



**REPUBLIC OF THE PHILIPPINES**  
**Senate**  
Pasay City

# **Journal**

**SESSION NO. 63**  
Wednesday, February 15, 2017

**SEVENTEENTH CONGRESS**  
**FIRST REGULAR SESSION**

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Wednesday, February 15, 2017

**CALL TO ORDER**

At 3:11 p.m., the Senate President Pro Tempore, Hon. Franklin M. Drilon, called the session to order.

**PRAYER**

The Body observed a minute of silent prayer.

**ROLL CALL**

Upon direction of the Senate President Pro Tempore, the Secretary of the Senate, Atty. Lutgardo B. Barbo, called the roll, to which the following senators responded:

Aquino, P. B. IV B.	Hontiveros, R.
Binay, M. L. N. S.	Lacson, P. M.
De Lima, L. M.	Sotto III, V. C.
Drilon, F. M.	Trillanes IV, A. F.
Ejercito, J. V. G.	Villanueva, J.
Gatchalian, W.	Villar, C.
Honasan, G. B.	Zubiri, J. M. F.

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

Senators Angara, Escudero, Gordon, Legarda, Pacquiao, Pangilinan, Poe and Recto arrived after the roll call.

Senator Cayetano was on official business as indicated in the February 15, 2017 letter of the Senator's chief of staff.

Senate President Pimentel was on official mission abroad.

**APPROVAL OF THE JOURNAL**

Upon motion of Senator Sotto, there being no objection, the Body dispensed with the reading of the Journal of Session No. 62 and considered it approved.

**ACKNOWLEDGEMENT  
OF THE PRESENCE OF GUESTS**

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

- Members of the Sangguniang Barangay of Bambang, Bulacan, Bulacan, headed by ABC President Kap. Edilberto "Tungka" Meneses; and



- Guests of Senator Zubiri, the members of the Night Wolves in Russia, headed by Daniel Foronda a.k.a. Mumbaki.

## REFERENCE OF BUSINESS

The Secretary of the Senate read the following Senate bills and resolutionS which the Chair referred to the committees hereunder indicated:

### BILLS ON FIRST READING

Senate Bill No. 1327, entitled

**AN ACT PROVIDING FOR A MAGNA CARTA OF THE POOR**

Introduced by Senator Sonny Angara

**To the Committees on Social Justice, Welfare and Rural Development; Ways and Means; and Finance**

Senate Bill No. 1328, entitled

**AN ACT PROVIDING FOR THE URBAN AND COUNTRYSIDE GREENING IN THE PHILIPPINES**

Introduced by Senator Sonny Angara

**To the Committees on Environment and Natural Resources; Local Government; and Finance**

Senate Bill No. 1329, entitled

**AN ACT REQUIRING ALL NATIONAL, REGIONAL, AND PROVINCIAL GOVERNMENT HOSPITALS TO ESTABLISH, OPERATE AND MAINTAIN A DIALYSIS WARD OR UNIT IN THEIR RESPECTIVE HOSPITAL AND PROVIDING FREE DIALYSIS TREATMENT TO INDIGENT PATIENTS**

Introduced by Senator Sonny Angara

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

Senate Bill No. 1330, entitled

**AN ACT ESTABLISHING A FRAMEWORK FOR FILM AND TELEVISION TOURISM IN THE PHILIPPINES, MARKETING THE INDUSTRY GLOBALLY AND PROVIDING EMPLOYMENT FOR THE SECTOR AND FOR OTHER PURPOSES**

Introduced by Senator Sonny Angara

**To the Committees on Public Information and Mass Media; Ways and Means; and Finance**

Senate Bill No. 1331, entitled

**AN ACT INSTITUTING INCLUSIVE EDUCATION AND THE ESTABLISHMENT OF INCLUSIVE EDUCATION LEARNING RESOURCE CENTERS FOR CHILDREN AND YOUTH WITH SPECIAL NEEDS IN ALL PUBLIC SCHOOLS DIVISIONS, PROVIDING FOR STANDARDS AND GUIDELINES, AND APPROPRIATING FUNDS THEREFOR**

Introduced by Senator Sonny Angara

**To the Committees on Education, Arts and Culture; Women, Children, Family Relations and Gender Equality; Ways and Means; and Finance**

Senate Bill No. 1332, entitled

**AN ACT CREATING AND ESTABLISHING THE PHILIPPINE HIGH SCHOOL FOR SPORTS**

Introduced by Senator Sonny Angara

**To the Committees on Education, Arts and Culture; Sports; Ways and Means; and Finance**

Senate Bill No. 1333, entitled

**AN ACT EXTENDING THE SERVICES OF A SCIENTIST WHO IS DUE FOR COMPULSORY RETIREMENT FOR A MAXIMUM PERIOD OF FIVE (5) YEARS AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8439,**

OTHERWISE KNOWN AS THE MAGNA CARTA FOR SCIENTISTS, ENGINEERS, RESEARCHERS AND OTHER SCIENCE AND TECHNOLOGY PERSONNEL IN GOVERNMENT

Introduced by Senator Sonny Angara

**To the Committees on Science and Technology; Civil Service, Government Reorganization and Professional Regulation; and Finance**

Senate Bill No. 1334, entitled

COLLECTIVE INVESTMENT SCHEMES LAW

Introduced by Senator Sonny Angara

**To the Committees on Banks, Financial Institutions and Currencies; Trade, Commerce and Entrepreneurship; and Ways and Means**

### RESOLUTION

Proposed Senate Resolution No. 292, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORT THAT THERE ARE 550 BLOOD BAGS THAT TESTED POSITIVE FOR HUMAN IMMUNODEFICIENCY VIRUS

Introduced by Senator Maria Lourdes Nancy S. Binay

**To the Committee on Health and Demography**

### SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended.

*It was 3:17 p.m.*

### RESUMPTION OF SESSION

At 3:18 p.m., the session was resumed with Senator Honasan presiding.

### PROPOSED SENATE RESOLUTION NO. 289

Upon motion of Senator Sotto, there being no objection, the Body considered Proposed Senate Resolution No. 289, entitled

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

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 resolution was read without prejudice to the insertion of its full text into the Record of the Senate.

Thereupon, the Chair recognized Senate President Pro Tempore Drilon for the sponsorship.

### SPONSORSHIP SPEECH OF SENATOR DRILON

Senate President Pro Tempore Drilon presented for the consideration and adoption of the Body Proposed Senate Resolution No. 289.

*Hereunder is the full text of the sponsorship speech of Senate President Pro Tempore Drilon:*

Under Article VII, Section 21 of the Constitution, it provides that: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

Likewise, Article II, Section 2 of the same Constitution provides that the Philippines "adopts the generally accepted principles of international law as part of the law of the land."

Even our Civil Code under Article 14, provides that "Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in the Philippine territory, subject to the principles of public international law and to treaty stipulation."

The power to bind the Philippines by treaty or international agreement is vested jointly by the Constitution in the President and this Chamber. A treaty or international agreement

ratified by the President and concurred in by this Chamber becomes part of the law of the land and may not be undone without the shared power that put it into effect.

The principle of checks and balance, historical precedent and practice accepted as law in most jurisdictions, and the Constitution's dictate for a shared treaty-making power require that a termination, withdrawal, abrogation or renunciation of a treaty or international agreement can only be done with the same authority that gave it effect — executive ratification with the concurrence of the Senate.

This is the sense of the 15 senators who signed Proposed Senate Resolution No. 289, namely, this Representation, Senators Aquino, De Lima, Hontiveros, Lacson, Legarda, Pangilinan, Zubiri, Honasan, Ejercito, Sotto, Angara, Recto, Villanueva and Trillanes, who expressed their support for this sense of the Senate Resolution.

Let me emphasize that this proposed sense of the Senate resolution is only a reiteration of the decision of, at least, 16 senators when they adopted Senate Resolution No. 33 which concurred in the ratification of the Articles of Agreement of the Asian Infrastructure Investment Bank (AIIB).

