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WEDNESDAY, OCTOBER 16, 2002

OPENING OF THE SESSION

At 3:48 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

The President. The 26th session of the Senate in the Second Regular Session of the Twelfth Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Joker P. Arroyo.

Everybody rose for the prayer.

PRAYER

Senator Arroyo:

Lord, help us face these troubled and uncertain times. We need Your strength and courage because we face problems that are not just hard to cope with but are also difficult to accept and understand.

We ask You to dispel our discouragement, strengthen our hope, and deepen our patience and perseverance.

Give us the courage and confidence, and let our faith sustain us until joy and peace can return to our lives.

We ask You these through Christ our Lord.

Amen.

ROLL CALL

The President. The Secretary will please call the roll.

The Acting Secretary [Atty. Reyes], *reading*:

Senator Edgardo J. Angara.....Absent
Senator Teresa Aquino-Oreta.....Present
Senator Joker P. Arroyo.....Present
Senator Robert Z. Barbers.....Absent
Senator Rodolfo G. Biazon.....**
Senator Renato L. *Companero* Cayetano.....Present
Senator Noli « Kabayan» De Castro.....Present
Senator Luisa « Loi» P. Ejercito Estrada..Present
Senator Juan M. Flavier.....**
Senator Gregorio B. Honasan.....Present
Senator Robert S. « JAWO» Jaworski.....Present
Senator Panfilo M. Lacson.....Present
Senator Loren B. Legarda Leviste.....Present
Senator Ramon B. Magsaysay Jr.....Present
Senator John H. Osmena.....Present*
Senator Sergio R. Osmena III.....Present
Senator Francis N. Pangilinan.....**
Senator Aquilino G. Fimentel Jr.....Present*
Senator Ralph G. Recto.....Present*
Senator Ramon B. Revilla.....Present*
Senator Vicente C. Sotto III.....Present
Senator Manuel B. Villar Jr.....Present*
The President.....Present

The President. With 13 senators present, the Chair declares the presence of a quorum.

The Majority Leader is recognized.

THE JOURNAL

Senator Leviste. Mr. President, I move that we dispense with the reading of the *Journal* of the 25th session of October 15, 2002 and consider it approved.

The President. Is there any objection? [*Silence*]
There being none, the motion is approved.

* Arrived after roll call

**On official mission

Senator Leviste. I move that we proceed to the Reference of Business.

The President. Is there any objection? [Silence]
There being none, the motion is approved.

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

BILLS ON FIRST READING

The Acting Secretary. Senate Bill No. 2380, entitled

AN ACT PROVIDING FOR THE ESTABLISHMENT AND
MANAGEMENT OF BALINSASAYAO TWIN LAKES IN
THE MUNICIPALITIES OF SIBULAN AND SAN JOSE,
ALL IN THE PROVINCE OF NEGROS ORIENTAL, AS
A NATURAL PARK, DEFINING ITS SCOPE AND FOR
OTHER PURPOSES

Introduced by Senator Jaworski

The President. Referred to the Committees on
Environment and Natural Resources; and Finance

The Acting Secretary. Senate Bill No. 2381, entitled

AN ACT AMENDING SECTION 223 AND 224 OF ACT NO.
3815, OTHERWISE KNOWN AS THE REVISED PENAL
CODE, AS AMENDED

Introduced by Senator De Castro

The President. Referred to the Committees on Justice
and Human Rights; and Public Order and Illegal Drugs

COMMUNICATION

The Acting Secretary. Letter from Deputy Executive
Secretary for Legal Affairs Jose T. Tale of the Office of
the President of the Philippines, transmitting to the
Senate two (2) original copies of R.A. No. 9172, entitled

AN ACT RENEWING AND AMENDING THE FRANCHISE
GRANTED TO EASTERN TELECOMMUNICATIONS
PHILIPPINES, INC. (EASTERN EXTENSION
AUSTRALASIA AND CHINA TELEGRAPH COMPANY
LIMITED) UNDER REPUBLIC ACT NO. 808, AS
AMENDED

which lapsed into law on October 3, 2002, without the signature of the President, pursuant to the provisions of Section 27 (1), Article VI of the Constitution.

The President. To the Archives

OFFICIAL VISIT OF THE REPRESENTATIVES OF THE FIRST
NATIONAL CONGRESS OF ADVENTIST STUDENT LEADERS OF THE
PHILIPPINES; AND THE LOCAL GOVERNMENT OFFICIALS OF STA.
ROSA, NUEVA ECIJA ACKNOWLEDGED

Senator Leviste. Mr. President, we would like to acknowledge the presence in the gallery today of the representatives of the First National Congress of Adventist Student Leaders sponsored by the Adventist University of the Philippines.

We would like to acknowledge also the presence of the local government officials of Sta. Rosa, Nueva Ecija, headed by its mayor, Marion Marcelo; vice mayor, Josefino Angeles; and its councilors.

The President. It is so noted.

Senator Leviste. Mr. President, on a point of personal privilege, I ask that we recognize Sen. Sergio R. Osmena III.

The President. Sen. Sergio R. Osmena III is recognized. May the Chair know the point of personal privilege.

QUESTION OF PRIVILEGE OF SENATOR OSMENA (5)
(Explaining His Dissenting Opinion on S. No. 2140)

Senator Osmena. Mr. President, yesterday, I was presented with the committee report on the Transco. I signed "dissenting" because the same crooks that have been stealing the government and the Filipino people blind are still in management position and control at Transco.

Mr. President, just as important reason for signing my dissent on the committee report is, I thought I would think it over for 24 hours.

First, in the second and last hearings of Transco last Thursday, less than a week ago by tomorrow, I had requested information from the FSALM and from the ERC-- and I know the Senate President was present so he knows the information that I had requested--and I had not received that information. Even though we had not received that information, the final committee report was made and passed around for signature.

Mr. President, I was just hoping that out of courtesy to a member of the committee, to a colleague at least, "I buy your leave" could have been asked.

Second, Mr. President, of even more importance to this Chamber is the fact that if a member of the Senate requests information and it is disregarded by the committee, then what respect would resource persons in the future have when they know that whatever information we ask for does not have to be given in a timely fashion?

Let me give examples of the type of information I had requested, for this Chamber and my colleagues to judge whether these were whimsical requests or whether they had some importance and materiality to the franchise under consideration by the Senate Committee on Public Services:

No. 1. I asked for a language that would ensure that they would be technical people, somewhat in charge of the operation of the Transco or the transmission company and not amateurs who may have nominal control of 60% of the

concession but would have absolutely no technical know-how in managing a transmission project.

Mr. President, in the EPIRA Law, because we thought that there would be no constitutional barrier to ownership of a concession contract by a 100% foreign entity, we placed on record the intent of Congress that any such concessionaire must have the experience of managing a concession of similar or larger size for the past three years. That is not in the language.

No. 2. That there should be a language that will tighten up the provision on the concessionaire's compliance with the TDF. I read that there were some amendments to the House version. But, Mr. President, that type of language that I had been expecting and which was promised by the DOE had not been submitted to my office.

No. 3. I asked for Latin American models to find out whether a concessionaire could encumber some or all of the assets of the Transco even though the ownership of those assets are not owned by the concessionaire.

In the recent hearings we had in the Piatco investigation, Mr. President, Piatco had been allowed by the DOTC to mortgage the new Terminal III, which means that on the very last year of the concession agreement, for example, on the 25th year, Piatco, who is obligated to turn over the Terminal III free and clear of all mortgages and encumbrances could just walk away one week before the end of the concession period and leave the Filipino people and the Philippine government holding hundreds of millions of dollars in mortgages. So, can the concessionaire of Transco do this?

Relating also to Piatco, Mr. President, 51% of Piatco is controlled by a group that has absolutely no experience in managing an international airport of the standard that Terminal III should be. Which is why, in the original terms of reference, we have mandated that a technical partner be part of the concessionaire for the Piatco Terminal III project. Unfortunately, what was not

foreseen was that, mag-aaway iyong 51% partner at iyong foreign technical partner at kung hindi na pinapansin iyong foreign partner, ano pa ang mangyayari sa atin?

Kapag iyong magiging may-ari o magiging concessionaire ng Transco, which is 60% Filipino, will quarrel with his foreign partner, how are the rights of the Filipino people, the consumers of electricity in this country going to be protected in such a case?

Another request that I made was the language that would allow the concessionaire to support and complement on commercially viable terms the expansion of the SPUG. The SPUG stands for the small public utilities groups which take care of the small islands, like Marinduque, Masbate, Palawan, Mindoro, Batanes, and Biliran. They are those that are not connected to the national transmission grid. That language is not in the committee report.

Also, I asked for a language that would protect Transco from any attendant liability incurred by the concessionaire that may be way out of proportion to the remaining life of the contract.

Mr. President, Transco is a work in progress. Even if we give out a concession contract for the management and expansion of the transmission company, every year the concessionaire will have to lay out US\$1 billion to US\$2 billion for expansion. If it were a 25-year contract, even on the 25th year, it would have laid that out. Now, how would they get paid back?

There must be some language that would, at least, protect both the concessionaire and the Filipino people to make sure that they can say, "Yes, we will respect valid contracts. Yes, there will be an assignability clause of those particular liabilities attendant to the expansion that would be made in the few remaining years of the concession contract."

No. 6. I asked for a provision on the power of eminent domain. Transco needs the power of eminent domain.

No. 7. A provision relating to the preservation of environment and ecology.

No. 8. I asked for a matrix on the "golden-share" issue that was raised by the Senate President himself. How was this "golden share" done in other countries that utilized the golden-share concept?

So, Mr. President, I was hoping that perhaps we would have been able to find time. First, get a timely response from the PSALM and the ERC on this request that we made, which they promised would be coming for us to absorb and craft proper language for amendments to the Transco bill.

Now, Mr. President, I do not think this representation has developed a reputation for just blocking bills. In the recent example of the SPAV now called the "Special Asset Management Company," I mean, we have worked long and hard to craft what we hope is a much better law that would redound to the benefit of the Filipino people in general and the financial sector in particular. And I think we have proven that.

So Mr. President, I was hoping that this Chamber will not be a rubber stamp of any rush to approve the Transco franchise. As a matter of fact, I have sided with the administration in making this franchise assignable because the government is going to lose maybe a couple of \$100 million, maybe \$500 million in the value of the Transco if it is bid out without an assignable franchise.

Unfortunately, I mean, I will abide by the rule or by the vote of my colleagues in this Chamber. But essentially, I think that that has to be revisited. Maybe, we should debate it on the Floor.

But Mr. President, I do not know why we are rushing to approve a franchise when one year and five months after the passage of this Electric Power Industry Reform Act of 2001 in early June last year, the Department of Energy and the PSALM did not finish all the requirements, all the conditions that Congress had put into the EPIRA for them to do.

For example, Congress had mandated that an interagency committee would review all the independent power purchased agreements. We have had a summary submitted to us; we have not been briefed as we were promised to be briefed by the Department of Energy. Ang gusto naming malaman at ng taong-bayan ay kung bakit nagkaroon ng overpriced contract at anong gagawin natin dito?

Now, Congress and the Senate, in particular, has happily investigated one or two contracts already. Casecan is almost over. It has turned out to be the most expensive PPA in the entire country at P9 per kilowatt-hour. And I hope to do one or two more investigations before the end of the year, including a privilege speech that I will make on Monday.

