

REPUBLIC OF THE PHILIPPINES  
**Senate**  
Pasay City

# Journal

**SESSION NO. 63**

Tuesday, June 5, 2012

**FIFTEENTH CONGRESS  
SECOND REGULAR SESSION**

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Tuesday, June 5, 2012

**CALL TO ORDER**

At 3:25 p.m., the Senate President, Hon. Juan Ponce Enrile, called the session to order.

**PRAYER**

Sen. Ralph G. Recto led the prayer, to wit:

Dear Lord, Your divine love binds us as one family and nation. You keep the lamp-light burning.

*Lord, we confess:*

When we stray from Your path, we suffer personal pain and allow evil to inflict hunger, violence and terror on our fellowmen.

Forgetting how to be a Master like You, we fail to be a servant of the sick, dejected and poor.

Losing faith, we allow division to rule our days and derision to burden our conscience.

*Lord we beseech You:*

Through Your wonderful ways, let us find our family always welcoming us, our friends supporting us and our countrymen believing in us.

*In these troubled times plaguing our nation, guide us to resist temptations*

of sloth, vice and malice. Let Your commandments and parables direct us to worship purely and render service selflessly.

All these we pray to You in Your Name.

Amen.

**ROLL CALL**

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

Angara, E. J.	Lapid, M. L. M.
Arroyo, J. P.	Legarda, L.
Defensor Santiago, M.	Marcos Jr., F. R.
Drilon, F. M.	Osmeña III, S. R.
Enrile, J. P.	Pimentel III, A. L.
Escudero, F. J. G.	Recto, R. G.
Estrada, J.	Revilla Jr., R. B.
Guingona III, T. L.	Sotto III, V. C.
Honasan, G. B.	Trillanes IV, A. F.
Lacson, P. M.	

With 19 senators present, the Chair declared the presence of a quorum.

Senators Cayetano (A), Cayetano (P) and Pangilinan arrived after the roll call.

Senator Villar was on official mission abroad.

*no p*

*At this juncture, Senate President Enrile relinquished the Chair to Senate President Pro Tempore Estrada.*

#### **DEFERMENT OF APPROVAL OF THE JOURNAL**

Upon motion of Senator Sotto, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 62 to a later hour.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Sotto, the session was suspended.

*It was 3:28 p.m.*

#### **RESUMPTION OF SESSION**

At 3:28 p.m., the session was resumed.

#### **REFERENCE OF BUSINESS**

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

#### **MESSAGE OF THE PRESIDENT OF THE PHILIPPINES**

Letter of His Excellency President Benigno S. Aquino III, dated 28 May 2012, submitting for the Senate's consideration and concurrence, the Maritime Labour Convention 2006, which was adopted by the General Conference of the International Labour Organization on 23 February 2006, in Geneva, Switzerland.

**To the Committee on Foreign Relations**

#### **RESOLUTIONS**

Proposed Senate Resolution No. 792, entitled

RESOLUTION CONGRATULATING AND COMMENDING FILIPINO STUDENTS BENEDICT IVAN ANDRADA, ERWIN SOLETA AND MARIA KATRINA VOLANTE FOR WINNING THE GRAND PRIZE IN THE FUTURE MINDS COMPETITION 2012 ON 26 APRIL 2012 IN MADRID, SPAIN

Introduced by Senator Lapid

**To the Committee on Rules**

Proposed Senate Resolution No. 793, entitled

RESOLUTION CONGRATULATING AND COMMENDING THE BAAO CHILDREN'S CHOIR OR THE BARLIN ANGELICS FOR WINNING THE GOLDEN TROPHY IN THE 18<sup>TH</sup> CARTAMEN INTERNATIONAL JUVENIL DE HABANERAS Y POLIFONIA (JUNIOR HABANERAS AND POLYPHONY INTERNATIONAL CONTEST) ON APRIL 27-29, 2012 IN TORREVIEJA, SPAIN

Introduced by Senator Lapid

**To the Committee on Rules**

#### **COMMITTEE REPORTS**

Committee Report No. 175, submitted jointly by the Committees on Health and Demography; and Finance, on House Bill No. 5622, introduced by Representative Banal, entitled

AN ACT INCREASING THE BED CAPACITY OF THE QUIRINO MEMORIAL MEDICAL CENTER FROM THREE HUNDRED FIFTY (350) TO FIVE HUNDRED (500) BEDS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8313, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES,

recommending its approval without amendment.

Sponsor: Senator Cayetano (P.)

**To the Calendar for Ordinary Business**

Committee Report No. 176, submitted jointly by the Committees on Health and Demography; and Finance, on Senate Bill No. 2853, introduced by Senator Revilla Jr., entitled

AN ACT INCREASING THE BED CAPACITY OF JOSE B. LINGAD MEMORIAL GENERAL HOSPITAL IN

*AS* *PS*

SAN FERNANDO CITY, PAMPANGA FROM TWO HUNDRED FIFTY (250) TO FIVE HUNDRED (500), UPGRADING ITS SERVICES AND FACILITIES AND PROFESSIONAL HEALTH CARE, AUTHORIZING THE INCREASE OF ITS MEDICAL PERSONNEL AND APPROPRIATING FUNDS THEREFORE,

recommending its approval with amendments, taking into consideration House Bill No. 3331.

Sponsor: Senator Cayetano (P.)

**To the Calendar for Ordinary Business**

Committee Report No. 177, submitted jointly by the Committees on Local Government; and Constitutional Amendments, Revision of Codes and Laws, on House Bill No. 3860, introduced by Representative Miraflores, entitled

AN ACT PROVIDING FOR THE REAPPORTIONMENT OF THE LONE LEGISLATIVE DISTRICT OF THE PROVINCE OF AKLAN,

recommending its approval without amendment.

Sponsors: Senators Marcos Jr. and Defensor Santiago

**To the Calendar for Ordinary Business**

Committee Report No. 178, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 4170, introduced by Representatives Sarmiento (C.) and Angara, entitled

AN ACT CONVERTING THE CATANDUANES STATE COLLEGES IN THE PROVINCE OF CATANDUANES INTO A STATE UNIVERSITY TO BE KNOWN AS THE CATANDUANES STATE UNIVERSITY AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To the Calendar for Ordinary Business**

Committee Report No. 179, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 4413, introduced by Representatives Cua and Angara, entitled

AN ACT CONVERTING THE QUIRINO STATE COLLEGE (QSC) IN THE MUNICIPALITY OF DIFFUN, PROVINCE OF QUIRINO INTO A STATE UNIVERSITY TO BE KNOWN AS THE QUIRINO STATE UNIVERSITY (QSU), INTEGRATING THEREWITH THE QUIRINO POLYTECHNIC COLLEGE (QPC) IN THE MUNICIPALITY OF CABARROGUIS AND THE MADDELA INSTITUTE OF TECHNOLOGY (MIT) IN THE MUNICIPALITY OF MADDELA, ALL LOCATED IN THE PROVINCE OF QUIRINO AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To the Calendar for Ordinary Business**

Committee Report No. 180, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 1338, introduced by Representatives Garin (J.) and Escudero, entitled

AN ACT SEPARATING THE OTON NATIONAL HIGH SCHOOL – CAMBITU EXTENSION IN BARANGAY CABOLOAN SUR, MUNICIPALITY OF OTON, PROVINCE OF ILOILO FROM THE OTON NATIONAL HIGH SCHOOL, CONVERTING IT INTO AN INDEPENDENT NATIONAL HIGH SCHOOL TO BE KNOWN AS CAMBITU NATIONAL HIGH SCHOOL AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To the Calendar for Ordinary Business**

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Committee Report No. 181, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 1600, introduced by Representatives Gatchalian and Escudero, entitled

AN ACT SEPARATING THE VALENZUELA NATIONAL HIGH SCHOOL – CANUMAY EAST ANNEX IN BARANGAY CANUMAY, CITY OF VALENZUELA, METRO MANILA FROM THE VALENZUELA NATIONAL HIGH SCHOOL, CONVERTING IT INTO AN INDEPENDENT NATIONAL HIGH SCHOOL TO BE KNOWN AS CANUMAY EAST NATIONAL HIGH SCHOOL AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To the Calendar for Ordinary Business**

Committee Report No. 182, submitted by the Committee on Education, Arts and Culture, on House Bill No. 1892, introduced by Representatives Gatchalian and Escudero, entitled

AN ACT CHANGING THE NAME OF BIGNAY ELEMENTARY SCHOOL IN BARANGAY BIGNAY, CITY OF VALENZUELA TO ROBERTA DE JESUS ELEMENTARY SCHOOL,

recommending its approval without amendment.

Sponsor: Senator Angara

**To the Calendar for Ordinary Business**

Committee Report No. 183, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 1340, introduced by Representatives Garin (J.) and Escudero, entitled

AN ACT SEPARATING THE DON FELIX SERRA NATIONAL HIGH SCHOOL — BAD-AS EXTENSION IN BARANGAY BAD-AS, MUNICIPALITY OF SAN JOAQUIN, PROVINCE OF

ILOILO FROM THE DON FELIX SERRA NATIONAL HIGH SCHOOL, CONVERTING IT INTO AN INDEPENDENT NATIONAL HIGH SCHOOL TO BE KNOWN AS BAD-AS NATIONAL HIGH SCHOOL AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To the Calendar for Ordinary Business**

Committee Report No. 184, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 5498, introduced by Representatives Angara and Escudero, entitled

AN ACT ESTABLISHING A NATIONAL HIGH SCHOOL IN BARANGAY DIANAWAN, MUNICIPALITY OF MARIA AURORA, PROVINCE OF AURORA TO BE KNOWN AS DIANAWAN NATIONAL HIGH SCHOOL AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To the Calendar for Ordinary Business**

Committee Report No. 185, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 3733, introduced by Representatives Cojuangco (E.) and Escudero, entitled

AN ACT ESTABLISHING A NATIONAL TECHNICAL-VOCATIONAL HIGH SCHOOL IN THE MUNICIPALITY OF MAYANTOC, PROVINCE OF TARLAC TO BE KNOWN AS MAYANTOC NATIONAL TECHNICAL-VOCATIONAL HIGH SCHOOL AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To the Calendar for Ordinary Business**

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Committee Report No. 186, submitted jointly by the Committees on Education, Arts and Culture; and Finance, on House Bill No. 1339, introduced by *Representatives Garin (J.) and Escudero*, entitled

AN ACT SEPARATING THE TIGBAUAN NATIONAL HIGH SCHOOL — BAGACAY EXTENSION IN BARANGAY BAGACAY, MUNICIPALITY OF TIGBAUAN, PROVINCE OF ILOILO FROM THE TIGBAUAN NATIONAL HIGH SCHOOL, CONVERTING IT INTO AN INDEPENDENT NATIONAL HIGH SCHOOL TO BE KNOWN AS BAGACAY NATIONAL HIGH SCHOOL AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Angara and Drilon

**To Calendar for Ordinary Business**

#### **ADDITIONAL REFERENCE OF BUSINESS**

##### **MESSAGE FROM THE HOUSE OF REPRESENTATIVES**

Letter from the House of Representatives, informing the Senate that on 30 May 2012, the House of Representatives requested a conference and designated *Representatives Tinga, Yap, Singson, Jr., Angara, Rodriguez, Sarmiento (C.), Arenas, Quimbo, Golez, Sarmiento (M.S.) and Arroyo (D.)* as its conferees to the Bicameral Conference Committee on the disagreeing provisions of House Bill No. 5808, entitled

AN ACT DEFINING CYBERCRIME, PROVIDING FOR THE PREVENTION, INVESTIGATION, SUPPRESSION AND THE IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES,

and Senate Bill No. 2796, entitled

AN ACT DEFINING CYBERCRIME, PROVIDING FOR PREVENTION, INVESTIGATION AND IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES.