In that Resolution No. 33, which ratified the Articles of Agreement of the AIIB, more than two-thirds of the membership of the Chamber resolved that the President of the Philippines may, with the concurrence of the Senate, withdraw the membership from the Asian Infrastructure Investment Bank.

Last December 5, the Senate already took the position that a withdrawal from an international agreement such as the AIIB must have the concurrence of the Senate. Therefore, this is simply a reiteration of that position already taken by the Senate in Resolution No. 33.

The legal question on whether the President of the Philippines can unilaterally terminate a treaty has yet to be decided by the Supreme Court.

Since the wording of the relevant section in our Constitution originated from the United States jurisdiction, we turn to the prevailing interpretation of the same section in the US jurisdiction.

In the United States, scholarly views continue to be mixed. Scholars argue that the framers, at the very least, prescribed a shared role between the Executive and the Legislative in keeping with the Constitution's principle of checks and balances.

Historical practice in the United States also shows that, far more often than not, the Senate or the whole Congress has exercised power to approve the termination of treaties.

There have been exceptions but none support a limitless power of the President to annul any treaty at his sole discretion.

Since the Constitution expressly provides for a shared treaty-making power, it necessarily implies that the power to abrogate the same must also be exercised jointly.

This position reinforces the fact that the Constitution is silent as regards power of the President to unilaterally terminate the treaty.

Through this sense of the Senate, it is our submission that the Senate must assert its power as the branch of the legislature involved in our foreign relations aspects of our governance. We must strengthen our institution by expressing the sense of the Senate that any termination of a treaty must have the concurrence of the Senate. It is for this reason that we urge the adoption of Proposed Senate Resolution No. 289.

## **INTERPELLATION OF SENATOR SOTTO**

At the outset, Senator Sotto confirmed that he signed Proposed Resolution No. 289.

Asked by Senator Sotto what are considered international agreements, Senator Drilon explained that international agreements would cover a whole menu of agreements entered into by a sovereign country, whether in the form of an executive agreement, a treaty or agreement between two departments of governments.

On whether treaties and protocols are considered part of international agreements, Senator Drilon replied in the affirmative, explaining that before they become effective they must be ratified by the President with the concurrence of two-thirds vote of the Senate.

Senator Sotto stated that earlier, there was mention of the Second Protocol that was signed by President Arroyo but which was not ratified by the Senate. He then inquired how an executive agreement signed by former DFA Secretary Alberto Romulo would be classified.

## SUSPENSION OF SESSION

Upon motion of Senator Drilon, the session was suspended.

*It was 3:28 p.m.*

## RESUMPTION OF SESSION

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

Upon resumption, Senator Drilon recalled that when the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which aimed to abolish the death penalty, was adopted by the United Nations, the Philippine government could not ratify it because at the time, there was still in the country's statute books the death penalty law; later, however, with the enactment of Republic Act No. 9344, which prohibited the imposition of the death penalty, then Secretary of the Department of Foreign Affairs Alberto Romulo issued an opinion that the law was an expression of the Philippines' support for the global community in its efforts to abolish the death penalty. He said that acting on the basis of Secretary Romulo's opinion, then President Gloria Macapagal Arroyo ratified and confirmed each and every article of the Second Optional Protocol, and the DFA took the position that the Senate's concurrence was not needed because the passage of the law abolishing the death penalty was the ratification necessary for the country to accede to the Second Optional Protocol.

Senator Sotto posited that what happened was that by implication, the Second Optional Protocol was ratified and acceded to. And he noted that what the resolution seeks to achieve is to reverse what happened, meaning, the Philippine government ratified an agreement without need of the concurrence of the Senate, but should it decide to withdraw, Senate concurrence must be secured. In reply, Senator Drilon pointed out that the Constitution allows the government to enter into a treaty but it is silent as to whether or not concurrence is necessary, an issue that has remained unsettled even in the United States. He said that it was precisely the reason why the Senate is expressing its sense, through the resolution, in order to strengthen its role as a treaty-ratifying body exercising its shared responsibility in the ratification of treaties. He cited a case in the United States which was brought to court, and the court agreed with the position that the concurrence

of the Senate was needed; however, on appeal, the US Supreme Court reversed the decision saying that it was a political question that it does not want to meddle in. He admitted that he was not aware of any case in the Philippines wherein the Executive department withdrew from a treaty, or of the Supreme Court ruling on a similar issue.

Asked whether in adopting the resolution, the Senate was practically saying that the opinion of Secretary Romulo was wrong, Senator Drilon answered in the negative, explaining that Secretary Romulo's position that the Philippines can accede to the Second Opinional Protocol following the passage of the law which abolished the death penalty was, in effect, an expression of the support for the global community in the effort to abolish death penalty.

## INTERPELLATION OF SENATOR PACQUIAO

Senator Pacquiao stated that Article VII, Section 21 of the Constitution mandates that "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." He then asked if the resolution would give the Senate the power to nullify a treaty. Senator Drilon explained that the proposed resolution does not give the Senate the power to ratify or to withdraw, as it only expresses the Senate's sense that any withdrawal from a treaty must have its concurrence before the withdrawal becomes effective. He added that the resolution would strengthen the power of the Senate in the foreign relations aspect of governance as it is the Senate rather than the House which has primacy on matters involving foreign relations.

Asked whether the International Covenant on Civil and Political Rights (ICCPR) could only be nullified by concurrence of two-thirds of all the members of the Senate once the resolution is approved, Senator Drilon replied that through the resolution, if adopted, it is the position of the Senate that the withdrawal of the country from the Second Optional Protocol would not be effective unless concurred in by the Senate. As regards the votes required, he said that the resolution did not provide it and that it is up to the Body to decide at a later date whether it would be two-thirds or a majority vote.

To Senator Pacquiao's observation that the resolution gives more power to the Senate than what



is contemplated the Constitution, Senator Drilon answered in the negative. He explained that the resolution would simply strengthen the Senate as it can now participate in the change of policy of government. For instance, he said that if the President declares that he/she is withdrawing from the treaty, the mandate of the resolution would come into play and the President must secure the concurrence of the Senate.

Senator Pacquiao opined that a treaty could not be superior over the Constitution because the Constitution is supreme over the treaty. Senator Drilon agreed that the Constitution takes precedence, as he clarified that the resolution is simply an issue of expression of the position of the Senate that it must participate in the change of government policy in the event the Executive withdraws from the treaty.

Senator Pacquiao argued that the power of the Senate is already defined in the Constitution and that adding more powers is tantamount to amending it, particularly Section 21 of Article VII thereof.

Senator Drilon hoped that Senator Pacquiao was not saying that the Senate should not exert any effort in order to be more effective in the conduct of its role in foreign relations. He reiterated that the resolution was only asking that the Senate be given more power in the conduct of foreign relations. He added that the resolution would also strengthen the position of the Senate as being superior to the House of Representatives on the matter of foreign relations.

At this juncture, Senator Pacquiao asked that the Members be given more time to discuss the resolution. Senator Drilon expressed his regret that he could not accede to the suggestion, saying that the resolution is very simple and that 14 senators already signed it. Besides, he pointed out the Senate, when it concurred in the ratification of the Articles of the Agreement of the Asian Infrastructure Investment Bank through Senate Resolution No. 33 where 16 senators voted in favor, already took the position that the President of the Philippines may only withdraw from its membership to the Asian Infrastructure Investment Bank with the concurrence of the Senate. He said that Proposed Senate Resolution No. 289 was only a reiteration of the policy that the Senate adopted in Resolution No. 33.

Senator Pacquiao maintained that Proposed Senate Resolution No. 289 was not a simple resolution

as it would affect the Constitution. He reiterated his request for more time to study the matter.

## SUSPENSION OF SESSION

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

*It was 3:47 p.m.*

## RESUMPTION OF SESSION

At 3:48 p.m., the session was resumed.