But over and above that, Mr. President, Transco, which is part of Napocor, is the largest corporation in our country in terms of assets. It is owned 100% by the Filipino people. If anything, the Senate and the House are its board of directors. We have oversight responsibilities. Transco alone is estimated to bring about a sale of about \$2 billion, Mr. President. This is the largest privatization in the history of this country. If we do not watch out, if the same crooks who have been stealing us blind, the same syndicates in Napocor are in control--and they are in control of Transco today--can we imagine kung makaka-10% lamang sila, that is \$200 million. That is P10 billion.

So I am hoping that the Senate, instead of rushing, with deliberate speed, will be very careful and plug all the loopholes so that, at least, we will have tried to

minimize any shenanigan that could happen on the sale of Transco.

I thank very much the President for his patience.

The President. Thank you, Sen. Sergio R. Osmeña III.

SUSPENSION OF SESSION

Senator Leviste. I move that we suspend the session for one minute, Mr. President.

The President. Is there any objection? *[Silence]*
There being none, the session is suspended for one minute.

It was 4:04 p.m.

RESUMPTION OF SESSION

At 4:17 p.m., the session was resumed.

The President. The session is resumed.

BILL ON SECOND READING

S. No. 2116--The Special Purpose Asset
Vehicles (SPAV) Act of 2002
(Continuation)

Senator Leviste. Mr. President, I move that we resume consideration of Senate Bill No. 2116 as reported out under Committee Report No. 41.

The President. Is there any objection? *[Silence]*
There being none, resumption of consideration of Senate Bill No. 2116 is now in order.

Senator Leviste. Mr. President, we are in the period of committee amendments. I ask that we recognize the sponsor, Sen. Ralph G. Recto.

The President. Sen. Ralph G. Recto is recognized.

For the record, Senator Recto, the Chair is in receipt of a version with the notation on the upper right hand portion saying "WITH APPROVED COMMITTEE AMENDMENTS AS OF OCTOBER 15, 2002."

May I know if it is the pleasure of the sponsor that this version be used for purposes of the debate this afternoon.

Senator Recto. That is right, Mr. President. Without prejudice to... Yesterday, we were unable to finish Article IV.

The President. That is correct. That is why we go back to Article IV. I mean we start with Article IV this afternoon.

Senator Recto. That is right.

The President. So we now proceed with Article IV which was not finished yesterday. In fact, it was suspended upon the request of Senator Arroyo. So we proceed to page ii, starting with line i7.

Sen. Joker P. Arroyo is recognized.

Senator Arroyo. Thank you, Mr. President. This Article IV is actually the heart of this bill. Before I propose my amendments, the reason Article IV, in its entirety is objectionable is, it gives the FIs tax-free transaction of the transfer of its NFAs. From the FI to the SAMC, there will be no tax. From the SAMC to a third party, there is no tax. So there are two transactions which would not be taxed.

Senator Recto. Limited to a seven-year period--two years for the first and five years for the second.

Senator Arroyo. Mr. President, precisely, we will come to the period later on, but this is quite a holiday for both the FI and the SAMC.

So my concern is: If the sponsor will insist on that tax provision, let me ask an alternative; whether the

same tax privileges would be given to a borrower? So should the borrower buy the same property--his property in fact--from the FI, it is tax-free under this.

Senator Recto. Yes, under Section 14, the same section, on page 13, line 7.

Senator Arroyo. All right. So it is free. But when the borrower sells it to a third party, it is now taxable. So I ask the question: Why is it that in the transfer from the SANC to a third party, it is not taxable, while in a transfer from the borrower to a third party, it is taxable?

Senator Recto. That is an excellent question, Mr. President. The reason we have provided for the first is that it is consistent with the Declaration of Policy in this bill. We want to address the nonperforming assets of the financial institutions. If we allow the borrower to sell to a third party or anyone for that matter, any Tom, Dick and Harry, to sell a property tax-free to any other person and this property is a nonperforming asset, that is not the intention of the bill.

Senator Arroyo. Mr. President, I am only referring to a nonperforming asset. Meaning, this is a nonperforming asset bought by the borrower. In fact, that is the property of the borrower himself. But because he would like to take a chance, he buys it, then he gets the transaction tax-free.

Now, he wants to make a little money so he transfers it to a third party or whoever funded him. Why will it be taxable? On the other hand, from the SANC to the third party, it is not taxable. Does the sponsor not think that this is discriminatory? If the idea is to help the financial institutions, that is fine, we have no problem with that. But in our desire to help the financial system, we should not create an unequal situation where the borrower is not extended the same privilege. After all, the borrower also lost his property.

Senator Recto. In the example that the gentleman had given, the borrower did not lose his property because he was able to buy it back, as the gentleman mentioned.

Senator Arroyo. Yes. He bought it back.

Senator Recto. In fact, Mr. President, I think it is clear that in this committee report, we have provided that if a borrower were to make a *dacion en pago* to the bank, it is tax-free as well. If a borrower were to make *dacion* to a SPAV, he also enjoys the same tax incentives and privileges.

The question of the gentleman from Bicol is: If a SAMC were to sell an NPA to a third party, it is tax-free; and if the borrower sells a property to a third party or even any Tom, Dick and Harry, selling to a third party it is not tax-free. Is it because this is a special law to assist the financial institutions wiping out their nonperforming assets?

In the gentleman's case, if we were to allow any Tom, Dick and Harry to sell a property tax-free, then there is no relationship to a nonperforming asset in a financial institution. If, for example, in the case of a borrower, I think it is good enough that he has the privilege to buy back his property either from a SPAV or if the FI is unable to sell this property to a SPAV and decides to sell it to the original borrower which is allowed actually in this bill, then I think he would have gotten his property back and that property now is no longer a nonperforming asset. I do not see the relationship by allowing the borrower to sell his property tax-free to a third party that would reduce the NPAs of the financial institution.

If, for example, in the case of a borrower, I think it is good enough that he has the privilege to buy back his property either from a SPAV or if the FI is unable to sell this property to a SPAV and decides to sell it to the original borrower which is allowed actually in this bill, then I think he would have gotten his property back and that property now is no longer a nonperforming asset.

I do not see the relationship that by allowing the borrower to sell his property tax-free to a third party, that would reduce the NFAs of the financial institution.

Whereas in the case of the SAMC, if we give the SAMC that privilege and because of the lack of capital in the Philippines, then we are enticing foreign investors to bring in capital in the Philippines, organize a SAMC because of the incentives provided for in this bill, purchase within a two-year period the nonperforming assets of the financial institutions, either rehabilitate some of these distressed businesses and within a five-year period sell these RFOAs or NFLs to a third party.

Senator Arroyo. Mr. President, as I said yesterday, *walang laban iyang* borrower. He can be outbid immediately by a SAMC because of the tax exemptions which are actually, in a sense, income already of either the FIs or call it the SAMC.

Now, there is no way by which a borrower can match the....

Senator Recto. I beg to disagree, Mr. President. The reason for that is, assuming that the FI is willing to negotiate with the SAMC and the original borrower, especially if the FI wants more value for these assets, it is safe to assume that the borrower would know more about these assets, would value these assets at a higher price than a SAMC. Meaning to say, if the FI.... Maybe the SAMC would buy this asset from the bank at a 50% discount. But the borrower, assuming the FI wants a greater value for this property and tells the borrower, "Okay, we take away the interest on interest, the penalties on interest," and realizing that the borrower would be willing to pay 90% of that asset, then he may elect to sell it directly to the borrower.

So, again, my proposition is that the borrower would know how to appraise his property possibly at a higher value than that of a third party, in this case, a SAMC.

Senator Arroyo. Mr. President, the example of the sponsor is that he is isolating each transaction. What I am trying to say is that if we look at the totality of the tax exemptions here, then this is so overloaded favoring the SAMC.

Look at this. Like the next Section 15 " " *ADDITIONAL TAX EXEMPTIONS AND FEE PRIVILEGES.* " (A) THE SAMC SHALL BE EXEMPT FROM INCOME TAX ON NET INTEREST INCOME, DOCUMENTARY STAMP TAX AND MORTGAGE REGISTRATION FEES ON NEW LOANS IN EXCESS OF EXISTING LOANS EXTENDED TO BORROWERS WITH NPLs WHICH HAVE BEEN ACQUIRED BY THE SAMC. "

How can there be even new loans?

Senator Recto. One of the purposes of this bill, Mr. President.... As I mentioned in the past, there are two types of SPAVs or probably two types of SAMCs. One would be interested in real estate property; one would be interested in making money by way of rehabilitating distressed businesses.

In this case, it is an incentive for the SAMC to rehabilitate by way of extending new loans or by capital infusion to these distressed businesses. Again, Mr. President, consistent with Section 2 of the Declaration of Policy.

Part of our Declaration of Policy, Mr. President, is " to help in the rehabilitation of distressed businesses with the end in view of contributing to economic value added. "

So precisely, that incentive....

Senator Arroyo. Which brings me to the point. We keep on talking about rehabilitating the banks. We never talk about really rehabilitating the borrowers. I mean, my thesis is straightforward. We have no quarrel about rehabilitating the banks, as I said earlier. As a matter of policy, we cannot allow banks to fail. But in our desire to help the banks, what is government doing?

Senator Recto. For the borrowers?

Senator Arroyo. Yes.

Senator Recto. Precisely, Mr. President.

Senator Arroyo. I asked this question: Where in this entire bill is a provision that helps the borrower? There is none.

Senator Recto. Section 15. The intention of Section 15 is for the SAMCs to rehabilitate the borrowers, Mr. President.

Senator Arroyo. That is very theoretical. Supposing that the SAMC does not rehabilitate the borrower, where does that put the borrower if after he has made money the SAMC invests it somewhere else and gives low priority to helping the distressed borrower?

Senator Recto. Precisely, Mr. President. If we do not have Section 15 here, as written, then there is no incentive for the SAMC to assist distressed borrowers.

If I may invite the gentleman to read on page 13, Section 15: " *ADDITIONAL TAX EXEMPTIONS AND FEE PRIVILEGES.*-(A) THE SAMC SHALL BE EXEMPT FROM INCOME TAX ON NET INTEREST INCOME, DOCUMENTARY STAMP TAX AND MORTGAGE REGISTRATION FEES ON NEW LOANS IN EXCESS OF EXISTING LOANS EXTENDED TO BORROWERS WITH NONPERFORMING LOANS WHICH HAVE BEEN ACQUIRED BY THE SAMC."

Really, there is an intention by the committee to add this provision so that there is an additional incentive for the SFAV or SAMC to assist and rehabilitate distressed businesses.

Senator Arroyo. Mr. President, this is an impossible situation.

Here is the borrower now who will be, supposedly, extended new loans. So, he is now given new loans by the

SAMC to what? Is it to rehabilitate his business or to start a new business? It does not say.

Senator Recto. It is basically to rehabilitate the business.

The concern of the committee--I am sure it is the same concern of the gentleman from Bicol--is not only the need to create jobs but also to protect jobs.

It has been said that in spite of the economic growth this year, we have a jobless growth. That is why the committee is taking pain to ensure that this provision is placed in the bill so that there is an incentive for SAMCs to rehabilitate distressed businesses--to preserve jobs, Mr. President.

