

**THE HUMAN SECURITY ACT OF 2007:
A Study on the Political Implications of
Republic Act 9372 on the
Members and Supporters of Mass Organizations**

An Undergraduate Thesis
Presented To

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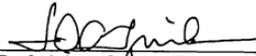
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APPROVAL SHEET

This thesis, entitled **The Human Security Act of 2007: A Study on the Political Implications of Republic Act 9372 on the Members and Supporters of Mass Organizations**, has been prepared and submitted by Maristelle Jean S. Tiamson, in partial fulfillment of the requirements for the degree of Bachelor of Arts major in Political Science.



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ABSTRACT

Transnational crimes have been in existence long before the 9/11 attacks in the United States took place. However, because of this incident, the capabilities of heightening fear and panic among the general public in order to challenge the authority of governments has been known.

As a response, the United States, being at the forefront and along with its "Coalition of the Willing," have come up with the measures and means to combat the threats of terrorism which include anti-terror legislations, intelligence and surveillance as well as police and military operations.

Here and abroad, efforts to enact anti-terror legislations have been challenged for being contentious and for having serious political implications.

With these facts at hand, the researcher intended to identify political implications of the Human Security Act of 2007 on the members and supporters of mass organizations and to know the factors that stimulate the formulation and enactment the Human Security Act of 2007 and the reasons that triggered certain institutions and individuals to challenge the said law.

After gathering pertinent facts as well as conducting interviews and analysis, the researcher found out that Human Security Act of 2007, just like any law, can be abused by law enforcement agents to bring about a chilling effect on individuals and organizations perceived by the government to be its enemies.

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CHAPTER I INTRODUCTION

STATEMENT OF THE PROBLEM

Transnational crimes have been in existence long before the 9/11 attacks in the United States took place. However, it was only during this incident that the power of the terrorists were made public as well as their capabilities of heightening fear and panic to the general public and of challenging the authority of the government. As a response, the United States government, through the United Nations, spearheaded measures and means to combat the threats of terrorism which include the legislation of anti-terrorism laws. The Philippines, along with other allied nations of the United States or the "Coalition of the Willing," has enacted the Human Security Act of 2007 (HSA).

Here and abroad, anti-terror legislations have been condemned by various institutions. A case in point is the anti-terror law of the United Kingdom where it is charged of an anti-democratic nature which was enacted on the basis of fighting terrorism but added to the draconian powers of the Labour government. The legislation was opposed specifically by the Muslim groups. The Muslim Association of Britain is against the anti-terror legislation because it alienates the legitimate Islamic beliefs and values. Secondly, Muslim groups believe that increasing the number of laws will not prevent an attack from occurring. Another opposition to the legislation rooted from the fact that more than 800 Muslim men

and women have been detained under the existing laws without charge and without trial.

In the Philippine setting, the HSA, although enacted both by the House of Representatives and the Senate, is yet to be implemented. The very nature of the HSA, according to critics, is surrounded by contentious elements. Critics to the HSA maintain that its provisions pose serious political implications specifically on the political opposition and the members and supporters of mass organizations.

This study is a response to the debate sparked by the HSA. In this light, the researcher was encouraged to dissect such implications on the concerned sectors of the Philippine society.

RESEARCH QUESTIONS

GENERAL QUESTION:

What are the political implications of the HSA on the concerned sectors of the society—political opposition and the members and supporters of mass organizations?

SPECIFIC QUESTIONS:

1. What are the factors that put forward the formulation and enactment of the anti-terror legislation?

2. What are the reasons for certain institutions and persons to challenge the HSA?

OBJECTIVES OF THE STUDY

GENERAL OBJECTIVE

To identify the political implications of the HSA on the concerned sectors of the Philippine society

SPECIFIC OBJECTIVES:

The researcher aims:

- To historicize the HSA which include the events that advance the legislation of the Anti-Terror Law;
- To understand the reasons which triggered certain institutions and persons to contest the constitutionality of the HSA

RESEARCH HYPOTHESES

NULL HYPOTHESIS – The variables under consideration will further extend the alleged abuses on the implementation of the HSA

ALTERNATIVE HYPOTHESIS – The variables have no significant effect on the implementation of the HSA.

REVIEW OF RELATED LITERATURE

Human security is a new idea that has been a long time in the making and yet it still remains a chronically underdeveloped concept in the field of politics. It is gaining ground specifically in international relations and becoming an increasingly influential idea in the policies both of nations and of international organizations. Although human security is far from becoming a generalized motive for international action, consensus has formed on two important traits of human security: firstly that it demands a refocusing of security on the individual, and secondly that this refocusing implies a broadening of the traditional concept of security (Jensen, 2006).

