



REPUBLIC OF THE PHILIPPINES
Senate
Pasay City

Journal

SESSION NO. 49
Monday, February 3, 2020

EIGHTEENTH CONGRESS
FIRST REGULAR SESSION

SESSION NO. 49
Monday, February 3, 2020

CALL TO ORDER

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

PRAYER

Sen. Pia S. Cayetano led the prayer, to wit:

Let us put ourselves in the presence of the Lord.

Heavenly Father,

Amid the perils that hound the world today, we ask for Your continuous protection. We remember Your Holy Words from Isaiah 41:10, "So do not fear, for I am with you; do not be dismayed, for I am your God. I will strengthen you and help you; I will uphold you with my righteous right hand."

We take comfort in these Holy Words as we continue to pray for the safety of our entire nation and the world. As social media has given us the means to have information at our fingertips, give us the wisdom to filter the right information from the wrong ones. Give us the humility to listen to the real

experts, and to even be able to undertake the unpopular route, if that is the right one.

All of these we lift up to You, O Lord.

Amen.

NATIONAL ANTHEM

The Senate Choir led the singing of the national anthem and thereafter rendered the song, entitled "*Ako ay Pilipino*."

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

v3

With 22 senators present, the Chair declared the presence of a quorum.

Senator Recto was absent.

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

MANIFESTATION OF SENATOR ZUBIRI

Senator Zubiri informed the members of the Body and all the staff that during the senators' meeting earlier at 1:30 p.m., they agreed that the Senate would be implementing stricter protocols on visitations, especially for those seeking financial assistance, due to the global outbreak of the novel coronavirus which has an alarming contamination rate. He also asked the senators to limit their official visits and approach Senate President Sotto or himself if they have questions as regards the protocols.

Senate President Sotto said that an official memorandum on the matter would be issued within the day.

Senator Zubiri also informed the Body that he had already spoken with the members of the House of Representatives, headed by Speaker Alan Cayetano, and that they had also agreed to impose the same precautionary measures.

ACKNOWLEDGMENT OF THE PRESENCE OF GUEST

At this juncture, Senator Zubiri acknowledged the presence in the gallery of the daughter and chief of staff of Atty. Pangalio Balindong, the current speaker of the Bangsamoro Parliament (BARMM).

Senate President Sotto welcomed the guest 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. 48 (January 29, 2020) and considered it approved.

REFERENCE OF BUSINESS

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

BILLS ON FIRST READING

Senate Bill No. 1300, entitled

**AN ACT PROTECTING INDIVIDUALS
WITH MIXED FILIPINO HERITAGE
FROM DISCRIMINATORY ACTS**

Introduced by Senator Tolentino

**To the Committee on Women, Children,
Family Relations and Gender Equality**

Senate Bill No. 1301, entitled

**AN ACT INSTITUTIONALIZING GOVERN-
MENT SUPPORT TO GIFTED AND
TALENTED STUDENTS, APPROPRIAT-
ING FUNDS THEREFOR AND FOR
OTHER PURPOSES**

Introduced by Senator Tolentino

**To the Committees on Basic Education,
Arts and Culture; Higher, Technical and
Vocational Education; and Finance**

Senate Bill No. 1302, entitled

**AN ACT MANDATING THE INSTAL-
LATION OF GRAY WATER TREAT-
MENT SYSTEMS/FACILITIES IN
BUILDINGS AND IMPOSING PENAL-
TIES FOR VIOLATION THEREOF**

Introduced by Senator Poe

To the Committee on Public Works

RESOLUTIONS

Proposed Senate Resolution No. 303, entitled

**RESOLUTION DIRECTING THE PROPER
SENATE COMMITTEES, TO CONDUCT
AN INQUIRY, IN AID OF LEGIS-
LATION, ON THE IMPLICATIONS**

OF THE TERMINATION OF RP-US
VISITING FORCES AGREEMENT

Introduced by Senator Binay

**To the Committees on Foreign Relations;
and National Defense and Security, Peace,
Unification and Reconciliation**

Proposed Senate Resolution No. 304, entitled

RESOLUTION CONGRATULATING AND
COMMENDING HIDILYN F. DIAZ
FOR SUCCESSFULLY DOMINATING
THE 2020 ROMA WEIGHTLIFTING
WORLD CUP WITH THREE GOLD
MEDALS ON 28 JANUARY 2020 IN
ROME, ITALY, SECURING FOR THE
COUNTRY A SPOT IN THE 2020
SUMMER OLYMPICS IN TOKYO,
JAPAN

Introduced by Senator Zubiri

To the Committee on Rules

Proposed Senate Resolution No. 305, entitled

RESOLUTION EXPRESSING THE SENSE
OF THE SENATE THAT TERMINA-
TION OF, OR WITHDRAWAL FROM,
TREATIES AND INTERNATIONAL
AGREEMENTS CONCURRED IN BY
THE SENATE SHALL BE VALID
AND EFFECTIVE ONLY UPON
CONCURRENCE BY THE SENATE

Introduced by Senator Drilon

**To the Committees on Foreign Relations;
and National Defense and Security, Peace,
Unification and Reconciliation**

Proposed Senate Resolution No. 306, entitled

RESOLUTION EXPRESSING THE SENSE
OF THE SENATE THAT THE VALI-
DITY AND IMPLEMENTATION OF
THE VISITING FORCES AGREE-
MENT BETWEEN THE REPUBLIC
OF THE PHILIPPINES AND THE
UNITED STATES OF AMERICA
SHOULD BE URGENTLY REVIEWED