**To the Archives**

#### **BILL ON FIRST READING**

Senate Bill No. 3216, entitled

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A FISH PORT AND COLD STORAGE FACILITY IN THE MUNICIPALITY OF SASMUAN, PROVINCE OF PAMPANGA AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Lapid

**To the Committees on Public Works; and Finance**

#### **RESOLUTION**

Proposed Senate Resolution No. 794, entitled

RESOLUTION DIRECTING THE APPROPRIATE COMMITTEES IN THE SENATE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE SAFETY STANDARDS AND PRACTICES BEING IMPLEMENTED IN THE COUNTRY'S FUN RUNS, MARATHONS, TRIATHLONS AND SIMILAR MULTI-DISTANCE SPORTING EVENTS WITH THE END IN VIEW OF ENSURING THE SAFETY OF OUR RUNNERS AND SPORTS ENTHUSIASTS

Introduced by Senator Lapid

**To the Committee on Amateur Sports Competitiveness**

#### **COMMITTEE REPORT**

Committee Report No. 187, prepared and submitted by the Committee on Public Order and Dangerous Drugs, on Senate Bill No. 3217, with Senator Honasan II as author thereof, entitled

AN ACT REPEALING THE MINIMUM HEIGHT REQUIREMENT FOR APPLICANTS TO THE PHILIPPINE NATIONAL POLICE, BUREAU OF JAIL MANAGEMENT AND PENOLOGY, AND BUREAU OF FIRE PROTECTION,

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recommending its approval in substitution of Senate Bill Nos. 3184 and 3203.

Sponsor: Senator Honasan II

### To the Calendar for Ordinary Business

## MANIFESTATION OF SENATOR SOTTO

Senator Sotto manifested that the agenda for the day was quite long. He begged the indulgence of the Body as some of the bills for Third Reading had clerical errors that were being corrected.

## SUSPENSION OF SESSION

Upon motion of Senator Legarda, the session was suspended.

*It was 3:38 p.m.*

## RESUMPTION OF SESSION

At 3:39 p.m., the session was resumed.

## PRIVILEGE SPEECH OF SENATOR LEGARDA

Availing herself of the privilege hour, Senator Legarda spoke on the destruction of the Philippine marine ecosystems that impacts the sustenance of Filipinos, the livelihood of fisherfolk, and the income of local industries that rely on tourism.

*The full text of her speech follows:*

### SEX ON THE REEFS

Yes, you heard it right: There is sex on the reefs. When the warm ocean currents meet the more temperate Philippine waters, a different kind of procreation is taking place – one that would save not only our marine life, but our very own as well.

The Philippines is located within the Coral Triangle, home to 76 percent of the world's coral species and over 2000 marine species. However tragedy is afoot. According to the U.P. Marine Science Institute, only five percent of the country's coral reefs remain in good condition.

In May 2011, we were outraged by the report that poachers ravaged approximately 7,000 hectares of sea bed within the Moro Gulf and the Sulu Sea. Authorities recovered two container

vans filled with thousands of species of black coral and hundreds of lifeless turtles and other marine species. This is only one case that illustrates the gravity of the situation.

Reefs are foremost complex ecosystems that are vital to the continuity of life in the sea. They protect coastlines from waves and storm erosion and function as nurseries and habitats for thousands of marine species. They are currently connected to mangrove forests, seagrass beds, and countless other ecosystems.

But the crux of the matter is that the destruction of our marine ecosystems will not only lead to the extinction of thousands of species but will also be detrimental to tourism, food supply and sustenance and livelihood of our fisherfolk.

For instance, the Department of Environment and Natural Resources (DENR) estimates that 80 percent of the animal protein requirement of Filipinos come from our seas. Our mangrove forests alone produce almost 108 million kilos of fish annually. The destruction of our reefs will radically deplete our food supply.

As a tropical tourist destination, our beaches are the most popular attractions to our tourists. We may well experience a massive decrease in tourist volume if these areas are destroyed, threatening local industries that depend on tourism.

But beyond these everyday realities are even larger questions. Do we want to be known as the nation that stood by the wayside as its reefs were plundered and its seas were poisoned? Or do we want to be known as a responsible people and a nation worthy of its blessings?

Fortunately, hope for the latter remains. A variety of sectors have merged and embarked on efforts to save the so-called "rainforests of our seas."

The Department of Science and Technology or the DOST has launched the "Filipinnovation on Corral Revolution," a program that aims to restore coral reefs by utilizing scientific expertise and Filipino ingenuity. In partnership with several universities such as the University of the Philippines-Marine Science Institute, the University of San Carlos in Cebu, private resort and dive shop owners, local government units, and other stakeholders, the program has established coral laboratories to produce young corals that will be used to enhance and restore coral reefs. The program also endeavors to identify genes that could possibly help corals cope with environmental stresses brought about by climate change.

Corals produce sexually and asexually. This was actually taught to me by no less than the Secretary of our Science and Technology Department who is present here today, who is an expert scientist on sexual and asexual reproduction of corals. In sexual reproduction, corals could be broadcasters where gametes, the eggs, and the sperm are released into the water. When an egg is fertilized by a sperm, it will become a zygote which will undergo series of cleavages until it becomes *planula larvae* in 96 hours.

When *planula larvae* matures, it will settle to a substrate and will become a polyp until it becomes a young coral. This young coral, which will be initially placed in underwater nurseries to assure stability and survival, will grow to form a coral colony in the reefs.

An NGO has also been at the forefront of coral restoration. The Sangkalikasan Producers Cooperative (SPC) has been active in restoring the vibrancy of marine life particularly in Boracay. The Code Blue Boracay Reef Buds Project aims to plant at least 5,000 artificial "reefbuds" on the waters of Boracay to rehabilitate the ecosystem underneath.

The technology used in this project was invented by a Filipino, Benjamin Tayag, Jr., based on the design of Austrian environmental scientist Herald Kremnitz. "Reefbuds" are large hollow, dome-like structures placed over damaged reef systems which facilitate their recovery. An initial reefbud also attracts marine species and another cycle of life under water commences.

We have provided our full support to this initiative of the Sangkalikasan and we have linked them up with the DOST's program so that the young corals produced in laboratories and nurseries will be planted in the artificial reef buds. The DENR has also expressed its support in expanding the reefbuds project and is set to craft a coral reef database to ensure that data on Philippine corals are updated. The DOST will also embark, along with the scientists, a coral mapping all over the country, so that we will be able to find out the important sources of food supply potentially for our fisherfolk and rural communities.

Imagine, if at least 80% of the deteriorating or dying corals which are 90% of the total corals in our country could only be resuscitated. Imagine, this would actually be the best poverty alleviation measure which would supply food for the almost 100 million Filipino

These efforts remain unknown to many, which is why I take this opportunity on World Environment Day, to commend, laud the DOST, DENR, the Sangkalikasan Producers Cooperative and many others like them as well as the academe, for shouldering the daunting task of resuscitating our dying marine ecosystems.

The environment is threatened by the times, by the pressures of modern society, by our very species.

But let this be a challenge to harness science and involve our citizens. Our scientists are both inspired and challenged, and I know that the Filipino scientists can do it.

The World Environment Day is at present less of a celebration and more of a call to action.

In closing, I enjoin every Filipino to take that one vital step forward. Another year of fighting for a sustainable future starts today.

#### REMARKS OF SENATOR HONASAN

Senator Honasan commended and manifested his support for Senator Legarda, whom he referred to as one of the Senate's resident environmentalists. He lauded her for calling the attention of the legislators, as caretakers of the environment, to the children's sustainable future, and to the endangered, precious and life-sustaining coral reefs.

#### REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Sotto, there being no objection, the Chair referred the privilege speech of Senator Legarda to the Committee on Environment and Natural Resources.

#### PRESENTATION OF RESOLUTION TO SENATE PRESIDENT ENRILE

At this juncture, Senate President Pro Tempore Estrada requested the members to witness the presentation of the resolution to Senate President Enrile commending him for his able, just, resolute, diligent leadership during the impeachment trial.

#### SUSPENSION OF SESSION

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

It was 3:48 p.m.

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## RESUMPTION OF SESSION

At 3:49 p.m., the session was resumed.

## MANIFESTATION OF SENATOR SOTTO

Senator Sotto manifested that Senate Resolution No. 89, entitled **RESOLUTION COMMENDING SENATE PRESIDENT JUAN PONCE ENRILE FOR HIS RESOLUTE, DILIGENT, IMPARTIAL AND JUST LEADERSHIP AS PRESIDING OFFICER OR THE SENATE SITTING AS AN IMPEACHMENT COURT IN THE MATTER OF THE IMPEACHMENT TRIAL OF THE CHIEF JUSTICE OF THE SUPREME COURT** was filed by Senator Estrada and cosponsored by all the Members.

## REMARKS OF SENATE PRESIDENT ENRILE

In accepting the resolution, Senate President Enrile delivered the following remarks:

I feel honored and awed by a resolution given to me by my peers and colleagues in this great Senate of our people in my humble capacity as your Presiding Officer in the course of a national drama which was the impeachment of no less than the Chief Justice of our Supreme Court.