Upon resumption, Senator Sotto clarified that the statement of Senator Pacquiao was not a motion but only a request that could be tackled at a later hour.

Thereupon, the Chair recognized Senator Lacson for his interpellation.

## INTERPELLATION OF SENATOR LACSON

At the outset, Senator Lacson presumed that with 15 senators of the Seventeenth Congress signing Senate Resolution No. 289, there is a big probability that the resolution would be adopted. He then asked how the Senate would proceed supposing the possibility of a withdrawal from an international treaty would happen.

In reply, Senator Drilon stated that should the President withdraw from a treaty, the Senate leadership or any Member of the Senate can challenge the withdrawal before the court and assert that the withdrawal was invalid because should the resolution be adopted, it becomes the legal position of the Senate that the withdrawal, to become effective, must have the concurrence of Senate, an issue that must ultimately be decided by the Supreme Court.

Asked what chances that the court would side with the Senate considering that the resolution does not have the effect of a law, Senator Drilon stated that the force of argument that the Senate would bring before the Supreme Court is the fact that the conduct of foreign relations is a shared responsibility between the Senate and the President which includes the concurrence of the Senate in the withdrawal from a treaty.

## INTERPELLATION OF SENATOR ESCUDERO

Asked by Senator Escudero on the rational basis

to require “majority of all senators” as compared to “majority of quorum,” Senator Drilon replied that should Senator Escudero wish, it can be provided in the resolution that concurrence must have the vote of the majority of all the members or a vote of the majority, there being a quorum.

To Senator Escudero’s observation that a joint resolution, which has the force and effect of law and binds the President to follow, would provide a more sufficient basis for the Senate to actually participate in the withdrawal of a treaty, Senator Drilon pointed out that there is nothing in the statute book that would prevent Congress from passing a law, but he expressed the view that under the country’s system of government, the Senate, as a treaty-ratifying body, has the primacy in the conduct of foreign relations compared to the House of Representatives which has primacy in taxation, local bills, etc. He believed that there was no need for a law at this point, reiterating that the resolution is simply an expression of the sense of the Senate with no intention to bind the President. He added that the resolution does not prevent anyone from filing a joint resolution in the future.

On whether he would concede that while the Senate has primacy over the House of Representatives with respect to foreign relations, the Executive branch has primacy on the conduct of foreign relations with other countries, and that the role, if at all, of the Senate would be to concur in treaties that the President decides to submit to the Senate, Senator Drilon pointed that aside from its power as a treaty-ratifying body, in the conduct of foreign relations, the Senate participates in the confirmation of ambassadors.

Senator Escudero believed that when a country withdraws from a treaty, all it takes is for the President to inform the body which drafted or implemented the treaty that the State is withdrawing, and with or without the resolution, that implementing body would accept and respect such withdrawal as an action of a sovereign state.

Senator Drilon admitted that the issue has not been settled and that even in the United States, a number of treaties were abrogated by the chief executive in the last 100 years, the last case being the withdrawal of the United States from the Mutual Defense Treaty with Taiwan in view of the latter’s adoption of the one-China policy. He revealed that

although the matter went to the courts, the latter refused to touch it because it was a political question. Hence, he said that in Philippine jurisdiction, there is no jurisprudence nor case brought to the Supreme Court with respect to treaties entered into inasmuch as some treaties provide a process of termination which involves a notification by the state party of its intention to terminate the treaty by the President through the ambassador, or the Foreign Affairs secretary.

Senator Drilon said that currently, notification could only be done when the Senate concurs in the treaty as part of checks and balances, thus becoming part of the law of the land.

Supposing a non-binding sense of the Senate resolution is passed but the President decides to withdraw from the ICC which, from the point of view of the ICC, is not binding but the membership or participation in the ICC has already been withdrawn as regards the point of view of the United Nations, Senator Escudero asked if the Senate or any member of the Senate or any private individual may go to court for the issuance of a temporary restraining order or a status quo ante order to prevent the President from withdrawing from the treaty.

Senator Drilon surmised that the United Nations would look into the domestic situation of the state party before it would rule on the effectiveness of the withdrawal, so that if it would be made aware of a pending case in domestic courts questioning the withdrawal, the circumstance would be taken into consideration by the UN when it receives the notice of withdrawal.

On the other hand, Senator Escudero said that it is not provided in the ICC Charter that consultation with the domestic law should be made. Senator Drilon clarified that it is not consultation, it is that the ICC would only look into the situation domestically but not to the extent of refusing a decision for withdrawal inasmuch as the procedure thereof should include the concurrence of the Senate.

As regards agreements concurred in by the Senate, like when the President decides to withdraw from the VFA, Senator Drilon said that if the resolution is passed, it is the sense of the Senate that its concurrence must be secured; however, with respect to EDCA, concurrence of the Senate is not necessary



because the Supreme Court has decided that it is an executive agreement.

Asked on the mother treaty of the Second Optional Protocol, Senator Drilon stated that it is the International Covenant on Civil and Political Rights where the Philippines is a state party, the ratification of which was concurred in by the Senate.

Asked if the Second Optional Protocol was effectively ratified by the Senate, Senator Drilon replied in the affirmative.

Senator Escudero stated that he has very serious reservations with respect to the interpretation as it might be stretched considering that in the Constitution the Senate has rules on how to concur with treaties. He explained that he is not aware of any procedure or decision by the court that speaks of a concurrence by implication; meaning, with the passage of law, the Second Optional Protocol was deemed to have been concurred in. Senator Drilon maintained that it is also the position taken by DFA Secretary Romulo.

Asked if the Second Optional Protocol was a separate treaty or an adjunct to the ICCPR, Senator Drilon answered that it is adjunct as it is a protocol attached to a treaty.

Senator Drilon said that similar to the analogy of EDCA as attached to either the MDT or the VFA which did not require the concurrence of the Senate, he does not know if the court touched on the issue of whether or not the EDCA is adjunct to the Mutual Defense Treaty or to other treaties.

On whether the courts could likewise rule that the Second Optional Protocol was not ratified by the Senate and therefore, it does not also require the concurrence by the Senate inasmuch as no earlier concurrence was given to begin with, Senator Drilon stated that the position of Secretary Romulo was that the passage of the law which abolished the death penalty was, in effect, the required ratification of the Second Optional Protocol since the Senate has ratified the main treaty.

At this point, Senator Escudero stated for the record that the position taken by Secretary Romulo was shaky because of two reasons: (1) under the Constitution, the required vote to concur in a treaty is two-thirds, thus the Body cannot simply ratify a treaty by the passage of law which requires a lower vote threshold; and (2) the non-participation of the

House of Representatives in the concurrence of a treaty and the passage of the law requiring its participation is a ripe ground for the Court to rule on concurrence by implication via the passage of a law, considering that the Constitution clearly states that only the Senate with two-thirds vote can concur in the treaty.

#### **INTERPELLATION OF SENATOR GORDON**

Asked by Senator Gordon on the difference between an international agreement and an executive agreement, Senator Drilon stated that in layman's response, an international agreement covers all kinds of agreements entered into by the country, while an executive agreement is entered into by the head of state or government of two countries which becomes part of the law of the land.

In addition, Senator Gordon said that an executive agreement is generally bilateral, while an international agreement speaks of a convention.

Asked if the Military Bases Agreement should have been ratified even if it was an executive agreement, Senator Drilon clarified that he was not aware if it was ruled by the Supreme Court as an executive agreement; however, the EDCA did not need the ratification of the Senate because it is an implementation of the Mutual Defense Treaty and the VFA.

Asked if the executive agreement was likewise covered by Section 21, Article VII of the Constitution which states that "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate," Senator Drilon replied in the negative.

Senator Gordon lamented that it is where the confusion lies for all law students because as far as they know, an executive agreement partakes the same weight as a treaty, only that it did not go into Senate concurrence notwithstanding international agreements as a third entity. Still, he said that in the old interpretation, international agreements could be done by the President and while there was no need for ratification, it has the binding effect of a treaty.

