



REPUBLIC OF THE PHILIPPINES
Senate
Pasay City

Journal

SESSION NO. 42
Tuesday, November 29, 2016

**SEVENTEENTH CONGRESS
FIRST REGULAR SESSION**

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CALL TO ORDER

At 3:26 p.m., the Senate President, Hon. Aquilino "Koko" Pimentel III, called the session to order.

PRAYER

Sen. Vicente C. Sotto III led the Body in prayer, prefaratorily quoting from the Holy Book, Proverbs 3:13-18, to wit:

Blessed are those who find wisdom,
those who gain understanding,

for she is more profitable than silver
and yields better returns than gold.

She is more precious than rubies;
nothing you desire can compare with her.

Long life is in her right hand;
in her left hand are riches and honor.

Her ways are pleasant ways,
And all her paths are peace.

She is a tree of life to those
who take hold of her;
those who hold her fast will be blessed.

Heavenly Father, You said that if
we ask for wisdom, You will give it gene-
rously. Today, Lord, I humbly ask that Your

wisdom be poured out over each and every person in this country. Guide us in everything we do, and in every action and decision we make, both big and small.

Lord, give us the understanding and insights into people and situations we would not have gleaned without Your divine intercession and give us clear leadings into actions You would like us to take.

Teach us to value Godly wisdom, honor and the fear of the Lord above all things so that Your good, pleasing and perfect will shall come to pass over our land.

Let the fruits of Your wisdom, including Your peace, prosperity and long life, be felt by all Your people.

And Lord, I pray that Your favour and mercy be upon each and every one of us and let Your glory be evident for all to see.

In Jesus' Mighty Name, we pray.

Amen.

ROLL CALL

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

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Aquino, P. B. IV B.	Legarda, L.
Binay, M. L. N. S.	Pacquiao, E. M. D.
De Lima, L. M.	Poe, G.
Drilon, F. M.	Pimentel III, A. K.
Escudero, F. J. G.	Sotto III, V. C.
Gatchalian, W.	Trillanes IV, A. F.
Gordon, R. J.	Villanueva, J.
Honasan, G. B.	Villar, C. A.
Hontiveros, R.	Zubiri, J. M. F.
Lacson, P. M.	

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

Senators Angara and Pangilinan arrived after the roll call.

Senator Cayetano was on official business, as indicated in the letter dated November 29, 2016 of the Senator's chief legislative staff.

Senator Ejercito was under preventive suspension.

Senator Recto was absent.

DEFERMENT OF THE APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body deferred the consideration of the Journal of Session No. 41 (November 28, 2016) as it was still being finalized.

REFERENCE OF BUSINESS

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

BILLS ON FIRST READING

Senate Bill No. 1253, entitled

AN ACT INSTITUTIONALIZING THE ELECTRIC COOPERATIVES DISASTER MANAGEMENT FUND AND PROVIDING FUNDS THEREFOR

Introduced by Senator Win Gatchalian

To the Committees on Energy; Cooperatives; Ways and Means; and Finance

Senate Bill No. 1254, entitled

AN ACT TO ELIMINATE ALL FORMS OF SEXUAL HARASSMENT IN WORK PLACES, EDUCATIONAL INSTITUTIONS, AND PUBLIC PLACES, AND PROVIDING PENALTIES THEREFOR, REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 7877, OTHERWISE KNOWN AS THE ANTI-SEXUAL HARASSMENT ACT OF 1995

Introduced by Senator Grace Poe

To the Committees on Labor, Employment and Human Resources Development; and Civil Service, Government Reorganization and Professional Regulation

RESOLUTION

Proposed Senate Resolution No. 234, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, AS TO THE FAILURE OF THE POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION TO REMIT DIVIDENDS DUE TO THE NATIONAL GOVERNMENT

Introduced by Senator Win Gatchalian

To the Committee on Energy

COMMITTEE REPORT

Committee Report No. 12, prepared and submitted by the Committee on Public Information and Mass Media, on Senate Bill No. 1255, with Senators Sotto III and Trillanes IV as authors thereof, entitled

AN ACT EXPANDING THE COVERAGE OF EXEMPTIONS FROM REVEALING THE SOURCE OF PUBLISHED NEWS OR INFORMATION OBTAINED IN CONFIDENCE BY INCLUDING JOURNALISTS FROM BROADCAST, NEWS AGENCIES AND INTERNET PUBLICATIONS, AMENDING FOR

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THE PURPOSE SECTION 1 OF
REPUBLIC ACT 53, AS AMENDED
BY R.A. 1477,

recommending its approval in substitution of Senate Bill Nos. 6 and 486.

Sponsor: Senator Grace Poe

To the Calendar for Ordinary Business

**ACKNOWLEDGMENT
OF THE PRESENCE OF GUESTS**

At this juncture, Senator Sotto acknowledged the presence in the gallery of Eduard Folayang, MMA fighter who won the ONE Championship's Lightweight title in the ONE Championship: Defend Honor in Singapore, and his coach, Mark Sanglao.

Senate President Pimentel welcomed the guests to the Senate.

SPECIAL ORDER

Upon motion of Senator Sotto, there being no objection, the Body approved the transfer of Committee Report No. 11 on Proposed Senate Resolution No. 241 from the Calendar for Ordinary Business to the Calendar for Special Orders.

**PROPOSED SENATE
RESOLUTION NO. 241**

Upon motion of Senator Sotto, there being no objection, the Body considered, on Second Reading, Proposed Senate Resolution No. 241 (Committee Report No. 11) entitled

**RESOLUTION CONCURRING IN THE
RATIFICATION OF THE ARTICLES
OF AGREEMENT OF THE ASIAN
INFRASTRUCTURE INVESTMENT
BANK.**

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.