Fate indeed is unfathomable and I never expected to be elevated to such high position of being the President of this Senate and, let alone, to preside over a national trial of the third highest position in this land. Nonetheless, I was given that rare opportunity and I must say whatever I did I own all the mistakes I committed, but I must say that I did it without any malice or without any selfish end and I did it not for myself but for the institution that we all respect and love as members elected by the Filipino people, and most importantly for the country and our citizenry.

I am happy that I received this recognition but the recognition and credit is not mine alone. It belongs to the collective body known as the Senate of the Republic of the Philippines who performed a splendid job to bring an event that showed not only to our countrymen and to our race but to the whole world that indeed in this corner of the globe, there is a country, tiny as it is, that can render justice impartially and fairly by the duly-elected representatives of the people.

And I would also like at this point, in receiving this resolution, commend the members of our staff who tirelessly attended to their chores in order to help us bring about a peaceful and effective trial never before done in the history of this country. And to all of you, I say that was our finest hour.

## COMMITTEE REPORT NO. 163 ON PROPOSED SENATE RESOLUTION NO. 788 (Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, on Proposed Senate Resolution No. 788 (Committee Report No. 163), entitled

**RESOLUTION CONCURRING IN THE RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF AUSTRALIA CONCERNING THE STATUS OF VISITING FORCES OF EACH STATE IN THE TERRITORY OF THE OTHER STATE.**

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

Thereupon, the Chair recognized Senator Legarda, sponsor of the measure, and Senator Defensor Santiago for her interpellations.

## INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

At the outset, Senator Defensor Santiago stated that she would conduct her interpellation in several stages, during which she would discuss the treaty as a question of national policy, its constitutional aspects, and discuss certain miscellaneous questions that have been raised by the general public.

On the national policy, Senator Defensor Santiago said that it would not consist of questions but would instead be mostly based on a magazine called *Focus on the Global South* which is a publication of a think tank. She then took note of the following events:

In December 2003, Prime Minister John Howard provoked criticism and protest around the region when he said that his country had the

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right to launch "preemptive strikes" against targets anywhere in Southeast Asia.

In July and August of the following year, Australian special forces and sailors trooped to the Philippines to hold joint training exercises with their Filipino counterparts.

She noted that it was not the first time they sought permission to come to the Philippines; they had already done so in 2004.

In October 2005, a few months after it was reported that the Australian police were involved in "covert operations" in the country, the Australian press carried reports, which were subsequently denied by the government, that elite Australian troops had joined their U.S. and Filipino counterparts in operations against alleged terrorists in the Southern Philippines.

She then asked whether there was already a prior agreement between the Philippines and Australia to undertake such joint military exercises or if this agreement would take effect only now.

If a Filipino had, for whatever reason, sued an Australian soldier participating in the "missions," she asked if the accused would be tried under the Philippine justice system like any ordinary foreigner brought to court.

Why the need for this kind of treaty? she asked. She said that should any foreign national — whether American or Australian — commit a crime and be sued in the Philippines for the crime, there is already a criminal justice system in place wherein the person will be treated like any other criminal. She opined that the reason the country has treaties like the Visiting Forces Agreement with the U.S. and the Status of Visiting Forces Agreement with Australia (SOVFA) is to allow these foreign nationals who would commit crimes in the Philippines to be given special treatment and not be treated like any other ordinary criminal or be treated like a Filipino. She observed that this was the first concern of the Australians who wanted to have a special status in the Philippines, above and beyond that enjoyed by any foreigner who wishes to avail of the Philippine judicial system.

She pointed out that there is a Bill of Rights in the Philippine Constitution that, in effect, is already incorporated in the treaty. Precisely, she said that this was a superfluous act. She asked why there

would be a need to spell-out the rights of Australian soldiers when they are already accorded protection under the Philippines' Bill of Rights. She said that the reason for the treaty is to give the Australian and American soldiers special status or privileged treatment.

Senator Defensor Santiago stated that under international law, any person, any individual, of any status, whether stateless or not, is already entitled to the panoply of rights covered by the U.S. and, for example, the Philippines' Bill of Rights. She explained that if a Filipino had, for whatever reason, sued an Australian soldier participating in the above missions, the accused should have been treated in the Philippine justice system like any ordinary foreigner brought to court.

She said that with the SOFVA signed by Manila and Canberra in 2007, Australian troops in the Philippines have become no ordinary foreigners as with the Philippines' only other such agreement, the VFA with the U.S., the SOVFA will accord Australian troops a different status. She maintained that the treaty seeks to provide special or privileged treatment to Australian soldiers so they would not be treated like Filipinos or any other person even if their rights are already guaranteed by the Bill of Rights.

She cautioned that before the Philippine Senate concurs in the treaty, or even before ratification by the President, it is essential or necessary to ask the rationale for the treaty. She said that it was obvious that the reason behind the treaty is to give special treatment to the Australian soldiers, similar to the special treatment given to the American soldiers under the VFA.

She noted that while the agreement with Australia is expected to be presented to the public in a different light, it is basically a pact that would, to the extent negotiable, exempt Australian troops in the Philippines from being subject to the country's laws. She said that she agrees with the joint military exercises; however, should Australian soldiers commit crimes in the Philippines, they should be sued, tried and placed under the jurisdiction of the Philippine judicial system, even as they are also guaranteed all the rights accorded to everyone under the Philippine Constitution. She concluded that the reason why the Australians want this treaty is that they want a better treatment than what is accorded by the Philippine Constitution.

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She stated that as explained by the U.S. Military Foreign Affairs Office in a presentation posted on the Pentagon website, the "Status of forces agreement seeks to apply the concept of the Law of the Flag or the idea that a country deploying military forces abroad should apply its own laws to its soldiers, not that of the country where they are to be deployed." She said that this is the principle being adhered to by the Americans and Australians — the Law of the Flag — which means that should Americans or Australians commit a crime in the Philippines, they would be tried and penalized under American or Australian law and jurisdiction, as the case maybe, and not under the Philippines'. She noted that this concept has driven the U.S. to negotiate a variety of such agreements with over 90 countries since 1951.

Senator Defensor Santiago explained that there are several kinds of SOVFA: 1) one that gives complete immunity from local jurisdiction and control to the foreign force; 2) one where the foreign force has limited rights. However, she pointed out that whatever form a SOFVA might take, it is not a new security agreement of the sort that binds parties to new defense obligations; it merely governs existing ties. But at the same time, she emphasized that the agreement is not also just a mere legal or judicial arrangement; its signing has new political and new strategic implications within and beyond the countries involved. She further noted that the SOFVA does not compel Australia to get involved with military problems affecting the Philippines.

As regards the benefit the Philippines would gain from this agreement, she said that she has studied the treaty and she does not see anything beneficial from it. She disclosed that upon signing of the treaty in 2007, Australia gave the country some military equipment and hardware.

Senator Defensor Santiago remarked that it is important to know that the two signatories of the agreement belong to the network of pro-U.S. allies in the Pacific, long described by U.S. policy makers and analysts as an American lake which, after Europe during the Cold War, is now considered the focus of strategic competition by neo-conservatives. She said that America has already made the Philippines the center of the "Pacific Pivot." She also revealed that instead of being in other countries, 60% of American military forces will now be stationed in the Asia Pacific. She likewise said that if the Philippines signs

and ratifies the SOVFA, it only means that it is one with America because its wants to do something about China.

*Senator Defensor Santiago stated that Australia is perhaps America's most reliable ally in the world because no other country, not even Britain, has fought side by side with the U.S. in all its major wars in the past century. In the recent years, she noted, Australia sent sizable contingents to join the U.S.-led invasion and occupation of Iraq and Afghanistan. She added that several countries have already left America's so-called "Coalition of the Willing" but Australia remains.*

Senator Defensor Santiago proceeded to make the following comments/observations:

Australia is home to important U.S. military bases and installations and the site of large-scale joint military exercises. It has also signed on to plans for developing the U.S.'s controversial anti-ballistic missile defense system in the region.

Itself a former colonial ruler of neighboring Papua New Guinea, Australia has recently sent troops to East Timor and the Solomon Islands, prompting concerns regarding its regional interventions. Its role in policing the region is critical to U.S. military strategy. As the influential American neo-conservative commentator Max Boot has pointed out, "We may be the global sheriff, but we need a posse to be effective, and Australia has been a stalwart member of that self-selected assemblage." As an analogy, the U.S. can be likened to the policeman of the world while Australia would be its deputy policeman, or a sheriff and its deputy sheriff.

With the US military overstretched, Washington may find more and more reason to share — if not outsource — some tasks to its deputy in Southeast Asia. Australia and the Philippines are like the assistants of the U.S. since the country still remains as America's most dependable ally in Southeast Asia.

In 1991, America closed its military bases in the country. But until now, about 300 to 500 U.S. Special Forces have been indefinitely stationed in Mindanao since early 2002. Apart from them, a steady stream of U.S. troops to take part in up to 24 exercises held all year round in various places in the country have been made. The Americans should have left but they are still in the country, at least 500 of them. And they increase in number every year because of the

so-called joint military exercises held 24 times a year – about two joint military exercises per month. Despite closing the American bases, they are still in the country.

Under the Mutual Logistics Servicing Agreement with the U.S. signed in 2001, the U.S. is permitted to use military facilities and installations all over the country. Though officials deny that bases have been re-established in the country, the Philippines is listed as hosting “cooperative security locations” — a category of bases — by the Overseas Basing Commission, an official body tasked to review the U.S.’s basing abroad. There are no more U.S. bases in the country, however, the Americans consider the country as a “cooperative security location.”

If ratified, the SOFVA will further strengthen the link between two pro-U.S. allies in the region. It will usher in more Australian military deployments to the Philippines — whether for military exercises or for the kind of missions described by U.S. Special Forces themselves as “counter-insurgency” or “unconventional warfare” operations in the Southern Philippines. Such joint missions among allies will enhance what the military calls “inter-operability” as they share military doctrine, information, techniques and equipment.

In bringing together two close allies in the southwestern rim of the Pacific, the SOFVA will strengthen the chains of the pro-U.S. bloc in the region and reinforce what one analyst calls the “new Pacific wall.” This new Pacific wall spans South Korea and Japan to the north, Mongolia to the northwest, Guam in the center and Thailand and Singapore further west.

While the threat of terrorism is often invoked to explain the growing cooperation between allies in the region, this explanation would only pertain to the so-called Islamic terrorists in Mindanao. But, how about groups like the Abu Sayyaf — the supposed target of U.S. military action in the Philippines — which does not have the capacity to be considered a primary threat to U.S. national security?

