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SESSION NO. 42

Monday, December 6, 2004

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 42

Monday, December 6, 2004

CALL TO ORDER

At 3:00 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

NATIONAL ANTHEM

The Malolos Chorale Ensemble led the singing of the national anthem and, thereafter, rendered the song entitled *Diwa ng Pasko*.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Biazon, R. G.	Lapid, M. L. M.
Drilon, F. M.	Lim, A. S.
Ejercito Estrada, J.	Magsaysay Jr., R. B.
Ejercito Estrada, L. L. P.	Osmeña III, S. R.
Flavier, J. M.	Pangilinan, F. N.
Gordon, R. J.	Roxas, M.
Lacson, P. M.	Villar Jr., M. B.

With 14 senators present, the Chair declared the presence of a quorum.

Senators Angara, Arroyo, Cayetano, Enrile, Madrigal and Recto arrived after the roll call.

Senators Defensor Santiago and Pimentel were on official mission.

Senator Revilla was absent.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 41 and considered it approved.

MANIFESTATION OF SENATOR ROXAS

Senator Roxas apologized for not being able to lead the Body in prayer. Instead, he said that he would furnish the Members with copies of the prayer.

The Chair suggested that Senator Roxas deliver his prayer in the next day's session.

REFERENCE OF BUSINESS

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

COMMUNICATION

Letter from Executive Secretary Eduardo R. Ermita of the Office of the President of the Philippines, transmitting to the Senate the letter of Her Excellency, President Gloria Macapagal-Arroyo addressed to Speaker Jose C. De Venecia Jr. of the House of Representatives, certifying to the necessity of the immediate enactment of H. No. 3154, entitled

AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND FIVE, AND FOR OTHER PURPOSES,

pursuant to the provisions of Article VI, Section 26(2) of the Constitution.

To the Committee on Rules

PRIVILEGE SPEECH OF SENATOR GORDON

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

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A few weeks ago, I stood up to remind our colleagues that we had a devastation going on at that time in Northern and Southern Luzon brought about by floods that inundated that area almost unnoticeably but proved very destructive to our country and people.

Now, a month-and-a-half later, I stand here once again for the same reason that perhaps has become more urgent. Just a few days ago, heavy rains brought about by typhoons Unding, Violeta, Winnie and Yoyong, one after the other, hit our archipelago, saturating eroded grounds and sending tons of mud and debris down hillsides and into homes as villagers slept.

The debris brought about by 17 days of rains caused tremendous damage as uprooted trees and timber pushed everything on their path out to the sea, after hitting villages and devastating not only the towns but more importantly and sadly, killing a lot of our people.

Indeed, one of the greatest typhoon-triggered tragedies has just occurred in our country covering a wide swath of Northern and Central Luzon, leaving 600 people dead, 350 people injured and 81 people missing, as well as destroying over 116,000 houses, of which 30,000 have been totally destroyed. This means 30,000 families would not have shelter for themselves in the next few years.

To nature, such incident was random and without meaning. But to us, the people who know that our countrymen were needlessly victimized, the incident has taken on a graver meaning literally and figuratively. We have grieved; we have suffered from the emptiness their death leaves. But how could we have prevented such a tragedy?

Yesterday, I went around Luzon with the Ambassador of the United States along with others from the European Community Organization in charge of humanitarian concerns and the International

Federation of the Red Cross. And as we visited the places that were devastated like Real, Infanta, and a town called Nakar, we saw the face of disaster on the faces of our people, mourning their dead and fearing for the next day because they have lost their homes, their farms and their sources of livelihood and daily sustenance.

Our country is indeed prone to typhoons. This is a given. The Philippines is geographically located in the Pacific belt of fire and typhoons. It sits astride Southeast Asia's typhoon belt and is usually the first country to be hit by typhoons from the Pacific Ocean. We experience an average of about 20 typhoons each year. But have we learned to survive in our national environment filled with typhoon hazards? Apparently not.

Year after year, we continue to suffer the same typhoon-triggered tragedies. Georg Wilhelm Frederick Hegel once said, and I quote, "We learn from history that we learn nothing from history."

Remember the Ormoc tragedy of 1991 when the devastating flood brought about by typhoon Uring took more than 5,000 lives, affected over 40,000 families and destroyed over 8,000 houses? Do we remember last year when two villages, San Francisco and San Ricardo in Southern Leyte, were totally devastated by landslides, precipitating an international effort by the International Red Cross and the USAID to get them to recover their lives?

What happens when humans abuse nature? Decades of illegal logging, unusually high rainfall and geography all contributed to the devastation brought by typhoons that lash the Philippines.

The solutions to our perennial problems of typhoon-triggered tragedies are nothing novel. While we have instituted remedial measures in response to the onslaught of typhoons through the National Disaster

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Coordinating Council in terms of providing relief operations and rehabilitation services, we must seriously consider preventive measures to avoid typhoon-triggered tragedies.

What precautions can we take to prevent forever a recurrence, or at least, to learn how to cope with and mitigate the damage?

Illegal logging has largely been blamed for the recent tragedy. Blame has fallen on illegal loggers who have stripped hillsides bare and turned lush green forests into death traps.

While abusive logging is admittedly a problem, there is a need to look at the situation holistically. Let us not stop at fixing the blame on illegal logging alone. The danger of catastrophic typhoons will not be solved simply by arresting illegal loggers and we have not even done that.

Our country's environmental crisis consisted mainly of the effects of almost half a century of unrestricted logging so much so that only 13% of our entire forest cover remains today.

Truly our forest lands have been heavily deforested and largely deteriorated through time. More than stopping at illegal logging, what we need to do is to simultaneously engage in reforestation to stabilize our soils and improve our environmental capacity to absorb heavy rains brought about by typhoons. But what efforts have we made to rehabilitate our forest lands? What we really need to do is to restore the nation's forests to health. And while we are still facing this environmental crisis due to logging, there is a new onset of environmental concerns in the form of pollution, land conversion and the other consequences of economic growth that must be addressed as well.

This double whammy of upland degradation and urban decay threatens us all. We must deal with both simultaneously.

Obviously, there are enough laws that had been enacted by past Congresses to address the problem of illegal logging. But how many illegal loggers have actually gone to jail? How many deaths have actually occurred because of this rampant practice of illegal logging, not limited just to the wealthy but also covers the very pernicious slash-and-burn tactics of farmers, or for that matter, the lack of monitoring of concessionaires as to whether they are, in fact, reforesting as required by law? There is no report whatsoever being given to the Congress or to our people as to the state of reforestation in our country. We just take it for granted and when tragedy strikes us, we are totally shocked, disheveled and disoriented at the monumental damage that has occurred.

We must be forever forward-looking in this country because we have a tendency to fix the blame and feel victimized. After centuries of colonization, we have a victim-oriented mindset. We must institute long-term solutions to curb the ill-effects of typhoons through policies that make good governance.

Section 16, Article II of the Constitution states that, "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

The Supreme Court in *Oposa v. Factoran*, GR No. 101083, 30 July 1993, described this right as "nothing less than self-preservation and self-perpetuation, the advancement of which may even be said to predate all governments and constitution." More specifically, our mandate is Section 4, Article XII of the Constitution which states that, "The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased or diminished except by law."

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The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.”

That was 17 years ago and we have not passed that kind of legislation to date.

First, therefore, we must get a clear assessment of the situation and identify critical protection areas or danger zones where communities may be prone to national disasters, whether geologic, hydrologic or weather-related.

The Department of Environment and Natural Resources must provide us with a geological survey of the archipelago, including the mapping of faults, on which basis we can define by law, forest lands that need special protection and treatment, including settlers that may be staying in those areas.

Let me remind this Body that two weeks ago, I read an item in the *Philippine Daily Inquirer* which stated that the Mines and Geological Service of the DENR, a day after the disaster at Paltik, in Baler, Aurora, found that there was actually a main fault where the people were situated so much so that if the typhoon did not get them this time, an earthquake will at some future time.