The Chair recognized Senator Legarda for the sponsorship.

**SPONSORSHIP SPEECH
OF SENATOR LEGARDA**

Senator Legarda presented for the Body's plenary consideration and approval Proposed Senate Resolution No. 241, titled "Resolution Concurring in the Ratification of the Articles of Agreement of the Asian Infrastructure Investment Bank" prepared and submitted by the Committee on Foreign Relations on November 22, 2016 under Committee Report No. 11, as she pointed out the benefits that the country would get from concurring in the ratification of the Articles of Agreement of the Asian Infrastructure Investment Bank (AIIB).

The following is the full text of the speech of Senator Legarda:

Asia's Massive Infrastructure Needs

Asia faces a massive infrastructure deficit.

The daily traffic crawl in Metro Manila and scenes of passengers walking along MRT tracks are reflective of the very tragic state of infrastructure development in our country. We are not alone.

In Southeast Asia, more than a third of the population lives in substandard housing. In many countries of Asia, the biggest cost is their supply chain. The movement of goods inside many Asian countries is so unreliable that there is no way of saying when the supply will actually arrive. In times of disasters, the infrastructure challenges translate to losses in human lives.

We are in this situation for a range of reasons — from bureaucratic inefficiencies, changing geographic distribution of people, weak regulatory environments, growth dynamics, just to name a few.

Financing is another issue. Infrastructure programs compete for finite funds with other national priorities.

The Asian Development Bank estimates that Asia will need at least US\$8.29 trillion to finance infrastructure development between 2010 to 2020 in order to maintain current levels of economic growth. These estimates do not even include social infrastructure requirements and infrastructure spending for disaster reconstruction efforts, which has become an annual requirement for us.

Infrastructure funding requirements of Asia are expected to grow by 7% to 8% every year, reaching \$5.36 trillion annually by 2025 and representing nearly 60% of the world's total.

Globally, there is a gap of US\$500 billion annually between investment needs and available public funds.

Asia, where 1.75 billion people live in extreme poverty, requires substantial amount of funding for infrastructure development to make inclusive growth possible across economies.

The Philippines ranked 95th out of 138 economies in the 2016-2017 World Economic Forum's global competitiveness index on infrastructure, highlighting how much we have lagged behind other economies. The absence of good infrastructure — from road networks, transportation systems, airports and seaports, electrification, water supply, to telecommunications — has had dire consequences on our nation's growth; above all, on our people's well-being.

The World Bank estimates that a 10-percent increase in capital investment into infrastructure projects contributes to a 1 percent growth in GDP.

Development of infrastructure is also crucial for enhancing our trade competitiveness. Resilient and adequate infrastructure will reduce the costs of trade and strengthen our competitiveness.

These would impact on our future growth.

The Benefits from AIIB

The AIIB, like the Asian Development Bank (ADB) and the World Bank, is a multilateral lending institution, owned by sovereign-member countries, which aims to promote economic development in Asia. It aims to foster economic development and promote regional cooperation.

The Philippines is the 57th prospective founding member of the AIIB, the last to have signed on in December last year. Forty-eight have already attained full membership, including Australia, France, Germany, India, South Korea, and Russia. All ASEAN countries have signed on, with the Philippines and Malaysia as the only ASEAN countries that have yet to deposit its Instruments of Ratification. We have only until December 31 of this year to make this submission and to pay our initial capital contribution.

An AIIB membership brings in a host of benefits, including:

- Additional source of financing to implement better and resilient infrastructure, both by the government and the private sector;
- Accelerate the Philippines' annual infrastructure spending to account for 5% of GDP, or even higher, and improving competitive-

ness through better infrastructure facilities that will attract investments into the country;

- Provide additional funding source to support rural and value chain development to increase agricultural and rural enterprise productivity and rural tourism of the country.

AIIB offers concessional rates that are:

- comparable to the rates of World Bank and the ADB;
- better than many of the Philippines' bilateral partners' lending rate; and
- lower than the Philippines' commercial borrowing rates.

The AIIB can provide an annual financing window to the Philippines of about US\$200 million to US\$500 million. In the end, we can see a 400% to 1,150% return on investment of our required paid-in capital of US\$196 million in 5 years.

Under AIIB's lending policy, the private sector can likewise avail of services or products from AIIB such as guarantees, private equity investments, and co-financing with private banks.

AIIB aims to supplement and not crowd out private sector financing since it will focus on vital financing projects that are unable to avail of reasonable financing terms and conditions.

The Philippines is expected to also realize other benefits from its membership in the AIIB, such as:

- Increased opportunities for Filipino contractors/professionals for infrastructure projects in the Philippines and abroad;
- More employment opportunities for Filipino workers due to heightened infrastructure spending;
- Reduced trade costs of about 15.6% of trade value and real income gain of about US\$220 billion.

Increased competitiveness and productivity, improved market connectivity and enhanced economic opportunities for both urban and rural areas of the country.

All these, Mr. President will contribute to the achievement of President Duterte's 10 Point Socio-economic Development Agenda.

Conclusion

The AIIB adheres to sound banking principles in its operations, consistent with principles



of transparency, openness, independence, and accountability.

It is also guided by environmental and social sustainability safeguards similar to what the World Bank and the ADB have established.

Infrastructure bottlenecks have stifled our growth potential for many years. More investment is required not only to build new projects but also to maintain existing infrastructure. The AIIB can broaden our infrastructure funding sources.

Let me underscore, however, that financing alone will not solve all our problems. Still, the fundamental issues have to be set right. We need to simultaneously create an environment with a predictable legal and regulatory framework, buttressed by transparent governance and decision-making processes.

Let us take, however, this crucial step to help address one of the most pressing issues facing our infrastructure sector.