Introduced by Senator Marcos

**To the Committees on Foreign Relations;
and National Defense and Security, Peace,
Unification and Reconciliation**

Proposed Senate Resolution No. 307, entitled

RESOLUTION URGING THE APPRO-
PRIATE SENATE COMMITTEE TO
CONDUCT AN INQUIRY, IN AID
OF LEGISLATION, ON GARBAGE
IMPORTED INTO THE COUNTRY,
WITH THE GOAL OF FORMULAT-
ING POLICY INTERVENTIONS TO
RESOLVE GARBAGE IMPORT-
ATION ISSUES

Introduced by Senator Cayetano

**To the Committees on Environment,
Natural Resources and Climate Change; and
Foreign Relations**

Proposed Senate Resolution No. 308, entitled

RESOLUTION DECLARING 2020 AS
THE SUSTAINABLE DEVELOP-
MENT GOALS DECADE OF ACTION

Introduced by Senator Cayetano

**To the Committee on Sustainable Develop-
ment Goals, Innovation and Futures Thinking**

COMMUNICATION

Letter from the Office of the President of the
Philippines, transmitting to the Senate two (2)
original copies of Republic Act No. 11468,
entitled

AN ACT DESIGNATING THE THIRD
SUNDAY OF NOVEMBER EVERY
YEAR AS THE NATIONAL DAY OF
REMEMBRANCE FOR ROAD
CRASH VICTIMS, SURVIVORS,
AND THEIR FAMILIES,

which were signed by President Rodrigo Roa
Duterte.

To the Archives

✓

2

ADDITIONAL REFERENCE OF BUSINESS**BILLS ON FIRST READING**

Senate Bill No. 1303, entitled

AN ACT ESTABLISHING THE SCIENCE
FOR CHANGE PROGRAM

Introduced by Senator Lacson

**To the Committees on Science and Techno-
logy; and Finance**

Senate Bill No. 1305, entitled

AN ACT AMENDING SECTION 9 OF
PRESIDENTIAL DECREE NO. 651,
ENTITLED "REQUIRING THE REGIS-
TRATION OF BIRTHS AND DEATHS
IN THE PHILIPPINES WHICH
OCCURRED FROM JANUARY 1,
1974 AND THEREAFTER"

Introduced by Senator De Lima

**To the Committee on Justice and Human
Rights**

Senate Bill No. 1306, entitled

AN ACT REDEFINING THE MANDATE
OF THE PUBLIC ATTORNEY'S
OFFICE (PAO), AMENDING FOR
THE PURPOSE REPUBLIC ACT NO.
9046 AND PERTINENT PROVISIONS
OF EXECUTIVE ORDER NO. 292,
OTHERWISE KNOWN AS THE
"ADMINISTRATIVE CODE OF 1987"
AS AMENDED, AND FOR OTHER
PURPOSES

Introduced by Senator De Lima

**To the Committees on Justice and Human
Rights; and Civil Service, Government Reorganiz-
ation and Professional Regulation**

Senate Bill No. 1307, entitled

AN ACT REDEFINING THE CRIME OF
SYNDICATED ESTAFA, AMENDING
FOR THE PURPOSE SECTION 1 OF

PRESIDENTIAL DECREE NO. 1689

Introduced by Senator De Lima

**To the Committee on Justice and Human
Rights**

RESOLUTION

Proposed Senate Resolution No. 309, entitled

RESOLUTION DIRECTING THE PROPER
SENATE COMMITTEES, TO CONDUCT
AN INQUIRY AND ASSESSMENT,
IN AID OF LEGISLATION, ON THE
VISA UPON ARRIVAL POLICY FOR
CHINESE NATIONALS WITH THE
END IN VIEW OF ENSURING THAT
THE VISA UPON ARRIVAL SCHEME
WOULD NOT POSE HEALTH RISKS
AND FACILITATE THE PROLIFERA-
TION OF SEX TRAFFICKING AND
PROSTITUTION IN THE COUNTRY

Introduced by Senator Binay

**To the Committees on Foreign Relations;
and Women, Children, Family Relations and
Gender Equality**

**ACKNOWLEDGMENT
OF THE PRESENCE OF GUEST**

At this juncture, Senator Zubiri acknowledged
the presence in the gallery of Gov. Miguel Luis
"Migz" Villafuerte of Camarines Sur.

Senate President Sotto welcomed Governor
Villafuerte to the Senate.

**COMMITTEE REPORT NO. 9
ON SENATE BILL NO. 1083**

(Continuation)

Upon motion of Senator Zubiri, there being no
objection, the Body resumed, on Second Reading, of
Senate Bill No. 1083 (Committee Report No. 9),
entitled

AN ACT AMENDING CERTAIN
PROVISIONS OF REPUBLIC ACT
NO. 9372, OTHERWISE KNOWN AS
AN ACT TO SECURE THE STATE

ms 

AND PROTECT OUR PEOPLE FROM TERRORISM.

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

Thereupon, the Chair recognized Senator Lacson, sponsor of the measure, and Senator Drilon, for the continuation of his interpellation.