This Chamber might call me a veteran of Mt. Pinatubo and many other incidents in this country. In Mt. Pinatubo, we learned to survive. When lahar beset our communities, we learned that when it rains in the mountains, a lot of rain might cause the lahar in the uplands to come down explosively and kill people downstream.

That is why with the cooperation of Phivolcs and other scientists, we were able to put up a lahar hazard system to warn the residents in the areas below to evacuate when there is an inordinate amount of rainfall.

In fact, before that was instituted, many bulldozers along with their drivers literally drowned in San Marcelino, Zambales, along the Sta. Fe river.

In addition to this, the identification of indigenous cultural communities and their ancestral lands must also be taken into consideration to ensure their economic, social and cultural well-being. In relation to this, a well-studied and effective land use and zoning plan for all provinces and municipalities must be a priority.

Second, we must establish standard operating procedures, establish the necessary facilities and procure the needed supplies to prepare for tragedies. This may mean the institutionalization of public safety and emergency management systems in the local government units and the integration of disaster mitigation and preparedness in the development plans of the local government units, including the use of local calamity funds for pre-disaster activities.

I have seen people literally marooned and I know that we have all seen this in the past. During Yoling, after so many weeks of rainfall, we saw Central Luzon become islands of rooftops where people were exposed to the elements and had to be rescued by helicopters. At that time, we did not have enough rubber boats nor was there a standard operating procedure for people to be pulled out in case of floodings.

In fact, late last week, I saw on television people along the Montalban river refusing to be evacuated so much so that helicopters pulled them out, risking their lives in the process. Rescue by helicopters is very expensive and unsafe.

Third, we must engage in an unprecedented effort in reforestation where all of us, including our children, our youth and senior citizens, even any organization, can volunteer to participate by planting trees in our forest lands. We

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can even utilize prisoners, those who are not much of a security risk, as they did in Tagum, Davao where they planted bananas in the early '70s so that these prisoners actually contributed to the economic development of this nation. We can actually pull out people in the Bilibid Prison and bring them to Central or Northern Luzon's mountains and create new penal colonies that will allow these people to plant on a continuous basis and maintain the trees so that we can recover our forests. We can even utilize our students and our teachers to plant trees as part of the school curriculum to teach environmental awareness and ecology.

This will condition the minds of our people to protect and conserve our forest lands and our environment.

There must also be greater coordination between the government and the people as to what plant or tree species to grow, where to plant and how to enforce the laws regarding forest conservation. There must be a massive information drive on this effort which must not be *ningas cogon*.

We have seen many tree plantings but after the photographs have been taken, we forgot that there has to be continuity beyond the media exposure or the photo opportunity.

Fourth, we need to enjoin the active participation of local government units in rehabilitating our forest lands by looking after their local communities, clearing forest lands to prevent slash-and-burn or *kaingin* farming and giving slash-and-burn or *kaingin* farmers suitable alternative town sites to live in.

If I remember my law correctly, the Public Land Act provides that government should be ahead of development; that it should set aside land sites to our people so that those who have no homes can be situated in these land sites instead of going up the mountains. Perhaps, in

addition to these land sites, we could introduce communal land farms or we can even pay these people to plant trees in the areas contiguous or adjacent to where they live. It will certainly be cheaper than having to undertake the cost of rehabilitation. Thirty thousand people will have to be rehabilitated, rivers will have to be desilted, the soil will have to be rehabilitated and agriculture restored in areas that have been punished by man's rapacity.

Fifth, we must be firm in the enforcement of our laws and policies. We can increase the penalties, if needed. But more important than these, there must be regular reports and constant monitoring and survey of our forest lands which the Senate Committee on Environment and Natural Resources can actually do from time to time.

For example, from Aurora all the way to Manila, I am told that there were 17 checkpoints in the past but we never found how many actual arrests were made in these checkpoints neither do we know how many illegal loggers or slash-and-burn farmers have been arrested or convicted in this country.

Forest denudation has been largely attributed to the lack of a coherent forest protection policy and weak law enforcement of the government.

I am sure that our colleagues in the Senate have other ideas. But certainly we must learn not only to survive but to prevail in this kind of situation that we face annually.

We cannot be looked at by the whole world as totally irresponsible -- unresponsive to the fact that we lost lives and property and have to ask international assistance every time a disaster strikes because that has an impact on our viability and our marketability as an investment or tourist destination. It shows a country that is irresponsible with respect to its

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environment. It shows a country without vision to save its people. It shows a country that forever carries a begging bowl in its hands, asking for donations to restore life in its land.

In addition to that shame, the loggers, those who profited from these illegal activities through the years, are laughing all the way to the bank because we have to pay for our negligence and because we have nothing to show but universal apathy.

We are, therefore, in a situation that calls for the collective effort of the nation to recover. But bigger than this national environmental crisis is our inability to learn our lessons. Neither are we ready to sacrifice, the psychological and spiritual sacrifice that is so necessary to get our feet back on the ground.

We are in a state of a looming financial crisis. What are we now going to do? Where are we going to get the money to restore the lands that have been ravaged by the typhoons?

As I speak today, Calumpit and Hagonoy and parts of Central Luzon are still flooded. Croplands damage is huge. Fishponds have overflowed. Agriculture in my region in Central Luzon is badly damaged; and people in the Southern area, including Quezon, are totally diminished by all these tragedies.

The government's ability to respond with financial assistance in times of tragedy is severely limited. I am sure that we can collectively do an effort towards addressing this problem that we face today.

There is need for the entire nation including the private sector to participate in ensuring the nation's preparedness for natural disasters. The Red Cross is in the forefront but the malady we face is no longer just environmental but financial.

The question remains: Where are we going to get the money to restore these lands, to restore 30,000 homes to our people when we have not even finished the building of homes for the victims of the tragedy in Southern Leyte?

So, perhaps, it is time that we became a little bit innovative. There has been talk that some of us will give up our pork barrel. I saw the Senate President the other day, immediately after the tragedy, he said that he has already contributed his entire pork barrel for the victims of the typhoon.

These are not only symbolic gestures but sincere gestures that people can respond to. As chairman of the Red Cross, I have received many donations from other countries. We received hundreds of thousands of dollars from the European community. And I have seen our people also contribute. Companies came out and gave million pesos, for example, to the Red Cross.

The amount required for rehabilitation and restoration is indeed huge. But more important is a change in our psychological mindset that must be shared by the whole country.

So, if, for example, we sacrifice our pork barrel, I am sure that would be received by the whole country very positively, so much so that perhaps, we can even ask our people to sacrifice as the Indians did when they gave their jewelry, or as the Koreans did when they gave their foreign exchange during their own disasters. Perhaps, on the matter of telecommunications taxes, we can also exact from our people that kind of sacrifice to be earmarked for education or for health, or for typhoon assistance or redevelopment. For example, a talk-and-text tax, as they have in other countries, might contribute immensely to a non-downgrading of the Philippines' credit rating.

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I would like to assure our colleagues that I have not talked with the President on this matter. But let me just say this. It is important that we come out symbolically as a nation to try and get our young who text a lot to contribute knowingly P1 every time that they text so that we can reestablish our foothold towards rebuilding this country immediately.

A 110 million text messages a day equate to P110 million a day. And if we put that for the whole year, we could actually have almost P37 billion, or practically almost half of what is required by those international credit rating agencies. Added to the P80 billion in sin taxes, we would create more than just the financial capability but a new spiritual well-being that together we are reckoning with the crisis.

Perhaps, we should really revisit all these things again. Perhaps, all the things that we suggested may be considered by this honorable Senate towards restoring our country's environment and certainly our country's financial standing before the international community.