If the gentleman thinks that he can propose certain amendments to even clarify the language or to even improve incentives so that rehabilitation takes place, I may not have any objections to that, Mr. President, or also if the gentleman thinks that this is not enough incentive for the distressed businesses for the borrowers.

Senator Arroyo. It is not a question of enough incentives but there is an overdose of exemptions.

Let us look at Section 16, lines 26, 27 and 28, on page 13: "Any loss that is incurred by the FIs as a result of the transfer of NFAs shall be treated as ordinary loss: *Provided*, That the accrued unpaid interest and penalties shall not be included as loss on said loss carry-over from operations subject to the provisions of the National Internal Revenue Code of 1997, except that the loss INCURRED BY THE FIs FROM THE TRANSFER OF NFAs WITHIN THE TWO-YEAR PERIOD... may be carried over for a period of five (5) consecutive taxable years immediately following the year of such loss: *Provided, further*, That the tax savings derived by FIs from the net operating loss carry-over shall not be made available for dividend declaration but shall be retained as a form of capital build-up."

In plain language, what does this mean?

Senator Recto. Yes. What it actually means, well, today, under existing law, under the National Internal Revenue Code, all corporations of the Philippines are allowed to have a three-year net operating loss carry-over. So, the only concession here for the bank is an additional two years--from three to five, in effect.

The reason for this, Mr. President, is, we know that the banks when they sell these nonperforming assets, many of these assets will be sold at a lower value than their book value, that they will be incurring losses. And therefore, the capital of these banks or the asset base of these banks may be reduced. Because of this, we are allowing them that any savings derived from the extension of the two years--from three to five--be used, to be retained by the bank as a form of capital buildup and not to be used for dividend declaration.

So, in effect, in this case government is telling them: "Okay, we will allow you to have an additional two years of NOLCO. That is the only concession that government is saying that "we will give you as far as NOLCO is concerned. Because any company today has three years. So we will give you an additional two years, ngunit ang kapalit niyan, you cannot use this for dividend declaration and you must retain this income for capital buildup of the bank."

Senator Arroyo. Mr. President, the net effect of this script of the technical language is that banks will not pay income tax for the next five years after we pass this law.

Senator Recto. Based on the two years.

Senator Arroyo. All right, call it two years. Now, yesterday I asked this question. I assume that the net income before tax of the banking system, according to the Department of Finance economic update for the year 2001, was P14 billion. Now, Mr. President, I was corrected

yesterday and they said that the income of the--oh, it was the tax.

Now, Mr. President, how much are the resources of the banking system? It is P3.401 trillion. Now, how much is their income? It is P14 billion.

It is less than 1%. That is the kind.... With resources amounting to P3.5 trillion, they paid a tax of P14 billion. And they have an income of P14 billion.

Senator Recto. Mr. President, I can give the gentleman the last decade figures if he wants, and I am sure he has a copy of the same data that I am looking at. In 1992 the resources of the banking system was P800 billion.

Senator Arroyo. All right.

Senator Recto. Today, the gentleman is right. It is P3.4 trillion. So there is a 500% growth in the last decade.

Senator Arroyo. How much was the net income in 1992?

Senator Recto. In 1992, it was P19.8 billion. Today, it is only P14 billion.

Senator Arroyo. Now, Mr. President....

Senator Recto. And that is why I have informed the Secretary of Finance that if he wants to improve revenues, I guess that the first thing to look at will be the banking system, the top 1,000 corporations. Because the data shows that while the resources have been increasing, their net income has been decreasing. Which shows that their deductions have been increasing. And if we were to benchmark a percentage of their total net worth in 1992, net income as a percentage of total net worth was 17.4%, today it is only 3.2%. As a percentage of total assets, it was 2.5% in 1992, today it is less than half of 1%.

So, definitely, I guess the gentleman and I know that if government wants to raise more revenues, clearly the data is with them and that we can use it as benchmarking to determine how much the banking system should be paying worth of taxes together with the top 1,000 corporations.

Senator Arroyo. I would like to thank the sponsoring chairman for that information. Because if he says that in the data that he mentioned--which I suppose is the same as what I have, because I got this from the Committee on Ways and Means office--in 1992 the resources of the banking system was P800 billion. In 2001 or three years after, it is P3.401 trillion. In other words, there has been a 500%--

Senator Recto. Well, 500% growth.

Senator Arroyo. --growth in resources. So, P800 billion to P3.5 trillion.

Now, how about the net income? In actual figures, from P19 billion or call it P20 billion in 1992, it is now P14 billion in 2001. So, while the resources increased five times, the net income decreased by, perhaps, 30%.

So, what I am trying to point out is, the government is trying to help the banking system, but has the banking system contributed enough to our economic development or whatever? Because if the resources increased five times and the net only increased by the same--let us call it the same so that there will be no argument--then I agree with the distinguished sponsor that something is wrong somewhere.

Senator Recto. I agree with the gentleman. Additional data for that matter just indicate the records as well. In 1996, the total payment of taxes of the banking sector is about 4% of the total BIR collections. Today, it is less than 1% of the total BIR collections.

Senator Arroyo. I thank the gentleman for being candid. But this is the sector of our economy that we want to help. That is why all I am saying is, are they worth helping? Now, that is a philosophical question. I do not want to argue over that because that is a policy determination made by the executive branch. But with this data that we have...

Senator Recto. Mr. President, if I may conclude on all the data that the gentleman and this representation have presented, the fact remains today that the banks have very high nonperforming assets. And it will be a terrible drain in the economy if nothing is done with regard to these NFAs as well.

The problem for the banks not paying taxes, I think, can be worked on by the Department of Finance, by the BIR, so on and so forth, not even necessarily that a bill or a new law must be created for that. It is basically tax administration. The concern of this bill, which I am sponsoring and which I support, recognizes the problem that today 18% of total assets of the banks are nonperforming assets. And unless we do something to correct that, to reduce these NFAs, that will be a terrible drag in the economy.

Senator Arroyo. So, I ask the question, Mr. President: Whose fault is it? It would seem that--not only lackluster performance of the banks but a terrible performance by the banks--we are now supposed to bail them out. So, I say fine. All right. But there must be some *quid pro quo* somewhere that if we have to rehabilitate the banks, we have to rehabilitate also the borrowers who also propel the economy.

Senator Recto. Precisely, Mr. President.

Senator Arroyo. I mean, these borrowers of ours, they also contributed to the economy. For all we know, they even paid more taxes than the banks.

Yesterday, I asked for information on how much taxes the banking system gave. The banking system gave only P4 billion.

Now, in that two books, confidential lists of borrowers who became delinquent, if that is analyzed, those defaulting borrowers paid more taxes than the banking system.

All we are asking, Mr. President, is a fair shake because, as I have said, no one is supporting the borrowers.

Senator Recto. Mr. President, I think there have been numerous reports in the papers and in media that I have been alluded to as pro-borrower in this bill already. I think if we take a look at the committee report and at the original bills filed, many provisions have been added to make sure that we have a fair shake here--that we do not redefine the relationship existing today between a lender or an FI and the borrower at the same time. If the government is willing to give incentives to the FI, I think the committee has tried its best to give incentives as well to the borrower.

That is why, Mr. President, there are many provisions in this committee report which allow the borrower today, No. 1, to make *dacion* to the FI and not to pay all this friction cost; to make *dacion* to the SPAV and not to pay this friction cost; and if we can interpret Section 15, the FI may want to decide to sell to the borrower and the borrower will not have to pay as well this friction cost. Not only the borrower but Juan dela Cruz. Because at present, today, if we open the newspapers, we will see that the foreclosed properties of the banks are being sold today to the general public without a SPAV, without a SANC. So, if the banks sell these NFAs today or these ROPDAs, any Tom, Dick and Harry has the opportunity, then we will also be giving them tax exemption because at the end of the day it will help reduce the NFAs of the financial institutions.

Senator Arroyo. Mr. President, we will go round and round and we will not get anywhere. But I just would like a clarification from the distinguished sponsor that, effectively, if this law takes effect, the banks will not pay any income tax because of the treatment of the transfers of the NFAs as ordinary loans.

Senator Recto. That would depend, No. 1, on how much NFAs the banking sector would be able to sell within a two-year period. And No. 2, what value they will get from these NFAs.

Senator Arroyo. Theoretically, let us state it this way. What is on the table is P500 billion. Let us say, we sell it at P250 billion, transfer.

Senator Recto. Put it this way. Let us make it a little more realistic.

Senator Arroyo. All right.

Senator Recto. If the NFAs today are about P500 billion and assuming that they were able to sell half, P250 billion for a value of P125 billion, then, potentially, the gentleman is right. They have a P125 billion....

Senator Arroyo. Divided by 5.

Senator Recto. Divided by 5.

Senator Arroyo. --is P25 billion.

Senator Recto.is P25 billion, the gentleman is right. And if they are paying P4 billion today, then they do not have to pay that P4 billion. Assuming they have to pay P4 billion every year for the next five years, they will not have to pay that P4 billion. The gentleman is right there.

But, like I said, today, they are allowed to have NOLCO for three years. The only additional concession that we are giving here is an additional P2 billion--from

P3 billion to P5 billion. Because at present, the same law applies to them. Anyone can avail himself of this NOLCO provisions in the Tax Code for three years.

Now, if the gentleman would like to propose a reduction of this NOLCO, then we subject that to the entire Body. If the gentleman thinks that additional incentives should be given to the borrowers, then maybe the Body might consider.

Senator Arroyo. Mr. President, Section 16 is a cruel provision because this is income tax. We are forgoing income tax. Income tax, as we know, is something that is.... Ordinary people--We all pay income taxes, but when we provide a provision in a law which in effect would operate to exempt or to relieve an entity from paying a tax because of classifications, that is not fair.

Senator Recto. Mr. President, that idea is not new today because there are existing laws. If one were an exporter, for example, he enjoys an eight-year tax holiday; he does not have to pay income taxes. Even the National Internal Revenue Code would have NOLCO provision of three years. Even individual income earners....

Senator Arroyo. Mr. President, that is correct. Because that is an incentive to do business and to do well.

Senator Recto. Precisely.

Senator Arroyo. This one is not an incentive. This exemption is to help them not pay taxes.

Senator Recto. The incentive here is that we want-- it is the policy of the state--the banks to reduce their NPAs. We want to cure the problems of the banking industry. The government is willing to provide that as is and this is not new. This happened in the United States in the 1980s after the Asian crisis. More so, in the South East Asian region, taxpayers' money were utilized to bail out the financial institutions.

Without the 1997 financial crisis, then, probably, we would not have this problem today. But because of the crisis in 1997--and the difference between the Philippines and our Asian neighbors is that they had the taxpayers' money, to begin with, to immediately appropriate for this purpose--in our case, we do not have the money to bail out the banking industry today. So, what we are saying is that, in effect, the taxes that we will pay next year, "O, siya, sa inyo na lamang," but we cannot use that for dividend declaration. We must use those resources to increase the capitalization of the bank."

Senator Arroyo. I agree, the banks cannot declare. That is different. So, we have no argument over that.