Senator Drilon stated that in terms of hierarchy of agreements, a treaty is more binding than an executive agreement entered into by the Chief Executive.

Senator Gordon opined that the executive agreement has the same effect as a treaty because



it is an international agreement that could be entered into by the President who has the prerogative and the power to do so as the chief spokesperson for foreign policy. In the case of a weighty proposition like a treaty, however, he said that the President would require the concurrence of a two-third votes of the Senate. Senator Drilon believed that the treaty is a binding agreement that is more permanent in character and would call for changes in a national policy or law while an executive agreement only enhances and implements a national policy.

Since all international agreements validly concurred in by the Senate becomes part of the law of the land, Senator Gordon posited that a treaty is converted into an ordinary statute as part of the law of the land. Senator Drilon believed that an international agreement is higher than an ordinary statute because it involves relations with another country. Senator Gordon agreed, noting that there would be negative repercussions to the image of the Philippines and relations with other countries if it went against a treaty or rejected it unilaterally.

Senator Gordon pointed out that in the case of *Philip Morris v. Court of Appeals*, the Supreme Court held that “the fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law.” He stated that “under the doctrine of incorporation as applied in most countries, rules of International Law are given a standing equal, not superior, to national legislative enactments.” Moreover he said that in case of conflict, a treaty may repeal a statute and a statute may repeal a treaty which is the principle of *lex posterior derogate prior* – that which comes last in time is usually upheld by the municipal tribunal.

For his part, Senator Drilon said that passing a law that contravenes a treaty means that the treaty is being repealed, in which case the participation of the Senate is very clear in that it participates in a process of repealing a treaty by passing a law which is contrary to the treaty.

On whether this action of either amending or superseding a treaty means that a treaty is not superior to but has the same force as law, Senator Drilon explained that passing a law which contravenes the government’s obligation under a treaty means that the treaty is being abrogated, and abrogating a treaty, he pointed, is an act of Congress which

includes the Senate. This, he said, is why the sense of the resolution only states that the Senate must participate in the abrogation of a treaty when the President withdraws from a treaty.

Senator Gordon noted, that unlike a law, in the case of a treaty which is published by the United Nations, if the Philippines unilaterally abrogates a treaty on matters involving, for instance, humanitarian law, other states might perceive the country as not being good on its word. Senator Drilon remarked that this is precisely the reason why passing the proposed resolution is a more sensible action since the country ought to exercise extra care in withdrawing from international obligations such as a treaty.

In closing, Senator Gordon said that he signed the resolution because he believed that it is simply an expression of the sense of the Senate, it confers no priorities and does not have the force of law.

## MANIFESTATION OF SENATOR SOTTO

At this juncture, Senator Sotto called attention to the 1969 Vienna Convention on the Law of Treaties to which the Philippines is a signatory, specifically citing Section 3 (TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES) thereof which states that termination of a treaty or the withdrawal of a party may take place:

- “(a) In conformity with the provisions of the treaty; or
- “(b) At any time by consent of all the parties after consultation with the other contracting States.”

He underscored the importance of finding out if there is such procedure in the treaties that the Philippines has entered into and how the country itself could terminate or suspend such treaties.

Stating that he was aware of the Philippines’ commitment to the Vienna Convention, Senator Drilon clarified that the resolution speaks of an internal process of determining whether or not the concurrence of the Senate is required for the government to effectively withdraw from a treaty.

## INTERPELLATION OF SENATOR RECTO

Asked by Senator Recto for the difference between an executive agreement and a treaty, Senator

Drilon explained that a treaty is more permanent in character and that it changes national policy because it creates an exception from a national policy, while an executive agreement is simply an agreement between the heads of two sovereign countries that only implements a policy. In other words, he said that the President cannot sign an executive agreement which will contravene a national law. He affirmed that a treaty, which requires the concurrence of the Senate, is either a bilateral or multilateral pact which has the force of law and is of a higher standard than an executive agreement which is bilateral in nature and does not need the participation of the Upper House. He pointed out that the President can even withhold a treaty if he does not want the Senate to participate in its ratification.

Stating that he was supporting the resolution for practical purposes, Senator Recto said that with or without a law or resolution it is possible that the President could suddenly decide to have the Philippines withdraw from an existing treaty. Senator Drilon replied that through the resolution, the Senate is expressing its sense that its consent should be secured before withdrawing from a treaty, but the President's decision to concur with such resolution is a matter for him to decide. However, he pointed out that the resolution gives the leadership of the Senate the basis to go to court and express its position that the concurrence of the institution ought to have been secured. Senator Recto agreed that something as important as a treaty could not be decided by only one person.

Asked if the General Agreement on Tariffs and Trade (GATT) is a treaty that could be easily abrogated by the President, Senator Drilon replied in the affirmative. But Senator Recto noted that pursuant to the resolution, it is the sense of the Senate that it should be consulted by the Executive branch before taking action.

Since the concurrence of the Senate is needed to make a treaty effective, Senator Recto believed that it is equally important to have the same concurrence before such an agreement, particularly a multilateral one, is abrogated. Senator Drilon agreed.

#### **INTERPELLATION OF SENATOR ANGARA**

At the outset, Senator Angara stated that he had signed the resolution and supported it because it upholds the power of the Senate as an institution and

recognizes its power to share in the foreign policy-making power. That said, he asked whether Senator Drilon agreed with the opinion of former foreign affairs secretary Alberto Romulo that the passage of a law can be considered concurrence in a treaty. Senator Drilon believed that the issue of whether the passage of a law is a sufficient ratification of a treaty is subject to various interpretations with equal force.

On whether there had been a similar case where the passage of the law by Congress was considered as either an accession to a treaty, a deposit of an instrument or a ratification of an international agreement, Senator Drilon replied that the issue of the necessity of the Senate's concurrence in the withdrawal of a treaty is a question of first impression, one which not even the United States has resolved.

Asked what the vote was when the Senate passed the law abolishing the death penalty, Senator Drilon said that he was Senate President at the time, and the vote was 16 in favor and one against.

Senator Angara noted that there was, therefore, no conflict but rather a congruence between the required constitutional vote and the actual vote since 16 senators voted in favor of the repeal and the Constitution requires a two-third votes of all the members. He expressed concern that the Romulo opinion might be a precedent to a shortcircuiting of the constitutional process since there might be a case where a law was only passed by a majority of all the members, there being a quorum.

Senator Drilon clarified that a law requires the concurrence of both Houses of Congress as well as the signature of the President. However, Senator Angara noted that the House of Representatives has a very small role in the conduct of foreign affairs.

On whether the Second Optional Protocol is considered a treaty, Senator Drilon explained that the proposed resolution is applicable not only to the Second Optional Protocol but to all treaties that had been entered into by the Philippines, which includes the Rome statutes, the Mutual Defense Agreement and the Visiting Forces Agreement. He expected that there would be much debate on whether the passage of the law which abolished the death penalty is equivalent to the concurrence of the Senate or whether a separate concurrence from the main



treaty is necessary. He believed that the Second Optional Protocol need not be taken into account in passing the resolution.

Senator Angara said that he had come across an authority which states that an optional protocol is a treaty that complements and adds to an existing human rights treaty. Relative thereto, he cited the information given by Senator Sotto that the Philippines ratified the International Covenant on Civil and Political Rights but that the accession to the Second Optional Protocol departed from the previous practice because it was done by notification only.

Asked if the Senate was notified of the accession to the Second Optional Protocol, Senator Drilon answered in the negative, saying that the DFA, through the Chief Executive, notified the UN of the country's ratification. As to when the Senate was made aware of the accession to the Second Optional Protocol, Senator Drilon replied that it happened during the committee hearing on the death penalty bill when Amnesty International and the Commission on Human Rights brought the matter up.

Senator Angara said that he finds the arrangement strange since the Second Optional Protocol requires state parties to inform other state parties upon the deposit of an instrument, yet the policymaking body was not informed. He suggested that such incident be also looked into.