I shoot this as a trial balloon today so that we can be more innovative during this Thirteenth Congress, to try and find out how we can address and mitigate and alleviate the human sufferings that our people are facing today.

We must not hold ourselves hostages to an uncertain future. We must perform our obligations to the future together. It is imperative that we, as a nation, take the lessons of these tragedies to heart and develop a strong resolve. As we must develop a strong resolve against graft and corruption, we must also develop a strong resolve that we can put our hearts and minds together to solve the problems of our country so that we stop

being a finger-pointing society but become a problem-fixing society.

We must really try to ensure that our people do not become hapless victims of the fury of nature and the fury of man-made tragedies because human life is sacred to us as a nation.

According to a famous statesman, John F. Kennedy, and I quote: "Our task is not to fix the blame for the past but to fix the course for the future." We look forward to the day when such tragedies are no longer part of life.

RESERVATIONS TO INTERPELLATE

Senator Pangilinan stated that Senators Cayetano, Madrigal and Angara made reservations to interpellate Senator Gordon.

INTERPELLATION OF SENATOR CAYETANO

At the outset, Senator Cayetano informed the Body that she climbed the highest peak in Luzon—Mt. Pulag in Benguet—the week before typhoon Winnie hit the provinces of Quezon and Aurora. She said that she brought her children, aged six and nine, to the national park to teach them awareness and appreciation of nature and the environment. She lamented that such an experience is something most people lack because they see only television footages which, when seen many times, could give someone a detached view of reality.

Wishing that all Filipino children could see what her children saw, she stressed the importance of awareness and vision to be able to get immediate reactions to situations such as the Quezon tragedy. She expressed support for Senator Gordon's vision to get people involved by making them aware; teach them to give a part of themselves, their time and money; and make them understand that the country could not move forward without the people's participation.

Senator Cayetano clarified that her statement was meant to show support because she admires the people who are in Quezon including her husband who is part of the Mt. Everest team. She added that after a few weeks, these people would go back to their normal lives and only a handful would remember what they saw in Quezon. The rest, she said, would go on with their daily lives not having an inkling of what may happen again simply because there is no plan to address the situation.

Senator Cayetano disclosed that in the last few years, 30 forest rangers have been killed in the line of duty. She said that the forest rangers, along with the OFWs and others, are among the heroes of the country. She recalled that during the last hearing of the Committee on Environment and Natural Resources, Senators Lapid and Pimentel shared the Chair's desire to put up some kind of fund for these people. She said that her desire to provide funds for these rangers was strengthened by her experience in Mt. Pulag. She disclosed that the forest rangers, who have no fixed salary, are dependent on contributions made by people who climb the mountain. Knowing that the DENR is grossly under-budgeted, she pointed out the need to work *within a limited budget*.

As regards the spirit of volunteerism, Senator Cayetano related that in the U.S., the national parks have a core group of paid forest rangers, including a group of mountaineers, cyclists and runners who dedicate part of their time to protect the forest. She inquired if this is what Senator Gordon envisioned.

Senator Gordon replied that it is partly what he envisioned. He stated that the government cannot succeed unless it makes the people part of the process of change. He added that it is good that there are paid park rangers not only to protect the forest but also to explain the forests to visitors. He averred that in this country, there seems to be a lack of culture of forest protection where the forest is viewed as a place where one can exhaust money in a quick way and not as a place where one can recharge energy or make money without destroying the forest. He noted that part and parcel of the holistic program he had in mind was the creation of special

protected areas where people could go, guided by properly trained forest rangers who would make sure that the trips are properly undertaken.

The other part of the problem, Senator Gordon said, is the fact that there seems to be no effort to try to convince people not to cut trees in the forest or go on slash-and-burn activities. He claimed that people have become jaded because of poor leadership and vision on the part of the government. Adverting to the Public Land Law, he noted that there is a provision that the Department of Environment and Natural Resources should, together with the local governments, set aside town sites as part of a massive zoning plan so that people who have no lands could actually go there and take part in replanting forests. He averred that he would rather pay people to plant trees than to find out, later on, that they have not only destroyed the forests but they have been victimized by natural calamities. He commented that there are so many things that needed to be done with respect to the way the people treat the forests including their safety.

Adverting to the issue of slash-and-burn and the lack of policy thereon, Senator Cayetano stated that there is no existing comprehensive plan in assisting the millions of Filipinos who depend on wood for fuel. She revealed that according to DENR officials, about eight million people use wood for cooking that translates to 40 million cubic meters of wood annually. She pointed out that the DENR has no policy, no awareness campaign, no studies on ways to provide an alternative mode to address the problem.

Senator Gordon stated that there would be an opportunity to speak to the DENR secretary about his policies during the hearing of the Commission on Appointments and the budget deliberations. Relative thereto, he said that there are government officials who address issues on forestry policies. He stated that Congress could get these people, including the NGOs, to help craft new legislations that would address these concerns.

As regards the Timber Licensing Agreements (TLAs) and the Integrated Forest Management

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Areas (IFMAs) that govern the land use and logging on public land, Senator Cayetano mentioned that there are a lot of permits issued for logging on private lands. She stated that the terms of these agreements are not as strict because it is private land. She stressed the need to strengthen the laws by providing, for instance, that the internal memorandum of the DA shall not give incumbent officials the right to use their discretionary power to grant permits.

Senator Gordon said that apparently, in this country, the philosophy of lawmaking is "thou shall not do this" instead of exacting what must be done. He added that only a part of the problem is being addressed, when in reality, there is a necessity to exact from the government people the means through which they can have a program that would expand the forests rather than diminish them. He said that aside from the proposal for a total log ban, it is imperative to find ways to expand the forests. He pointed out that in his speech, he underscored the need for radical, positive measures such as creating a new penal colony and putting in money so that criminals can replant trees in the forests. These, he said, are among the issues that could be addressed rather than talking about a total log ban.

Senator Gordon suggested finding sources – like the telecom tax – as support contributions for the future of the country, for forestry and for education. He stressed that there is need to reorient the thinking of legislation from "concupiscence" to finding out what makes men good so that laws would encourage man to be productive rather than violate the law.

Senator Cayetano agreed with the points raised by Senator Gordon, saying that it was unfortunate that there is call for a total log ban which may never become a reality.

Senator Gordon opined that only 13% of the forest cover remains and the need now is to plant, replant and reeducate the people in order to create a culture of environmental consciousness. He related that when he was tourism secretary, his goals were to bring in visitors, create jobs, and protect and preserve the natural endowments including forests and man-made treasures. Apparently, there is a scant recognition in the

educational curriculum as regards the preservation of the natural resources, he said.

On the issue of a total log ban, Senator Cayetano stated that according to the DENR secretary, it would make the work of the department easier should the ban push through because the DENR staff would no longer spend time checking all the trucks for illegally cut logs.

Senator Gordon pointed out that despite the anti-smuggling law, the people of the Bureau of Customs and the BIR are not aware of the extent of smuggling and that despite the checkpoints, smuggling incidents were never reported.

Senator Cayetano stated that she wanted to hear what programs the Executive department has in place to support a total log ban. She observed that the people are dependent on wood from which all paper requirements come. Despite her support for the log ban, she said she needed to hear data from economic advisers how these daily concerns could be addressed.

Senator Gordon pointed out that for starters, what should be answered is how the government intended to promote the protection of forest resources. Adverting to the ACEF where the farmer-beneficiaries did not even know there was such fund due to lack of money for promotions, he stated that there is a need to let the people know there is an effort to inform – from schools down to the communities – in order to create a culture that would enhance the environment and the forest. He pointed out that the Red Cross disaster preparedness program includes 1) planning, preparation, prediction and practice; 2) training to cope and to mitigate the damage; and 3) renew and rehabilitate. He opined that when a typhoon hits, everybody trips over one another trying to give funds, just like what the media stations are doing now. But afterwards, there is still rehabilitation, he said. He added that up to now, victims of the Southern Leyte tragedy are still undergoing rehabilitation.