Let me just summarize. What is it that the banks would get--tax exemptions for the transfer of an NPA from the FI to the SAMC? I am talking only about the banks. And the tax exemptions will refer to the documentary stamps taxes, the capital gains taxes, the creditable withholding taxes and the VAT. So, those are what they will get. Now, over and above that for a period of two years, they will effectively not pay any income taxes.

How about the borrower? The borrower is free only of taxes if the transfer is from the FI to the borrower.

Now, Mr. President, let me jump to something else because it breaks when the borrower loses his property because of the operation of this bill. Let us say that the foreclosed value is P100,000. If his property is declared an NPL and it is sold from the FI to the SAMC and the value of the foreclosed loan is P100,000 and SAMC buys it only from the FI for P50,000, what happens? The borrower will still be liable for the balance of the P50,000 loan.

Senator Recto. A deficiency claim.

Senator Arroyo. A deficiency claim. In the original bill....

Senator Recto. The original committee report.

Senator Arroyo. In the original committee report, it was provided that there will be no deficiency claim. Now, it has been restored. It is just too much for the borrower. He loses his property, then after losing his property, then he will still....While the banks are being rehabilitated because of this bill, the borrower is not rehabilitated. All money that he makes is still subject or rather can be reached by the FIs or the SAMC. We are trying to prevent that situation.

Senator Recto. Yes.

Senator Arroyo. Meaning, these are the interlocking provisions here. It would seem that the original text was much better. I do not know what happened, why they are now bracketed.

Senator Recto. Mr. President, if I may explain.

I realized that if we were not to allow the SAMC to have a deficiency claim over the borrower, then we might be redefining the relationship today between the FI and the borrower.

My basic concept here is simple. For as long as we do not redefine the relationship between the FI and the borrower and change the rules in the middle of the game, that is fine with me. But if it changes the rules in the middle of the game and redefines that relationship, either in favor of the FI or in favor of the borrower, then that would be unfair to any of the parties.

Mr. President, I think the Civil Code is clear. The Civil Code protects the rights today of the FI, the borrower, and the potential assignee, in this case, the SAMC. That is why there are articles in the Civil Code on the assignment and subrogation of credits. Whereas, in the example of the gentleman from Bicol, if, for example, an FI were to sell the foreclosed property or an NPL, for that matter, to a SAMC for 50% of the price, under the Civil Code today on assignments of credit, the borrower

has a right to match that price with the assignee within a 30-day period.

Mr. President, there are certain rights afforded to the borrower and rights afforded to the assignee. Under our present laws, an FI can sell an NFL to an assignee. That is why I accepted the amendment in the committee report and ensured that we have in place the particular provisions of the Civil Code which is on page 10, Section 12, line 26

It says, " *Provided, further,* That in the transfer of the NFLs, the provisions on subrogation and assignment of credits under the New Civil Code shall apply."

By having this provision, Mr. President, the FI will be concerned about transferring NFLs to an assignee. What could apply would then be subrogation of credit in the sense that if a SFAV or a SAMC were interested in rehabilitating a business, then our impression is that that would be a subrogation of credit, which means that there will be new parties involved in the contract and a new contract. That way, more rehabilitation of distressed businesses will be done.

Senator Arroyo. Mr. President, on page 11, there is a beautiful clause here alluded to by the distinguished sponsor which is on lines 1 and 2: " *Provided, finally,* That after the transfer of NFAs to the SFAV" -- which is SAMC now -- "the transferring FI shall have no further claim or right of action against the borrower." One sentence spells out a relief to the borrowers and this is now bracketed.

Mr. President, I read the Civil Code and I must confess that I am a little rusty now when it comes to obligations and contracts. I went through it and I found it very confusing. But this line says all and saves the borrowers. If we can only see here that what we are trying to propose is that we also, by this law, give the borrowers a break -- and the break is that once their assets are sold, they start a new lease on life so that they will not be burdened by thinking that " I am now

making money for the bank to pay for the deficiency -- this is the thrust of my proposal. Why do we not just restore or remove the brackets and then I think we will have....

Senator Recto. Mr. President, I assure the gentleman from Bicol that I share his concern. Nevertheless, the reason I agreed to have this deleted was I did not want it to be said that I was redefining the relationship between the creditor and the borrower in the middle of the game.

Senator Arroyo. Mr. President, what is wrong if we redefine it? If it is for the good of all, let us redefine it.

In that list that was given to us by the Bangko Sentral on a confidential basis, are, of course, debts of over the million mark. If we look at them, those very same people can still be instruments of our economic recovery.

Senator Recto. Definitely, Mr. President. That is why I introduced certain amendments to the committee report to ensure their survival.

Senator Arroyo. It is a who is who as we know. But, why?

In the United States, it is in Chapter 11 of the Bankruptcy Law. We have here the Insolvency Law, but it does not work. It is not that it does not work but people do not take advantage of it because there is a certain shame attached to filing a petition for bankruptcy or insolvency. But this one will relieve all those borrowers of the shame of having borrowed money and not having been able to pay it, especially since there is a cutoff date.

So all their debts, if these now become NFAs, the borrowers can now have peace of mind and sleep well because they do not have to think about paying anymore deficiency judgment.

What I am saying is, if we are going to give the banks something, let us also give the borrowers because this is what it is all about.

How do we know someday when we become also borrowers and then we are indebted and we cannot pay? Then a law is passed which says that "Within 180 days, if you cannot pay, you become an NFL. And the moment you become an NFL, then SAMCs and financial institutions will now come in and get your property. Even after they got your property, one still has to pay for the deficiency." So we can just go on and on about this.

Senator Recto. Yes, that is right. That is why I think that the Civil Code is clear, and there are certain rights given to the borrowers. So, in this case, it will still apply to the NFLs.

Mr. President, again, let me just reiterate that I share the same concerns of the gentleman from Bicol. But I think that the Civil Code in these two particular articles have served us well. And that there is no need to redefine the relationships between the three parties involved here--the FI, the borrower and the assignee, in this case, the SMC.

Again, let me reiterate that by having not only the provisions in Section 12 but also those in Section 13, I do not want it to be said that I redefine the relationship by having these two provisions after careful study of the measure, Mr. President.

But I am sure that our colleagues are hearing the debate today. This provision is close to me because there is a Recto doctrine on the matter, incidentally,--

Senator Arroyo. Yes, I would remind the gentleman about that.

Senator Recto. --on chattels. That is why a chattel is a sale--the creditor does not have a deficiency claim on the person who bought a property which has a chattel mortgage. Similarly in a pawnshop, Mr. President, when

one makes *sangia* to a pawnshop and he is unable to pay his debt, the pawnshop does not have a deficiency claim on the borrower as well. I realize that.

But I think the banking industry is also different. That is why I would rather be guided by the Civil Code, particularly these two articles in the Civil Code as well.

SUSPENSION OF SESSION

Senator Arroyo. Mr. President, can I have a moment's suspension of the session? Because this initiative on the taxes really came from the gentleman and the lady Senator from San Juan. I do not know why no....

The President. The two gentlemen have been on the Floor for almost one hour. I have not heard any particular amendment.

Senator Arroyo. Yes. No, because we are just taking the whole thing and then perhaps, we will....

The President. All right. So perhaps we can have the amendment after the break.

Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

Senator Arroyo. Thank you, Mr. President.

It was 5:06 p.m.

RESUMPTION OF SESSION

At 5:10 p.m., the session was resumed.

The President. The session is resumed.

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. Mr. President, this representation discussed the matter with the sponsoring senator, including Senator Estrada. We agreed that we can close the period of committee amendments. Then we can just proceed and vote on the individual amendments when we are ready, and give us a clean copy now so that we can delete and have the individual amendments.

The President. All right. In that case, the Chair is prepared to receive a motion to terminate the period of committee amendments.

Senator Recto. Mr. President, I move that we close the period of committee amendments.

The President. What is the pleasure of Sen. Serge Osmeña?

Senator Osmeña (S). Just a clarification, Mr. President, on Article IV, because I was not able to take my turn yesterday on tax exemptions and fee privileges. May we clarify if this is limited only to one more transaction after the SPAV? There is a danger the way the law reads that it leaves the situation open for the transfer from one SANC to another SANC. Would that be exempt under Section 14?

Senator Recto. Yes, but that will be considered as a third party--the second SANC which the distinguished sponsor mentioned. If that second SANC were to sell it to another SANC or to a third party, then that transaction is not covered by the tax exemptions and fee privileges under this section.

Senator Osmeña (S). All right. Then may we ask the committee to formulate a tighter language that would ensure that it is only good for one more transaction after the first SANC purchased it. Perhaps the....

Senator Recto. With respect to the distinguished gentleman from Cebu, maybe in the period of individual amendments, I would suppose that he may actually be even

better than I and my committee staff to propose the tightened language.

Senator Osmeña (S). No, no, Mr. President. I would like to take advantage of the presence here of the Department of Finance and the Bangko Sentral to help craft language which should be more elegant.

Senator Recto. It is noted, Mr. President.

The President. All right. So there is now a motion if that is satisfactory to.... Sen. Serge Osmeña is recognized once more.

Senator Osmeña (S). There was a deletion on line 27 of page 12, of financial institutions....

The President. What page again, please?

Senator Osmeña (S). On page 12, line 28, the last line. Does "transfer" here envision...?

Senator Recto. Excuse me, Mr. President. Could the distinguished Senator repeat that? Page 12?

Senator Osmeña (S). Page 12, line 28 of the latest copy, October 15. "SANC or transfers by way of dation in payment". Do those transfers cover what type of assets?

Senator Recto. They cover, if I am not mistaken, only assets which were considered as NFAs which were part of the original security of the loan, in this case, as of June 30, 2002, and that is found on page 13, line 7. It says: "PROVIDED, FURTHER, THAT THE TAX EXEMPTIONS AND FEE PRIVILEGES SHALL NOT APPLY TO ASSETS TRANSFERRED FROM A BORROWER TO AN FI OR TO A SANC IF SAID ASSETS HAD NOT BEEN PART OF THE SECURITY FOR THE LOAN AS OF JUNE 30, 2002."

Senator Osmeña (S). All right.

Senator Recto. But if I may point out, Mr. President, there may be a problem as well in this particular section. For example, a borrower would have a clean loan with the FI and the borrower now wants to pay to make dation to the FI. Lugi naman iyong FI if there will be attendant...

Senator Osmeña (S). That was my position earlier. What if we craft language or it can be done in the period of individual amendments.

Senator Recto. That was my suggestion.

Senator Osmeña (S). If we craft language to cover such payment so that the FIs are not shortchanged, we would, in effect, be removing the rights of the FI to accept dation in payment today for loans.

Senator Recto. I think during the individual amendments we can be fair both to the FI and to the SPAV.

Senator Osmeña (S). That is right.

Senator Recto. Because it could happen on both sides.

Senator Osmeña (S). So, when we talk about transfers on line 28, we are talking of transfers of assets, because on line 27, it covers sales or transfers of NFAs. That is accurate. But later on when we do dation in payment, we are really talking of transfers of assets.

Senator Recto. That is right.