INTERPELLATION OF SENATOR DRILON (Continuation)

At the outset, Senator Drilon expressed the view that the definition of terrorism must have legal precision and certainty because the penalty of the many punishable acts is life imprisonment. He said that the issue, therefore, is when an individual will be charged with violation of the Anti-Terror Act, with rebellion, with *coup d'etat*, or with sedition, because under the present statute books, there are acts which could qualify under any of those four laws. He noted that the international definition of terrorism has as its main objective, "to sow fear and spread violence," while under the proposed measure, the terror act would be qualified through its purpose, namely, "to intimidate, put fear, force or induce the government or any international organization or the public to do or abstain from doing any act or seriously destabilize or destroy the fundamental political, economic and social structures of the country, or create a public emergency or undermine public safety." Thus, he said that when a fiscal is confronted with a complaint by the law enforcement authorities, he has to judge what information would be filed in court because terrorism, *coup d'etat*, rebellion, and sedition have similar elements. He then asked what the distinguishing factors are that the prosecutor would use as basis in deciding whether the punishable act falls under rebellion, sedition, *coup d'etat* or terrorism.

In reply, Senator Lacson said that aside from the definition contained in Section 4, further guidance may be taken from G.R. No. 231658, a decision by the Supreme Court dated July 4, 2017, on the *Lagman vs. Medialdea* case, to wit:

"In determining what crime was committed, we have to look into the main objective of the malefactors. If it is political, such as for the purpose of severing the allegiance of Mindanao to the Philippine Government to establish a *wilayat* therein, the crime is rebellion. If, on the other hand, the primary objective is to sow and

create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand, the crime is terrorism. Here, we have already explained and ruled that the President did not err in believing that what is going on in Marawi City is one contemplated under the crime of rebellion."

However, Senator Drilon referred to Article 134 of the Revised Penal Code on the definition of rebellion, to wit:

"The crime of rebellion or insurrection is committed by rising publicly and taking arms against the government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

He noted that the purpose of rebellion is what an act of terrorism would have based on its definition, a portion of which reads: "seriously destabilize or destroy fundamental, political, economic, or social structures of the country and force or induce the government or any international organization or the public to do or to abstain from doing any particular act." He opined that the definition of terrorism was broad enough to include rebellion, making it difficult for fiscals to judge what crime or what information to file. Thus, he stressed the importance of identifying the difference between rebellion and terrorism because it is what the fiscals would be looking at.

Senator Lacson explained that precisely, after the enumeration of the acts that would constitute acts of terrorism, an amendment was inserted in the second paragraph, to wit: "WHEN THE PURPOSE OF SUCH ACT BY ITS NATURE AND CONTEXT IS TO INTIMIDATE, PUT IN FEAR...." Further, he cited the same Supreme Court ruling in the *Lagman vs. Medialdea*: "Besides, there is nothing in Art. 134 of the RPC and RA 9372 (Human Security Act) which states that rebellion and terrorism are mutually exclusive of each other or that they cannot co-exist together. RA 9372 does not expressly or impliedly repeal Art. 134 of the RPC. And while rebellion is one of the predicate crimes of terrorism, one cannot absorb the other as they have different elements." Also, he said that under the Revised Penal Code, the elements of rebellion were as follows: (1) that there will be (a) public uprising and (b) taking arms against

the government; (2) that the purpose of the uprising or movement is either (a) to remove from the allegiance to said government or its laws, the territory of the Philippines or any part thereof, or to any body of land, naval, or other armed forces, or (b) to deprive the Chief Executive or Congress wholly or partially of any of their powers or prerogative.

Senator Drilon opined that the elements of rebellion cited in the Revised Penal Code would be encompassed in the general purpose which would qualify as an act of terrorism. He said that an act of terrorism is done for the purpose of forcing or inducing the government or any international organization or the public to do or to abstain from doing any act, which he viewed as broad enough to certainly cover rebellion.

Senator Lacson clarified that in the definition of terrorism, there is no public uprising involved in the crime as in the case of rebellion. He said that the absence of public uprising in terrorism delineates it from rebellion.

Asked whether an act of violence would not qualify as rising publicly, Senator Lacson pointed out that under Article 134, public uprising is an element of rebellion, while in the proposed measure public uprising is not necessarily an element.

Asked whether the Marawi Siege was a rebellion or whether it was an act of terrorism, assuming that the bill was already a law at that time, Senator Lacson replied that the determination would depend on the evidence as presented by the prosecutor, pointing out that if the evidence would prove that there are elements that would fall under the provisions of the Anti-Terrorism Act, the prosecutor may file for violation of said law but if the nature and context by which the crime was committed would not constitute violation of that law, then as in the case of Marawi Siege, the case would be rebellion.

Senator Drilon stated that the act which took place in the Marawi Siege could very well fall under the definition of the purpose for which terrorism is committed — to force or induce the government or the public to do or abstain from doing any act and seriously destabilized or destroy the fundamental, political, economic, and social structure of the country. Asked whether it would be rebellion or terrorism when the perpetrators tried to remove Marawi from the country, Senator Lacson stated that the existing

law at the time the Marawi siege was committed still contained predicate crimes, including the P500,000 penalty, that was why the government chose to file the case of rebellion; however, if the proposed bill was already a law at that time, the government would have filed a case of terrorism. He added that in the case of terrorism, an individual could commit such crime but not in rebellion where there must be public uprising and necessitates the participation of other individuals.