Senator Gordon stated that this was the reason the international community was brought to Southern and Central Luzon yesterday – to find out how to best rehabilitate not just the homes but the crops. *R*

Senator Cayetano disclosed that in a newspaper article, a congressman blamed the Congress for the tragedy that occurred because it failed to specify the limits of forest lands. She said that as chair of the Committee on Environment and Natural Resources, she had asked the DENR about the delineation and limits of forest land and she was told that this is still a work in progress. She expressed hope that the present Congress would be supportive of efforts to finally determine the specific limits. She added that it all boils down to the budget, yet in spite of foreign funding, about P3 billion is still needed. She stressed that without technical information, she cannot take the lead in delimiting the forests' boundaries much as she would like to.

As regards the lack of funds, Senator Gordon stated that the country could get support from national and international agencies. He added that there is always money available but the Executive has to be aggressive in creating opportunities for the people.

As regards the filing and prosecution of cases against illegal loggers and similar violators of forest laws, Senator Cayetano asked if there is the political will to prosecute. She said that she supported clamors that would make illegal logging a heinous crime. She said that she intended to call on the previous DENR secretaries to enlighten her on what transpired during their terms, especially with regard to the grant of TLAs and IFMAs.

Senator Cayetano believed that the only way to achieve the spirit of volunteerism is to make people feel that all sectors of society are one in trying to protect the environment.

Senator Gordon said that every time the country is faced with a problem, it has always been said that there is lack of money or political will. The country, he pointed, is facing times when legislators need to exact a higher level of behavior from the people. As regards the telecom tax, he stated that he would like to get inspiration from the people who could express their support by sending text messages as part of their contribution to nation-building especially if Congress would be smart enough to earmark the expected P110 million to P200 million a day for education

and health programs. The local government and the legislators, he added, must also do their part in setting aside money and come up with P120 billion that is enough for the country to be on good standing with its creditors.

MANIFESTATION OF SENATOR PANGILINAN

Senator Pangilinan manifested that Senators Angara, Madrigal and Biazon would interpellate Senator Gordon in the next day's session.

REMARKS OF SENATOR GORDON

Senator Gordon informed the Body that the "Donate a Load to the Red Cross" program that he introduced the other day generated P1.4 million in just four hours, mostly from people who texted a donation of P100. He expressed hope that Senator Recto would increase cigarette and liquor taxes a bit more to raise more funds.

COMMITTEE REPORT NO. 5 ON SENATE BILL NO. 1854

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1854, (Committee Report No. 5), entitled

**AN ACT INCREASING THE EXCISE
TAX RATES IMPOSED ON
ALCOHOL AND TOBACCO
PRODUCTS AMENDING FOR THE
PURPOSE SECTIONS 141, 142,
143, 144, 145 AND 288 OF THE
NATIONAL INTERNAL REVENUE
CODE OF 1997, AS AMENDED.**

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

The Chair recognized Senator Recto, Sponsor of the measure, and Senator Lacson for his interpellation.

INTERPELLATION OF SENATOR LACSON

Asked by Senator Lacson what the Constitution says about the rule of taxation, Senator Recto

stated that Section 28, Article VI states that it has to be progressive, equitable and uniform.

On whether the National Internal Revenue Code is uniform and equitable, Senator Recto said that it is not equitable but regressive because 52% of all tax collections are in the form of indirect taxes which means that the burden is on the consumers. To be progressive, he pointed out, the tax burden should be based on income.

Senator Recto affirmed that for the rule of taxation to be uniform and equitable, it should be fair to all concerned.

Senator Lacson pointed out that there is a provision in the National Internal Revenue Code that favors certain manufacturers in the tobacco industry in terms of payment of taxes. He asked whether the net retail price is based on a survey conducted by the BIR and the NSO in 20 leading supermarkets in Metro Manila and five leading supermarkets in the provinces.

Senator Recto said that it should be 10 leading supermarkets in Metro Manila and five major supermarkets for products marketed in the region. The net retail price of all the brands, by and large, he pointed out, is much higher than the brackets imposed in 1997 because a specific tax system that is based on volume had been adopted instead of an *ad valorem* tax system that is based on value.

As regards the net retail price of the different cigarette brands per pack, Senator Recto enumerated the following: Champion Menthol King, P6.76; Fortune International Filter King, P6.06; Bowling Gold FKHP, P8.50; Bowling Gold Menthol, P8.69; Bowling Gold MK, P10.00; Astro Filter King, P3.78; Memphis Filter King, P4.56; and Memphis Menthol, P4.75.

Asked how much the cigarette company pays in tax per pack of Champion Menthol King, Senator Recto said that it is P3.30 because it is one particular brand that "fell in the cracks." All taxes on cigarettes prior to 1997, he pointed out, were based on an *ad valorem* system. He stated that there is a provision in the existing law that provides that within a period of three years, the taxes on these brands should not go down.

As regards Astro and Memphis, Senator Recto informed the Body that after reclassification by the BIR, the present tax rate is P5.60 as compared to P1.12 in 2003. A provision in the measure, he pointed out, corrects the error by providing that the BIR can no longer arbitrarily reclassify to have a level playing field between the different players like Fortune, Philip, La Suerte and all other manufacturers that may introduce new brands into the market.

Asked how much the manufacturer of Champion Menthol King would pay in taxes under the measure, Senator Recto said that it would definitely pay a rate higher than P3.30. Those that have been classified in the low-priced category in 1997, he added, would continue to pay the low price and the same thing goes with medium- and high-priced cigarettes, tobacco and alcohol.

Asked why Astro and Memphis would be taxed 300% to 400% more when they belong to the same price category, Senator Recto stated that the measure seeks to address this problem because it is unfair that every two years, they can be reclassified based on the BIR revenue regulations. The measure, he reiterated, provides that any new brand should be finally classified within a three-month period.

Asked how the BIR would reclassify these brands when it is very clear in the provision in the Code that all cigarette brands that are in existence as on October 1, 1996 would not be reclassified, Senator Recto explained that when Congress shifted from an *ad valorem* tax system to a specific tax system, it, in effect, determined the classification based on the prices at that particular time and classified these products accordingly. As regards new variants of existing brands, he said that Congress decided that to favor government, a variant would be classified at the highest tax rate on that particular brand.

Senator Recto said that it was not the intention of the past Congress to give the BIR the authority to reclassify cigarette brands very often or every two years because to do so would be arbitrary on the part of the BIR. He said that the measure seeks to correct the situation by

mandating the BIR to make a final reclassification three months after a new brand had been launched in the market.

Asked how the BIR could be arbitrary when parameters were precisely set in the present law, Senator Recto replied that there is no provision in the present law that authorizes the BIR to reclassify the brands of cigarettes every two years. He explained that the law allows the BIR to make an initial classification based on the suggested retail price that the manufacturer submitted after which, the BIR would check it against the prevailing market price.

Senator Lacson reasoned that the BIR can conduct surveys but it cannot, by itself, reclassify the brands of cigarettes. Senator Recto pointed out that the assertion of Senator Lacson is now the subject of a case involving La Suerte. However, he noted that the BIR regulation authorizes the agency to reclassify brands.

Senator Lacson pointed out that a provision in the Code states that the classification of each brand of cigarettes based on its average retail price as of October 1996 as set forth in annex (d) shall remain in force until revised by Congress.

Upon query, Senator Recto stated that 52 brands are listed in Annex "D."

On the amount of tax that should have been collected from the 52 brands if said provision is not in the Code, Senator Recto recalled that when the present law was being debated and Congress decided to shift from the *ad valorem* tax system to the specific tax system, a classification of the brands of cigarettes was made — low, medium and high — to protect the consumers, tobacco farmers and the government. He stated that in interpreting the law, the BIR came out with a regulation that allowed it to reclassify new brands every so often which is precisely being corrected in the proposed measure.