Senator Osmeña (S). Therefore, the committee amendments by addition on lines 3, 4 and 5, on page 13, should really refer to the previous sentence where it refers to dation in payment. Therefore, I would propose that, if the gentleman would accept the deletion of the phrase "OR TRANSFERS BY WAY OF *DACION EN PAGO* BY THE BORROWER TO THE SANC" on lines 3 to 5 and merely insert

on line i after the word «FI» the phrase OR BY BORROWER TO THE SAMC.

Senator Recto. It is accepted, Mr. President.

The President. Wait. With all due respect, can we put this in an orderly basis because if we close the period of committee amendments, then we can go through this...

Senator Osmeña (S). This is a committee amendment, Mr. President. It is in bold letters on page 13. So, I am asking that it merely be transferred from line 3 to line i.

The President. All right.

Senator Recto. It is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmeña (S). And lastly on line 9, just for clarification, in the new committee amendments, after the word «OR», can we insert the word BORROWER? So it will read, FROM A BORROWER TO AN FI OR BORROWER TO A SAMC. It is just for clarification.

Senator Recto. It is accepted, Mr. President, subject to what we discussed earlier.

Senator Osmeña (S). Yes, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmeña (S). Thank you very much, Mr. President.

The President. There is a motion to close the period of committee amendments. Is there any objection? [Silence] There being none, the motion is approved.

We now proceed to the period of individual amendments.

SUSPENSION OF SESSION

Senator Leviste. Mr. President, I move that we suspend the session for one minute.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 5:18 p.m.

RESUMPTION OF SESSION

At 5:26 p.m., the session was resumed with Sen. Noli "Kabayan" de Castro, presiding.

The Presiding Officer [Sen. De Castro]. The session is resumed.

Senator Leviste. Mr. President, we just closed the period of committee amendments on Senate Bill No. 2116.

SUSPENSION OF CONSIDERATION OF S. NO. 2116

I move that we suspend consideration of the measure.

The Presiding Officer [Sen. De Castro]. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING

S. No. 2130 - Dual Citizenship Act
(Continuation)

Senator Leviste. Mr. President, I move that we resume consideration of Senate Bill No. 2130 as reported out under Committee Report No. 46.

The Presiding Officer [Sen. De Castro]. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 2130 is now in order.

Senator Leviste. I ask that we recognize the sponsor, Sen. Franklin M. Drilon.

And to continue with the interpellation, I ask that we recognize the Minority Leader, Sen. Vicente C. Sotto III.

The Presiding Officer [Sen. De Castro]. Senator Drilon is recognized; and Senator Sotto for the interpellation.

Senator Sotto. Thank you, Mr. President.

With the indulgence of the Senate President, I would just like to probably be enlightened more on one or two aspects of the bill.

The distinguished sponsor will have to pardon me if I ask one or two questions that have already been asked. He can do away with it if he has already done so. I can just look it up in the records, but if he would care to answer again, I would not mind at all.

Senator Drilon. Mr. President, I do not mind at all repeating the answer.

Senator Sotto. All right. Thank you then, Mr. President.

As I said, there were some issues I wanted clarified, particularly on dual citizenship.

As I understand it, this proposed law seeks to provide for the retention of Philippine citizenship by Filipines who acquire or have acquired foreign citizenship.

Under our present Constitution or any other law for that matter, does it automatically renounce the

citizenship of Filipinos who acquire foreign citizenships?

Senator Drilon. That is correct, Mr. President.

Under Commonwealth Act No. 63 passed on October 1936, the naturalization in a foreign country is a manner of losing Philippine citizenship. Specifically, Section 1, paragraph 1 of Commonwealth Act No. 63 reads:

How Citizenship May Be Lost - A Filipino citizen may lose his citizenship in any of the following ways and/or events: 1) by naturalization in a foreign country.

This is a law, Mr. President, which was passed on October 1936, and that is about 64 years ago. Since that time, we have had two constitutions and several revolutions and several changes in the world economic order. And it is our respectful submission that it is to the national interest of the country that we review and amend Commonwealth Act No. 63.

Senator Sotto. Commonwealth Act No. 63, which is probably older than any of the members present in this Hall today.

Senator Drilon. Older than the sponsor and the interpellator, Mr. President. *[Laughter]*

Senator Sotto. Just as a walk-through after that wonderful response, Mr. President. The Constitution provides that citizenship conferred by virtue of blood relationship is a basis for the acquisition of Philippine citizenship. Is that correct?

Senator Drilon. That is correct, Mr. President, particularly Section IV, Section 1, paragraph (2), which states:

Section 1. The following are citizens of the Philippines:

(2) Those whose fathers or mothers are citizens of the Philippines.

So the principle of *jus sanguinis* is followed in our Constitution, Mr. President.

Senator Sotto. So it is accurate to say then that being a child of a Filipino parent, legitimate or illegitimate, the presumption is that the child is a Filipino and remains one until proof is shown that he has renounced his Philippine citizenship?

Senator Drilon. It is not only a presumption, Mr. President, it is a fact that he is a Filipino and that he continues to be a Filipino unless any of the causes enumerated in Section 1 of Commonwealth Act No. 63 for the loss of citizenship will occur, among which, are naturalization and express renunciation of citizenship.

Senator Sotto. Would this hold for a natural-born citizen of the Philippines who eventually became a naturalized citizen of a foreign country and who did not renounce his Philippine citizenship?

Senator Drilon. Yes, Mr. President, because under Commonwealth Act No. 63, the mere naturalization in a foreign country is a cause for the loss of citizenship regardless of whether or not the naturalization process involved renunciation or an oath of allegiance in that country as long as he is naturalized in another country under Commonwealth Act No. 63, the Philippine citizenship is lost.

Senator Sotto. Perhaps, Mr. President, the former Secretary of Justice and former Executive Secretary can refresh my memory on the Frivaldo case, if the distinguished gentleman will recall.

Senator Drilon. Yes, Mr. President.

Senator Sotto. He acquired Australian citizenship...

Senator Drilon. No.

Senator Sotto. Is it U.S. or Australian citizenship during the time of President Marcos?

Senator Drilon. It is U.S. citizenship.

Senator Sotto. All right, U.S. citizenship and then ran....

Senator Drilon. What happened there, if my memory serves me right, Mr. President, is that former Governor Frivaldo became an American citizen by naturalization. He became a naturalized American citizen. By operation of Commonwealth Act No. 63, he lost his Philippine citizenship. Subsequently, he renounced his American citizenship and ran for governor of Sorsogon.

Senator Sotto. A province in Bicol. Yes, but he was disqualified after winning.

Senator Drilon. He was disqualified because he became a stateless person. Because when he lost his Philippine citizenship by virtue of his naturalization in America, when he renounced his American citizenship, it was not automatic that he became again a Filipino citizen. Therefore when he ran, he was a stateless person. That was what the Supreme Court ruled, precisely because of Commonwealth Act No. 63.

Senator Sotto. Again, the distinguished gentleman will have to refresh my memory. Because the way I recall it, the Supreme Court decided in his favor afterwards.

Senator Drilon. Afterwards because then he went through a process of repatriation.

Senator Sotto. Only because he went through a process.

Senator Drilon. That is correct.

Senator Sotto. Because the way I recall the Supreme Court decision, it said something to the effect that

Filipinos who became naturalized foreign citizens retain their Philippine citizenship. Something to that effect.

Senator Drilon. No, Mr. President. In fact....

Senator Sotto. So I did not get it correctly.

Senator Drilon. Governor Frivaldo lost the case initially because he became a stateless person according to the Supreme Court. Subsequently, he had himself repatriated and went through a process and therefore, at that point, I think it was in the second election that he

Senator Sotto. He ran again?

Senator Drilon. --ran again; and he was sustained.

Senator Sotto. I would like to thank the distinguished gentleman.

Senator Drilon. And that is by operation of Commonwealth Act No. 63, the law which we are trying to amend.

Senator Sotto. For those who will benefit by this piece of legislation, Mr. President, what citizenship will reflect on the official documents or papers of those concerns specifically for their daily transactions or business?

Senator Drilon. Good question, Mr. President. I would like to think, if my advice was asked, in cases where a nationality requirement is stated in the law and a document is being executed pursuant to that nationality requirement, the dual citizen--Filipino-American--will not be violating any law by stating that he is a Filipino.

So that, for example, where he is a lawyer and he became a naturalized American citizen and with the effectivity of this law he becomes a dual citizen, he petitions the Supreme Court. He can say that, "I am a

dual citizen and I want to go back and practice law. He will be allowed now because he is a dual citizen.

Thereafter, if he purchases a piece of property, he can say that he is a Filipino without, in my mind, violating the law.

Senator Sotto. What is the current practice in the other countries that have dual citizenship, Mr. President? Do they carry two passports?

Senator Drilon. I cannot answer that as far as other countries are concerned, Mr. President. But allow me to place on record that our countrymen, a number of them, carry two passports. This was testified to during the committee hearings.

It would appear that in England particularly and even in the United States, I suspect, when a person becomes a citizen of the United Kingdom, the authorities there do not require him to surrender his passport. So, what these Filipinos would do is take their oath as citizens, subject to the United Kingdom, and would not surrender their Philippine passport. They would afterwards go to the Philippine Embassy, renew their passport, and now they have two passports.

That was testified to by one of the resource persons during the committee hearing when they were encouraging the committee to favorably act on this bill because they said, "That it is happening already today. So you better just confirm what we are doing. We have two passports, most of us".

Senator Sotto. What are we saying now when we pass this bill is, it is a choice, a matter of choice of the citizen.

Senator Drilon. Yes, Mr. President. It will no longer be something that they will hide under the rug.

Senator Sotto. When they travel internationally....

Senator Drilon. It is their choice which passport to use, as they are doing now, some of them.

Senator Sotto. It is somewhat clear now, Mr. President.

Let me now go to a little apprehension on this issue. Because there are certain businesses or nature of businesses which can only be accorded to citizens*

Senator Drilon. That is correct, Mr. President.

Senator Sotto. --in the Philippines, like the media industry. What happens now? Does the sponsor not think that this would be prejudicial to Philippine citizens who have remained totally loyal to the country to be threatened now by the possible entry of foreign investors using Filipinos with dual citizenship as legal vehicles in their transaction?

Senator Drilon. That is a very good question, Mr. President. But let me preface the answer with some impressions that now would go around coffee shops by virtue of this 100% Filipino requirement in mass media. A number of media companies would have wanted to accept foreign investment to augment their capital even just on a minority position. But the Constitution, if I recall correctly, says mass media is 100%. Therefore, it has become a drawback because precisely the Constitution prohibits any equity by foreigners in mass media.

It is ironic, Mr. President, because the reasoning is that we should not allow foreign media to be in our companies operating mass media in the country. But daily, when we open our television screen, we see CNN, we see Fax News, we see all kinds of foreign TV shows which are beamed in the bedrooms and in the living rooms of thousands and per hundreds, if not millions, of Filipinos.

Now, having said that, Mr. President, it is the belief and submission of this representation that precisely this will help our media industry because now

it will allow former natural-born citizens of the country who now are Filipinos again to be able to invest in mass media, whereas before or at present they are absolutely prohibited even if they are Filipinos by blood. So that his bill would solve partially the problem of plowing in equity into our mass media organizations.

That is our submission, Mr. President. So, instead of mass media being threatened or for that matter any nationalized industry being threatened this, in effect, would be a source of equity and capital by Filipinos who are now qualified to invest in those nationalized companies as against the present where they are completely shut out even if the Filipino blood runs in their veins.

