

At 6:35 p.m., the session was resumed.

REQUEST OF SENATOR ZUBIRI

Senator Zubiri asked the senators to convene at the lounge to discuss the House version of the Legislative Calendar of the First Regular Session.

ADJOURNMENT OF SESSION

Upon motion of Senator Zubiri, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Tuesday, July 30, 2019.

It was 6:36 p.m.

I hereby certify to the correctness of the foregoing.

ATTY. MYRA MARIE D. VILLARICA
Secretary of the Senate

Approved on July 30, 2019