I therefore urge you to approve proposed Senate Resolution No. 241, titled "Resolution Concurring in the Ratification of the Articles of Agreement on the Asian Infrastructure Investment Bank."

COSPONSORSHIP SPEECH OF SENATOR CAYETANO

At the instance of Senator Sotto, there being no objection, the Body approved the insertion of the cosponsorship speech of Senator Cayetano on Proposed Senate Resolution No. 241 into the Journal and Record of the Senate.

Following is the full text of Senator Cayetano's speech:

May I have the honor to sponsor the Senate's issuance of concurrence to the Instrument of Ratification issued by Pres. Rodrigo Roa Duterte on the Articles of Agreement (AOA) of the Asian Infrastructure Investment Bank (AIIB).

Any institution that will promote human development, accelerate economic and social progress, and further good relations with neighboring nations should be embraced and supported. AIIB, like the Asian Development Bank (ADB) and the World Bank (WB), is a multilateral lending institution, owned by sovereign-member countries, which aims to promote economic development and strengthen

regional cooperation and partnership in the Asian region.

AIIB is committed to follow sound banking principles, and aims to be lean, clean and green in its operation. It follows environmental and social sustainability safeguards that are similar with ADB and WB.

Currently, the bank has fifty-seven prospective founding members, of which forty-eight countries have already attained full membership.

Some notable members of the bank are Australia, France, Germany, India, Singapore, South Korea and Russia.

The Philippines signed the Articles of Agreement of the AIIB on December 31, 2015.

AIIB offers soft financing to both public and private entities in its member countries and other entities concerned with the economic development of the Asian region. As such, the Philippines' membership to AIIB provides the country an additional source of financing to implement better and resilient infrastructure, both by the government and the private sector. Our membership in the bank will support the achievement of President Duterte's 10 Point Socioeconomic Development Agenda. In particular, it will support the administration's goals of accelerating the Philippines' annual infrastructure spending to account for 5% of GDP, and improving competitiveness and ease of doing business in the country. It also supports the President's focus on promoting rural and value chain development to increase agricultural and rural enterprise productivity and rural tourism in the country.

The Philippines stands to gain more than what we have to contribute to the bank (i.e., paid-in capital of US\$196 billion or P93 billion in the next four years). AIIB offers concessional rates that are (i) comparable to rates of WB and ADB, (ii) better than many of the Philippines' bilateral partners' rate, and (iii) cheaper than the Philippines' commercial borrowing rates. AIIB, likewise, has substantial paid-in capital to leverage for to provide financing support to its members. The Executive branch, through the DOF, plans to borrow from the bank US\$500 million annually to finance/co-finance infrastructure projects of the country.

AIIB's role as a major player in infrastructure development in Asia in the future is inevitable and the timing of our membership in AIIB cannot be more perfect as the Philippines is at the point of development where increasing our infrastruc-

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ture capacity can no longer be set aside. More than the economic numbers we have achieved in the recent years, it is putting those numbers in concrete forms felt by the majority of the Filipino people that is of great importance and priority.

Moreover, our membership is an act of positive engagement to one of the biggest economies in the world – China. Our membership to AIIB is supportive of this administration's goal of improving and solidifying the Philippines' bilateral relations with China.

With your support on the approval of our membership in AIIB, we do not only go a step closer towards narrowing down the gap between the rich and the poor of the country, but also benefit from the act of camaraderie towards our Asian brothers and sisters particularly to ASEAN countries that are less developed than ours that can benefit from AIIB. As with all other countries that have developed before us, it is a small step for the Philippines in transitioning from a recipient to a donor of foreign assistance.

INTERPELLATION OF SENATOR DRILON

Asked by Senator Drilon how many countries signed the Articles of Agreement of the Asian Infrastructure Investment Bank (AIIB), Senator Legarda stated that 57 Prospective Founding Members signed the Articles of Agreement, the Philippines being the 57th member to sign last December 31, 2015, which was ratified for the second time by President Duterte on October 19, 2016.

As regards the capital allocation for AIIB, Senator Legarda said that the authorized capital is US\$100 billion and the Philippines' capital allocation is US\$196 million, payable in five years. This, she said, represents 0.9975% or 1% of the total AIIB shares to be paid in installments, as follows: for 2016 – US\$39 million or P1.86 billion; for 2017 – US\$78 million or P3.72 billion; for 2018 – US\$39 million or P1.86 billion; and for 2019 – US\$39 million or P1.86 billion. The first installment, she said, is in the amount of P1.86 due before the end of the year.

Asked if the required paid-in capital share of P1.86 billion due for 2016 was included in the GAA, Senator Legarda said that the DOF, through the DBM, has requested the use of savings to augment the Bureau of Treasury's budget allocation for Cash Management Funding and Investment of Excess

Funds which is a line item provision in the 2016 budget, which request is still pending approval by the President. She explained that the purpose of the line item is to pay subscription memberships and commitments to international obligations and international financial agencies.

Asked on the source of savings which would be used to augment the item, Senator Legarda said that P1.5 billion would come from the discontinuance of construction of the DOF building and P360 million would be charged against the President's contingency fund for 2016.

Senator Drilon elucidated that he was asking the questions because in the recent budget hearing, there were debates on the utilization of savings. Moreover, he pointed out that the resolution would require the concurrence of two-thirds (2/3) of the members of the Senate to ratify the Treaty so that it would be effective and binding.

Asked by Senator Drilon what the process of withdrawal from the Agreement would be, Senator Legarda said that as provided in Chapter 7, page 22 of the Agreement, particularly Article 37 for Withdrawal, Article 38 for Suspension and Article 39 for Settlement of Accounts, the Philippines can withdraw its membership and AIIB shall arrange the repurchase of the country's shares at the repurchase price shown at the value of the books of the bank at the date the country ceases to be a member. She, however, pointed out that the bank may withhold a certain amount as long as the country is a borrower, guarantor or a contracting party with respect to equity investment or other financing with the bank.