Senator Angara stated that while he concurs with the resolution, questions might be raised as to whether the country is in fact a party and whether the accession to the treaty was validly entered into.

### **INTERPELLATION OF SENATOR HONTIVEROS**

Senator Hontiveros pointed out that Vienna Convention on the Law of Treaties allows a nation to withdraw from a treaty if the same treaty contains a provision allowing withdrawal. She asked if a country could withdraw from a treaty if the same does not contain a provision allowing withdrawal. Senator Drilon explained that there are two views on the issue: first, if there is no process of withdrawal as contained in the treaty, the country cannot withdraw; and second, under the law, a treaty is of the same level as a municipal or national law, which can be terminated. He said that it is an open question which he is not prepared to debate at that time.

Senator Hontiveros pointed out that the Second Optional Protocol does not contain a provision allowing withdrawal; therefore, it might be argued that the Philippines cannot validly withdraw.

### **INTERPELLATION OF SENATOR DE LIMA**

At the outset, Senator De Lima stated that she fully concurs with the resolution because she believes it is necessary, desirable and would strengthen the Senate as an institution. However, she expressed similar concern about the issues surrounding the Second Optional Protocol. She stated that the Second Optional Protocol had been duly ratified as reflected in the records of the UN, and as such, it has become in force, and therefore binding on the state signatories. As mentioned several times, she stated that according to the opinion of Secretary Romulo, the Second Optional Protocol was merely an executive agreement and is not subject to concurrence. She stated that treaties and international agreements are ratified by the Executive branch and required to be concurred in by the Senate. As such, she said that it is the act of concurrence that the Constitution requires, not necessarily the act of ratification.

Senator De Lima then presented the timeline of the International Covenant on the Civil and Political Rights and its protocols, as submitted by the Office of the Senate Secretary, to wit:

- September 22, 2006 – Second Optional Protocol to the International Covenant on Civil and Political Rights, signed by the states-parties in New York;
- April 25, 2007 – Instrument of Ratification was signed by then President Gloria Macapagal-Arroyo; and
- November 20, 2007 – Instrument of Ratification was deposited with the United Nations.

She noted that there was an instrument of ratification signed by the President and submitted to the UN and entered into its books. She also mentioned that the DFA treated the Second Optional Protocol just as an executive agreement, the reason why it did not pass through Senate for concurrence.

Since the Second Optional Protocol was treated as a executive agreement which did not require Senate concurrence, Senator De Lima stated that the resolution on the floor, if adopted, would have no bearing because it only pertains to the withdrawal



from a treaty or international agreement duly concurred in by the Senate.

Senator De Lima said that the Executive department needs to explain because insofar as the books of the UN is concerned, that Philippine government ratified the Second Optional Protocol, while the DFA was saying that it was an executive agreement.

Senator Drilon stated that Senator De Lima's statements support the position that ultimately, the Supreme Court will be called upon to decide on the issue which could be a case of first impression. Senator De Lima agreed.

Senator De Lima said that in the meantime, pending any issue that may be brought to the Supreme Court for resolution, the Senate has to take the position that the purported ratification of the Second Optional Protocol as submitted and entered in the books of the UN is deemed to be regular and valid or constitutional.

Senator Drilon clarified that the resolution on the table is simply a "sense of the Senate resolution" which states that the Senate must participate in the withdrawal from a treaty, it does not touch the issue of whether or not the accession to a particular document is valid as it is a completely different issue.

Senator De Lima expressed concern that if the incumbent administration would agree with the position of the DFA that the Second Optional Protocol was merely an executive agreement, then it can unilaterally withdraw from such agreement. Senator Drilon said that such withdrawal would still be subject to a review and a decision by the Supreme Court in an appropriate case brought to it.

Senator De Lima said she could not understand why the DFA would take the position that the Second Optional Protocol was merely an executive agreement after submitting an instrument of ratification. If it was duly concurred in, she asked what kind of document was submitted to the United Nations because as far as UN is concerned, the submitted instrument of ratification was a correct act or instrument. She agreed that only the Supreme Court could settle the issue.

#### **FURTHER INTERPELLATION OF SENATOR PACQUIAO**

Asked if the resolution on the table is considered

a simple resolution, Senator Drilon replied that it is a "sense of the Senate resolution" which neither binds the country, nor the President.

Senator Pacquiao requested that the Members be given more time to further study and discuss the resolution. Senator Drilon disagreed, as he requested that the Senate resolution be voted upon.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Sotto, the session was suspended.

*It was 4:43 p.m.*

#### **RESUMPTION OF SESSION**

At 4:47 p.m., the session was resumed.

#### **MANIFESTATION OF SENATOR SOTTO**

Senator Sotto stated that he and Senator Pacquiao have asked Senate President Pro Tempore Drilon to give the other Members time to further study the resolution so that it could get the support of the entire Senate. With the concurrence of Senate President Pro Tempore Drilon, Senator Sotto said that the resolution would be the first item in the agenda and would be voted upon on Monday.

Senator Drilon stated that he does not object to the suspension, with the commitment of the Majority Leader that the resolution would be calendared and voted upon on Monday.

#### **SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 289**

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

#### **COMMITTEE REPORT NO. 21 ON SENATE BILL NO. 1279**

*(Continuation)*

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1279 (Committee Report No. 21), entitled

#### **AN ACT CREATING A NATIONAL SCHOOL FEEDING PROGRAM TO**



**COMBAT HUNGER AND UNDER-NUTRITION FOR ALL PUBLIC BASIC EDUCATION STUDENTS, AND FOR OTHER PURPOSES.**

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

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

**SUSPENSION OF SESSION**

Upon motion of Senator Sotto, the session was suspended.

*It was 4:48 p.m.*

**RESUMPTION OF SESSION**

At 4:49 p.m., the session was resumed with Senate President Pro Tempore Drilon presiding.

Upon resumption, the Chair recognized Senator Villar for her manifestation.

**MANIFESTATION OF SENATOR VILLAR**

Senator Villar shared her experience with regard to the nutrition program in public schools. She recalled that as chair of the Senate Committee on Agriculture and Food in the 16<sup>th</sup> Congress, she was invited to a school in Iloilo province which had a vegetable garden. She said that the school encouraged the students to plant vegetables and that during lunch time the mothers would come to harvest, cook, and feed the children. She said that the program resulted in the solution of the malnutrition problem in that particular school and at the same time earned a little income for the school.

Senator Villar said that when the proposed measure was sponsored on the floor for plenary deliberations, she thought that instead of giving a budget to the nutrition program, the "*Gulayan Para sa Paaralan*" program should instead be supported because the program would make farmers out of the students early in life, especially in the rural areas; and, the government would be able to encourage the students to engage in agriculture. She cited the opinion of the United Nations' Food and Agricultural Organization (UNFAO) that family farms would feed the world and not the corporate farms. She

explained that there are 500 million family farms in the world and the students should be encouraged to continue their family farms. In addition, she said that the government would not have to spend for a nutrition program since the schools would solve its own problems of malnutrition on their own through the *Gulayan Para sa Paaralan* program.

Senator Villar lamented that the *Gulayan Para sa Paaralan* program in the public schools has not been getting enough support. She maintained that the government should encourage people to be self-sustaining so that they would learn to solve their own problems through their own efforts and not just rely on the government to solve the problems. This way, she said, the citizens would be able to contribute to the development of agriculture in the country considering that the Philippines is an agricultural country and one-third of its population is composed of farmers and fisherfolk with another one-third of the population indirectly dependent on agriculture.

In closing, Senator Villar said that the government should do its best to support agriculture even in the schools and make farmers out of the students.

In reply, Senator Aquino pointed out that Section 8 of the bill, in fact, talks about the *Gulayan Para sa Paaralan* program. He clarified, however, that the Committee, instead of just focusing on one feeding program, decided to include all the successful modalities of feeding programs being implemented by the government, such as the centralized kitchen in public school modality; the centralized kitchen with a local government modality; the school-based feeding program; and the *Gulayan Para sa Paaralan* program.