Asked whether the crime of rebellion does not carry the penalty of life imprisonment, Senator Lacson assumed that the crime of rebellion is not a capital offense.

Asked whether some charged of terrorism can be convicted for rebellion if the defense counsel is able to prove that the crime committed is rebellion, Senator Lacson answered in the affirmative, pointing out that rebellion is another offense and that double jeopardy will not set in because even if the crime of terrorism under the measure is dismissed for some reason, the crime of rebellion can still be pursued.

Senator Drilon asked whether the judge, having heard the evidence and having seen that the elements of terrorism have not been proven but, in fact, all the evidence pointed to rebellion, can convict the accused of rebellion even if charge sheet or information was a case of terrorism. He said that in the Revised Penal Code, anyone charged with murder can still be convicted of homicide if no element of murder such as treachery is established because they fall within the same class of crimes. He asked whether the same theory could be applicable in the law because rebellion is punished under the Revised Penal Code while terrorism is punished under a special law. He further asked whether one can be convicted for rebellion under the Revised Penal Code and at the same time be charged for terrorism which is a special law.

Senator Lacson stated that there is a different rule in the case of murder which can be downgraded to homicide, and he agreed that the judge cannot convict a person arraigned for the crime of terrorism for another crime which is rebellion if the judge does not find sufficient evidence to convict the respondent for terrorism.

Senator Drilon said that the under the Revised Penal Code, so long as the crime falls under the

same title, one can be convicted for a lesser crime. He requested Senator Lacson to study the measure well and to find out how they can provide in the law elements which can distinguish one from the other so that both the prosecutor and the judge will not be in a quandary. Senator Lacson agreed.

Asked on the difference in the elements between a *coup d'état* and those constituting act of terrorism, Senator Lacson explained that the purpose of *coup d'état*, under Article 134A, as amended by RA 6968, is to "seize or diminish state power"; thus, the malefactor's intent and purpose or objective of the act being committed would serve as the guide.

But Senator Drilon noted that the way the definition was crafted, whether or not one is a public officer, or a military, or a police, "any person" can be convicted under the anti-terrorism measure; whereas, in a *coup d'état*, unless one is a public officer one cannot fall under the category. For instance, he asked what crime former Senator Honasan would be charged with, supposing he was still a member of the Armed Forces of the Philippines and committed what he had committed.

Senator Lacson said that Senator Honasan would be charged for *coup d'état* because his purpose was clear — to seize or diminish state power.

But Senator Drilon pointed out that the purpose is also covered by the broad definition of forcing or inducing the government or any international organization or the public to do or to abstain from doing any particular act.

Senator Lacson said that the evidence clearly showed the objective or the intent, or purpose of the person committing the act.

To Senator Drilon's query whether the position of the person who committed acts of terrorism would be the more crucial distinction as Senator Honasan would be charged for the crime of *coup d'état* under Article 134-A because he was a public officer rather than charged as a terrorist, Senator Lacson pointed out that the seizing or diminishing of state power is different from preventing the government to perform its functions; thus, the prosecutor must be guided by the purpose or intent for which the act was committed.

Senator Drilon stated that his concern was on the definition because it covers "any person". He recalled that the first time he took the floor during the period of interpellations, Senator Lacson clearly stated that under the circumstances, Senator Honasan could not be charged for terrorism but *coup d'état*, as he was a public officer; in the succeeding interpellation, Senator Lacson stated that Senator Honasan could be charged for terrorism.

As regards the observation that the purpose of seizing and diminishing state power, and destabilizing the political structure could either be acts of terrorism or *coup d'état*, Senator Lacson stated that the operative phrase "to seize or diminish state power" was apparent when Senator Honasan embarked on several adventures to seize or diminish state power, but not to terrorize.

Senator Drilon believed that there was nothing wrong in providing a clearer definition of the term "terrorism" because this is an area where confusion and difficulty would arise. Senator Lacson assured that the deliberations would serve as guide in establishing the proper language to define what "acts of terrorism" should be.

Senator Drilon hoped that during the period of amendments, Senator Lacson would be able to clarify in the language of the bill what the elements of terrorism, rebellion, sedition, and *coup d'état* are that would distinguish one from the other so that the prosecutor and the judge could see the direction they should take in punishing the acts committed.

Senator Drilon then asked how a liberation or democratic movement is distinguished from terrorism, and when is a person considered a terrorist or a leader of a liberation movement, particularly when violence takes place as in the case of Nelson Mandela. Senator Lacson prefaced his answer with the quotation "One man's terrorist is another man's freedom fighter." He noted that a democratic movement has a legitimate purpose to express dissent, similar to what happened during martial law period where people succeeded in taking up arms to correct an abusive regime; had they lost, they would be considered as terrorists or rebels, and would be criminally answerable for their acts, he said. Thus, he acknowledged the need to seriously examine the intent and purpose of the act by its nature and context.

But Senator Drilon observed that a deeper analysis would show the broad definition of terrorism would

1115

include rebellion, sedition, and *coup d'état*. He hoped that at the appropriate time, Senator Lacson could look more closely at the vagueness or broadness of the definition to see how it could be better addressed.

Asked if in the absence of purpose or intent to qualify it as an act of terrorism, the act would be punished under the Revised Penal Code, specifically under rebellion or *coup d'état*, Senator Lacson replied in the affirmative.