Senator Lacson argued that instead of protecting the consumers, the provision favored the manufacturers because the tax rates on low-brand cigarettes have remained the same but their prices have increased. Relative thereto,

Senator Recto adverted to a portion of the debates between Senator Romulo and Senator Enrile, to wit:

Senator Romulo: That is the reason why... be clarified on the records, the indexation would be more consumer-friendly than if we were not to include indexation in this bill.

Senator Enrile: That is correct, Mr. President. That is why we adopted this. It is not much really to just increase the revenue of the government but to obtain a degree of equity among all the concerned parties in the industry, the government, the consuming public, suppliers of raw materials and also the producers.

Senator Romulo: With this as a reference point, the equity and stability maintained all throughout until, of course, there is another amendment.

Senator Recto recalled that the intention of Senator Enrile to shift from *ad valorem* tax to specific tax was that the tax on the cigarettes would be based on volume and that the reason for bracketing the tiers was to protect the consumers and tobacco farmers but when Congress decided not to index the rates and the brackets by inflation, the conference committee put a provision in the Act that only Congress shall reclassify the brands of cigarettes.

Asked why the Members debated on a provision that did not exist in the bill but was simply inserted by the conferees, Senator Recto stated that there was a debate on the policy issue on whether to index the rates and brackets by inflation or not, and for Congress to determine the rate of tax increases. He reiterated that the intent of the law was to shift from the *ad valorem* tax system to the specific tax system or from a value-based tax system to a volume-based tax system.

To the assertion that the provision was inserted by Congressman Javier during the conference committee, Senator Recto stressed that the conference committee adopted the provision.

On how much taxes government would have been collected during the last four years if the provision had not been inserted in the Act, Senator Recto replied that if the tax rates at that time had been increased, Congress, whose intention was to bracket the tiers, would have been confronted with elasticity issues.

On whether he was suggesting that consumption of sin products is elastic, Senator Recto replied that consumption would be more elastic for low-end cigarettes and less elastic for high-end cigarettes. He pointed out that there are five markets for cigarettes – the low-end, medium-end, high-end, premium and native.

On the observation that the consumption of sin products is inelastic, Senator Recto stated that elasticity is also a function of income so that when the tax on low-end Memphis, which increased from P1.12 to P5.60 upon reclassification, its volume dropped by 80%. But Senator Lacson contended that its volume decreased simply because the tax on the other brands remained at P1.12 per pack.

Senator Recto explained that when Astro and Memphis cigarettes were reclassified from low-end to medium-end and the tax increased from the P1.12 to P5.60, the volumes dropped by 80% because their consumers shifted to other low-priced cigarettes.

Senator Lacson contended that smokers of low-priced brands would slow down for a while but would continue to smoke because smoking is a vice. Senator Recto reasoned that consumption would depend on the individual's ability to pay for the product.

On the amount of taxes which could have been collected if the provision is not in the law, Senator Recto replied that it would be speculative. Senator Lacson disagreed, pointing out that a study had been made by former Finance Secretary Isidro Camacho.

At this juncture, Senate President Drilon requested Senator Lacson to put the estimated loss of revenue into the Record.

Senator Lacson stated that from 1999 up to 2002, Fortune Tobacco should have paid P28 billion more in taxes and Philip Morris waived taxes in the amount of P10.18 billion.

Senator Recto surmised that the analysis of Mr. Camacho was based on the specific tax and the present retail price as he pointed out that the failure to collect the right amount of taxes was not due to the provision but the failure of Congress to increase the tax rates every two or three years.

Senator Recto suggested a rated increase every two years until 2011, taking into account the medium-term fiscal plan of the government. Had Congress either indexed the tax by inflation or made a determination of the rate increases for a specific period of time, he said, then there would at least be no losses for that particular period. He stressed that the reason that the measure was being discussed again was that Congress only had one rate increase in the year 2000. He expected that the new administration, after 2010, would discuss the issue all over again.

At this juncture, Senator Roxas suggested that the potential or claimed revenue loss can be calculated based on removals, giving a range data between increase in price and impact on demand over a period of time. This way, he said, the Body would have specific numbers to talk about.

Senator Lacson informed the Body that based on 2003 removals of 4.395 million packs for both native products and machine-packed cigarettes, P41.9 billion in taxes would have been collected compared to only P19.6 billion, pegging uncollected taxes in 2003 at P22.2 billion. He pointed out that if the intent was to raise revenues, the provision should be deleted.

Senator Recto disagreed that increasing the price of a pack of cigarettes would translate to more revenues for the government. He expressed concern that all comments were directed against tobacco and cigarettes when the same rule applies to alcohol, fermented liquor and distilled spirits. He explained that the same provision exists for

both alcohol and tobacco because of the shift from *ad valorem* tax to specific tax.

At this juncture, the Chair said that the difference in opinion between Senators Recto and Lacson would be resolved during the period of amendments.

Senator Lacson asked that he would prefer straight arithmetic to contested assumptions since the basic issue is to raise more revenues for the government. Senator Recto maintained that the committee considered all the arguments, studied the growth rate of the industry from 1997 to 2004 and came out with proposals which ensured the concerns of all stakeholders, that is, revenues for the government, neutrality of the market share for the players, ability to pay for the consumers and jobs for the tobacco farmers, factory workers and local manufacturers. He argued that a single excise tax rate might result in the importation of alcohol and tobacco instead of the country manufacturing these products; on the other hand, a very high tax on cigarettes would eventually affect the farmers as well as the factory workers.

To the observation that all brands should have been reclassified, Senator Roco replied that it was not the fault of the manufacturer that its old brands were already in the market before the reclassification. He stressed that the problem was that the existing law has the provision on new brands and gives BIR the arbitrariness to classify them. He underscored that the proposed measure corrected this situation by giving only to Congress the authority to reclassify. He disagreed with Senator Lacson that the provision favored only two or three big manufacturers as the shift from *ad valorem* tax to specific tax favored old brands already in the market.

Senator Recto argued that if indexing taxes was a superior way of taxation, then wages should be indexed too. He recalled that the matter of indexing taxes as well as wages was already debated upon in 1997 and there were many fine arguments against indexing taxes by inflation. He explained that even if prices increased, low-priced cigarettes would have to be taxed as such because it is already a specific tax based on volume

and no longer based on value. He denied that the measure was protecting anyone.

Asked if he was present when the President met with tobacco manufacturers, Senator Recto replied in the affirmative. He said that Harry Tan of Fortune Tobacco and Chris Nelson of Philip Morris were present. The two companies, he said, account for 90% of market share in terms of value and 90% to 95% of excise taxes.

Replying to the Chair's query, Senator Recto stressed that both big and small players of the tobacco industry were invited to the committee hearing. He disclosed that no one was complaining about the measure except those who worked to increase the rates more than what the committee proposed. He explained that the proposed system of classification protected the products from the movement of prices which could hit the consumer or the revenue of the government.

Senator Lacson requested a list of all the brands so he could identify the manufacturers being favored by the provision. He stressed that he wanted to be convinced that the rule of taxation is uniform and equitable. He suspended his interpellations until he shall have received the documents.

Senator Recto expressed his gratitude to Senator Lacson for raising important points during his interpellation. He however, reiterated that Senator Lacson's query was the first argument that the Committee on Ways and Means studied before crafting the bill.

At this juncture, the Chair reminded the Body about Senator Lacson's request for certain data and said it expected the Department of Finance to provide the same.

Senator Lacson asked that the information also include the names of the manufacturers of the tobacco brands.

Senator Recto gave assurance that the DOF had been requested to provide the data.

For his part, Senator Pangilinan recalled that according to Senator Lacson, his decision whether or not to continue his interpellation would depend on the data to be submitted.

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At this juncture, the Chair recognized Senator Madrigal for her interpellation.