Asked if the concurrence of the Senate must be secured for the Agreement to be binding with the government, Senator Legarda replied in the affirmative. As to who is authorized to withdraw the Philippines' membership from the bank, she stated that it would be the governor who is appointed by the President to represent the Philippines in the board of the bank. Senator Drilon disagreed, saying that since the treaty, once ratified and concurred in, becomes part of the law of the land, it cannot just be the governor who can withdraw the country's membership from the AIIB. Senator Legarda clarified that before taking action, the governor would have to consult first with the Executive Department that ratified the treaty and with the Senate that concurred in the ratification.

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SUSPENSION OF SESSION

Upon motion of Senator Legarda, the session was suspended.

It was 3:37 p.m.

RESUMPTION OF SESSION

At 4:05 p.m., the session was resumed.

Senator Drilon informed the Body that Senator Legarda would spread into the record the interpretations and the answer to his query.

Since the Senate's concurrence is needed for the agreement to be ratified, Senator Legarda explained that the Philippines' withdrawal from the agreement would have to go to the Senate as well. As such, she said that the governor, appointed by the President to represent the country, would not only have to seek the approval of the Office of the President, in coordination with the DFA, but also the concurrence of the Philippine Senate.

For his part, Senator Drilon pointed out that the Constitution envisions a shared decision-making insofar as treaties are concerned in light of Section 21, Article VII thereof, 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." This being the case, he said that the concurrence of the Senate would be required to terminate the validity and effectiveness of treaties as well. He indicated that at the appropriate time, he would move for the inclusion of a paragraph that would reflect that withdrawal of membership from the AIIB must have the concurrence of the Senate.

Senator Legarda welcomed the proposal to amend the resolution of concurrence to include a paragraph reflecting said interpretation.

INTERPELLATION OF SENATOR HONTIVEROS

Preliminarily, Senator Hontiveros noted that throughout the entire Articles of Agreement (AOA) of the AIIB, environmental and social safeguards were mentioned only once, specifically in Article 13.4 (Operating Principles) thereof, and said article, she further observed, neither specified how policies

addressing environmental and social impacts would be developed and the possible space for civil society to be part of that process.

She also expressed concern that Article 13.9 on development partner policies could put a very low safeguard standard in place, which, in turn, would generate significant environmental, social, fiduciary and reputational risks because under the same article, the AIIB may apply a co-financier's environmental and social policies and may rely on the co-financier's determination as to whether compliance with their policies and procedures has been achieved.

Senator Hontiveros likewise noted that the mitigation measures in the required Environment and Social Management Plan (ESMP) did not clearly indicate a binding requirement on the client in case of non-compliance. She said that the absence of a minimum 120-day public commenting period, as required by other international financial institutions like the World Bank, and the ADB, means that potentially impacted communities would be denied ability to respond to and provide detailed input on assessments done by others on likely risks and impacts to their lives and livelihoods. Moreover, she said that there was no indication towards sustainable development or poverty alleviation in the agenda of the AIIB based on its AOA.

Asked for the legally binding requirements with the Environmental and Social Frameworks (ESF) which would ensure that both the bank and the client implement and adhere to the ESF, Senator Legarda explained that under the Agreement, the AIIB, recognizing that environmental and social sustainability is the fundamental aspect of achieving its outcomes, would have implementing rules based on its environmental and social protection mechanisms. She explained that the AIIB follows three associated environmental standards which set out more detailed mandatory environmental and social requirements such as:

- Environmental and Social Assessment Management where clients are required to undertake environmental and social assessment in varying degrees depending on the categorization of the project. The assessment considers project and design alternatives to avoid or minimize physical and/or economic displacement and the impact on indigenous peoples;



- ESS 2 Involuntary Resettlement would assess whether bank projects involve involuntary resettlement — when it is not feasible to avoid involuntary resettlement and ensure that resettlement activities are conceived and executed along with sustainable development programs ensuring that persons displaced by the project will share in the project's benefits; and
- ESS3 on Indigenous Peoples wherein the bank screens projects by seeking the technical judgment of experts and scientists with expertise of the social and cultural groups in the project area. The bank also conducts consultations with indigenous peoples and requires the client to prepare an Indigenous Peoples' Plan, to assess if the project will greatly impact indigenous peoples similar to the standards of the World Bank and the ADB.

Adverting to a footnote of the AIIB Environmental and Social Framework (ESF) which calls for involuntary resettlement with the “avoidance of the use of unnecessary disproportionate or excessive force,” Senator Hontiveros expressed concern that the provision is not an outright ban on the use of violence to obtain land for an AIIB project as it appears that it would allow the necessary use of force for possible land grabbing. She said that she found the vague use of terminology unacceptable because it makes allowance for the use of violence against local communities. Senator Legarda clarified that the ESF has a provision on exclusion which states that the bank would not finance a project that “either involves or results in forced evictions, or involves activities or items specified in the list” set forth in the attached Environment and Social Exclusion List.

Senator Hontiveros also expressed concern that in contrast to other multilateral development banks, the AIIB exclusion list fails to have a clear and unambiguous prohibition on force or violence or on unknowingly financing operations such as the production of or trade in radioactive materials including nuclear reactors and its components, activities involving harmful or exploitative forms of forced labor or child labor and projects in conflict zones. However, Senator Legarda clarified that the AIIB exclusion list covers forced labor or harmful or exploitative forms of child labor along with the production of or trade in any product or activity deemed illegal under national laws or regulations of

the country in which the project is located or international conventions and agreements or subject to international phaseout or bans such as:

- Production of or trade in
 - a. products containing polychlorinated biphenyl (PCBs),
 - b. pharmaceuticals, pesticides and other hazardous substances subject to international phaseouts or bans (covered by the Rotterdam and Stockholm conventions)
 - c. Ozone depleting substances (Montreal Protocol);
- Trade in wildlife;
- Transboundary movement of wastes prohibited under the Basel Convention;
- Production of or trade in weapons and munitions, including paramilitary materials;
- Production of or trade in tobacco; and even
- Production of or trade in unwanted asbestos fibers.