On the issue of proscription, Senator Drilon noted that under the proposed measure, it is a mandatory requirement for the judge to issue a preliminary order of proscription within 72 hours after the filing of application should the judge determine that there is probable cause to show that a group is a terrorist organization. Asked if the preliminary order based on probable cause could be the basis for the detention of alleged members of the organization, Senator Lacson replied in the affirmative, saying that in the preliminary order of proscription, there must be probable cause to the membership of each and every member of a proscribed organization, and that the alleged members' assets would even be frozen.

Senator Drilon also noted that the burden of proof would now be shifted from the government to the proscribed group to prove why a preliminary order of proscription must be set aside. This, he said, might pose problem because it is now the defendants who must prove that they are not members of a proscribed organization, which is contrary to the presumption of innocence enshrined in the Constitution. He expressed his concern that the preliminary order of proscription might be used to justify the random detention of individuals under the guise of their membership in a proscribed group. In other words, he explained that once the judge rules on the basis of a preliminary submission that XYZ organization is a terrorist group, a person can be detained based on the order of proscription, and the burden of proof to show that the order has no basis is now on that person rather than on the prosecutor and the government.

Senator Lacson said that the principle is akin to a respondent against whom a warrant of arrest was issued by the judge based on probable cause but would not be convicted yet; however, during trial, since the crime is unbailable, he/she would be detained until such time that the judge grants bail or the prosecution fails to prove guilt beyond reasonable doubt. He clarified that it does not necessarily mean

the burden of proof has shifted to the respondent so he/she would not be detained because the threshold that the judge will follow before issuing a preliminary order of proscription is probable cause—in the same manner that a prosecutor files the information for finding probable cause against an individual, and the judge, after judicial determination of probable cause, will issue a warrant of arrest. He emphasized that there is no difference with respect to the due process being followed in the current justice system. He further explained that a person would be detained once the judge finds probable cause and issues a preliminary order of proscription against the organization including its established members, and within six months, the judge will determine if the preliminary order of proscription would be a permanent order. He reiterated that there was no deviation from the regular practice of detaining a person after finding probable cause, and that the judicial determination of probable cause is likewise observed.

Senator Drilon noted that at present, when information is filed in court, the judge determines the issuance of a warrant of arrest on the basis of his own personal examination or judicial determination of probable cause. Senator Lacson recalled that when he was still with the law enforcement, the judge has no other option but to issue a warrant of arrest especially when the prosecutor claims that the information filed has probable cause.

Senator Drilon noted that jurisprudence has evolved, pointing out that the Supreme Court has even ruled that the judge would have to examine personally and determine whether or not there is probable cause. Asked if such procedure is applicable in the bill, and whether or not the application for declaring an organization as a proscribed organization is determined by the judge, Senator Lacson replied in the affirmative.

Thereupon, Senator Drilon proposed to include the applicable provision in the Constitution insofar as such procedure is concerned. Senator Lacson gave the assurance that the judge has to exercise judicial determination of probable cause before issuing a preliminary order of proscription, adding that the filing of the application must be with the authority of the Anti-Terrorism Council, upon the recommendation of the National Intelligence Coordinating Agency (NICA).

Senator Drilon said he would be waiting for the submission of the amendments on the issuance of

PS

preliminary order of proscription by a court of law to be clearly enunciated in the proposed measure.

As regards individuals who are supposedly members of a proscribed organization, Senator Drilon asked what kind of safeguards could be included in the law so that the mere fact that it is a proscribed organization should not result in every alleged member being indiscriminately arrested. He noted that under the proposed measure, one can be detained for 14 working days and there could be some degree of arbitrariness.

Senator Drilon posed a situation wherein he was alleged to be a member of a proscribed organization, he was arrested and detained for 14 working days. He asked how the proposed measure would then guard him against abuses. Senator Lacson replied that it is incumbent upon the government to prove that the person to be arrested is indeed a member of that proscribed organization and that he knowingly became a member of such organization before he could be arrested. He said authorities cannot just arbitrarily arrest any person on the basis of being suspected to be a member of the said organization.

Senator Drilon noted that unless there is proof that the person became a member, knowing that it is a terrorist organization, he cannot be arrested. He said that this intent must be clearly reflected in the proposed measure.

Senator Lacson read the second paragraph of Section 9, to wit:

“ANY PERSON WHO SHALL VOLUNTARILY AND KNOWINGLY JOIN ANY ORGANIZATION, ASSOCIATION OR GROUP OF PERSONS KNOWING THAT SUCH ORGANIZATION, ASSOCIATION OR GROUP OF PERSONS IS PROSCRIBED UNDER SECTION 24 OF THIS ACT, OR THE UNITED NATIONS SECURITY COUNCIL-DESIGNATED TERRORIST ORGANIZATION, OR ORGANIZED FOR THE PURPOSE OF ENGAGING IN TERRORIST ACTS, SHALL SUFFER THE PENALTY OF xxx.”

Senator Drilon placed on record that it is not mere membership in the proscribed organization, but that it must be proven before the court that the person, with full knowledge of the nature of the organization, knowingly and voluntarily joined it. He said that it is not automatic that one who is a member of a proscribed organization could be arrested.

At this juncture, Senator Gordon agreed with Senator Drilon that mere membership is not a ground for arrest and that the person must have knowingly joined the organization.