We have previously cited the case of Mr. Mark Fangilinan, a real estate developer in Guam, who would have wanted to invest and develop real estate, but he could not do so because although he is a Filipino by blood, by culture, by tradition and is a leader of the Filipino community in Guam, a recognized leader of the Filipino community, could not help and invest in our country because under a 66-year old law, he is considered an alien.

It is, therefore, my submission, Mr. President, that our national interest is not at all prejudiced by the passage of this Act. In fact, our national interest will be served by the passage of this proposed law. We cannot imagine when our national interest will be prejudiced if we allow the former natural-born citizens of the country to be able to reacquire their Philippine citizenship.

Senator Sotto. For the record, Mr. President, I only brought that out because there were apprehensions to that effect. But I must say and place on record the fact that I will concur with the sponsor, the Senate President. As a matter of fact, when many portions or provisions in the Constitution were made--we all know that in 1986 or 1987 there was no Internet yet--all these developments were neither realized nor even thought of by the framers.

At this point, although we can see the implication, the market will be open now to that...

Senator Drilon. Only to former natural-born citizens of the Philippines.

Senator Sotto. Yes, I know, Mr. President, but we know that there are many ways of skinning the cat. [Laughter] They can always use the former Filipinos and now again Filipinos. I have nothing against it.

Senator Drilon. No, no. What I am just saying, Mr. President, is that if they are going to use former Filipino citizens, if they have the intention of creating dummies out of the former Filipino citizens who, under this law, will now become Filipino citizens again, they do not have to wait for the passage of this law. Right now they can do it, if they are willing to do it.

Senator Sotto. Yes, Mr. President. I would like to thank the gentleman for that.

May I now move on to another point of clarification. This is in Section 3 of the bill.

Senator Drilon. Yes, Mr. President.

Senator Sotto. I understand that this proviso mentions that a renunciation of Philippine citizenship which may be a part of or in connection with the oath of allegiance which may have been required by the concerned foreign country for purposes of naturalization will not be a bar to the reacquisition of Philippine citizenship.

Does the gentleman not think that the mere fact that Filipinos who applied for naturalizations were required to renounce their Philippine citizenship by the host country be a strict requirement to maintain their citizenship in that country, and reacquiring such Philippine citizenship under this proposed law might become detrimental or jeopardize their foreign citizenship status?

Senator Drilon. No, Mr. President, absolutely not, because that former natural-born citizen of the country is not doing anything. He does not do any act which can be the basis for the revocation of that foreign citizenship which he acquired by naturalization. It is by virtue of an act of a sovereign state that he is conferred that status of a second citizenship, the citizenship of his birth. Therefore, wala pong pakialam ang kaniyang bansa kung saan siya naging bagong mamamayan.

As we said earlier, Mr. President, the principle of citizenship is that it is the country, the sovereign country which, by its laws, determines who are its citizens. And the beneficiary does not do anything. That is precisely the nature of a natural-born citizen. One is a citizen by virtue of the law and he does not have to do anything as contrasted to a naturalization process where one goes through his positive act. Willingly and willfully, one becomes a citizen of another country.

In this particular case, it is by an Act of Congress that one is conferred or allowed to reacquire Philippine citizenship.

Now, in the remote possibility that it could prejudice his second citizenship or the citizenship of his adopted country, he can always renounce. He can always renounce and that is allowed under our proposal.

Senator Sotto. That is very good. I would like to thank the gentleman for that, Mr. President.

Would there be a country?

Senator Drilon. I am not aware of any, Mr. President.

Senator Sotto. Would the gentleman know if that would be possible, that remote possibility?

Senator Drilon. I am not aware of any, Mr. President. But, as I said, I am no expert in all the laws. I would like only to think that I have the working knowledge of Philippine law. I certainly am ignorant of the laws of other countries. But as far as this proposal is concerned if, indeed, it places in danger the citizenship of his adopted country, then he can renounce Philippine citizenship.

Senator Sotto. I am totally satisfied with the answer, Mr. President. I was just curious to know, just in case.

Anyway, let me move on now to Section 6. Section 6 says, "natural-born citizens of the Philippines who acquire foreign citizenship shall....enjoy full civil and political rights and shall be subject to all attendant liabilities and responsibilities under existing laws of the Philippines." Do we mean to say here, Mr. President, that those who will reacquire their Filipino citizenship will also be taxed on their incomes under our pertinent laws on taxation?

Senator Drilon. No, Mr. President. A very good question. For the record, these dual citizens will not be subject to taxes. And outside of the Philippines, under our laws, under our Internal Revenue Code, as amended by the Comprehensive Tax Reform Law which the gentleman from Quezon City and this representation participated in passing, income earned by Filipinos abroad are exempted from taxes. Now, if that income is earned in the Philippines, that income is subject to taxes. So, it will not change nor affect the liabilities for taxes, Mr. President.

Senator Sotto. Thank you, Mr. President. Very good, we would like that on record. We thank the Senate President for that.

SUSPENSION OF SESSION

Mr. President, may I move that we suspend the session for one minute.

The Presiding Officer (Sen. De Castro). Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 5:51 p.m.

RESUMPTION OF SESSION

At 5:55 p.m., the session was resumed.

The Presiding Officer [Sen. De Castro]. The session is resumed.

Senator Sotto. Mr. President, I wish to thank the Senate President, the sponsor of the bill, for the answers. It has enlightened me. I have no further questions at this point.

Thank you, Mr. President.

Senator Drilon. Thank you, Mr. President.

Senator Leviste. We would like to thank the Minority Leader.

I ask that we recognize Sen. Teresa Aquino-Oreta to interpellate, Mr. President.

The Presiding Officer [Sen. De Castro]. Sen. Teresa Aquino-Oreta is recognized.

Senator Oreta. Thank you, Mr. President.

Will the gentleman from Iloilo yield for a few questions?

Senator Drilon. Yes, Mr. President.

Senator Oreta. I only have three questions.

Senator Drilon. Yes, Mr. President.

Senator Oreta. Mr. President, are there any studies that would determine how many would stand to benefit, at least, from this bill once it is passed into law, more or less?

Senator Drilon. From the Commission on Overseas Filipinos, there is a figure here of 2,736,528 worldwide as being permanent residents of the various countries in the world. The most prominent would be the Americas and the trust territories which would have 2,291,311, particularly the United States where there are 1,910,844.

Now, Mr. President, I must qualify that this data states permanent residence in foreign countries. I suspect that it includes both immigrants and citizens of the country where they are staying. So, there is no disaggregation. It is just a total figure of 2,736,528 as permanent residents in various countries around the world.

Senator Oreta. I would like to thank the gentleman for that, Mr. President.

Now, my next question is: Will dual citizens enjoy the same rights as ordinary Filipino citizens? Meaning, if one is a dual citizen and there are some rights of the regular Filipino citizen, will their rights be the same?

Senator Drilon: That is our proposal, Mr. President. That is what is stated in the measure--the enjoyment of full civil and political rights.

Senator Oreta. I see. I would like to thank the gentleman for that again, Mr. President.

Now, my third is a hypothetical question. We will take into consideration that this bill has been passed into law and it is now being enjoyed by our Filipino citizens.

This is, again, a scenario No. 1. For example, Mr. A was born in the U.S. to Filipino parents.

Senator Drilon. Mr. A, U.S., Filipino parents, all right.

Senator Oreta. He comes to the Philippines to seek his fortune and he registers himself in accordance with the provision of the Dual Citizenship Law as well as its implementing rules and regulations.

Senator Drilon. Yes.

Senator Oreta. Now, soon after, Mr. A meets Mrs. B.

Senator Drilon. Yes.

Senator Oreta. They fell in love and married in compliance with the laws of the Philippines.

Senator Drilon. Yes.

Senator Oreta. Now, in the course of their marriage, they acquired for themselves a house, lot, and a host of other properties. Now, a few years later, the marriage turned sour. Mr. A moved back to the U.S. and successfully secured a divorce decree against his marriage with Filipina "B". Now, Philippine laws do not recognize divorce decree secured by Filipino citizens abroad. How do we treat the divorce decree secured by Mr. A who is both an American who recognizes divorce and a Filipino who does not recognize divorce?

Senator Drilon. Mr. President, I must confess the question is a little difficult but I will attempt to answer.

"A" here, in the example, is both an American and a Filipino citizen since he was born in the United States of Filipino parents. This is a classic case of a dual citizen.

Senator Oreta. That is correct, Mr. President.

Senator Drilon. So, such being the case, when he goes back to the United States and seeks a divorce, under our laws, that divorce....

Senator Oreta. That is not valid?

Senator Drilon. I will go out on a limb here.

In the example that was mentioned by the Senator from Malabon, in effect, the Philippines would recognize such divorce under our laws now because "B" can remarry.

Senator Oreta. But in the Philippines, right now, there is no divorce law and we do not recognize divorce.

Senator Drilon. That is correct.

Senator Oreta. --and they got married here in the Philippines.

Senator Drilon. That is correct, Mr. President. But under the Family Code now, in the example that the distinguished Senator gave, "B" can remarry. Because "A" secured a divorce in the United States, valid in the United States and, therefore, "B" can remarry. This is an amendment in the Civil Code enacted under E.O. No. 227 during the time of the Freedom Constitution. Before this E.O. No. 227, in the situation which the distinguished Senator described, "B" is married to nobody because "A" is validly divorced. But since we do not recognize divorce here, "B" is still married to no one and, therefore, cannot remarry.

Under Article 26 of the Civil Code, as amended by E.O....

Senator Oreta. Excuse me, Mr. President. I thought the gentleman said "B" can remarry.

Senator Drilon. Before the law was amended.

Senator Oreta. All right.

Senator Drilon. Now, with the amendment under Article 26, as amended by E.O. 227, it says, "Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have the capacity to remarry under Philippine law."

Senator Oreta. I thank the gentleman for that answer, Mr. President. Can I have another scenario?

Senator Drilon. Yes, please.

Senator Oreta. Mr. "A" is in America and meets Mrs. "C", an American citizen. Eventually, they got married in civil rights, let us say, in Las Vegas, Nevada. Considering that Mr. "A" acquired a divorce decree as an American citizen, he is not anymore considered married in the Philippines as the gentleman has just mentioned--that the marriage fades?

Senator Drilon. Can the good senator repeat the question?

Senator Oreta. Let us say "A" marries again an American citizen.

Senator Drilon. "A" is the same "A" in the first example?

Senator Oreta. Yes, the same "A" in the first scenario.

Senator Drilon. All right.

Senator Oreta. "A" meets and marries an American girl, let us say, in Las Vegas. "A" got a divorce in America. Now, can his Filipina wife charge him for bigamy in the Philippines?

Senator Drilon. No. Because if "A" was validly divorced in the place where the divorce decree was secured, he has the capacity to get married again and,

therefore, he cannot be charged with bigamy because bigamy presumes that at the time one contracted marriage, one did not have the legal capacity to contract marriage because of a previous marriage. Since the previous marriage was dissolved by virtue of a validly recognized divorce decree in the place where it was secured, then he has the legal capacity to remarry, and therefore, he is not liable for bigamy.