Senator Legarda believed that since the AIIB exclusion list includes activities prohibited by the laws of the country where the project is located, it must therefore respect the conventions, treaties, agreements as well as the national and local legislation of the Philippines. She said that she would furnish Senator Hontiveros with a copy of the exclusion list as it covers most of the aforementioned concerns.

Regarding concerns over the possibility that the bank might fund production or activities involving radioactive or hazardous materials, Senator Legarda assured Senator Hontiveros that the AIIB would abide not only by international conventions and agreements that deem such activities to be illegal but even existing national legislation and conventions on the same.

On another matter, Senator Hontiveros stressed the need to clearly protect the human rights of indigenous peoples as embodied and agreed upon by nations in the United Nations Declaration on the Rights of Indigenous Peoples. She also pointed out that the AIIB-AOA is narrowly defined because it invalidates collective consensus and unanimous Free, Prior and Informed Consent (FPIC) by hinting towards disagreements within the IP communities in order to still validate individual FPICs to represent the consent

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of the community. She believed that the provision has to be redrafted as the current form is a clear manipulation of the usage of the FPIC.

For her part, Senator Legarda said that the concern is addressed by the Indigenous People's Rights Act (IPRA), which requires FPIC, and would be respected and upheld by the AIIB. Senator Hontiveros said that she would study possible ways for the IPRA to be more explicitly reflected in the AOA.

Senator Hontiveros also noted that the AOA does not have any provisions for the establishment of a specific compliance review mechanism which can investigate operations, management and project sites nor does it provide a grievance mechanism for affected communities of AAIB projects. She said that responsibility for the implementation of the ESF may be passed on to financing consultants which has been a failed practice both at the ADB and the World Bank. Therefore, she said that the AIIB has to be different in this respect.

Senator Hontiveros also pointed out that even though client performance in the AOA is solely measured against obligations set forth in the legal agreement instead of against all safeguards and the draft ESF states that "all environmental and social documents are required before the approval of the operation", it also states that "Resettlement action plans and other important requirements such as plans for impacts on indigenous peoples may also be developed subsequent to board approval." This, she said, allows for a widespread use of deferred compliance which defeats the process of requiring protective measures prior to implementation.

In this regard, Senator Hontiveros observed that while the ESF aims at managing the operational and reputational risks of the AIIB as well as address, identify or manage the environmental social risk and impacts, it falls short of a commitment to "do no harm" to those affected by its projects.

Senator Legarda pointed out that there is a provision on the establishment of a "culturally appropriate and gender exclusive" grievance mechanism that would receive and facilitate the resolution of affected indigenous people's concerns and grievances. She also noted that there is a free, prior and informed consultation requirement for indigenous peoples, as well as the protection of

commercial development of IP cultural resources and knowledge. She assured that all the concerns mentioned were addressed by the guidelines of the treaty.

On gender and labor issues, Senator Hontiveros stated that there is no clear guideline or safeguards on landownership and gender-based access to customary rights over natural resources. She added that the current draft does not require gender segregated information and data on impacts and risk analysis, as per UN CEDAW, thus making project impacts on affected communities not actually identified. She also noted that the AIIB does not clearly cite or require adherence to ILO's core labor standards at all levels of operation.

In reply, Senator Legarda said that as a signatory to the UN-CEDAW as well as the UN Declaration on the Rights of Indigenous Peoples, the Philippines has no disconnect with the treaty since the AIIB will adhere, respect, and recognize the country's agreements, treaties and conventions, as well as the law of the land.

Regarding non-resident board of directors, Senator Hontiveros noted that the AIIB is currently structured with a non-resident member of the BOD, unlike the ADB and World Bank. With a resident BOD, she said that there would be a direct access to operations and management departments which allows civil society to directly engage the BOD and raise complaints, share ground realities and demand actions and change from operations and management. On the issue of accountability and transparency in the AIIB-AOA, with a non-resident BOD, it could be envisioned as an opaque bank which will not be held legally accountable. She surmised that lead AIIB operations and management would remain far from any direct questioning.

Senator Legarda said that while it is the existing set-up, the member of the board does not necessarily have to be in China. She said that in the era of modern technology, communication would be easier. While the presence of the BOD may be required at several times of the year, she said that their attendance would not be a requirement and the board members can live in their area of residence. She assured the Body that they would not be remiss in their duties, and their core principles of being lean, clean and green, as well as of transparency, independence, openness and accountability would be upheld.

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On another matter, Senator Hontiveros noted that the AIIB is similar to ADB in that it is immune to judicial proceedings, as provided in Article 46.1. She also mentioned Articles 47 to 50 which further broaden immunity from judicial proceedings all AIIB stock and operations. As a result, she said that a binding grievance mechanism within AIIB, in case of project impacts, has yet to be established. She suggested that AIIB include a requirement, for instance in the projected loan agreement, that project management clients inform affected people of the existence of the mechanism and its functions. Senator Legarda took note of the statements, and agreed that the provision of immunity from judicial proceedings is entirely the same with ADB and partially the same with World Bank. Senator Hontiveros said that it therefore disproves AIIB's claim to be different from the two international financial institutions.