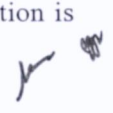
Senator Lacson disclosed that there was, in fact, a pending petition before the Department of Justice (DOJ) to declare the Communist Party of the Philippines-New People's Army (CPP-NPA) as a proscribed terrorist organization, together with a government-submitted list of its members that could be arrested only upon the petition's approval. He said that, if granted, the government could later submit a supplemental petition to include additional members who must also be proven to have knowingly, voluntarily, and with full knowledge of the nature of the organization, joined it. He admitted that there is no phrase referring to the presumption of knowing, as he affirmed that it is implied in the provision on providing material support in Section 11.

At this juncture, Senator Tolentino asked whether the United Nations' declaration of proscribed organizations itself would suffice for a Philippine court of law to rely on, or whether there is still need for a court determination or validation that such organization is a terrorist organization. Senator Lacson said that an act of a court in the Philippines is required to formalize the United Nations' resolution declaring a terrorist organization as a proscribed organization.

Asked if he has a list of the organizations proscribed by the United Nations and if it included the well-known Middle Eastern terrorist fronts as mentioned during the interpellation, Senator Lacson replied in the affirmative, saying that Al-Qaeda and ISIS are included in the United Nations' list of proscribed terrorist organizations.

Senator Tolentino concluded that even if there is a prior list coming from the United Nations, it would not be automatic that knowingly becoming a member of an organizations proscribed by the United Nations would merit an offense as enunciated by the proposed law. Senator Lacson said it should be formalized by a competent Regional Trial Court that would issue an order of proscription.

Senator Tolentino asked how an accused member of a proscribed organization could exonerate himself in an ongoing court hearing at the instance that the timing of his membership was *a priori*, or before the declaration of the court that the said organization is a terrorist organization.



Senator Lacson said that the person's involvement would not qualify as "joining knowingly and with full knowledge of the nature of the organization," supposing it was only in such court hearing that an individual found out that the organization that he joined is a terrorist front. However, he said that the person might still be charged with terrorism if the government is able to prove that he is really a member.

Adverting to Section 22, which includes a new Section 25, Senator Drilon asked Senator Lacson to closely examine paragraph 4, starting on line 22, which states:

"THE COURT WILL SCHEDULE A SUMMARY HEARING AT A DATE AND TIME WITHIN A SIX-MONTH PERIOD FROM THE FILING OF THE VERIFIED APPLICATION, WHEN THE RESPONDENT MAY, FOR GOOD CAUSE, SHOW WHY THE ORDER OF PROSCRIPTION SHOULD BE SET ASIDE."

He noted that the provision shifted the burden of proof to the one who was arrested because he now has to show that the order of proscription should be set aside. Senator Lacson explained that the burden of proof stays with the government, but if after 72 hours the judge determines probable cause for the issuance of preliminary order of proscription against the organization concerned, the burden of evidence would be shifted from the government to the other party or the accused. He affirmed that the burden on the government is only to show probable cause within the six-month period.

Senator Drilon asked if it would be better that the order be reversed, so that within that period, the prosecution must show that, indeed, the preliminary order was valid and supported by evidence rather than shifting the burden to the defendant. He reminded the Body that it would be a summary hearing and not just meant to establish probable cause, and that the standard of evidence or the hurdle for purposes of evidence is low. Senator Lacson agreed to revisit the provision in order to make it consistent and fair.

Senator Lacson cited another jurisprudence, in *Corpus vs. Sarmiento*, G.R. No. L-45137, which stated that:

"When a *prima facie* case is established by the prosecution in a criminal case, as in the case at bar, the burden of proof does not shift to the

defense. It remains throughout the trial with the party upon whom it is imposed—the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial. This burden of going forward with the evidence is met by evidence which balances as introduced by the prosecution. Then the burden shifts back."

Senator Lacson said he was open to an amendment to further improve the language of Section 25, paragraph 2.

As regards the deputized law enforcement agency or military personnel authorized to file charges, Senator Lacson admitted that the provision was vague, but he believed that it is the Anti-Terrorism Council-Program Management Center (ATC-PMC) that would issue the authority. Senator Drilon noted that, in concept, it is the Anti-Terrorism Council which is the source of deputization.

Referring to the provision specifying 14 working days as the period of detention without judicial warrant of arrest, Senator Drilon pointed out that the actual period would be three weeks if considered on a calendar basis, excluding Saturday and Sunday. He raised the possibility that the 14 working days would be subject to different interpretations as they might fall during special non-working holidays such as Holy Week. Senator Lacson proposed 14 calendar days, subject to an extended period of another four or five days.

Asked who would determine the extension of the period of detention, Senator Lacson replied that it would be a court of law. He said that other countries such as Singapore has a detention period of 732 days that can be extended indefinitely.

Senator Drilon said he would wait for the proposed amendment.

Senator Drilon noted that on page 26, lines 11 to 14, the bill proposed the deletion of an existing provision, which provided:

"That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7, and examination of bank deposits under Section 27 of this Act."

Senator Drilon asked Senator Lacson to spread into the record the rationale of the said deletion.

SUSPENSION OF SESSION

Upon motion of Senator Lacson, the session was suspended.

It was 4:20 p.m.

RESUMPTION OF SESSION

At 4:20 p.m., the session was resumed.