Senator Oreta. Is it not that in a divorce, the consent of both parties is necessary?

Senator Drilon. I do not know. It depends on the law where the divorce decree is granted. I assume this varies from state to state in the United States and varies from country to country in Europe. So I cannot really say that consent is necessary. It varies. It depends on the laws of the country granting the divorce.

Senator Oreta. Mr. President, looking at the scenario, what protection will Filipina «B» have in case she marries a Filipino with dual citizenship and he decides to divorce her without her consenting to that divorce?

Senator Drilon. That is difficult to answer, Mr. President.

Senator Oreta. What protection will the Filipina wife have? What will apply? Because in the Philippines, we have laws that somehow protects the Filipina woman.

Senator Drilon. The difficulty there, Mr. President, in the situation presented is that it really depends on the laws of the country where the divorce decree is secured, whether or not consent of the other spouse is necessary, et cetera. The only protection, I assume, is that he or she can oppose that divorce petition in the foreign country and seek support for whatever remedies are available.

Senator Oreta. In other words, if Mr. Dual Citizen marries a Filipina, Mr. Dual Citizen then enjoys more

rights than Mrs. Filipina basing it on the dual citizenship bill.

Senator Drilon. Assuming that that is correct, Mr. President, that advantage is there even without this law. Because if he is an American, then he can do exactly what he is doing as what the lady Senator describes.

So this law will not change anything as far as that particular situation is concerned.

Senator Oreta. Can I go further, Mr. President?

Senator Drilon. Yes, please, Mr. President.

Senator Oreta. Now, Mr. Dual Citizen gets old, gets very rich, et cetera and let us say, stays in California. Before his death, he executes a will giving all his properties to a good friend and not leaving anything to Mrs. American Wife. Because in America, there is such a law that one can leave everything to whoever one wants.

Senator Drilon. That is correct.

Senator Oreta. Unlike in the Philippines, the heirs somehow enjoy a compulsory

Senator Drilon. There is no system of legitime in the United States, particularly in the State of California. The testator can leave everything to a charity organization, leaving the children or his spouse without anything.

Under our Civil Code, in cases of succession, the amount of successional rights shall be regulated by the national law of the person whose succession is under consideration. In that particular case--this is a classic case of conflict of laws--without this bill, there will be no question that since he is only an American, then absolutely no legitime.

Now, since he is now a dual citizen--a Filipino and American--there is a chance now for the particular

provision of the Civil Code to apply. In fact, it puts the Filipina wife or the Filipino husband in a better position. Whereas, before assuming that we have.... As of today, let us say a natural-born Filipino citizen who is now naturalized as an American dies in America, there is no legitime for his Filipino wife, assuming he has a Filipino wife. Under this bill since he now becomes a dual citizen, then Article 16 of the Civil Code will come into application and the conflict of laws in private international law will have to be applied, and there is basis for the Filipina wife in that example and his children to claim legitime.

Senator Oreta. All right. Thank you, Mr. President, that is all.

The Presiding Officer [Sen. De Castro]. May the Chair ask a follow-up question.

Senator Drilon. Yes, please, the Chair may do so.

The Presiding Officer [Sen. De Castro]. Husband A and Wife B divorced, di ba? Sa States nag-divorce itong A, dini-vorce niya si Wife B. Anong mangyayari ngayon? What will happen sa kanilang conjugal property in the Philippines?

Senator Drilon. Right now, let us say, we have no law right now, they are both American citizens in that example.

The Presiding Officer [Sen. De Castro]. No. Filipina and Wife B. Husband A is dual citizen.

Senator Drilon. No, no. Presently, there is no dual citizenship law. In that example, there is no conjugal partnership of gains as far as I know in the United States. In the United States, assuming it is absolute separation, then everything that belongs to the husband goes to the husband. Now, under the same set, Mr. President, if we have this law, there is an opportunity to apply Philippine law because now a

personal law is applicable to the dual citizen as far as his Philippine citizenship is concerned.

The Presiding Officer [Sen. De Castro]. In other words, maghahati sila ng property in the Philippines?

Senator Drilon. The wife can even apply for an authority to administer the properties found in the Philippines.

The Presiding Officer [Sen. De Castro]. All right. Just one follow-up question.

Senator Drilon. Yes, sure.

The Presiding Officer [Sen. De Castro]. The Frivaldo case. If this bill would be enacted into law o maging batas na, will it remove statelessness kagaya nang nangyari kay Governor Frivaldo?

Senator Drilon. That is correct, Mr. President. The Frivaldo situation will no longer be possible because if we have Frivaldo becoming a naturalized American citizen, he is still a Filipino citizen, and therefore, the moment he loses his American citizenship, he does not have to do anything else. He is still a Filipino.

Ang nangyari po kay Frivaldo dahilan sa Commonwealth Act No. 63 ay nawala ang kaniyang pagka-Filipino noong na naturalized siya as an American. When he lost his American citizenship, he was no longer a Filipino, so he became stateless.

The Presiding Officer [Sen. De Castro]. All right. I would like to thank the sponsor for that clarification.

Senator Leviste. Mr. President, may I intervene. Sen. Teresa Aquino-Oreta asked a question about a dual-citizen husband who is married to a Filipina wife, and who divorced his Filipina wife. We know that under existing laws, an alien husband can divorce his Filipino wife. If he initiates it, the divorce is valid in the Philippines. Is that correct, Mr. President?

Senator Drilon. The divorce is valid in the Philippines, yes.

Senator Leviste. The divorce is valid in the Philippines if it is initiated only assuming by the American husband, but the Filipina cannot initiate the divorce against the American husband. Is that right? Yes, I am very sure of that.

Senator Drilon. Yes, that is correct because a Filipina....

Senator Leviste. Yes, she cannot.

Senator Drilon. Because we have no divorce law. That is correct, we have no divorce law in the Philippines. Therefore, the Filipina cannot initiate the divorce.

Senator Leviste. Yes. I am just setting the premise. So, the question of Senator Ureta earlier was-- and may the sponsor elucidate on that--if, however, it is not an American husband, it is a dual-citizen husband who is enjoying the privileges of being a citizen of the U.S. and of the Philippines that initiates the divorce, does the Filipina wife automatically lose any relationship with that dual-citizen husband? But since he is also enjoying the privileges and benefits of being a Filipino, can he then be sued by the Filipina wife for bigamy assuming he marries again?

Senator Drilon. First, I will beg the question. If he marries again in the United States, there is no bigamy because of the principle of territoriality. The crime of bigamy must be committed in the Philippines.

Senator Leviste. All right. If he marries an American or even if he marries a Filipina in the U.S.

Senator Drilon. In the U.S., that is correct.

Senator Leviste. Regardless of nationality or citizenship.

Senator Drilon. That is correct.

Senator Leviste. --if he marries someone in the U.S. or in a foreign country, then he will be governed by....

Senator Drilon. No. We are just talking about bigamy because the Senator is saying, if he marries again, is he liable for bigamy? If he marries outside of the Philippines, he is not liable for bigamy because the crime, assuming that there is a crime, was not committed within the Philippine territory.

Senator Leviste. Because we are governed by territoriality.

Senator Drilon. That is right.

Senator Leviste. Therefore, he cannot marry on Philippine soil.

Senator Drilon. That is correct.

Senator Leviste. He cannot marry on Philippine soil and invoke the fact that he is a dual citizen and that he is partly American and....

Senator Drilon. That is correct.

Senator Leviste. So that is clear. He can marry and not be charged with bigamy as long as he remains in the U.S.

Senator Drilon. Yes.

Senator Leviste. Thank you, Mr. President.

Senator Drilon. All right.

The Presiding Officer [Sen. De Castro]. Or he does not want to marry. So there is no problem.

Senator Drilon. I hope the lady senators' husbands are not listening to this debate. They might start to think what the lady senators have in mind. [Laughter]

Senator Leviste. I move that we recognize Sen. Serge Osmeña.

The Presiding Officer [Sen. De Castro]. Sen. Serge Osmeña is recognized.

Senator Osmeña (S). Would the good sponsor yield for a few questions, Mr. President?

Senator Drilon. For the third time, yes, Mr. President.

Senator Osmeña (S). Yes, it just shows how interesting the topic is. But I would just like to point out to Senator Ureta, the *Senadora* from Tarlac, that it is also possible for a Filipina to go to Las Vegas and obtain a divorce, [Laughter] and I have been witness....

Senator Drilon. It is also possible for a Filipina to go to Las Vegas.

Senator Osmeña (S). It is also possible for a Filipina to go to Las Vegas and obtain a divorce because one does not have to be a citizen of the United States to obtain a divorce but merely have, in certain states like Las Vegas, 90 days residency.

The Presiding Officer [Sen. De Castro]. Then one can marry in Hong Kong.

Senator Osmeña (S). Then one can marry again anywhere.

Senator Drilon. Yes.

Senator Osmeña (S). I just wanted to be clarified-- oh, yes, there are also states with "no-fault divorces," as they call it. So they just give everybody his freedom without finding fault or division of property.

But in any case, I just would like to be enlightened, Mr. President, on these principles of *jus*

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*sol*i and *jus sanguinis*. Am I correct that the Philippines follows the *jus sanguinis* principle?

Senator Drilon. That is correct, Mr. President.

Senator Osmeña (S). For example, if a child of American parents is born in Manila, would the Philippine government recognize the child as a Filipino citizen?

Senator Drilon. No, Mr. President.

Senator Osmeña (S). So, we would have a double advantage now because if we are Filipino parents, we have a child born in the United States, he is automatically recognized by both states as citizens of both countries.

Senator Drilon. The gentleman is very correct, Mr. President.

Senator Osmeña (S). All right. On taxes, Mr. President, would there be an impact on taxes? Because I understand that in the tax treaty which covers savings in the Philippines and in the United States, the tax treaty states that if one pays taxes in the Philippines, for example, for his income in the Philippines, he can deduct that from what he owes in U.S. taxes. And if there is a difference, he still has to pay the difference. Fortunately, because of the devaluation of the peso, our tax rates are higher than those in the United States. But it could also be the other way around. The Philippines could now impose taxes on Filipinos presently living in America.

Senator Drilon. No, Mr. President.

Senator Osmeña (S). Not at all?

Senator Drilon. Because under our laws right now, Mr. President, income earned by Filipinos outside the Philippines is exempt from income taxes regardless of the amount of income earned. If we remember, this was part of the package of revenue reforms. I think it was the 11th Congress or the 10th Congress that passed it.

Senator Osmeña (S). Yes. Because the tax treaty between the United States and the Philippines states differently.

Senator Drilon. Yes. But we have a specific law.

Senator Osmeña (S). We have specifically taken that.

Senator Drilon. Yes.

Senator Osmeña (S). In case of death, which country's estate taxes would prevail?

Senator Drilon. Where the property is located, Mr. President.

Article 16 of the Civil Code states that real property as well as personal property is subject to the law of the country where it is situated.

Senator Osmeña (S). So, therefore, if I have cash, bonds or shares of \$1 million in the United States, it is the U.S. law that prevails at the time of death.

Senator Drilon. That is correct, Mr. President.

Senator Osmeña (S). What about if it is in a third country?

Senator Drilon. The third country?

Senator Osmeña (S). Yes. If I have \$1 million deposited in Liechtenstein?