Senator Defensor Santiago posited that whatever reasons the Americans came to the country for, it is not for protection of Filipinos but for theirs. *If the Americans really wanted to protect the Filipinos, she asked why it did not issue a statement against China regarding the Scarborough Shoal.* She noted that the country’s Foreign Affairs Secretary went to the U.S. but no statement came

from the U.S. Secretary of State. *America, she claimed, would not help the Philippines; it would depend on the benefit that would redound to them.* She believed the Filipinos should change their mindset that the U.S. would automatically come to their aid whenever they need help, stressing that the Filipinos are the only ones who could help themselves. She warned that if the Filipinos allowed the Australians to use the country, they should know the reason for such agreement. *She continued putting on record her comments, to wit:*

In contrast, the U.S.’s own 2006 Quadrennial Defense Review, widely seen as articulating official government thinking, has unequivocally identified China as having “the greatest potential to compete militarily with the United States.” It is China which the new Pacific wall surrounds. And, as with all alliances, it is on the existence of a perceived common threat where the pro-U.S. bloc in the region could flounder. While the U.S. under Bush, after vacillating for years on whether to walk the path of engagement or containment, may have now positively identified China as its potential enemy, the Philippines has not — and may not.

The Philippines has not shown hostility against China but the U.S. interprets it as such. Why would they drag the country to their conflict with China?

When President Arroyo sought the SOFVA in 2007, Filipino generals were holding official talks with Chinese security officials in Manila and getting pledges of US\$1.2 million in military engineering equipment from Beijing which is a pittance compared to the \$96 million we stood to get from the U.S. in 2007, far from enough to tip the scale of allegiances. But with exports to China growing five-fold between 2001 and 2005 and with investments from China recording a dramatic 12,000% increase between 2001 and 2006, the Philippines’ attitude toward its neighbor is now more ambiguous.

With the issue on the Scarborough Shoal, *will Australia come to our aid if we sign this agreement or would they imitate the U.S. – leave the country on its own as long as they get what they need from us.* In effect, that is what is going in plain, simple terms.

Whether the Philippines’ interests will be served more by being on the side of the U.S. and Australia in a potential confrontation with China is expected to weigh heavily on the minds of the Philippine Senate as its members begin to debate whether or not to ratify the SOFVA.

We should then choose – China or U.S. and Australia? America is quite far, how could they help us? Until now, they have not issued any statement that they would help us with the Sacrborough Shoal issue.

When we signed the SOVFA in 2007, all we got was 28 high-speed gunboats and about \$3.28 million in inducements for signing presumably to be used against alleged communist rebels and Moro separatists in the south.

Indeed, while the Philippine military consistently claims that the subjects of their foreign-assisted offensives in Mindanao are “Al-Qaeda linked” members, it has repeatedly turned out that they have actually been targeting members of a separatist movement that forged a peace agreement with the government in 1996.

We should therefore ponder on what the country would gain from signing this agreement. We will only receive 28 high speed gunboats and \$3.28 million in military assistance. In what way will the country benefit from this agreement? In the same way, what have we gained from the U.S. VFA? I have previously presented to the Body that we received so little compared to what the U.S. has given to the other countries without a VFA in the Pacific area.

Senator Defensor Santiago then proceeded to discuss the constitutional aspect of the treaty, to wit:

First, let me deal with the reciprocal character of this SOVFA and its implications. Reciprocal means mutual benefit between the contracting parties. This SOVFA expresses reciprocity and mutuality. In effect, this implies two contracts – an agreement regulating the Philippine Visiting Forces in Australia and an agreement regulating the Australian Visiting Forces in the Philippines. If you enter into a contract, both parties should be considered as equals. If there would be an Australian Visiting Force in the Philippines, there should also be a *Philippine Visiting Force* in Australia. That would be absurd.

The necessary implication of the title along with this agreement is that the Filipinos have a general obligation on the whole to send an AFP Military Visiting Force to Australia in order to conduct training for the Australian Military Forces or to hold joint exercises with them so that the Australians can be acquainted with modern weapons technology. This agreement implies that the Australians would come to the country to train our military and vice versa. That

would be absurd – if we cannot even sustain itself, how can we pay for the expenses of training other military forces. Is that what this agreement is about?

What will then be the Philippine Visiting Force? Do we have modern cruise warships, jet fighter aircraft, tanks, and other modernized units as compared to Australia which exhibit the latest strategic technique and military hardware? This outlook is a falsification of reality. They want the country to sign the agreement in the guise that the Australians and Filipinos would be treated equally. But that is not the case. They are the only ones who could come to the country under the guise of military exercises while we do not have the capacity to do so. In the first place, the Philippines has no intention or capability to send a Visiting Force to Australia.

Therefore, the fundamental and essential basis of this agreement – that it is reciprocal and mutual – is *non-existent and is illusory*. If in practice – in intention and capability – this agreement would be realized and become operational only on the side of Australia. Then, the entire treaty regime becomes one-sided and unequal. That is what I am trying to say: only Australia would benefit from this agreement, and the Philippines would not gain anything from it.

In that case, clearly, this SOVFA may be shown to be an implementation of Australian Foreign Policy in Philippine territory. Therefore, it becomes a pivotal question for the Senate to clarify or verify whether the preconditions or presuppositions of this agreement exist, as I have already pointed out.

Senator Defensor Santiago asked on the constitutional rationale or state policy that allows the Philippine military forces to be trained by a foreign visiting force in its own territory.

In reply, Senator Legarda read Article XVIII, Section 25 of the Constitution, to wit:

Section 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning military bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

Noting that Senator Legarda cited a “negative provision” of the Constitution, Senator Defensor Santiago further asked for a positive constitutional policy or rationale.

With the permission of the Sponsor, Senate President Enrile sought to answer the query, pointing out that the shaper of foreign policy is the President, and the duty of the Senate is to agree or disagree with the foreign policies that the President adopted. He emphasized that the constitutional basis is the power of the President to represent the country in both domestic and foreign relations.

Senator Defensor Santiago agreed, but she pointed that the power to decide foreign policy is not enjoyed by the President alone, but jointly with the Philippine Senate. Apart from it being the President’s prerogative, she reiterated her query on the positive constitutional provision that allows the President to choose a foreign visiting force that will train the country’s soldiers in its own territory.

Senate President Enrile explained that the President is the commander-in-chief of the Armed Forces of the Philippines, and, as such, he is in charge of national security. He added that the President, as the chief executive, shapes the foreign and domestic policies and then presents them to Congress for agreement and adoption or rejection. He stated that the power of the President as a foreign policy formulator and as commander-in-chief of the AFP in charge of national security would be the constitutional basis of the agreement between the Philippines and Australia.

In the field of political science, Senator Defensor Santiago stated that the Philippines might be the only nation claiming independence which has failed to be educated or which has become more ignorant of the past – 300 years of Spanish *Guardia Civil*, 50 years of U.S. military bases and continuing military presence in various guises. And now, she said that the country is faced with Filipino military forces tracing its lineage to General Antonio Luna of the Philippine Revolution to be trained by American military forces in Philippine territory.

Senator Defensor Santiago asked why foreigners need to train the Philippine military in the Philippine territory. She pointed out that if foreigners really want to train the Filipino soldiers, they should pay for the expenses and train them in their country with

their equipment and technology. She further inquired on the reason for the foreigners’ entry into the country.

Senate President Enrile said that when the war broke out in 1941, the Philippines was not a participant but it became involved because of the presence of U.S. military forces in the country. He stated that even without the Americans in the country, given the military posture of Japan, the Philippines could have been occupied as it was, in fact, occupied, and when finally the Japanese forces prevailed, it was the American, Australian and other allied troops that liberated the country from an enemy whose might the Philippine forces alone could not dislodge. He said that the question is who could present an alternative to protect the country from a predatory power in the regions of the world.

Senator Legarda added that supporting the agreement and concurring in its ratification is an important milestone for the comprehensive partnership between the Philippines and Australia, especially as it will accelerate the two countries’ broad deep collaboration in the area of defense and security. She believed that fostering strong defense relations with partners and their neighbors through combined training allowed by the SOVFA is a good defense strategy which enhances the country’s defense posture. She believed that the combined training exercises not only improve the bilateral defense relationship but also improve the inter-operability of the two forces to address security threats, including non-traditional threats such as natural disasters.

Senator Legarda said that another reason why she believes the agreement is in order is that it has not only focused on the defense aspect but also included a regard for the environment and with a strong DRR component. She said that Australia has been very vigilant and has, in fact, already started an environmental coast watch system all over the country since the signing of the agreement and is the biggest donor in terms of DRR aid.

Senate President Enrile noted that in the Mutual Defense Treaty with the United States, the Philippines is bound to perform its obligation in the event of contingent incidences where the treaty provisions would come into play. Since Australia is also an ally of the United States, he believed that there is a possibility of combined forces working together—Americans, Australians, New Zealanders and Filipinos,

and even Thais and Japanese, — in the event of an unexpected regional or world event where military force would be employed. He believed that it would be to the best interest of the country to know the military doctrines of other countries that will be involved in such a situation to be able to work with them not only to defend democracy but also to defend the country. He also pointed out that during the war, the Australians came to the country to liberate the people even without any visiting forces agreement, and he further recalled that during his stint a defense secretary and minister of the Marcos administration for 17 years, the Australians have been helping the country particularly in putting up a road system in Samar that gave the poor island some degree of infrastructure for higher mobility. He clarified that he was merely stating facts and was not citing the Australians' accomplishments to seek favor for the treaty.

At this point, Senator Defensor Santiago, in presenting her second question, asked on the true nature and extent of the Australian military presence as contemplated by the agreement as she noted the preponderance of the phrase "other activities" in the treaty, to wit: 1) Article I, paragraph (i) which defines official duty as "acts performed or words spoken by the members of the Visiting Force in the conduct of combined training, exercises or other activities"; 2) Article I, paragraph (n), defining the meaning of visiting force which is intended to mean "any body, contingent, or unit of the forces' sending state when present in the receiving state in connection with combined training, exercises or other activities mutually approved by the parties"; 3) Article IV, paragraph (l) whereby the receiving state shall facilitate the admission and departure of the members of the visiting force and civilian component for combined training exercises or other activities mutually approved by the parties; and 4) Article V, paragraph (l), whereby the visiting force may temporarily use such defined land and sea areas, airspace or facilities of the receiving state mutually determined by the parties for combined training, exercises or other activities mutually approved by the parties.