Senator Legarda said that while it may seem similar on that point, it would entirely be different in terms of operations, membership, and many other aspects. Senator Hontiveros pointed out that the recourse to judicial proceedings is one of the protections that a national community or local communities within a host nation would need especially when engaging with a large, powerful, highly resourced institution.

Senator Hontiveros asked how it would be ensured that the loans accessed through AIIB are not tied, and how AIIB is a better alternative to the other international financial institutions, like the World Bank, IMF and ADB. Senator Legarda replied that the major difference is that the loans with AIIB are not tied unlike the other institutions. In fact, she said that AIIB can get contractors and implementers of projects from non-member countries. She stated that not being tied could be interpreted in various ways, but that one of the major differences would be that they would not dictate on the contractors. She reiterated that the choices of contractors would be broadened to include non-member countries.

Senator Hontiveros pointed out that the loans should also not be tied to unfair conditionalities, and that AIIB should not subject the debtor to a structure adjustment against the will of the governor or against national interest.

Senator Hontiveros inquired on the legally-binding conditions whereby AIIB assesses the equivalence of client systems with AIIB requirements in order to ensure that there is not an overreliance of client's

self-assessment, self-monitoring and self-reporting. She further asked on the ambiguities or gaps in the text of the full AOA which fail to clearly indicate the possible impacts of bank operations on communities and the environment. Lastly, she asked about the clear and mandatory accountability mechanisms which allow affected communities direct access to accountability, prevention and redress of harms. Senator Legarda said she would provide Senator Hontiveros the inclusion list and the matrix of the differences among the institutions.

INTERPELLATION OF SENATOR GORDON

At the outset, Senator Gordon noted that apparently major powers in the world are trying to make a stab at controlling the international financial institutions. He pointed out that ADB is from Japan, the World Bank is, in effect, from the US, and AIIB is from China.

Asked if the treaty is a move by China to make sure that they would be able to control the world order from the Asia-Pacific point of view, Senator Legarda said that the intent is for China to provide financing not only to its neighbors but to developing, vulnerable nations in dire need of infrastructure financing. She said that it would be difficult for her to judge or interpret whether China is creating its own hegemony. She, however, agreed that the country should be alert regarding such matters.

Senator Gordon noted that with the US and Japan not joining AIIB, there is geopolitics involved in the creation of AIIB.

At this juncture, Senate President Pimentel relinquished the Chair to Senator Escudero.

Senator Gordon also opined that influence is being fought over in the scenario, with the smaller countries trying to go with the flow to get lower interest rates dangled by the institutions. He said that he would like to know the view of the government on the matter since it is in possession of information that people do not have. Since Japan and the US did not join, and those that joined are from the G7, including Canada and France, he asked if it would be in the national interest if the Philippines becomes a member of AIIB.

Senator Legarda believed that it is in the interest of the country to join to be able to access funding at



rates lower than those of the other multilateral lending institutions.

Senator Gordon cautioned that the country might be lured in by China, get tied up and not be able to go freely. He also mentioned China's offer to sell four machine guns for the price of one, as disclosed by the President. The only advantage, he believed, is that the options are increasing. Senator Legarda reiterated that it is in the national interest to join AIIB to access non-tied funds with lower interest rates. She also said that other countries have already accessed AIIB, like Maldives and Pakistan.

To Senator Gordon's concern that the US or Japan might retaliate if the Philippines joins AIIB by enforcing more strict requirements when loaning from them, Senator Legarda said that she was not certain if ADB or World Bank would no longer support or lend funds if the country borrows from AIIB. However, she pointed out that AIIB may co-finance with ADB and World Bank, as they are doing in other countries that have been members already of ADB and World Bank.

Asked where the AIIB would be located, Senator Legarda said that the situs of AIIB is in Beijing. She affirmed that the AIIB had already lent funds and that the country would be its 57th member. She reiterated that other countries like Maldives, Pakistan, and Bangladesh, have already accessed the fund. She said that there are also co-financed projects like in Indonesia where there was a co-financing with ADB and the UK's Department of International Development, in Tajikistan which is co-financed with the European Bank, Myanmar which is co-financed with the IFC, and Pakistan which is co-financed with the World Bank.

Senator Gordon said that while, indeed, small countries like Bangladesh, Tajikistan, and Maldives are benefitting, it would inevitably buy influence for China. Senator Legarda said that it could be a possibility.

As regards the member-countries' voting power in the AIIB, Senator Legarda said that China's voting power is 26%; India, 7.51%; Russia, 5.92%; Germany, 4.15%; South Korea, 3.50%, Australia, 3.46% and the Philippines, 1.1%. She said that the Philippines was at No. 20 out of the 57 founding members.

As regards the country's possible membership in the Trans-Pacific Partnership (TPP), Senator Legarda

replied that there is no specific move yet to join the TPP.

Senator Legarda clarified that the P3 billion pertaining to the subscription of the Philippines to the AIIB would be from the savings of DOF and the contingent fund for 2016 but the subscription amount for 2017 was already included in the GAA. She clarified that the Philippines is not yet considered to have joined the AIIB until the Senate has concurred in the ratification of the treaty.

With respect to the TPP, Senator Legarda said that the Philippine government was still studying its position even as it has expressed its interest to join it. She said that the lead agency would be the DTI in consultation with the DFA and the DOF.

Asked by Senator Gordon whether it would be to the best interest of the Philippines to have access to credit in the TPP, Senator Legarda replied in the affirmative. She reiterated that the government led by the DTI and in consultation with DOF and DFA is interested but whether or not the country is going to be a member of the TPP is still being studied.

As regards China, Senator Legarda said that China was not invited and not included in TPP.