Senator Drilon. The laws of Liechtenstein.

Senator Osmeña (S). So, that is Philippine jurisprudence today.

Senator Drilon. That is Philippine law, Mr. President.

Senator Osmeña (S). Therefore, it would be the advantage then of Filipino citizens whether or not this bill passes into law to keep assets offshore.

Senator Drilon. Assuming that there are favorable tax laws in that country.

Senator Osmeña (S). There are definitely countries with more favorable tax laws than we have.

Senator Drilon. That is correct, Mr. President. That is what our Civil Code provides under Article 16.

Senator Osmeña (S). Mr. President, would there be any prohibition--this is a far-fetched question--from somebody obtaining a third or a fourth citizenship under existing laws?

Senator Drilon. Under existing laws right now, there is none. One cannot do it because under Philippine laws, a Filipino who gets naturalized in a foreign country would lose his Philippine citizenship. Therefore, he cannot be a citizen of a third country.

Senator Osmeña (S). Under this law one will now be allowed to take on a third, a fourth or fifth citizenship.

Senator Drilon. That is correct, Mr. President, one is still considered a Filipino citizen.

Senator Osmeña (S). Lastly, Mr. President, the other day I made mention that existing jurisprudence in the United States, although it has not been fully tested. This specifically deals with the eligibility of someone to become President of the United States. This is the 14th Amendment of the U.S. Constitution which provides that all persons born or naturalized in the United States are citizens. Therefore, this has effectively divided Americans into two kinds of Americans--those born in the United States and those who are naturalized American citizens. If one is not born in the United States, he is

born outside the United States, he is an American citizen but he is considered a naturalized American citizen.

Having said that, Mr. President, how then does the word "naturalized", with the way we use it in our laws and in this bill, come to mean, knowing that I have just discovered that in the United States the term "naturalized" means something further.

Senator Drilon. Under our laws and jurisprudence, a natural-born citizen is one who at the time of his birth is a citizen of the Philippines and he does not have to do anything in order to acquire that Philippine citizenship. And under the Constitution, if one's father or mother is a citizen of the Philippines, he is a natural-born citizen of the country.

Senator Osmena (S). No matter where he is in the world?

Senator Drilon. No matter where he is in the world. A naturalized Filipino citizen is one who by some act was conferred a Philippine citizenship.

Senator Osmena (S). Whether voluntary or involuntary?

Senator Drilon. Whether voluntary or involuntary, Mr. President.

Senator Osmena (S). Therefore, anybody who at the time of birth does not have a Filipino father or a Filipina mother is not a citizen.

Senator Drilon. Not a citizen.

Senator Osmena (S). And is there any law now that confers upon any such being automatic citizenship just like in the United States?

Senator Drilon. None, Mr. President.

Senator Osmena (S). Would the gentleman say that the U.S. follows both the *jus soli* and *jus sanguinis* rule? *Jus soli* by virtue of the Constitution and *jus sanguinis* by virtue of statute?

Senator Drilon. As far as I understand the situation, my answer is in the affirmative.

Senator Osmena (S). It seems to me and I am not a lawyer that the *jus soli* law of the United States is recognized in the Constitution, and by using the word "naturalized", they also seem to recognize *jus sanguinis*. So there are countries that can recognize both.

Senator Drilon. Apparently, yes. The United States is one of them.

Senator Osmena (S). Is it in our Constitution that we would always be limited to *jus sanguinis*?

Senator Drilon. Yes, Mr. President.

Senator Osmena (S). So there is no way we can recognize by law or by statute anybody who was born in this country as a Filipino.

Senator Drilon. None, Mr. President.

Senator Osmena (S). Thank you very much, Mr. President.

Senator Drilon. Sen. John H. Osmena wanted to interpellate, Mr. President.

The Presiding Officer (Sen. De Castro). Sen. John H. Osmena is recognized for interpellation.

Senator Osmena (S). Thank you, Mr. President.

Senator Drilon. With pleasure. We yield to Sen. John Osmena, Mr. President.

Senator Osmena (J). Mr. President, given the porous state of our government system wherein a Tonggan becomes a Filipino for the purpose of playing basketball, and the Senate has two resolutions pending but nobody seems to care. Senator Barbers does not seem to care neither does Senator Angara. If it were only my committee, or if I could only find any form or shape to consider that as something of the affairs of the government committee, I would call a hearing.

Given that same situation, we have Pinizzi, an Italian, is a Filipino. A Tonggan, Taulava, is a Filipino. Somebody has adopted the name "Faras" and became somebody from Cabanalan.

I mean, I am afraid, Mr. President. I am in favor of this myself. Personally, yes. As a matter of fact, Senator Salonga wanted to have me ousted from the Senate because I was a dual citizen. And the 1987 Constitution frowns on this particular activity according to the doctrine of Salonga, which is not the case anymore because the Supreme Court has already ruled.

But anyway, my apprehension lies in the gentleman's paragraph, on page 2, line 10.

Senator Drilon. Yes.

Senator Osmena (J). "A system of continuing registration for individuals covered by this Act shall be established by an administrative mechanism."

Conceivably, a Chinese national could have a birth certificate from one of the many municipalities in this country, and could now claim to have been born in the Philippines, and therefore be a natural-born citizen and then registered there. Would it not be possible, Mr. President?

Senator Drilon. That would be possible. But that particular circumstance would be irrelevant as far as this bill is concerned. Because that Chinese has a

document which shows that he is a natural-born citizen of the Philippines.

Senator Osmeña (J). Yes, Mr. President. But other than that document, he would have a hard time trying to prove his residence. The fact that he is natural-born will be the sole evidence.

But having registered now in accordance with this bill, does he acquire a certain form of permanency or legitimacy, Mr. President?

Senator Drilon. No, Mr. President, because the registration contemplated on line 10 is not the determining factor as far as the grant or denial of citizenship is concerned.

In other words, if one is not a natural-born citizen of the country, his registration under Section 3 in the registration book does not grant him that Filipino citizenship.

Senator Osmeña (J). All right, Mr. President, I am happy to hear that.

Therefore, registration, in the context of the bill of the distinguished sponsor is simply a mechanical act of recording somebody's claim to have been born in the Philippines and being a Filipino citizen and enjoy the privileges of this Act.

Senator Drilon. That is correct, Mr. President, it does not add anything; it does not add any probative value to his document. If that document is fake, the fact that he registered under this proposed registration system will not add any value to that fake document.

Senator Osmeña (J). Can we add some words to this line, continuing registration, to record those individuals who claim to be covered by this Act?

Senator Drilon. Yes. I have no problems with that, Mr. President.

In fact, this sponsor is not so keen about retaining this particular paragraph, but instead is, in fact, thinking of a registry where we can place those who renounced Philippine citizenship which will now be with the Bureau of Immigration.

In other words, to trace those who have renounced their citizenship, we should have a registry of those who renounced their citizenship as proof that they are no longer Filipino citizens. Because going through this, if for example, somebody comes before the Consulate of the Philippines in San Francisco and validly renounces his Filipino citizenship, I do not know what that San Francisco Consulate will do with that document.

Senator Osmeña (J). I do not know if our foreign service law provides for that, but the American Foreign Service Law provides for a system of renunciation.

Senator Drilon. We have a system of renunciation here under Commonwealth Act No. 63, Mr. President.

Senator Osmeña (J). We have a system of renunciation.

Senator Drilon. Yes.

Senator Osmeña (J). Because in 1963 when I renounced my American citizenship, I filed with the U.S. Embassy a renunciation.

Senator Drilon. Yes. I have not seen the rules and regulations implementing Commonwealth Act No. 63. But under Section 1, paragraph 2, a Philippine citizenship may be lost by an express renunciation of citizenship. So I presume that the implementing rules would provide for a procedure in the renunciation.

Senator Osmeña (J). That is my only concern, Mr. President. I have no problem with this bill, having at one time been given a passport. After I obtained my Philippine passport, the American Embassy gave us an

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American passport, which I subsequently returned. So I can see what this would mean, how much it would benefit our other countrymen.

Thank you very much, Mr. President.

Senator Drilon. Thank you, Mr. President.

The Presiding Officer [Sen. De Castro]. I would like to thank Sen. John Osmeña.

Senator Drilon. Mr. President, there are still others who have...

Senator Biazon has indicated that he wants to ask a few questions on Monday.

SUSPENSION OF CONSIDERATION OF S. NO. 2130

Therefore, we move to suspend the period of interpellations and suspend also the consideration of this measure.

The Presiding Officer [Sen. De Castro]. Is there any objection? [Silence] There being none, the motion is approved.

With the permission of the Body, the Secretary will read the Additional Reference of Business.

ADDITIONAL REFERENCE OF BUSINESS

RESOLUTION

The Acting Secretary [Atty. Reyes]. Senate Joint Resolution No. 10, entitled

JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO SUSPEND THE EFFECTIVITY OF THE LAST PROVISION OF SECTION 26(A) OF REPUBLIC ACT NO. 8749, OTHERWISE KNOWN AS THE "PHILIPPINE CLEAN AIR ACT OF 1999" FOR A PERIOD NOT EXCEEDING ONE YEAR

Introduced by Senators Drilon, Villar Jr. and Leviste

The Presiding Officer [Sen. De Castro]. Referred to the Committees on Environment and Natural Resources; and Energy

The Majority Leader is recognized.

Senator Drilon. There being no more business for today, Mr. President, I move that we suspend our session until tomorrow at ten o'clock in the morning.

Senator Osmeña (J). Mr. President.

The Presiding Officer [Sen. De Castro]. Sen. John Osmeña is recognized.

PARLIAMENTARY INQUIRY OF SENATOR OSMEÑA (J)
(If the Committee Report on Transco Has
Been Submitted to the Bills and Index
Service and Included in the Order of Business)

Senator Osmeña (J). Mr. President, parliamentary inquiry of the Secretariat.

Has the committee report on the Transco been submitted already to the Bills and Index Division? Has it been already marked received?

Senator Drilon. Tonight, yes.

Senator Osmeña (J). Is it now in the Order of Business?

Senator Drilon. Not yet, Mr. President. It was just filed, now at 6:35 p.m. It is now 6:36 p.m. So it is not yet in the Order of Business.

Senator Osmeña (J). Thank you, Mr. President.

Senator Oreta. Mr. President.

The Presiding Officer [Sen. De Castro]. Sen. Teresa Aquino-Oreta is recognized.

Senator Oreta. Did I hear the Senate President say we will resume tomorrow?

Senator Drilon. We suspended our session until tomorrow.

Senator Oreta. Tomorrow....

Senator Drilon. At ten o'clock.

Senator Oreta. Mr. President, because we were attending the Finance Committee hearing this afternoon and the hearing will continue tomorrow at 9:30 in the morning, I think.

Senator Drilon. We will request that the Finance Committee suspend its session at about 10:30 a.m. when we hold our session.

Senator Oreta. All right. Thank you, Mr. President.

SUSPENSION OF SESSION

Senator Drilon. So I move that we suspend the session until tomorrow at ten o'clock in the morning.

The Presiding Officer [Sen. De Castro]. The session is suspended until ten o'clock tomorrow morning, October 17, 2002, if there is no objection. *[There was none.]*

It was 6:37 p.m.