Senator Defensor Santiago pointed out that the same open-ended and wide-ranging activities, yet undetermined, are the reference points of the agreement particularly in Article VI, paragraph 2 and Article VII, paragraphs 1 and 4. Considering the broad-ranging coverage of the phrase "other activities," she said that the approval of the parties

become susceptible to such elasticity as to include an expansive range.

Senator Legarda bared that she also raised the same question during the Committee hearing, pointing out that the SOVFA covers members of a sending state's visiting forces and its civilian component. She said that this is temporary for the receiving state, just in connection with combined training, exercises and other activities mutually approved by the parties. She said that the RP-Australian SOVFA itself has set the limitations on what is to be covered by the term "other activities," activities that should be mutually approved by the parties. In the event that the members of the Australian Visiting Forces intend to use areas and facilities of the Philippines, she said that the Australian authorities have the obligation to give prior written notice of their intention to temporarily use such defined land and sea areas, airspace or facilities of the Philippines as the receiving state.

Moreover, Senator Legarda said that the activities contemplated under the SOVFA will be within the bounds set by the Supreme Court. She explained that as conceived, the joint exercises may include training on new techniques of patrol and surveillance to protect the nation's marine resources, sea search and rescue operations to assist vessels in distress, disaster relief operations, civic action, projects such as the building of schools, and even for medical and humanitarian missions. She added that the Joint Committee that will decide on the coverage of such activities will be composed of members from both the Australian and Philippine governments and will be created in the event the Senate concurs in the treaty.

Senator Defensor Santiago noted that in her response, Senator Legarda simply described the procedure to be followed in conducting "other activities" but did not give their coverage. She averred that the phrase "other activities as mutually agreed upon by the parties" is so vague that it might be considered void for vagueness, meaning, it is so vague that what is prohibited or what is allowed cannot be understood and therefore becomes void. Thus, she believed that if a case is brought before the Supreme Court questioning its constitutionality, it is possible that the Supreme Court will strike down the SOVFA because it is void for vagueness. She said that even as Senator Legarda assured that the "other activities" contemplated under the treaty would be within the bounds set by the Philippine Supreme Court, she argued that what the constitutional

*Handwritten initials*

authorities of one's contracting party to a treaty might say has absolutely no value in international law. She stressed that the parties can cite only principles of international law and not their own constitutional authority, for instance, their Supreme Court, in arguing their cases.

Senate President Enrile stated that the term "other activities" is a catch-all phrase to cover non-military activities by the military forces of both countries for which a treaty is necessary, for instance, construction of roads by Australian military engineers who will be deployed in the country bringing their own materiel; civic actions by a military medical team; military counter-insurgency operations such as building structures for the populace using their own military personnel; and even tutoring in schools. He pointed out that even in the Visiting Forces Agreement with the United States, there is a phrase to cover a mirage of possible activities that are not exactly military in nature but done in the course of the visit of the foreign force to the country.

Reacting thereto, Senator Defensor Santiago said that the deliberations in the Senate are not necessarily binding on the contracting party in the SOVFA.

Moving on to her third question, Senator Defensor Santiago said that a central issue that confronts the Senate dwells on the magnitude of military presence of Australia which the agreement authorizes, particularly on the number of forces involved. She noted that the open-ended scope of the activities that the parties may approve does not make a full disclosure of relevant considerations to enable the Senate to calculate the cost entailed by the agreement in terms of derogation of the sovereignty and the threat of the security of the people. She proposed to renegotiate the treaty, if necessary, so that the Philippine government can obtain a definition on the specific activities of the Australian visiting force within the Philippine territory in order for the Senate to gain knowledge on the full magnitude of foreign military presence in the territory. She reiterated that the Senate has not been informed of what other activities are authorized, judging from the copy of the agreement that was distributed to the Senators.

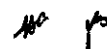
Senator Defensor Santiago cited the viewpoint of the international law of treaties on the legal necessity to determine beforehand the scope of Australian military presence which could be determined by the

specific value of the activities to be undertaken under the agreement, especially since in establishing the legal relations of the Philippines and Australia, the agreement is intended by them to create rights and obligations to be governed by international law. She added that international law requires that the SOVFA must express with precision the rights and duties which the parties intend to require from each other as a matter of law.

Asked on the maximum presence of Australian forces to be allowed on Philippine territory, Senator Legarda said that she asked the same question during the committee hearing and according to the DFA and DND, the Joint Committee will determine the number of forces, all of which should be within the confines of the Constitution and existing laws and should be mutually agreed upon by the members of the Joint Committee.

Moreover, Senator Legarda said that the Philippines as a receiving state shall be notified at least fifteen days in advance of the estimated arrival of the visiting forces of the sending state and its civilian component and, in emergency situations such as search and rescue and disaster and relief operations, such notices can be made within forty-eight hours in advance of the estimated time of arrival or as otherwise mutually determined by the parties. She said that in both cases, notice for the departure of the visiting forces and its civilian component shall be made also at least forty-eight hours in advance of its estimated time of departure. As to the exact number of troops that will come to the Philippines, she admitted that it was not stated in the agreement itself but will be mutually and jointly decided on by both parties.

For his part, Senate President Enrile stated that the size of the visiting forces would depend on the nature of the exercise to be undertaken between the two countries. He said that from an economic viewpoint, the bigger the size of troops that would be sent in the country means the bigger the inflow of economic activities would be because they would be buying some of the country's products during their stay. He stressed, however, that said argument is not being used as an excuse to ratify the treaty because these troops are not entering the country as tourists, but for the purpose of knowing the condition of the country and its terrain, and acquainting themselves with the soldiery so that they can work together in case of need.





At this point, Senator Defensor Santiago proceeded to the constitutional issue of tax exemptions. She made the following observations, to wit:

The SOVFA makes stipulations on exemption from duties and taxes under Article 13, entitled "Importation and Exportation". In paragraph 8(a) of this Article, the term "duties and taxes" is understood to mean "all customs duties and internal revenue taxes, such as value added, ad-valorem and percentage taxes, payable on importation or exportation."

This definition is applied in particular in the following tax exemption clauses of the agreement as follows:

The first tax exemption:

Article X13(3): The Visiting Forces may, in accordance with the law of the Receiving State, import free of duties and taxes equipment, materials, motor vehicles, provisions and supplies including bullets, ammunitions and other exclusive devices intended for the exclusive official use or consumption of the Visiting Force or its Civilian Component for combined training, exercises or other activities mutually approved by the Parties.

The second tax exemption:

Article 123(6): The Service Authorities of the Sending State shall be permitted to import and export, free of duties and taxes, all fuel, oil and lubricants intended for exclusive use in official motor vehicles, aircraft, and vessels of the Visiting Force or its Civilian Component used in connection with combined training, exercise or other activities mutually approved by the Parties.

These provisions of the SOVFA need consideration in the light of our own Constitution, Article VI, Section 28(4) which provides:

No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.

At this point, Senator Defensor Santiago emphasized that under the Constitution, there should be a concurrence of a majority of all the Members of the Congress.

This constitutional requirement could be interpreted to mean that tax exemption includes

exemption from customs duties and that it is an exclusive prerogative of Congress and is required to be embodied in statutory law, not in a treaty or international agreement without legislative authority. Whereas, if the tax exemptions in question, as embodied in this agreement, are concurred in by the Senate by authority of the treaty clause of our Constitution, concurrence of such tax exemptions will only be by the Senate and with the vote of at least two-thirds of all its members. The assumption that laws providing tax exemptions are exclusive to congressional authority may put to doubt the validity of the President's act in negotiating and concluding a treaty providing for tax exemption without congressional authority. It may also be raised as a constitutional issue as to whether the President, through treaty-making, can assume the authority to grant exemption of customs duties, which is apparently not included in the restricted powers over the tariff system as delegated to the Executive under the Constitution, Article VI, Section 28(2).

Senator Defensor Santiago then asked Senator Legarda to make a brief comment on the constitutional provisions she has cited and which she said appear to be contradicted by the provisions of the SOVFA. In response, Senator Legarda said that she appreciates the interjections made since she has also raised the same issue during the hearing and she wanted the same to be part of the deliberations on the agreement.

Senator Legarda noted that Senator Defensor Santiago's question was simply whether or not the grant of tax exemptions under the Philippine-Australia SOVFA constitutes a usurpation of Congress' power to grant tax exemptions, the answer to which is that the agreement recognizes the legislative powers of Congress, including the power to grant tax exemptions, such that the Philippine-Australia SOVFA was submitted to the Senate for its concurrence.

Senator Legarda recalled that in response to her query on constitutional and legal issues during the committee hearings, the Department of Justice made the following statement:

The decision of the Supreme Court in *Bayan vs. Zamora*, declaring the Philippine-US Visiting Forces Agreement valid and constitutional forecloses any discussion on the issue of the grant of tax exemptions and privileges under the Philippine-Australia SOVFA. The provisions on the importation and exportation found in the

Philippine-Australia (SOVFA) so far are substantially similar with the provision of the Philippine-US VFA on the same subject matter.

The Philippine-Australia SOVFA does not grant to the Australian Visiting Force or its civilian component any special privilege that exceed those recognized under international law and tax exemptions and duty-free privileges are internationally-accepted consequences of international agreements among nations.

Moreover, the tax exemptions on certain items of the visiting forces and its civilian components under the agreement xxx particularly Article 13, paragraphs 3 and 4, like the tax exemptions granted under the VFA are not absolute and subject to conditions set forth under paragraphs 3, 4 and 6.

Relative thereto, Senator Legarda cited then Senate President Marcelo Fernan's explanation of his vote on the RP-US VFA as follows:

Tax exemptions given to US personnel do not contravene the constitutional provision that tax exemptions can only be granted by Congress. Duty-free arrangements extended to visiting forces apply only to military equipment, supplies and personnel for use during exercises. If duty-free goods or equipments are disposed of to taxable persons or entities, taxes and duties will be imposed. Tax exempt and duty-free privileges under the VFA moreover are reasonable arrangements recognized and upheld in many status of forces agreements between governments.

In addition, Senate President Enrile said that one sovereign cannot tax another sovereign including the property of that sovereign which, he said, is a basic principle of international law. He said that the property of the United States cannot be taxed in the Philippines in the same manner that they cannot impose taxes on the country's properties in the United States, pursuant to the rule on comity of nations. He stressed that the assets that would be brought by the Australian military forces into the country are not properties of the soldiers but properties of the Queen or sovereign of Australia.