He explained that the bill allows for different modalities in different areas in the country because the proposed measure is more of a statement of principle and policy that the government needs to get into the nutrition program. He stated that he would rather leave it up to the particular locality, the DepEd, the National Nutrition Council (NNC) and the oversight committee that was being created to oversee the nutrition program to determine and decide the best modality suited for them.

Senator Aquino said that he is aware of the *Gulayan Para sa Paaralan* program which is being implemented not only in Iloilo but also in other parts of the country, many of which are usually done by



the public schools alone without any support from the national government. He said that during the period of amendments, he would be open to discuss proposals coming from Senator Villar.

Senator Villar stated that she does not believe that the *Gulayan Para sa Paaralan* program is successful in many schools in the Philippines because it is not well supported. However, she emphasized that in order to make it successful, the *Gulayan Para sa Paaralan* could be done in the public schools as a nutrition program especially in the rural areas.

#### **INTERPELLATION OF SENATOR POE**

Prefatorily, Senator Poe said that it is an established principle that laws must provide minimum standards for their implementation and state their implementing agency. In the case of Senate Bill No. 1279, she noted that Section 3 of the bill was unclear on the number of days the national school feeding program should be implemented. She expressed hope that it would be at least for the entire school year as she proposed in a similar bill.

Senator Aquino said that during the period of amendments, he would be amenable to any suggestions and recommendations to be proposed by Senator Poe on the matter.

On the coverage of the bill, whether it would include all students across all levels or just the students with special needs or the entire student body of the public schools, Senator Aquino said that the bill seeks to include everybody, as he pointed out that currently nutrition experts in the schools are moving away from servicing just the malnourished towards addressing the nutritional needs and concerns of about two million to six million malnourished and stunted children and students. This shift, he said, is reflected in the bill as a statement of principle to ensure that the nutrition of students are addressed, and that the Committee did not want to put in any limit, hoping to actually provide for all the students, from the malnourished to the stunted, by providing more in the budget or through programs in the schools.

Senator Poe agreed that aside from addressing only the severely wasted, the coverage must also include the stunted children which comprise half of the student body population. She suggested that the bill should at least target a goal depending on the capability of the government to afford the program,

for instance, a tier program to begin from pre-school until grade school and all the way up to high school.

Senator Aquino said that the Committee intends to introduce a provision on progressive implementation which would allow the implementing agency to determine what scope it could handle based on budgetary constraints. He reiterated that the bill was more of a statement of principle that the government should be taking the lead in institutionalizing nutrition programs in the public schools.

Senator Poe pointed out that the *Gulayan Para sa Paaralan* program mentioned by Senator Villar deserves a second-look, and the government should focus on and support the program. She proposed that the Committee research which indigenous vegetable is suitable to a particular area so that the government would not have to spend too much cost on fertilizers.

Senator Aquino said that during the period of amendments, he would look into the recommendation on the *Gulayan Para sa Paaralan* program as mentioned in Section 8 of the bill.

In closing, Senator Poe expressed her appreciation to Senator Aquino for giving priority to the proposed measure, as she lamented that the bill did not even have the benefit of a public hearing in the 16<sup>th</sup> Congress. She believed that the Philippines, with its population of 103 million, a majority of whom are at an average of 23 years old while 34% are ages one to 17 years old, would benefit from the fruits of the bill which she described as an investment for the future. She said that this is as important as spending on infrastructure, and that the current Senate has now the privilege to institute a program that would empower the Filipino race in Asia and the world. She said that if the state truly recognizes and acknowledges that the human resources of the Philippines are one of the best in the world, it would be doing its citizens, particularly the children, a great disservice if they do not grow up smart because they are hungry. She said that she is pushing for the enactment of the bill not for anything political but to leave a legacy for everyone.

#### **MANIFESTATION OF SENATOR HONASAN**

Senator Honasan manifested that Senator De Lima earlier signified her intention to interpellate on the bill but has decided to withdraw. However, he

said that Senator Pacquiao has signified his intention to interpellate on the bill.

### SUSPENSION OF SESSION

Upon motion of Senator Honasan, the session was suspended.

*It was 5:04 p.m.*

### RESUMPTION OF SESSION

At 5:07 p.m., the session was resumed.

### MANIFESTATION OF SENATOR HONASAN

Senator Honasan manifested that Senator Pacquiao has withdrawn his intention to interpellate on the bill.

### SUSPENSION OF SESSION

Upon motion of Senator Honasan, the session was suspended.

*It was 5:08 p.m.*

### RESUMPTION OF SESSION

At 5:08 p.m., the session was resumed.

### TERMINATION OF THE PERIOD OF INTERPELLATIONS

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

### SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1279

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

### COMMITTEE REPORT NO. 28 ON SENATE BILL NO. 1304

(Continuation)

Upon motion of Honasan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1304 (Committee Report No. 28), entitled

### AN ACT PROVIDING FOR A FULL TUITION SUBSIDY FOR STUDENTS ENROLLED IN STATE UNIVERSITIES AND COLLEGES (SUCS), AND APPROPRIATING FUNDS THEREOF.

Senator Honasan stated that the parliamentary status of the bill was the period of interpellations.

The Chair recognized Senator Aquino, sponsor of the measure, and Senator Gatchalian for his interpellation.

The Chair recognized Senator Gatchalian for his interpellation.

### INTERPELLATION OF SENATOR GATCHALIAN

Preliminarily, Senator Gatchalian lauded Senator Aquino for shepherding a landmark bill that would transform the system of the country's higher education institutions.

Senator Gatchalian noted that Section 4(d) of RA 8292, or the Higher Education Modernization Act of 1997, allowed the SUCs to fix their tuition fees as well as give them the academic freedom in determining their policies and tuition fees. The proposed measure, he said, allocates funds to the SUCs for the payment of tuition fees of the students in their own locality. He then asked what are the mechanisms that are in place to prevent the SUCs from increasing their tuition fees in order to get more allocations for their schools.

Senator Aquino replied that at present, the CHED has an internal mechanism that would either allow or disallow tuition fee increases. He said that if there is a need for a check and balance on such matter, the Committee is open to an amendment.

Senator Gatchalian also noted that a lot of SUCs increase their tuition fees to cover for their operating expenses partly because a lot of students could not pay such fees. Since the proposed measure would completely pay the tuition fees of the students, he feared that some of the SUCs might be tempted to increase their tuition fee rates in order to get more revenues.

Senator Aquino replied that an amendment could be introduced into the bill to make sure that the



SUCs should go through a process before they can increase tuition fees in the same way that they have to go through a process to improve their capacity.

Senator Gatchalian said that at the proper time, he would propose amendments in order to put more mechanisms into the bill so that the SUCs could not abuse its academic freedom of increasing tuition fees.

As regards the accounts receivables of the SUCs, Senator Gatchalian disclosed that during the committee hearing, the SUCs and CHED were not able to furnish the Committee members with the information they needed at that time. He asked if the SUCs have finally provided the Committee with the data on their accounts receivables, specifically on how many students were not able to pay their tuition fees and instead issued promissory notes or any other instruments to insure payment of their debts. Senator Aquino replied that the CHED did not provide the requested data.

Asked how much was the total revenue or the total tuition fees that are supposed to be paid by the students had they paid fully, Senator Aquino replied that it is almost P16 billion, meaning, the students are only paying half of their tuition fees. He suggested asking the CHED to provide the Committee with better information on the matter. Senator Gatchalian stressed that such information would determine the sustainability of the program because the allocation of P8 billion for the students for the current year is actually based on their actual payment of tuition fees so that a lot of students have to issue promissory notes.

Senator Aquino surmised that a majority of the students in SUCs are either poor or near poor so that half of them cannot even pay the average tuition fee of about P6,000 to P8,000 per semester. This is the group that needs help, he said, and he promised to get better data although a cursory look would conclude that a number of students are unable to pay even the low tuition fee rates.