INTERPELLATION OF SENATOR MADRIGAL

Asked by Senator Madrigal to explain the main purpose of the bill, Senator Recto replied that it is primarily to raise revenues for government and to balance the interest of all stakeholders in the industry including consumers.

Asked to clarify whether the bill is also a health-related measure, Senator Recto replied in the affirmative. He explained that the bill proposes that a certain percentage of the excise taxes collected will be utilized to fund the universal coverage of the PhilHealth programs and to educate the public on the ill-effects of smoking.

Adverting to the October 28 hearing of the Committee on Ways and Means wherein Senator Recto himself admitted that the Executive department has never sold the bill as also health-related, Senator Madrigal asked whether the bill should not contain any such provisions. Senator Recto believed that the Executive has been promoting the bill as a revenue measure and, in fact, has used it to please creditors and credit-rating agencies.

Upon further queries, Senator Recto stated that there was no provision for health services in the original bill but the committee adopted a provision in the Enrile bill earmarking part of the proceeds from the incremental revenue for health-related purposes. Further, he affirmed that health is a secondary consideration, as the primary purpose is to raise revenues in a fair, equitable manner.

As to whether he believed the administration's claim that the sin taxes would pull the country out of the fiscal crisis, Senator Recto opined that one revenue measure or even the sin industry could not pull the Philippines out of its fiscal crisis. He believed that there are several solutions to the problem: reduce expenditures, raise more revenues from other industries, reduce smuggling and corruption, privatize Transco and Napocor successfully, and increase the revenues of Napocor by hiking power rates.

Senator Madrigal wondered whether Senator Recto still believed that the Philippines would not be downgraded by international rating agencies even if the sin tax bill is passed considering that it is expected to generate only P7 billion of the P150 billion package estimated by the administration and the country's creditors. Adverting to a statement he made the other day, Senator Recto said that even with the passage of the sin tax bill, he expected Moody's Investor Service and Fitch Ratings to downgrade the country's credit ratings because the market already did it. Further, he expressed hope that the country's rating would not drop by two notches and that the local market and the credit rating agencies would eventually upgrade the Philippine's credit ratings once the other revenue measures are passed.

At this juncture, the Chair noted that while the country may have already suffered a market pricing downgrade, the reputational damage of a credit rating downgrade to the country's economy is a matter of greater concern.

Senator Recto believed that the credibility of the credit rating agencies is at stake if they do not push through with this action as they always take their cue from the movements of the local market. He reiterated that the passage of revenue measures and a power rate increase would help the market upgrade the credit standing before the credit rating agencies do the same. Citing the local stock market as an example, he said that businessmen surveyed on their observation of the economy would give a positive or negative view based on the movements of the local index. For its part, the Chair reiterated its belief that a drop in the credit ratings would do more damage to the reputation of the Philippines compared to a market pricing downgrade. In reply, Senator Recto reiterated his earlier suggestion to Moody's Investor Service to give President Macapagal Arroyo one year - from June to June - to improve the country's credit rating. He noted that the suggestion is realistic because none of the political parties, presidential candidates or even senators promised to raise taxes during the last elections. Further, he pointed out that it was only after the elections that President Macapagal Arroyo mentioned the fiscal problem of the country. Now that Congress understands

the magnitude of this dilemma, he said, the Legislative and the Executive are willing to work together to address the issue – the first action being the sin tax bill. He also believed that up to five revenue measures might be passed in the next two to three months, nevertheless, the rating downgrade is still expected since the market has already done the same lest the credibility of the ratings agencies are questioned as what had happened to Moody's two years earlier. However, the Chair reiterated that it did not share Senator Recto's sentiment.

Asked by Senator Madrigal why there are no health-related provisions in the bill, Senator Recto reiterated that the bill was not solely crafted for revenue purposes for which reason, officials of the Department of Health were invited to the committee deliberations. Further, he said that there is a provision on health-related purposes in the bill.

Senator Madrigal revealed that the World Health Organization has taken the position that price tax and tax measures are effective and important means of reducing tobacco consumption.

Asked if the committee took that into consideration in crafting the bill, Senator Recto replied that this was why the committee had proposed a hike on the taxes on sin products. Although he had listened to the statements made by health officials and had read the explanatory note of Senate Bill No. 1815, he stressed that health is a secondary issue since pleasing the country's creditors and rating agencies and, at the same time, raising revenues for the government, are the main purposes behind the Executive's proposal. In fact, he noted that the committee is not handling health concerns and the bill was not even secondarily referred to the Committee on Health.

At this juncture, Senate President Drilon relinquished the Chair to Senate President Pro Tempore Juan M. Flaviera.

Senator Recto admitted to having spoken with Senator Flaviera regarding the matter as he expressed willingness to accept the former's

amendments with regard to the provision on health care.

Asked whether he believed that the right to health is a basic human right, Senator Recto replied in the affirmative.

On how Senate Bill No. 1854 could balance the Filipino's right to health against economic considerations for generating revenue, Senator Recto reiterated that while revenue generation is the primary objective for crafting the measure, health considerations were also taken into account. This, he said, was the reason why part of the provisions on health care are geared to health-related concerns. He expressed no objection to amendments increasing the percentage in the provision although this would have to be taken in the context of similar provisions for tobacco products in the Code.

Asked if the bill complies with the directive for the State to protect life and promote the general welfare as stated in Section 5, Article II of the Constitution, Senator Recto replied in the affirmative. He explained that the revenues to be generated from the sin taxes would be used for government expenditures on health needs, education, and other services for the citizens.

As to whether he is in effect subsuming the health considerations of the nation into revenue considerations, Senator Recto reiterated that raising revenue is the primary objective of Senate Bill No. 1854. However, he said that the bill proposes that a portion of the earnings be allocated for health purposes through its inclusion in the national budget. Moreover, he believed that the purposes stated in Section 5, Article II of the Constitution would be achieved if Congress is able to raise revenues for the government.

Asked if he would be willing to accept amendments if she could prove empirically that the bill does not safeguard the Filipinos' right to life and health, Senator Recto suggested that the Senate study ways to provide more teeth to existing laws such as the Tobacco Regulation Act as it is the proper venue for such concerns. However, he stressed that the bill was referred to committee because it is a revenue measure. *16*

Relative to this, he stressed that he is not supportive of any vice.

Senator Recto said he recognizes any person's right to smoke and drink and that any tobacco product or alcohol should be taxed accordingly. He underscored the need for balance in the alcohol and tobacco industries considering that both products are bad for health. He expressed surprise that the discussion from the beginning revolved around the issues on tobacco products when, in fact, alcohol is a bigger industry that has also adverse social and health effects, and therefore, should be taxed higher. He noted that while tobacco is taxed 50%, alcohol, fermented liquor is taxed 39%, and distilled spirit, 23%. He reiterated that excess smoking has not led to killing of pedestrians but excess drinking has.

If it could be proved empirically through a cost-benefit analysis that raising revenue can also have a health benefit, Senator Madrigal asked Senator Recto if he would be averse to an amendment at the proper time supporting this analysis. Senator Recto replied that there would not be any problem if he and Senator Madrigal would have the same assumptions to support the claim.

Relative thereto, the Chair stated that it was not too aggressive about the measure because it was holding to the WHO's assumption that for every 10% increase in the tax of the cigarettes, there will be a 4% decrease in the incidence of smoking.

Senator Recto noted that the problem with the WHO analysis is that it did not consider different markets but only one market. He informed the Body that the Committee is in possession of other related studies such as those conducted by the Oxford Economy Forecasting and the International Tax and Investment Center on the relationship between taxation, consumption, smuggling of tobacco, among others, as well as examples of tax situations in the United States, Canada, South Africa, Brazil and the Philippines.