Senator Defensor Santiago posited that whether a state can tax real estate and other properties of another state on the territory of the receiving state will depend on whether it is a party to the Vienna Convention on diplomatic privileges immunities. She disagreed to the proposition that it may be a customary principle of international law that a state can no

longer impose tax on a property just because there is a property of another state in the country. She stressed that a state cannot even construct or buy those properties unless the receiving state consents thereto. So, naturally, she said, when the receiving state consents, a provision on the treaty for diplomatic immunity or for diplomatic privilege for a certain property could be included as to whether or not the said property should be subject to tax. She said, however, that generally, a receiving state would want to tax said property unless it is willing to waive the right because it highly values its friendship with the other state.

Thereafter, Senator Defensor Santiago proceeded to the rules on criminal jurisdiction which, she said, are the most controversial provisions of the SOVFA, just as the provisions on criminal jurisdictions are the most controversial in practice of the VFA with the U.S.

Asked whether the provisions of the SOVFA on the matter intrude on the exclusive power of the Supreme Court to promulgate rules concerning pleadings, practice and procedure in all courts under the Constitution, Senator Legarda noted that she also raised the same concern before the DOJ during the committee hearings, which, she said, was also one of the reasons why she voted against the VFA in 1999. But in answer to the query, she said that the provisions of the SOVFA clearly emphasize the principle of respect for laws of the receiving state. She said that it was her understanding, based on the wordings of the SOVFA, that it is the receiving state which would exercise primary jurisdiction over cases, except those offenses committed against the property or security of the sending state, and offenses done in the performance of an official duty. She opined that the rights granted to the sending state are quite reasonable, and that the provisions of the SOVFA are reciprocal such that what applies to Australia also applies to the Philippines.

Moreover, Senator Legarda noted that the provisions on criminal jurisdiction in the RP-Australia SOVFA had been the main focus of the departments that negotiated the present agreement which provides for penal rules on custody, detention and confinement of any member of the Australian Visiting Force or its civilian component over whom the Philippines would exercise jurisdiction, and she expressed the view that the SOVFA provisions on criminal jurisdiction cannot be said to encroach on the Supreme Court's power

to promulgate rules concerning practice and procedure before all courts because said power does not include the power to bestow jurisdiction. She said that jurisdiction is conferred by law and that since a treaty stands on equal footing with the law, a treaty may validly amend or modify a law.

Senator Legarda went on to note that should an act or omission be found to be within the jurisdiction of the courts and the appropriate case is accordingly filed, the proceedings shall be in accordance with the Philippines' Rules of Court, especially with regard to custody, period of trial, and place of detention and imprisonment.

Senator Defensor Santiago took exception to the statement that a treaty may amend or, otherwise, modify an existing law, asserting that it goes against the principles of constitutional law, both in the United States and the Philippines. She said that it would depend on the Supreme Court of a country. She opined that a state cannot possibly enter into a treaty and propose that all contrary laws of the other state be automatically amended to conform with the treaty because that will be in violation of the principles of sovereignty.

Going into the issue of death penalty, which is also the last question on the constitutional issues raised by the SOVFA, Senator Defensor Santiago noted that under the SOVFA, Article XI, paragraph 12, provides that: "A sentence of death shall not be carried out by either party." Said provision in the SOVFA, she asserted, appears to be contrary to the country's Constitution, particularly Article III, Section 19, paragraph 1, which allows the imposition of the death penalty for compelling reasons involving heinous crimes, thus empowering its execution through a legislative act. She explained that the Constitution provides that there shall be no more death penalty unless the Congress decides that there should be a death penalty for compelling reasons involving heinous crimes.

Further, Senator Defensor Santiago pointed out that the SOVFA, like all other treaties that the Philippines has entered into, should uphold the dignity and integrity of the country's armed forces.

Asked to resolve the apparent conflict between the provisions of the SOVFA and the Constitution, Senator Legarda said it was her understanding that the death penalty should not be carried out by the state or by the SOVFA.

But Senator Defensor Santiago argued that it is constitutionally provided that the death penalty is allowed for compelling reasons involving heinous crimes, as long as the Congress passes the appropriate law. In response, Senator Legarda opined that if such law is passed allowing the death penalty law, it would be considered supreme over the provisions of the agreement. Senator Defensor Santiago disagreed.

Senator Legarda stated that if the matter becomes an issue between Australia and the Philippines, there is a 180-day period of termination within which the parties may terminate the agreement in the event a case arises which aggravates tensions brought about by the disrespect of a law that has been passed by Congress. She reiterated that it is her personal interpretation that if a law allowing the death penalty is passed, which would be contrary to the provision of the SOVFA, the issue must be brought to the Joint Committee for discussion. She also admitted that Senator Defensor Santiago would be in a better position to answer the question and that she was not certain as to what should prevail between the law that could be enacted subsequent to the concurrence in the agreement.

At this juncture, Senator Defensor Santiago deferred the continuation of her interpellation to give way to the interpellation of Senator Arroyo.

## MANIFESTATION OF SENATOR ARROYO

Senator Arroyo recalled that when he entered the Senate in 2001, one of the first matters taken up was the issue of exportation of mangoes to Australia. He said that during that time, Philippine mangoes were banned and Senator Angara was fuming mad because with his experience in agriculture, he knew that the country's mangoes were accepted in the U.S., Japan and other advanced countries. He said that when he asked Senator Angara today\* about the problem, the latter replied that Australia has not only banned mangoes but also bananas and pineapples, and that the country's balance of trade with Australia was P500 million in import and only P50 million in export, meaning, it was lopsided.

Senator Arroyo recounted that when he asked Senator Defensor Santiago, former chair of the Committee on Foreign Affairs, on the advantages of RP-Australia SOFVA, her reply was there was none and that economic relations with Australia is one-

As corrected by Senator Sotto on June 6, 2012.

*Jul P*

sided. Thus, he opined that the Senate cannot simply not concur in treaties if other contracting parties have no consideration of the country's interests.

Senator Arroyo disclosed that according to his readings, the country's military relationship with Australia was planned by the United States War Department, way back in 1914, before the U.S. entered World War I, and was termed *War Plan Orange No. 3* which was designed to protect Australia by delaying the advance of Japanese imperial forces to Australia which, in fact, happened when Japan invaded the Philippines in 1941. He said that Philippine defenses were designed to prevent the advance of Japan to Australia. Japan never reached Australia. Geographically, he said that Australia is way down under, far from the Philippines, and is classified more as a South Pacific island.\*

He said that he wanted to address this question to his colleagues so that when they vote on the treaty to consider, whether with this kind of economic and military history with Australia and the United States, the Philippines will actually benefit.\*

Replying thereto, on behalf of Senator Legarda, Senate President Enrile confirmed that Australia is far from the Philippines and has banned the entry of Philippine fruits. But he believed that security issues should be tackled separately from economic issues, in the same manner that despite its economic problems with the United States, the Philippines still maintains a military alliance with it since the country cannot defend itself with its own resources and level of capability.

He pointed out that he was not defending Australia but they ought not to lose sight of the fact that were it not for Australia, the United States would not have recovered its colonies or territories in the Far East, including the Philippines, and war with Japan would have been prolonged. He revealed that after leaving Corregidor, Gen. Douglas MacArthur sought refuge in Australia and established AFWESPAC — the center of military preparation for the liberation of captured colonies by the Japanese in Southeast Asia. He claimed that without Australia, America would not have been able to finish the war in three years and probably, the Philippines would be part of Japan now. He emphasized that there was great utility of Australia in World War II because it was from there that

forces were deployed to recover and liberate the Philippines from Japanese military occupation.

*At this juncture, Senator Honasan relinquished the Chair to Senate President Pro Tempore Estrada.*

#### MANIFESTATION OF SENATOR ANGARA

Adverting to the lopsided balance of trade of agricultural commodities between Australia and the Philippines, Senator Angara noted that the issue on the ban of mangoes, pineapples and bananas is now being litigated before the WTO in Geneva. He suggested that an overall perspective on the issue be appreciated because the primordial objective of international relations is national security.

Likewise, he mentioned that the merit or demerit of the VFA should be evaluated in the context of the AFP modernization plan. He recalled that the first modernization program of AFP was launched in mid-'90s which did not achieve its vision except for capability-building. Moreover, he stated that the proposed AFP modernization plan aims to put more emphasis on the country's naval and air assets to project a force of deterrence instead of a force of offense. In a 1,000-meter archipelago, he noted that the country needs every single ally to assist in modernizing weaponries and military doctrines as well as improving the inter-operability of equipment, weapons and communications. Further, considering the age of climate change, he said that the country needs allies in case of disaster since the Philippines, for the past five years, has been victim of many unprecedented disasters making it one of the Top 10 Disaster-Prone Countries in the world.

In closing, he averred that it is imperative to consider the network of alliances and friendship with traditional friends to allow modernization in the armed forces or to at least be at par and/or competitive with Asian countries notwithstanding some irritants in trade relations.

#### MANIFESTATION OF SENATOR LEGARDA

Senator Legarda thanked Senators Defensor Santiago and Arroyo for putting on record very important issues relative to the RP-Australia Status of Visiting Forces Agreement (SOVFA) so that the Joint Committee, which is tasked to implement the RP-Australian SOVFA, may refer to it.

\*As corrected by Senator Sotto on June 6, 2012.

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**SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 788**

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

**PRESIDENTIAL CERTIFICATION**

Upon direction of the Chair, the Deputy Secretary for Legislation read the President’s certification as to the necessity of the immediate enactment of Senate Bill No. 3009.

HON. JUAN PONCE ENRILE  
Senate President  
Philippine Senate  
Pasay City

Dear Senate President Enrile:

Pursuant to the provisions of Article VI, Section 26 (2) of the 1987 Constitution, I hereby certify to the necessity of the immediate enactment of Senate Bill No. 3009 entitled:

AN ACT TO FURTHER STRENGTHEN THE ANTI-MONEY LAUNDERING LAW, AMENDING FOR THE PURPOSE SECTIONS 10 AND 11 OF REPUBLIC ACT NO. 9160, OTHERWISE KNOWN AS THE “ANTI-MONEY LAUNDERING ACT OF 2001,” AS AMENDED, AND FOR OTHER PURPOSES

to address the urgent need to make the existing Anti-Money Laundering Law more compliant with international standards in order that the country will not be categorized as money laundering and terrorist financing (ML/TF) risks to the international financial system.

Best Regards.