In reply, Senator Lacson explained that the provision was deleted as an additional safeguard. Senator Drilon believed otherwise, saying that the provision proposed to be deleted is, in fact, a safeguard.

SUSPENSION OF SESSION

Upon motion of Senator Lacson, the session was suspended.

It was 4:21 p.m.

RESUMPTION OF SESSION

At 4:23 p.m., the session was resumed.

Upon resumption, Senator Lacson stated that the proposed deletion sought to make the law proactive. He explained that as stated in previous paragraphs, the purpose is to prevent the occurrence of acts of terrorism which would result in loss of lives and properties, and that in place of the deleted provision, a phrase was inserted under Section 27, to wit: "PERSONNEL OR DEPUTIZED LAW ENFORCEMENT AGENCY OR MILITARY PERSONNEL IF IT IS ESTABLISHED THAT (1) FURTHER DETENTION OF THE PERSON/S IS NECESSARY TO PRESERVE EVIDENCE RELATED TO THE TERRORIST ACT OR COMPLETE THE INVESTIGATION; (2) FURTHER DETENTION OF THE PERON/S IS NECESSARY TO PREVENT THE COMMISSION OF ANOTHER TERRORIST ACT; AND (3) THE INVESTIGATION IS BEING CONDUCTED PROPERLY AND WITHOUT DELAY."

Senator Drilon requested that Senator Lacson further clarify the provision during the period of amendments.

Senator Lacson stated that it could be balanced by the inclusion of several safeguards under the

proposed measure. As stated in the bill, he said that the law enforcer taking custody shall notify in writing the judge nearest the place of arrest of the following information: time, date, and manner of arrest; the location or locations of the detained suspects; physical and mental condition, a copy of which would be furnished to the Anti-Terrorism Council and Commission on Human Rights, as proposed by Senator Hontiveros.

Regarding the previous answer of Senator Lacson on amending "14 working days" to "14 calendar days, provided that an application for extension can be provided" on page 26, line 2, Senator Drilon asked if the application should be done before the court. Senator Lacson answered in the affirmative.

Asked why the requirement for an official custodial logbook under Section 23 had been deleted, Senator Lacson explained that it has been replaced by the provision "The judge nearest the place of arrest must be informed" which he cited earlier, thus making it more effective than a custodial logbook.

SUSPENSION OF SESSION

Upon motion of Senator Drilon, the session was resumed.

It was 4:27 p.m.

RESUMPTION OF SESSION

At 4:28 p.m., the session was resumed.

Adverting to the proposed deletion of Sections 27 and 28 (*Judicial Authorization Required to Examine Bank Deposits, Accounts, and Records*), Senator Drilon asked if bank deposits could be examined even without court authorization. Senator Lacson said that those provisions are a restatement of the provisions on terrorist financing under Republic Act No. 10168.

Regarding Section 32 (*Bank Inquiry and Examination*), Senator Drilon asked if a mere court designation of an organization as a terrorist organization sufficient authorization for law enforcement to examine and open bank accounts. He noted that the section provides that the bank accounts may be opened through the Anti-Money Laundering Council upon being declared as a terrorist organization without any further need of a court authorization. Senator Lacson stated that the provision under RA 10168 would apply, particularly Section 11 which authorizes

Anti-Terrorism Council to issue an *ex parte* order to freeze property or funds without delay. Senator Drilon asked whether that requirement would be dispensed with in view of the proposed amendment to Section 23. He said that the way he envisioned Section 32 is that it would declare an organization as a proscribed organization, and the law enforcement agency, through the Anti-Money Laundering Council, may conduct an inquiry and examine the bank accounts and investments of such organization, and that "such inquiry and examination shall be in accordance with Republic Act No. 9160." He stated that the first sentence implies that it can be done without any court order, while the second sentence requires a court order. Senator Lacson stated that the law was not amended, and that it was the same provision under the AMLA as amended by RA 10168.

Once an organization is declared as an outlawed organization and an order of proscription has been issued, Senator Drilon asked if it would be enough for the AMLC to open the accounts of the terrorist organization. Senator Lacson answered in the affirmative, citing Sections 10 and 11 of RA 10168.

Senator Drilon requested that he be permitted to raise additional clarificatory questions once the amendments are introduced, saying that they all have a common purpose which is to strengthen the country's ability to fight terrorism but at the same time, he cautioned that they should be conscious of their obligation to make sure that abuses are not committed in the name of fighting terrorism. Senator Lacson assured the Body that he would welcome anything that will improve the final version of the measure.

SUSPENSION OF SESSION

With the permission of the Body, the session was suspended.

It was 4:39 p.m.

RESUMPTION OF SESSION

At 5:17 p.m., the session was resumed.

INTERPELLATION OF SENATOR GORDON

Asked by Senator Gordon whether proscription would automatically or, at the very least, allow the government to start freezing assets, Senator Lacson replied in the affirmative.

Senator Gordon pointed out that under the Dangerous Drugs Law, when assets are frozen after a case, it is immediately forfeited in favor of the government; on the other hand, the proposed measure would follow the AMLA procedure. Senator Lacson explained that the Anti-Money Laundering Council (AMLC) would file *ex parte* and the Court of Appeals would issue the freeze order.

Asked where the frozen assets would go, Senator Lacson said that it would go to the AMLC.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

There being no further interpellation, upon motion of Senator Zubiri, there being no objection, the Body closed the period of interpellations and proceeded to the period of amendments.