In connection therewith, Senator Recto cited the Canadian Action Plan to combat smuggling in 1994 by imposing a very high tax on tobacco products which did not lead to the reduction in

the number of smokers but to a loss of revenues, hence, 70% of its market was affected by smuggling. Eventually, he said, the tax rates were lowered in order to capture the market. He quoted Canadian Prime Minister Jean Chretien who said, "Smuggling is wrecking the safety of our communities and livelihood of law-abiding merchants. It is a threat to the very fabric of Canadian society. Effects of tobacco smuggling include the violent organized crime, the establishment of extensive smuggling networks that are being used for liquor and to a lesser extent, weapons and drugs, the loss of \$2 billion a year in public funds through federal and provincial tax losses, the loss of business for law-abiding merchants and the general lack of respect for the law. Smuggling also undermines government's initiatives to reduce smoking particularly among young people."

Further, Senator Recto noted that the U. K. government, which has a similar experience, stated:

"Alongside the impact of smuggling on health and revenue, there are other undesirable effects. These include the law and order and social problems arising from the concentration of large groups of criminals in certain areas, particularly Dover and East Kent, and it has resulted in a decreasing respect for the law as the number of people involved in the buying and selling of smuggled goods has risen to so many thousands possibly, millions. In addition, large-scale tobacco smuggling has a potential to create the building blocs for organized crime networks, run along business lines rarely seen before in the U.K. and to finance other serious criminal activity."

Senator Recto observed that many countries that claim they are not against increasing taxes have experienced trade-offs; these countries claim that they agree with the WHO but they cannot agree fully that those ratios are exact for each economy or society.

Senator Madrigal agreed with Senator Recto regarding the econometric model. However, she said, the model which she would present in due

time would be specific only to the Philippine market.

Asked whether the measure could instill health consciousness in the Filipino people as mandated by Section 15, Article II of the Constitution, Senator Recto replied that 2.5% of the total revenues from this measure would be given to the DOH purposely for information campaign concerning the ill-effects of smoking. Also, he said, 10% of the incremental revenue starting January 2005 shall be earmarked for the National Health Insurance Program to meet and sustain its goal of universal coverage.

At this point, the Chair said that at the proper time it would propose an amendment changing the DOH education/information program to a health prevention program and increasing the share from 2.5% to 5%. Senator Recto expressed willingness to accept the proposal.

Upon further queries of Senator Madrigal, Senator Recto explained that the Executive was asking for at least P7 billion revenues. While the committee is looking at P10 billion revenue, P5 billion from alcohol and P5 billion from tobacco, he acknowledged the possibility that it may not reach the target amount. Also, he noted that in 1997, Congress expected a revenue of P7 billion from the measure but record shows that only P3 billion was generated. He said that the revenue to be raised under the present bill was calculated in a way that would capture the natural growth of the industry without killing it.

On whether he was aware of the P10 billion health bill for respiratory diseases, Senator Recto replied in the negative. He opined that respiratory diseases are caused not only by cigarettes but also by other factors like pollution and genetics.

Senator Madrigal stated that the Philippines is a party to several treaties which guarantee the right to health of every individual. She asked Senator Recto if he was aware that the Philippines had ratified the International Covenant on Economic, Social and Cultural Rights. Senator Recto replied in the negative.

Senator Madrigal informed the Body that the covenant, which was ratified in 1966, recognizes the State obligation of upholding the right to health. Since the principal purpose of the bill is to raise revenue only, she asked whether the government would, in effect, go against the State obligation under this international covenant to protect and promote the highest standards of health in the country. Senator Recto stated that he did not perceive it in that way. He said that it would be difficult for him to make a judgment call since he was not familiar with the treaty. He suggested that Senator Defensor Santiago, chair of the foreign relations committee, help explain the treaty.

Senator Recto stated that although the Senate has not ratified the Convention on Tobacco Control, he would be willing to work with Senators Madrigal, Defensor Santiago and Flavier on the matter. He explained that he mentioned the convention because it is more specific and related to the topic at hand.

Senator Madrigal noted that the International Covenant of Economic, Social and Cultural Rights states that:

The state parties to the present Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps necessary to achieve the full realization of such right, shall include those necessary for the prevention, treatment and control of epidemic, endemic occupational and other diseases

Asked if tobacco smoking is a disease or an addiction, Senator Recto agreed that smoking is addictive; however, he admitted that he does not know if smoking in itself is a disease since he is not a health expert.

Senator Recto pointed out that he has a conceptual framework on taxation. He believed that people should not smoke and he is not forcing anyone to smoke. He stated that with the increase in tax rates, the interest of all stakeholders would be balanced and, hopefully, smoking would be deterred. He said that the committee took into

consideration the concerns of the workers who could lose their jobs and the consumers who do not have money to support their health concerns, especially since the government does not have a wide health services program.

Adverting to the tax rates, asked at what level consumption becomes zero — neither decreasing or increasing, Senator Recto replied that the committee could only make guesstimates. He said that the projection of revenue goes through a process of looking at growth rates and simulations but at the end of the day, all of the figures are just estimates. He added that the committee had looked at the primary objective of raising revenues and balancing the interest of stakeholders including consumers. Moreover, he stated that it is an individual's right to smoke and drink if he wants to at his own risk.

Senator Recto pointed out that a provision in the bill earmarks 12.5% of the revenues for health care. He stated that under the same provision, government is mandated to educate the public on the ill effects of smoking and drinking.

Asked if he would consider an empirical econometric model that is not based on guesstimates and would prove in layman's term the supply-demand curve, Senator Recto replied in the affirmative as he stated that Senator Madrigal could prove her point.

Senator Madrigal informed Senator Recto that with the assistance of economists, she formulated a theorem that is unbiased and clearly compared Senate Bill No. 1815 with Senate Bill No. 1854. However, Senator Recto clarified that there is no basis for comparison because Senate Bill No. 1815 deals only with cigarettes, whereas Senate Bill No. 1854 includes tobacco, alcohol and distilled spirits.

Asked if the bill would equitably diffuse wealth, Senator Recto admitted that he is against the imposition of a higher tax rate on the poor who consume low-end cigarettes. He expressed willingness to accept proposals relative thereto.

Senator Madrigal pointed out that in the Constitution, a sin tax should decrease the consumption of the sin product. Senator Recto

explained that his sentiment was on the tax burden on tobacco, which is roughly 49%; fermented liquor, 39%; and distilled spirits, 23%. He said that much as he would like to increase the taxes on alcohol to the same level as tobacco, it would be difficult for the alcohol industry to accept the idea. He reiterated that, by and large, he was against any taxes; however, when left with no choice, he would rather have more direct taxes than indirect taxes.

Asked whether a study was done to determine the effect of the tax rate on the major low-end manufacturers, Senator Recto replied that the findings had been incorporated in the committee report. Among the three proposals, he said, the 435% tax rate proposal of the Enrile bill would definitely affect the low-end manufacturers.

Upon further query, Senator Recto denied that his figures were mere guesstimates but were based on the proposals of Senator Enrile and others, as well as on the findings and proposals of the committees, including the following: tax rate for low-end cigarettes should increase by 48%; 50% of the volume of tobacco products belongs to the low-end products, the raw materials for which are produced by local tobacco farmers; and 50% of the factory workers are involved in manufacturing low-end tobacco products. In fact, he said, when Astro and Memphis were reclassified to medium-end, their tax increased from P1.12 to P5.60, their volumes dropped by 80% resulting in a reduction of the work week to three days.

Senator Recto emphasized that he would rather protect local manufacturers than importers; and subsidize a local tobacco farmer and a local factory worker than import sin products and thereby subsidize a foreign tobacco farmer or factory worker.

In the absence of a study, Senator Madrigal reiterated that the figures were all guesstimates. Senator Recto disagreed, saying that his data were the product of eight years of study. He pointed out that all projections, to a certain degree, are guesstimates and have their margins of error despite their scientific basis, including even the surveys in the last Philippine and American national elections. In fact, he said, when the bill was debated in 1997, the expected incremental

revenue was P7 billion; however, it turned out to be P3.3 billion.