Senator Gordon expressed concern about China. He said that he saw on a television news report that the Chinese were shooing away Filipino fishermen in the Panatag Shoal. Senator Legarda said that she has not heard about it but she informed Senator Gordon that the DFA is trying to validate the information from the Philippine Coast Guard.

Senator Gordon cautioned that the Philippines should be completely aware of its responsibility in terms of national interest. He opined that every student of foreign affairs knows that there are no permanent friends or enemies but only permanent interests.

In reply to Senator Gordon's queries on the shares of Japan, China and the US in ADB, AIIB and World Bank, Senator Legarda said that Japan's share in the ADB is 15.6%; China is 26% in AIIB and 16% in ADB; and US has 15% in the World Bank.

Senator Gordon asked what would happen when the Philippines come to a misunderstanding with China, whether it would be easy to pull out the country's investment in the AIIB. Senator Legarda said that

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there is a mechanism for pull-out and it has to go the same process as in ratification, meaning, it has to be affirmed by 2/3 vote of the Senate. She said that in terms of the country's investment, the money would be returned at the current value at the time of the withdrawal or pull-out.

As regards the exercise of the veto power, Senator Legarda said that China has no veto power in the AIIB while Japan has veto power in the ADB and the US has veto power in the World Bank. She explained that despite China's major influence with the AIIB because of its 26% share, the bank is a multilateral institution owned by 57 member-countries. She said that it would be difficult for China to exercise full control of AIIB's direction and operations.

Senator Gordon said that with a 26% voting power, China would have a lot of negotiating power.

On the percentage of voting powers in the World Bank, Senator Legarda said that the US has 16.51% voting power; Japan, 7.14%; and China, 4.61%; on the other hand, in the ADB, Japan has 15.6%; US, 15.5%; and China, 6.5%.

Senator Gordon opined that China was putting up its own bank to preserve not just its power but its influence. Senator Legarda said that it was to China's interest and part of economic diplomacy.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

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

TERMINATION OF THE PERIOD OF COMMITTEE AMENDMENTS

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

At this juncture, Senator Escudero relinquished the Chair to Senate President Pimentel.

DRILON AMENDMENTS

As proposed by Senator Drilon and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

1. On the first "WHEREAS" clause, replace the phrase "the Constitution, Article 7, Section 21 states" with ARTICLE VII, SECTION 21 OF THE PHILIPPINE CONSTITUTION PROVIDES THAT;
2. Replace the whole sixth "WHEREAS" clause with the following: WHEREAS, PRES. BENIGNO C. AQUINO III AND PRES. RODRIGO ROA DUTERTE RATIFIED THE AGREEMENT ON 04 FEBRUARY 2016, AND ON 19 OCTOBER 2016, RESPECTIVELY;
3. Insert a new seventh "WHEREAS" clause to read as follows: WHEREAS, THE AGREEMENT IS SUBMITTED TO THE SENATE FOR CONCURRENCE, IN ACCORDANCE WITH THE CONSTITUTION;
4. Reword the new eighth "WHEREAS" clause, to read as follows: WHEREAS, IN THE HEARING CONDUCTED BY THE SENATE COMMITTEE ON FOREIGN RELATIONS ON 10 NOVEMBER 2016, THE DEPARTMENT OF FOREIGN AFFAIRS, DEPARTMENT OF FINANCE, DEPARTMENT OF BUDGET AND MANAGEMENT, DEPARTMENT OF JUSTICE, THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY AND THE BANGKO SENTRAL NG PILIPINAS FAVORABLY ENDORSED THE CONCURRENCE OF THE SENATE TO THE RATIFICATION OF THE AGREEMENT.

Upon motion of Senator Drilon, the session was suspended and was resumed shortly thereafter.

5. Add the following as the final "resolved" clause: RESOLVED, FINALLY, THAT THE PRESIDENT OF THE PHILIPPINES MAY, WITH THE CONCURRENCE OF THE SENATE, WITHDRAW THE MEMBERSHIP OF THE PHILIPPINES FROM THE ASIAN INFRASTRUCTURE INVESTMENT BANK.

TERMINATION OF THE PERIOD OF INDIVIDUAL AMENDMENTS

There being no other individual amendment, upon



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

APPROVAL OF PROPOSED SENATE RESOLUTION NO. 241 ON SECOND READING

Submitted to a vote, there being no objection, Proposed Senate Resolution No. 241 was approved on Second Reading.

SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 241

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

SPECIAL ORDER

Upon motion of Senator Sotto, there being no objection, the Body approved the transfer of Committee Report No. 12 on Senate Bill No. 1255 from the Calendar for Ordinary Business to the Calendar for Special Orders.

COMMITTEE REPORT NO. 12 ON SENATE BILL NO. 1255

Upon motion of Senator Sotto, there being no objection, the Body considered, on Second Reading, Senate Bill No. 1255 (Committee Report No. 12), entitled

AN ACT EXPANDING THE COVERAGE OF EXEMPTIONS FROM REVEAL- ING THE SOURCE OF PUBLISHED NEWS OR INFORMATION OBTAINED IN CONFIDENCE BY INCLUDING JOURNALISTS FROM BROADCAST, NEWS AGENCIES AND INTERNET PUBLICATIONS, AMENDING FOR THE PURPOSE SECTION 1 OF REPUBLIC ACT 53, AS AMENDED BY R.A. 1477.

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 Poe for the sponsorship.

SPONSORSHIP SPEECH OF SENATOR POE

Senator Poe submitted for the consideration of the Body Senate Bill No. 1255 which seeks to amend Republic Act No. 53, better known as the Sotto Law or Shield Law. She stated that the committee report is a consolidation of two bills, Senate Bill No. 6 and Senate Bill No. 486, which were filed by Senators Sotto and Trillanes, respectively. She said that during their committee hearing on the proposed measure, all stakeholders from the media, government, and civil society organizations have agreed on one thing: that the 70-year old law is ripe for amending.