MANIFESTATION OF SENATOR DRILON

Senator Drilon said that he has extensively studied the bill and found it extremely difficult, as he noted the many implications on every provision and the fact that it involves the study of so many laws. He believed that Senator Lacson was the one most familiar with the bill as he was the one who drafted it. Moreover, he said that since Senate Bill No. 1083 was a substitute bill, under the Rules there could be no committee amendments. For the same reason, he proposed that the Rules be suspended during the period of amendments in order to allow the committee to introduce amendments. He said that if the Body would proceed with the individual amendments, the Members would find it very difficult to understand and follow what the bill was all about.

Senate President Sotto said that technically, the amendments of Senator Lacson would be considered as individual amendments. However, he said that he does not see any problem with the manifestation of Senator Drilon and if there was no objection from the Body, the motion may be approved and Senator Lacson may submit committee amendments to be considered as the working draft.

SUSPENSION OF THE RULES

Upon motion of Senator Drilon, there being no objection, the Body approved the suspension of the Rules of the Senate to allow Senator Lacson to

17

present further committee amendments prior to the period of individual amendments.

MANIFESTATION OF SENATOR LACSON

Senator Lacson requested to be given another day to present the committee amendments because the Committee would have to consolidate and review the issues and concerns that were raised during the period of interpellations.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1083

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

COMMITTEE REPORT NO. 31 ON SENATE BILL NO. 1240 (Continuation)

Upon motion of Senator Zubiri, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1240 (Committee Report No. 31), entitled

AN ACT INSTITUTIONALIZING BAMBOO INDUSTRY DEVELOPMENT IN THE PHILIPPINES, CREATING THE BAMBOO INDUSTRY DEVELOPMENT CENTER (BIDC), APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

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

Thereupon, the Chair recognized Senator Pimentel, sponsor of the measure.

MANIFESTATION OF SENATOR ZUBIRI

Senator Zubiri manifested that Senator Revilla would no longer interpellate on the measure and would instead propose amendments to the bill.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

There being no further interpellation, upon motion of Senator Zubiri, there being no objection, the Body

closed the period of interpellations and proceeded to the period of committee amendments.

MANIFESTATION OF SENATOR PIMENTEL

Senator Pimentel informed the Body that he would be proposing about nine amendments to the bill — four to address the concerns of Senator Drilon, four from Senator Villar, and an amendment jointly proposed by Senators Binay and Revilla. Saying that he has yet to finalize the wordings of the proposed amendments, he requested that the period of amendments be scheduled on another day.

COAUTHORS

Upon motion of Senator Zubiri, there being no objection, Senators Revilla, Binay, Gordon, Drilon, Villar, Villanueva and Tolentino were made coauthors of the bill.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1240

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

CHANGE OF COMMITTEE REFERRAL

Upon motion of Senator Zubiri, there being no objection, the Body approved to transfer the referral of Senate Bill No. 1138 (An Act Strengthening Local Government Participation in Agriculture Development) to the Committee on Agriculture, Food and Agrarian Reform as the primary committee and to the Committee on Local Government as the secondary committee.

SECOND ADDITIONAL REFERENCE OF BUSINESS

The Secretary of the Senate read the following resolutions which the Chair referred to the committees hereunder indicated:

Proposed Senate Resolution No. 310, entitled

RESOLUTION CREATING A SELECT OVERSIGHT COMMITTEE ON INTELLIGENCE AND CONFIDENTIAL FUNDS, PROGRAMS AND ACTIVITIES

Introduced by Senators Sotto III and Lacson

To the Committee on Rules

Proposed Senate Resolution No. 311, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION AND WITHIN THE CONTEXT OF THE PROGRAMME FOR INTERNATIONAL STUDENT ASSESSMENT (PISA) RESULTS, IN ORDER FOR THE SENATE TO ALIGN ITS LEGISLATIVE INITIATIVES AND BUDGETARY PRIORITIES WITH THE VISION OF THE DEPARTMENT OF EDUCATION AS IT PIVOTS ITS FOCUS FROM ACCESS TO QUALITY IN THE BASIC EDUCATION SECTOR, AND TO SUSTAIN THE BOLD EFFORTS OF OTHER STAKEHOLDERS TO IMPROVE THE EDUCATION SYSTEM AND MAKE IT INSTRUMENTAL TO DEVELOPING THE COUNTRY'S HUMAN CAPITAL AND SERVE AS A MAJOR CATALYST TO NATIONAL DEVELOPMENT

Introduced by Senator Gatchalian

To the Committee on Basic Education, Arts and Culture

Proposed Senate Resolution No. 312, entitled

RESOLUTION EXPRESSING THE SENSE OF THE SENATE FOR THE PRES-

IDENT TO RECONSIDER HIS PLAN TO UNILATERALLY WITHDRAW FROM THE VISITING FORCES AGREEMENT WITH THE UNITED STATES OF AMERICA

Introduced by Senators Sotto III, Lacson and Drilon


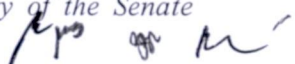
To the Committees on Foreign Relations; and National Defense and Security, Peace, Unification and Reconciliation

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 the following day.

It was 5:30 p.m.

I hereby certify to the correctness of the foregoing.


ATTY. MYRA MARIE D. VILLARICA
Secretary of the Senate


Approved on February 4, 2020