Acceding to the request of Senator Madrigal, Senator Recto said he would ask the DOF and the National Tax Research Center officials to provide data and assumptions on the projections as to how much the major low-end manufacturers of cigarettes would benefit from the bill.

Senator Madrigal said that she would suspend her interpellation until she shall have received the calculations and instruments used to support the cigarette provisions of the bill, such as supply-demand curve and cost-benefit analysis, so that she could apply them in her econometric model. Senator Recto said that the projections had already been presented during his sponsorship speech. Senator Madrigal said that she would like to see the reasoning behind the bill, not merely matrices and facts.

Senator Recto reiterated that in preparing the committee report, the committee took into consideration the House version, the Enrile bill, as well as such data on the production volume for the first nine months of 2004 to project what the volume would be at the end of the year; the growth rate of the entire industry from 1997 to 2004 — 2.07% for the high category, negative .62% for the medium category, 6.86% in the low category, and negative 2.06% in the packed-by-hand. He said that there was not so much data on premium cigarettes because this is where a lot of smuggling takes place. He added that based on Senator Enrile's assumptions, the five tiers would eventually become a single tier because drops in certain tiers are expected in the first year.

Asked whether the committee did a study on who would benefit from the bill, Senator Recto said that it did not but it did its own analysis on revenue impacts, cumulative revenues, and other factors. However, Senator Madrigal pointed out that an analysis is an "if-then" situation.

Senator Recto said that in 1997, the bill was discussed and debated for eight to nine months; this year, the committee deemed it fit to look at all the records of the debates to understand each and

every provision of the law. He said that he was tremendously educated by reading the transcripts and appreciated the tax system that Senator Enrile adopted and why he wanted to index tax rates and brackets so as to be fair to all stakeholders.

Asked if it was an admission that the Enrile bill is fairer than his bill, Senator Recto said that he was merely talking about how the Senate debated the Enrile bill in 1997, and some concepts that he adopted in the present bill. Pointing out that the bill included tax rate proposals on alcohol and tobacco, he said that no one, not even the Minority, was obligated to do similar projections.

Asked what good the projections would do, Senator Recto said that he would be willing to listen to Senator Madrigal if she has any projections. Relative thereto, he reiterated that even if incremental revenue was expected to be P7 billion in 1997, only P3.3 billion was generated because the only rate increase took effect in 2000. He said that the law would not be amended today had the past Congress agreed to index the rates and the brackets as proposed by Senator Enrile, instead of passing the prerogative to the Executive. However, he said that he understood why Congress opted for the latter and, to a certain degree, he was now following the wisdom of the old Congress by proposing to increase the tax rates for a longer period in view of the six-year fiscal plan of the administration. He emphasized that the sin tax bill alone would not solve the fiscal problem of the nation, neither would it be a nicotine patch for the masses.

Replying to another query, Senator Recto said that he had an analysis in his mind when the committee crafted the report but while not all facts were written down, the outcome of the analysis or the recommendations was included in the committee report. In addition, he said that he had seven to eight hours of debate last week with Senator Enrile and together they dissected every single provision in the bill from alcohol to tobacco, even those that were not proposed to be amended. He said that they had differences on the five tiers of the tobacco provisions but had already agreed on four.

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Asked if he agreed with the tax rate proposed by Senator Enrile, Senator Recto said that having already agreed on the four, their difference of opinion as regards the tax rate on low-end tobacco, hopefully, would be threshed out.

Senator Madrigal agreed that the tax rate on low-end tobacco was the bone of contention because it would have a major impact on the people as far as health and demand are concerned. Senator Recto stated that he would be willing to listen to any proposal as he gave assurance that the committee considered the interest of the stakeholders. Given the fact that the increased tax rates would hit even low-end consumers, he stressed that he was sensitive to their ability to pay but they smoke at their own risk.

Asked how the committee arrived at the 48% tax rate increase on low-end cigarettes, Senator Recto explained that 12% added to the present tax of P1.12 plus P0.40 would yield P1.68, or a 48% tax rate increase for the first year. He disclosed that the original position of Philip Morris was for a P1.00 across-the-board increase and that of Fortune, a 20% increase. He pointed out that since Philip Morris has 40% of the market and Fortune, 60%, the committee decided to adopt the tax rate increase of 12% plus P0.40 to make the market share neutral.

Senator Recto recalled that in the debates in 1997 between Senator Macapagal Arroyo and Senator Enrile, several issues were discussed, to wit: 1) market neutrality – should the tax increase change the market share by favoring one manufacturer over another; 2) tax burden neutrality – should it favor consumers over the manufacturers or the manufacturers over the importers. He stated that after considering so many factors, the committee members reached a consensus to be market-share neutral by adopting a 48% tax increase on low-end cigarettes that he himself opposed. However, he noted that between the proposed 435% tax rate increase in another bill and the committee proposal of 48%, he supported the latter. Simply put, he said he could not complain because Fortune, which produces low-end cigarettes, agreed to pay a heftier tax rate increase.

Asked why the manufacturers agreed to the compromise tax, Senator Recto underscored that with the formula, the manufacturers expect that the industry can still grow; the importers would not be favored over them; their workers would not be displaced; and they could still purchase tobacco from farmers. At the end of the day, he posited, the revenues would be good and the down trading would be captured. Precisely, he pointed out, a higher tax rate would be imposed on low-end cigarettes to prevent down trading. He observed that because of reduced per capita income and the wide disparity, in the last seven to eight years, in the tiers, the consumption of high-end cigarettes has been growing at 2%; medium-end cigarettes has not been growing and low-end cigarettes has been growing at 6.86%, meaning, the consumers are turning to cheaper cigarettes.

On whether the tax rate increase is advantageous to manufacturers of low-end cigarettes, Senator Recto replied that it is not because the tax on low-end cigarettes is 48% compared to 17% on medium-end cigarettes; 16% on high-end cigarettes and 30% on premium cigarettes.

On the contention that the committee should have given an empirical explanation of the tax rates since numbers are easily understood, Senator Recto pointed out that Senator Madrigal could give her own projections. He stressed that given the time constraint, the committee did its best to come out with its own version, every provision of which he would be willing to defend.

At this point, Senator Madrigal sought leave to make her own presentation in the next day's session, stating that she was still waiting for data on alcohol from concerned government agencies. Senator Recto invited Senator Madrigal to present her projections on tobacco and cigarettes in the day's session. He stated that he would be willing to look at the model, cautioning, however, that the assumptions could have flaws.

Senator Madrigal stated that she would be presenting an econometric model supported by some game theory and analysis. She noted that the game theory could be used for predicting

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movements in the capital market and it could be useful in probing the tax burden analysis.

**INQUIRY OF
SENATOR EJERCITO ESTRADA (J)**

Asked by Senator Ejercito Estrada (J) how many Minority senators would still interpellate on the bill, Senator Pangilinan stated that Senator Osmeña has suspended his interpellation; Senator Lim has made reservation to interpellate; Senator Lacson would decide whether or not to resume his interpellation upon receipt of certain documents; and Senator Angara has waived his reservation to interpellate.

Thereupon, Senator Ejercito Estrada (J) made reservation to interpellate on the bill after Senator Lim.

**SUSPENSION OF CONSIDERATION
OF SENATE BILL NO. 1854**

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

**MANIFESTATION OF
SENATOR PANGILINAN**

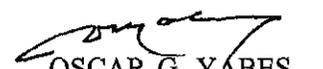
Senator Pangilinan manifested that Senator Madrigal would speak on a question of personal and collective privilege in the next day's session.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session suspended until two thirty in the afternoon of the following day.

It was 6:37 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
18/12/04

Approved on December 7, 2004