Very truly yours,

(Sgd) BENIGNO S. AQUINO III

Cf: Hon. Feliciano R. Belmonte, Jr.  
Speaker of the House of Representatives  
Quezon City

**APPROVAL OF SENATE BILL NO. 3009 ON THIRD READING**

In view of the presidential certification, upon motion of Senator Sotto, there being no objection, the Body considered, on Third Reading, Senate Bill No. 3009.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Sotto, there being no objection, the Deputy Secretary for Legislation read only the title of the bill, to wit:

AN ACT TO FURTHER STRENGTHEN THE ANTI-MONEY LAUNDERING LAW, AMENDING FOR THE PURPOSE SECTIONS 10 AND 11 OF REPUBLIC ACT NO. 9160, OTHERWISE KNOWN AS THE “ANTI-MONEY LAUNDERING ACT OF 2001,” AS AMENDED, AND FOR OTHER PURPOSES.

The Deputy Secretary for Legislation called the roll for nominal voting.

**RESULT OF THE VOTING**

The result of the voting was as follows:

*In favor*

- |                   |            |
|-------------------|------------|
| Angara            | Lapid      |
| Cayetano (A)      | Legarda    |
| Cayetano (P)      | Marcos     |
| Defensor Santiago | Osmeña     |
| Drilon            | Pangilinan |
| Enrile            | Pimentel   |
| Estrada           | Recto      |
| Guingona          | Revilla    |
| Honasan           | Sotto      |
| Lacson            |            |

*Against*

None

*Abstention*

None

With 19 senators voting in favor, none against, and no abstention, the Chair declared Senate Bill No. 3009 approved on Third Reading.

**SPECIAL ORDER**

Upon motion of Senator Sotto, there being no objection, the Body approved the transfer of Committee Report No. 146 on Senate Bill No. 3204 from the Calendar for Ordinary Business to the Calendar for Special Orders.

## ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

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

- Former Tarlac Governor and Philippine Public Safety College (PPSC) President Margarita R. de los Reyes-Cojuangco;
- Atty. Ruben R. Platon;
- Dr. Marcelino A. Lipana;
- Police officers: P S/Supt. Amador B. Navarroza; P C/Supt. Clarence Guinto; P Supt. Wilberto Rico Neil Kwan Tiu; P S/Supt. Dennis U. Rocamora; and P Supt. Nicolas S. Salvador;
- Employees of the PPSC and Philippine National Police Academy (PNPA);
- Recruits of the Philippine National Police (PNP), Bureau of Fire Protection (BFP) and Bureau of Jail Management and Penology (BJMP);
- Guests from the Department of Science and Technology led by DOST Secretary Mario G. Montejo

## COMMITTEE REPORT NO. 146 ON SENATE BILL NO. 3204

Upon motion of Senator Sotto, there being no objection, the Body considered, on Second Reading, Senate Bill No. 3204 (Committee Report No. 146), entitled

AN ACT INSTITUTING THE PHILIPPINE PUBLIC SAFETY COLLEGE SYSTEM AS THE PREMIER EDUCATIONAL INSTITUTION FOR TRAINING, HUMAN RESOURCE DEVELOPMENT AND CONTINUING EDUCATION OF ALL POLICE, FIRE AND JAIL PERSONNEL, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, with the permission of the Body, upon motion of Senator Sotto, only the title of the bill was read without prejudice to the insertion of its full text into the Record of the Senate.

The Chair recognized Senator Angara for the sponsorship.

## SPONSORSHIP SPEECH OF SENATOR ANGARA

In presenting Senate Bill No. 3204 for plenary deliberations, Senator Angara delivered the following speech:

I rise today as the Chair of your Committee on Education, Arts and Culture to seek the support of this Chamber's distinguished members for the swift enactment of Senate Bill No. 3204 under Committee Report No. 146 – the Philippine Public Safety College System Act of 2012.

The Philippine Public Safety College (PPSC) has been in existence for 22 years. It was created under Republic Act 6975 or the Department of the Interior and Local Government Act of 1990.

The law designated the PSSC as the premier educational institution for the training, development and continuing education of all the personnel of three critical public safety agencies: the Philippine National Police (PNP), the Bureau of Fire Protection (BFP) and the Bureau of Jail Management and Penology (BJMP).

The PSSC also supervises the education and training programs offered by its six constituent units – the National Police College (NPC), Philippine National Police Academy (PNPA), Police National Training Institute (PNTI), Fire National Training Institute (FNTI), Jail National Training Institute (JNTI), National Forensic Science Training Institute (NFSTI) – as well as its 17 Regional Training Schools.

In essence, the PPSC is the National Defense College of the Philippines, Philippine Military Academy, AFP Training Command and the AFP Joint Staff General Staff Course for uniformed civilian personnel rolled into one.

From 1994 to 2008, the PSSC had trained approximately 200,000 policemen, firemen and jail guards – the men and women who acts as our first line of defense in times of emergency and crisis.

However, the PPSC was created, and has been operating, only as a bureau of the DILG. As such, it does not enjoy fiscal autonomy and flexibility.

Its powers and functions under RA 6975 are limited and vaguely defined. They are as follows:

- Formulate and implement training programs for the personnel of the Department;
- Establish and maintain adequate physical training facilities;

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- Develop and implement research and development to support educational training programs;
- Conduct an assessment of the training needs of all its clientele; and
- Perform such other related functions as may be prescribed by the Secretary.

While these functions may have served adequately in the early years of the PPSC, they are unable to do justice to the complexity and importance of the PPSC's jurisdiction today.

For this reason, your Committee recommends the transformation of the PPSC into a specialized higher educational institution, though it will remain attached to the DILG.

Governance and administration of the PPSC will rest on a board of trustees chaired by the Secretary of the DILG. The president of the PPSC will serve as the vice chairperson while the chiefs of the PNP, BJMP and BFP will sit as members.

The powers and duties of the board have been expanded to make it a more responsive academic institution for our uniformed civilian personnel.

Admittedly, the PPSC has been discharging such educational and administrative functions for decades. However, this is the first time that these duties will be codified into a clear charter.

Moreover, defining and delineating the PPSC's authority in its own charter strengthens its leading role as an academic and training institute for our policemen, firemen and jail guards.

The PPSC has upheld a culture of honesty, professionalism and responsiveness in the delivery of public safety services. We also want to reinforce that with a culture of academic and training excellence.

Just like other higher education institutions, the PPSC will be able to create local and international fellowships, scholarships, grants and professional chair awards for its faculty, staff and students.

It is encouraged to cultivate relations with agencies and similar institutions, public or private located here or abroad, for the exchange of knowledge, talents and best practices.

The PPSC is also mandated to promote research and extension services so that its production of intellectual property will become more systematic and, thus, protected.

Important, too, is the proposed measure's emphasis on the PPSC's capacity to administer donations, gifts, income and land grants for faculty, personnel and infrastructure development. Though its budget will be provided under the general appropriations, the PPSC must still be made financially independent and stable, capable of providing for its needs over and above the limited allocation from the government.

The importance of the PPSC is indisputable. Public safety is the handmaiden of economic prosperity. Hence, we should ensure that their guardians can capably guarantee public safety.

Our policemen, firemen and jail guards are the guardians of our public spaces – and the caretaker of our people. Let us pass this measure swiftly as a show of trust and confidence in our uniformed civilian personnel.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 3204**

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

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL NO. 2796 AND HOUSE BILL NO. 5808**

Upon motion of Senator Sotto, there being no objection, the Body considered the Conference Committee Report on the disagreeing provisions of Senate Bill No. 2796, entitled

**AN ACT DEFINING CYBERCRIME,  
PROVIDING FOR PREVENTION,  
INVESTIGATION AND IMPOSITION  
OF PENALTIES THEREFOR AND  
FOR OTHER PURPOSES,**

and House Bill No. 5808, entitled

**AN ACT DEFINING CYBERCRIME,  
PROVIDING FOR THE PREVEN-  
TION, INVESTIGATION, SUPPRES-  
SION AND THE IMPOSITION OF  
PENALTIES THEREFOR AND FOR  
OTHER PURPOSES.**

The Chair recognized Senator Angara to sponsor the report.

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## JOINT EXPLANATION OF THE CONFERENCE COMMITTEE

At the instance of Senator Angara, there being no objection, the Body approved the insertion of the Joint Explanation of the Conference Committee on the disagreeing provisions of Senate Bill No. 2708 and House Bill No. 5808 into the Journal and Record of the Senate.

*Following is the full text of the Joint Explanation:*

### JOINT EXPLANATION OF THE CONFERENCE COMMITTEE ON THE DISAGREEING PROVISIONS OF SENATE BILL NO. 2796 AND HOUSE BILL NO. 5808

The Conference Committee of the Senate and House of Representatives on the disagreeing provisions of Senate Bill No. 2796 and House Bill No. 5808 submits the following joint statement to both Houses in explanation of the amendments agreed upon by the conferees and recommended in the accompanying Conference Committee Report:

1. The bicameral conference committee agreed to use the Senate version as the working draft of the conferees.
2. Section 2 of the Senate version on the Declaration of Policy was adopted.
3. Section 3, Definition of Terms, of the Senate version was adopted with the following amendments:
  - a) Subparagraph (c), *Communication*, was amended by inserting the phrase "information through ICT medium, including voice, video and other forms of data" as stated in the House version and shall now read as follows:
 

“(c) *Communication* refers to the transmission of information through ICT media, including voice, video and other forms of data.”
  - b) Subparagraph (d), *Computer*, the last phrase has been reworded to read as follows:
 

“It covers any type of computer device including devices with data processing capabilities like mobile phones, smart phones, computer networks, and other devices connected to the internet.”
4. Subparagraph (f), *Computer Data*, of the

Senate version was adopted as subparagraph (e) of the reconciled version;

5. Subparagraphs (e), *Computer Program*, and (f) *Computer System*, of the House version were adopted as subparagraphs (f) and (g) of the reconciled version;
6. Subparagraph (j), *Without Right*, of the Senate version was adopted as subparagraph (h) of the reconciled version;
7. Subparagraph (h), *Cyber*, of the House version was adopted as subparagraph (i) of the reconciled version;
8. Subparagraphs (h), *Critical Infrastructure*; (i), *Cybersecurity*; (k), *Database*; (l), *Interception*; (m), *Service Provider*; (n) *Subscriber's Information*; and (o), *Traffic Data or Non-Content Data* of the Senate version were adopted and renumbered as subparagraphs (j), (k), (l), (m), (n), (o), and (p) of the reconciled version;
9. Section 4 of the Senate version was adopted with the following amendments:
  - a) On subparagraph (2) of Section 4, *Illegal Interception*, the following proviso was deleted:
 