To Senator Gatchalian's observation that the potential revenue would be about P16 billion, assuming they have the capacity to pay their tuition fees, which would also mean that every year, there is a need to allocate at least P16 billion to sustain the program, Senator Aquino replied in the affirmative.

On the issue regarding accounts receivables, Senator Gatchalian asked if the accounts receivables

from the students would be a prerequisite for them to avail of the higher education program once the bill becomes a law. Senator Aquino replied that there is no provision in the proposed measure regarding the current debts of the students to the schools.

Asked if there is any intention of condoning the accounts receivables or the debts the students incurred, Senator Aquino replied in the negative, saying that Senator Gatchalian could introduce a provision that would address such concern. He said, however, that the scope of the bill is forward looking and not really regarding previous debts from the previous years.

Senator Gatchalian then reiterated his request for the data that he needed from the CHED, saying that it is vital in determining the sustainability of the program as well as determining how many students would benefit from it. He informed the Body that two or three days ago, some of the Cabinet secretaries issued a press release that only 12% of the students enrolled in the country's SUCs are actually poor. But based on information, he said that only half can actually afford the tuition fees even if they are not in the poor category. Hence, he reiterated that the needed information from the CHED is very vital in determining the demographics of the students in the country's SUCs.

Adverting to the position paper submitted by the country's economic managers regarding the proposed measure on the floor, Senator Aquino said that he took exception to their use of "anti-poor" because the term was not used in its proper context even as he agreed that only about 12% of the poorest of the poor are able to get to the SUCs. He acknowledged that about 20% of the students are in the category of being financially challenged or near poor, a parlance used in the social development circles. He said that those 20% of students who are near poor, based on the analysis from NEDA and from PIDS, are the majority of students that need help, and that its modality is what is being debated upon.

Senator Aquino pointed out that 11 senators have already authored, coauthored and cosponsored the proposed measure and that they have chosen to provide the benefit outright to the students as the modality.

He also disclosed that Senator Zubiri recently sponsored the bill on the "Ease of Doing Business," which is basically the simplest way possible for the

people to receive benefits and support. That, he said, is also the same spirit of the proposed free tuition fee at the SUC level: to make it easy for those that the government would want to help.

Senator Gatchalian lamented that he too does not know where the label “anti-poor” came from because his information validates that almost 90% of the students who go to the SUCs are considered below middle income which is the near poor category. He also cited the huge account receivables of the SUCs from their students as proof. He said that even if the students are in a middle low income category, they are still not sure if they can pay their tuition fees.

Saying that the proposed measure is a laudable program, Senator Gatchalian commended Senator Aquino for shepherding the bill.

#### **INTERPELLATION OF SENATOR GORDON**

At the outset, Senator Gordon asked if the proposed measure has an appropriation of P16 billion. Senator Aquino replied that the appropriation for free tuition for students enrolled in SUCs is P8.3 billion for the current year.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Gordon, the session was suspended.

*It was 5:25 p.m.*

#### **RESUMPTION OF SESSION**

At 5:28 p.m., the session was resumed.

Senator Gordon disclosed that Senator Aquino told him that the accounts receivables from the students, including what was appropriated, amounted to P8.3 billion so that, in effect, P16.3 billion is available because the students are not paying their debts, the reason why in the proposed legislation, there is a budget of P15 billion. Senator Aquino replied in the affirmative, explaining that it was just a rough estimate but it is closer to the actual need of P16 billion.

Asked when the exact amount would be known, Senator Aquino replied that since P8.3 billion is already included in the 2017 budget allocation and could be used for the first semester of 2017-2018

school year, once the proposed measure is passed, the balance could be appropriated and on the succeeding 2018 budget, the fund would then be available for a full implementation of the law.

Citing Section 4 (*Eligibility to the Full Tuition Subsidy*), Senator Gordon observed that it is the SUC that seemed to be applying for the full tuition subsidy and not the student, and that there is no direct line for the student to apply for the subsidy but through the SUC.

Senator Aquino stated that the modality chosen by the Committee is to have an outright tuition fee subsidy for all the students enrolled in the SUCs. He explained that the Committee considered two schools of thought: 1) to have an outright subsidy and the student who can afford to opt out and, in effect, make a donation; or 2) to allow everyone to apply for a scholarship, which could be expensive, cumbersome and mired in bureaucracy and patronage. He stated that the Committee decided not to have the usual application for scholarship that would indicate even the number of appliances one would have, but to grant the tuition fee subsidy to everyone, and those who belong to a certain income bracket can be asked to opt out of the government’s program. He stressed that it would be made clear in the enrolment procedure that the free tuition fee is really meant for those who cannot afford. He recalled that in previous interpellations, Section 4 should include the determination of whether a student can or cannot afford.

Senator Gordon said that looking at Section 8 (*Requirements for SUCs*) in relation to Section 4, SUCs are mandated to fulfill certain requirements before accessing the fund, and Section 8(a) is trying to create a mechanism for financially-disadvantaged students when it actually meant “poor but deserving” students. He believed that the bill has to be clear, otherwise, a lot of people would claim that they are disadvantaged, and even if they are, they do not exert an effort to raise their circumstances.

Senator Aquino stated that at the proper time, the term could be changed to “poor but deserving.” He informed that Body that the Committee has also been having debates with the Executive department on the definition of “poor.” He stated that the NEDA has come out with a statement that “very few poor are in SUCs,” however, when it says “poor” in other matters, they would refer to the “poorest of the poor” or the “E” socio-economic class, roughly with



an income of less than P15,000 per annum. He recalled that during the interpellation of Senator Gatchalian, it was established that 90% of the population actually belong to the “poorest of the poor,” “poor” and “near poor” category, terms that were provided by the economic managers which is why the Committee opted to use the broader “financially disadvantaged” term. He stated that at the proper time, an amendment can be introduced with understanding. But he stressed that the principle must be very clear and that the law should require the students to be “poor but deserving.”

As regards Section 8, Senator Gordon noted that the provision spells out the requirements for SUCs in order to access the fund. He supposed that the students cannot access the funds directly and that he/she would have to take a qualifying examination and affirmative action mechanism for financially-disadvantaged students. He also observed that more than the qualification of the student, Section 8 addresses the demographic requirements which, he said, scares him.

Senator Aquino noted Senator Gordon’s observation, adding that any suggestions and amendments would be welcomed at the proper time.

Senator Gordon believed that the proviso to “publish maximum standards that the SUC can accommodate” is questionable. He questioned why the funding would be on the basis of what the SUC could accommodate. He said that the term “accommodate” is very questionable because it is subject to favoritism.

Senator Aquino clarified that the intention of the bill is to provide all students the tuition fee subsidy, without patronage and favoritism.

Senator Gordon asserted that Section 8(c) provides for the SUC to submit demographics like previous enrollment rate, graduation rate, among others; it is the SUC that is being made to qualify instead of the student.

Responding thereto, Senator Aquino stated that the most basic data is the capacity of the SUC to accommodate the number of students, and the CHED does not have the capacity to determine how many students could be enrolled in a particular SUC, the teacher-to-student ratio, classroom-to-student ratio, among others.

Senator Gordon posited that if there are many students to a teacher, the students would not learn and would not even participate in discussions. He said that, among other things, the Committee should clarify what it meant with the terms “gross tuition receipts,” “teachers’ welfare” and “performance training profiles.” He reminded the Committee that the objective is to make sure that a student gets an education instead of focusing on the surveillance of an SUC whether or not it complies with the requirements being demanded by the CHED.

Asked by Senator Aquino if the requirements are superfluous to the intention, Senator Gordon replied in the affirmative.

As regards Section 11, Senator Gordon expressed concern that there are not enough guidelines on when the student will pay. In reply, Senator Aquino stated that Section 11 refers to the guidelines and mechanisms of the UniFAST Law, and the intention is to assure that the tuition fee subsidy would not be detrimental to the current scholarship programs being enjoyed by the students. He said that the free tuition fee is an additional scholarship program aside from a number of programs found in the UniFAST Law which was passed in the 16<sup>th</sup> Congress.