Following is the full text of Senator Poe's sponsorship speech:

Republic Act No. 53 was first passed in 1946 upon the proposal of the late Sen. Vicente Yap Sotto when the dissemination of news and investigative reports was almost solely through print media. It exempts the publisher, editor, columnist or duly accredited reporter of any newspaper, magazine or periodical of general circulation from divulging their sources unless it endangers the security of the State. It is in consonance with Section 4 of the Constitution that safeguards the freedom of speech and expression. It enables press freedom and guarantees the freedom of speech by ensuring that the press is allowed to report on matters involving public interest without fear of undue pressure from the government to reveal their sources. It guarantees the safety of news sources who, if not for this law, would most likely cower at the thought of prosecution for revealing to the media what they know.

Ten years later, RA 53 was amended to recognize the fact that press freedom is not absolute, and falsity can and should be punished under civil and criminal laws. Thus, the addition of the caveat in the law that the publisher, editor, columnist or duly accredited reporter of any print media may still be held liable under civil and criminal laws. The Shield Law has also been carried over or reiterated in RA 10173 or the Data Privacy Act of 2012. Nonetheless, the language of the law is still confined to print media.

Today, we want to expand the coverage of RA 53 to respond to growing technology. We now receive news not just through print media but also through broadcast media, such as TV, radio, and the internet. Based on a 2012 survey conducted by TNS, 45% of 1,000 respondents from classes A,B,C,D, and E claimed that they connect to the Internet, while 365 listen to the



radio, 12 percent read newspapers, and 4% read magazines. Given these figures, it appears that the preferred mode of accessing information is no longer through print media, obviously.

Thus, under our proposed measure, we shall expand the coverage of RA 53, as amended, to any publisher, owner, or duly recognized or accredited journalist, writer, reporter, contributor, opinion writer, editor, manager, producer, news director, web master, cartoonist or media practitioner involved in the writing, editing, production, and dissemination of news for mass circulation, of any print, broadcast, wire service organization, or electronic mass media, including but not limited to the internet, and cable TV and its variants.

Perhaps, some of you are wondering, why include cartoonists or opinion writers or even web masters? This is because if a person is involved in the creation, production, or dissemination of news reports, whether through words, actions, or pictures, then their sources should be afforded protection under the law. But what about libelous content? The Shield Law cannot be used to protect a person from libel. We have retained the first part of RA 53, as amended, which states, "Without prejudice to his liability under the civil and criminal laws." The law therefore protects media practitioners from being compelled or forced to reveal their sources but not from spewing out malicious imputations under the guise of journalism. Are fake news sites covered by the Shield Law? No. To a degree, there will be some sort of accreditation, which shall be effected by the media outlets and practitioners themselves. Besides, fake news sites usually aggregate content from legitimate news sites and distort the content to propagate information that will either fit their political agenda or spread misinformation. Thus, they usually have no sources to protect.

The value of RA 53 should not be undermined. In several instances, this law had protected journalists from the legislature that conducted inquiries, in aid of legislation, in order to coerce resource persons, particularly those from the media, to divulge their sources, even if the information had nothing to do with the security of the State. For example, RA 53 was invoked when in 2007, the Senate ethics committee tried to compel a journalist from the *Philippine Daily Inquirer* to reveal her sources who exposed details of a closed-door hearing. Similarly, in 2015, the Shield Law was again invoked when a reporter of *The Standard* alleged that based on her sources, the previous administration used money from a crime lord to

guarantee the swift approval of the Bangsamoro Basic Law.

As lawmakers, we should capacitate the Fourth Estate — the media — in ferreting out the truth. The media have a very dangerous job, and one way we can help them is to ensure the protection of their sources. The Shield Law actually acts as a second shield, with the first line of defense being the media practitioners themselves. Through this law, we want to embolden whistleblowers to speak out. If they cannot approach government institutions, then they should at least be able to approach the media. It is about time that we amend this law and extend protection to our truth-seekers and tellers in broadcast and online media.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1255

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

MEMBERSHIP IN THE COMMISSION ON APPOINTMENTS

Upon nomination by Senator Sotto, there being no objection, Senator Angara was elected member of the Commission on Appointments in lieu of Senator Ejercito.

SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended.

It was 5:27 p.m.

RESUMPTION OF SESSION

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

CHANGE OF REFERRAL

Upon motion of Senator Sotto, there being no objection, the Chair referred Senate Bill No. 1250, which was originally referred to the Committee on Labor, Employment and Human Resources Development, as the primary committee, instead to the Committee on Women, Children, Family Relations and Gender Equality as the primary committee; and to the Committee on Labor and Employment and Human Resources Development as the secondary committee.



Likewise, upon motion of Senator Sotto, there being no objection, the Chair referred Senate Bill No. 1252, which was originally referred to the Committee on Justice and Human Rights, as the primary committee, instead, to the Committee on Women, Children, Family Relations and Gender Equality as the primary committee; and to the Committee on Justice and Human Rights as the secondary committee.

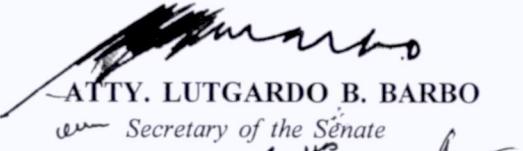
ADJOURNMENT OF SESSION

Upon motion of Senator Sotto, there being no objection, the Chair declared the session adjourned

until three o'clock in the afternoon of Monday, December 5, 2016.

It was 5:29 p.m.

I hereby certify to the correctness of the foregoing.


ATTY. LUTGARDO B. BARBO
as Secretary of the Senate


Approved on December 5, 2016