“*Provided, however, That it shall not be unlawful for an officer, employee, or agent of a service provider, whose facilities are used in the transmission of communications, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity that is necessary to the rendition of his service or to the protection of the rights or property of the service provider, except that the latter shall not utilize service observing or random monitoring except for mechanical or service control quality checks.*”
  - b) Subparagraphs (3), *Data Interference* and (4) *System Interference*, of the House version were adopted as subparagraphs (3) and (4) of the reconciled version.
  - c) Subparagraph (6), *Misuse of Devices*, of the Senate version was adopted and renumbered as subparagraph (5) of the reconciled version, but with the deletion of the following proviso:
 

“*Provided, That no criminal liability shall attach when the use, production, sale, procurement, importation, distribution, or otherwise making available, or*

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possession of computer devices/data referred to is for the authorized testing of a computer system.”

d) Subparagraph (5), *Cyber-squatting*, of the Senate version was adopted as subparagraph (6) of the reconciled version,

e) Subparagraphs (B1) *Computer Related Forgery*, and (B2) *Computer Related Fraud*, of the Senate version were adopted as subparagraphs (B1) and (B2) as the reconciled version.

f) Subparagraph (b3) *Computer Related Identity Theft*, of the House version was adopted as subparagraph (B3) of the reconciled version with the deletion of the second paragraph on penalties, to wit:

“Any person found guilty of any of the punishable acts enumerated in Section 4(a) of this Act shall be punished with imprisonment of *prision mayor* or a fine of at least Two hundred thousand pesos (P200,000.00) up to a maximum amount commensurate to the damage incurred or both.”

g) Subparagraph (C1), *Cybersex*, of the Senate version was adopted as paragraph (C1) of the reconciled version;

h) Subparagraph (C2), *Child Pornography*, of the Senate version was adopted with the following amendments:

- 1) Delete the words “especially as” between the words “2009” and “committed”; and
- 2) The following proviso after the word “system” was added:

“Provided, That the penalty to be imposed shall be one degree higher than that provided for in Republic Act No. 9775.”

10. Subparagraph (C3), *Unsolicited Commercial Communications*, of the Senate version was adopted with the following amendments:

- 1) Inserted a new subparagraph (b) which reads as follows:

“(b) The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or”

- 2) Renumber subparagraph (C3b) of the Senate version as subparagraph (C3c).

11. Section 5, *Other Offenses*, of the Senate version was adopted as Section 5 of the reconciled version.

12. A new Section 6 was added to the reconciled version which reads as follows:

“Sec. 6. - All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act. *Provided*, That the penalty to be imposed shall be one degree higher than that provided for by the Revised Penal Code and special laws.”

13. Section 6, *Liability under Other Laws*, of the Senate version was adopted as Section 7 as the reconciled version.

14. Section 7, *Penalties*, of the Senate version was adopted as Section 8 of the reconciled version, with the following amendments:

a. The following proviso was added after Anti-Child Pornography Act of 2009:

“Provided, That the penalty to be imposed shall be one degree higher than that provided for in Republic Act No. 9775, if committed through a computer system.”

15. Section 8, *Corporate Liability*, of the Senate version was adopted as Section 9 of the reconciled version with the following amendments:

a) Insert in the conditions for (a) and (b) with the following:

“a) a power of representation of the juridical person, PROVIDED THE ACT COMMITTED FALLS WITHIN THE SCOPE OF SUCH AUTHORITY”;

“b) an authority to take decisions on behalf of the juridical person, PROVIDED THE ACT COMMITTED FALLS WITHIN THE SCOPE OF SUCH AUTHORITY, or”;

16. Section 8, *Law Enforcement Agencies*, of the House version was adopted as Section 10 of the reconciled version, with the title changed to “*Law Enforcement Authorities*” for consistency.

17. Section 15, *Duties of Law Enforcement Authorities*, of the Senate version was adopted as Section 11 of the reconciled version.

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18. Section 9, *Real Time Collection of Traffic Data*, of the Senate version was adopted as Section 12 of the reconciled version.
19. Section 10, *Preservation of Computer Data*, of the Senate version was adopted as Section 13 of the reconciled version.
20. Section 11, *Disclosure of Computer Data*, of the Senate version was adopted as Section 14 of the reconciled version.
21. Section 12, *Search, Seizure, and Examination of Computer Data*, of the Senate version was adopted as Section 15 of the reconciled version.
22. Sections 13, *Custody of Computer Data*, 14, *Destruction of Computer Data*, and 15, *Exclusionary Rule*, of the House version were adopted as Sections 16, 17, and 18 of the reconciled version, with an amendment on the Sections referred to on *Destruction of Data* to reflect the renumbering of the reconciled version: new Sections referred to are now Sections 13 and 15.
23. Section 13, *Restricting or Blocking Access to Computer*, of the Senate version was adopted as Section 19 of the reconciled version.
24. Section 14, *Non-compliance*, of the Senate version was adopted as Section 20 of the reconciled version.
25. Section 16, *Jurisdiction*, of the Senate version was adopted as Section 21 of the reconciled version.
26. Chapter VI on *International Cooperation*, Section 17 of the Senate version on *General Principle Relating to International Cooperation* was adopted as Section 22 of the reconciled version.
27. Chapter VII on *Competent Authorities*, Section 18, *Department of Justice*, of the Senate version was adopted as Section 23 of the reconciled version.
28. Section 18, *Cybercrime Investigation and Coordinating Center*, of the House version was adopted as Section 23 of the reconciled version.
29. Section 19, *Composition*, of the House version was adopted as Section 24 of the reconciled version with the following amendments:
  - a) Delete the phrase "the Chief of the National Prosecution Service and the Head

of the National Computer Center" after the word "PNP" and "as members" and in lieu thereof, insert the following phrase:

"Head of the DOJ Office of the Cybercrime and one (1) representative each from the private sector and academe"

30. Section 20 of the House version was adopted as Section 25 of the reconciled version.
31. The chapter on *Final Provisions* is adopted as Chapter VIII of the reconciled version.
32. Section 23 of the Senate version was adopted as Section 27 of the reconciled version.
33. Section 27 of the House version was adopted as Section 28 of the reconciled version.
34. Sections 25, 26 and 27 of the Senate version were adopted as Sections 29, 30 and 31 of the reconciled version.

The title of the House version was adopted as the title of the reconciled version. It reads:

"AN ACT DEFINING CYBERCRIME, PROVIDING FOR THE PREVENTION, INVESTIGATION, SUPPRESSION AND THE IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES"

In case of a conflict between the statements/ amendments stated in this Joint Explanation and the provisions of the consolidated bill in the accompanying Conference Committee Report, the latter shall prevail.

## APPROVAL OF THE CONFERENCE COMMITTEE REPORT

Submitted to a vote, there being no objection, the Conference Committee Report on the disagreeing provisions of Senate Bill No. 2708 and House Bill No. 5808 was approved by the Body.

## SENATE CONFEREES

Upon nomination by Senator Sotto, there being no objection, the Chair designated the following as members of the Senate panel in the Bicameral Conference Committee on the disagreeing provisions of Senate Bill No. 3204 (Anti-Money Laundering Law Amendments) and its counterpart House Bill: Senator Guingona as chair; and Senators Osmeña, Drilon, Lacson, Pangilinan, Arroyo and Marcos as members.

**ANNOUNCEMENT OF SENATOR SOTTO**

Senator Sotto announced that the Bicameral Conference Committee on the disagreeing provisions of Senate Bill No. 3204 (Amendments to the AMLA) and its counterpart House Bill will be held at nine o'clock in the morning the following day at the Pecson Room.

**COMMITTEE REPORT NO. 153  
ON HOUSE BILL NO. 4111**

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of House Bill No. 4111 (Committee Report No. 153), entitled

AN ACT REAPPORTIONING THE  
PROVINCE OF COTABATO INTO  
THREE (3) LEGISLATIVE DISTRICTS.

On the parliamentary status of the bill, Senator Sotto stated that there were issues about the bill that had to be settled first.

Thereupon, the Chair recognized Senator Marcos, Sponsor of the measure.

**MANIFESTATION  
OF SENATOR MARCOS**

Senator Marcos stated that the issues regarding the measure have been ironed out, and he informed the Body that there were no individual and committee amendments to be proposed. In view thereof, he asked that the measure be approved on Second Reading.

**TERMINATION OF THE PERIOD  
OF AMENDMENTS**

There being no committee and individual amendments, upon motion of Senator Sotto, there being no objection, the Body closed the period of amendments.

**APPROVAL OF HOUSE BILL NO. 4111  
ON SECOND READING**

Submitted to a vote, there being no objection, House Bill No. 4111 was approved on Second Reading.

**SUSPENSION OF CONSIDERATION  
OF HOUSE BILL NO. 4111**

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

**COMMITTEE REPORT NO. 49  
ON SENATE BILL NO. 2865**

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2865 (Committee Report No. 49), entitled

AN ACT PROVIDING FOR A NATIONAL  
POLICY ON REPRODUCTIVE  
HEALTH AND POPULATION AND  
DEVELOPMENT.

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

**MANIFESTATION  
OF SENATOR SOTTO**

Senator Sotto stated that Senate President Enrile has withdrawn his reservation to continue with his interpellation on the bill, in view of which, he proposed that the period of interpellation be closed to pave the way for the *turno en contra*.

**TERMINATION OF THE PERIOD  
OF INTERPELLATIONS**

There being no further interpellations, upon motion of Senator Sotto, there being no objection, the Body closed the period of interpellations.

**SUSPENSION OF CONSIDERATION  
OF SENATE BILL NO. 2865**

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

**SUSPENSION OF SESSION**

Upon motion of Senator Sotto, the session was suspended.

*It was 5:41 p.m.*

**RESUMPTION OF SESSION**


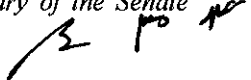
At 5:44 p.m., the session was resumed.

**ADJOURNMENT OF SESSION**

Upon motion of Senator Sotto, there being no objection, the President Pro Tempore declared the session adjourned until three o'clock in the afternoon of the following day.

*It was 5:44 p.m.*

I hereby certify to the correctness of the foregoing.

  
EMMA LIRIO REYES  
Secretary of the Senate  


Approved on June 6, 2012