Senator Gordon suggested that Section 11 be explained in detail so that there would not be any ground for saying that it is not clear. He believed that nothing good is easy to get and that people should not think that free education is a handout because students would have to work for it as well. He cited a Chinese saying “*Bo choi kang Bo tan Cha*,” meaning, “you do not work, you do not eat”. He stated that he does not want the government to send the idea to the people that it is a Santa Claus sending goodies because students might not be challenged anymore.

Senator Aquino clarified that the tuition fee subsidy is only a 30% of the total cost of education; thus, it is not a complete dole-out because the student would still have to pay for their education.

Senator Gordon stated that the Philippines’ tuition fees are one of the lowest in the region, with Cambodia and Indonesia lower than the Philippines. He then enumerated some of the tuition fees around the world: China, US\$2,000-\$4,000 per year; India, US\$370 per year; Korea, US\$3,500 to \$8,000 per year; United States, US\$30,000 per year; and



United Kingdom, US\$7,500 per year. He said that the amount is reflected in their grade school and high school where teachers are paid very well.

In addition, Senator Gordon read into the record the cost of education in ASEAN countries: Thailand, US\$8,500 per year; Singapore, US\$10,500 per year; Cambodia, US\$250 per year; Philippines, US\$180 to US\$200 per year; Brunei – totally subsidized; Myanmar US\$85 per year; Laos, US\$203 per year; Indonesia, US\$157 per year; Vietnam, US\$200 per year.

He believed that there is hardly any country in the world where it is easy to get into college because people know that education is not cheap. He stated that if a country offers free education completely, the students would become self-entitled, and if there is too much entitlement in the country's culture, with everybody practically taken care, the government may end up asking for more taxes to fulfill all the requirements that it had to give to its people. He asserted that the people should know that they have to pay for their fair share. He said that there is a way in which the people can be educated to pay their taxes.

Senator Gordon further pointed out that after a student graduates in Singapore, he/she would have to pay for his/her education within 12 years, and that the moment he/she gets a job, he/she has to pay right away although gradually. He said that the student loans come from the Central Provident Fund which is protected by the Singaporean government. He stressed that it is important that people start thinking in terms of the benefits of a "study now, pay later program" that should be given to poor but deserving students. He added that there should be a policy wherein a scholar who does not study or opts to drop out of the program should get out of the program and reimburse what was paid for by the government. He said that he would only want to create a philosophy within the law and for his thoughts to be reflected into the record for research purposes. He added that lawmakers are aware that in certain circumstances, they would suddenly see a windfall that there is a surplus in the budget and would quickly suggest to put that budget into education.

Senator Gordon stated that government cannot forever do what it wants to do for the people because they would no longer strive. He stressed that education is hard in the Philippines but that is the way life is.

Senator Aquino thanked Senator Gordon for his suggestions. He stated that firstly, during the deliberations of the Committee, there was talk that there must be such service clause to those who wish to receive free education. He clarified that he is not completely against it but that, like voluntarism, it would not be complete voluntarism if it requires something in exchange. Secondly, he said that based on statistics, very few students actually get to college, with only four out of 10 who enter the education system stepping into college, and only a little over one would actually graduate from college, the three dropping out also because of financial concerns. He stressed that the bill intends to make sure that more students would actually graduate.

Disagreeing with Senator Aquino, Senator Gordon stated that statistics, according to the Israelis, do not mean it is the reality. He said that the reality is when someone feels entitled, he/she does not strive hard enough. He opined that what is wrong with the educational system is the lack of culture that says "education is expensive." He recalled that when he was mayor, he told the students that if they take drugs, they would die, and that he gave public school students the impression that he would not care if they drop out of school because he knows that those who are smarter but do not use his/her talents deserve to be kicked out and somebody who truly wants education would get it. He stated that in the Chinese community, a lot of them do hard work, with some not even having had any education but they send their children to good schools. He believed that the Filipinos' orientation is like the friars of old which is paternalistic, which means it should take care of its people. He believed that what should be inculcated upon the people is the protestant ethic that people should work hard. He stressed that those who really want to study should keep up with the standards set by the SUC and if he/she cannot keep up, he would have to get out and pay the government back for what it has spent.

Senator Aquino supposed that if the proposed amendment is to have a grade requirement, it would be included into the bill at the proper time.

Senator Gordon believed that there is much philosophy in transformation rather than transaction. He explained that if one wants to transform his/her life, he/she better get an education.

With reference to the bill under consideration, Senator Gordon stated that when things are too easy,



people get blinded by entitlements. He stated that even though he does not know Senator Aquino's mother but only his father, since he was ahead of the latter in school, Senator Aquino came out to be a very good man because of the values inculcated in him by his parents. He believed that it is not money or education which could lead a person to success but hard work and personality. He said that he knows a lot of people who, although not graduates of schools like Ateneo, San Beda or La Salle, fared better. He said that he would want to ensure that the measure succeeds and that it does not become an entitlement that when the people see money, they would grab the opportunity, only to find out in the end that they failed to graduate.

Senator Gordon said that he knows the sacrifices of parents who would sell their properties just to support of their children's education. He said that there is no question about the desire for education but on those who feel that it is an entitlement, the reason why they drop out of school. He added that he does not buy the reasoning that the people did not proceed to take higher education because of lack of money, saying that he knows a lot of people who do not have the financial capability but succeeded in life. He agreed to the contention of the secretary of Education that children must work hard starting in the primary and secondary levels because the tertiary level might be already late.

Senator Aquino, for his part, said that at the right time, he would consider the proposal to introduce a grade requirement provision in the bill.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1304**

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

#### **COMMITTEE REPORT NO. 8 ON SENATE BILL NO. 1233**

*(Continuation)*

Upon motion of Senator Honasan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1233 (Committee Report No. 8), entitled

#### **AN ACT CREATING THE COCONUT FARMERS AND INDUSTRY TRUST**

FUND, PROVIDING FOR ITS MANAGEMENT AND UTILIZATION, AND FOR OTHER PURPOSES.

Senator Honasan stated that the status was the period of interpellations.

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

#### **MANIFESTATION OF SENATOR PANGILINAN**

Saying that he was ready for the interpellations, Senator Pangilinan informed the Body that there were reservations to interpellate but the senators requested that their interpellations be rescheduled on Monday. He expressed hoped that the measure would be one of the priorities in the agenda on Monday.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1233**

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

#### **MANIFESTATION OF SENATOR PANGILINAN**

Senator Pangilinan said that Senators Recto, Gordon, Pacquiao and Escudero asked that their interpellation on Senate Bill No. 1233 be scheduled on Monday.

#### **COMMITTEE REPORT NO. 17 ON SENATE BILL NO. 1271**

*(Continuation)*

Upon motion of Senator Honasan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1271 (Committee Report No. 17), entitled

**AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION (SOGIE) AND PROVIDING PENALTIES THEREFOR.**

Senator Honasan stated that the status was the period of interpellations.

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

**MANIFESTATION  
OF SENATOR HONTIVEROS**

Senator Hontiveros informed the Body that based on her earlier discussion with Senator Honasan, the acting Majority Leader, no Member has registered to interpellate on the bill during the day's session. However, Senator Honasan said that Senators Pacquiao and Villanueva expressed their intention to interpellate on the measure at a later date.

**SUSPENSION OF CONSIDERATION  
OF SENATE BILL NO. 1271**

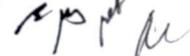
Upon motion of Senator Honasan, there being no objection, the Body suspended consideration of the bill.

**ADJOURNMENT OF SESSION**

Upon motion of Senator Honasan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Monday, February 20, 2017.

*It was 5:58 p.m.*

I hereby certify to the correctness of the foregoing.

  
ATTY. LUTGARDO B. BARBO  
*ccm* Secretary of the Senate  


Approved on February 20, 2017