The movement from idea to materialization of such ideas often involves the cooperation of many individuals. However, this action becomes more complicated when it occurs within a bureaucracy. In an invitational conference on "*Countering Terrorism: Integration of Practice and Theory*" held in February 28, 2002 at the FBI Academy, Quantico, Virginia, more than 70 academic scholars and researchers, and personnel from justice, intelligence and law enforcement agencies were divided into seven groups. The respective groups discussed the scenarios developed before the conference. These scenarios depicted some of the current problems that both law enforcement agencies and intelligence agencies deal with as they attempt to discover find out cadres of terrorists.

Three broad themes emerged from the discussions. These were the following: (1) efficient and effective collection and dispersal of information; (2) development and maintenance of working relationships among various communities and law enforcement personnel, and; (3) effective communication with targeted people or groups that is important to effective counter-terrorist strategies.

Important issues need to be resolved to determine the potential of human security both as a doctrine and as policy. These issues include the role of the state as a partner in the human security of its people and the nature of its legitimacy, and the status of human security as a foreign policy tool and the legitimacy of exterior policies as opposed to contextualized responses to moral imperatives. As human security become a more relevant and influential concept, these questions are taking part in the international affairs. One example of how human security developed is apparent in both the European Union (EU) and United States (US) policies towards the Middle East and North Africa (MENA) region. In the post-9/11 world and in the context of the global fight against terrorism, the link between the human security of individuals in the MENA region and the security of both the EU and the US and their populations has become more obvious and newly relevant than it had been before (http://www.peacecenter.sciences-po.fr/journal/issue2pdf/jensen_fairlie.pdf).

Jensen (2006) observed that both the EU and US policies are based on the idea that "the security of human beings in another state will contribute to their own security and that development can be the solution to security problems."

Each policy is different in its approach, application and reception. The US policy focuses on the "non-negotiable demand of human dignity" and the vitality of development, democratization and liberalization of markets (Jensen, 2006). For these policies to materialize, the Middle East Partnership Initiative (MEPI) and the Greater Middle East Initiative (GMEI) were launched in 2002 and 2003 respectively. The former focused on politics, economy, education and women empowerment. The latter took a more aggressive position towards reform and democratization with emphasis on education and development of the private sector.

On the other hand, the EU policies in the MENA region focused on reform and cooperation as enshrined in the Barcelona Process which began in 1995 as a "pact between these countries to promote peace and security, liberalized markets and to foster a rapprochement of their peoples" (Jensen, 2006). These goals were to be realized through a series of bilateral and multilateral programs. In 2003, Wider Europe Neighbourhood Policy (ENP), which functions on the premise that cooperation will be mutually beneficial, was introduced as a response to the GMEI.

Jensen (2006) provided the dichotomy in approach in the MENA policy between the EU and the US. The EU policy, which focuses on multilateral means and comprehensive agreements, offers more funds for political reforms amounting to 3 billion Euros annually. In addition, the EU seeks a dialogue based on commonalities. On the contrary, US policy prefers to deal bilaterally with states and is more open to the use of force or coercion; threatening states "to meet democratic deficits with direct sanctions" (http://www.peacecenter.sciences-po.fr/journal/issue2pdf/jensen_fairlie.pdf).

The differences in approach imply a difference in the moral viewpoint between the EU and the US. The EU policy allows for more autonomy, time and resources to its regional partners. The US policy tends to impose particular solutions; thus, infers a very clear idea of what is considered to be appropriate according to a universalist code.

Conclusively, Jensen (2006) considered the foreign policies in the MENA region based on the key question on "how the normative status of the concept might affect its operationalization in terms of the legitimacy of the state sovereignty and the degree to which policies can be appropriated by those for whom they are intended." The possible combinations of these conditions are summarized in the matrix below. The matrix aims to exhibit the possible combinations of outcomes as they have been described, though not in the case study.

	Strong normative initiative	Weak normative initiative
Both Legitimate state partners:	Best human security results. Most contextualised policies	Limited human security results: possibility for contextualised policies by non-state actors. otherwise solution might be 'imposed'
Legitimate state partner (FP) : Illegitimate state partner (recipient)	Resistance to any outcomes from recipient: any human security contextualised but on terms imposed by illegitimate regime	Imposed results if any: least contextualised outcomes
Both Illegitimate state partners	Refusal to compromise: human security considered interventionist tool	Imposed solutions if any: poor prospects for human security: dangerous outcome possible
Illegitimate state partner (FP) : Legitimate state partner (recipient)	Imposed solutions: contextualisation contested: some human security outcomes possible according to common values	Imposed solutions: little context: someone else's human security

* FP: Foreign Policy state/ Recipient: state that is targeted by that foreign policy

Source: http://www.peacecenter.sciences-po.fr/journal/issue2pdf/jensen_fairlie.pdf

FRAMEWORK OF THE STUDY

The researcher used a combination of qualitative and quantitative research methods in order to understand and analyze the data gathered from various sources.

With consideration to the nature of the study, the researcher employed the critical social science approach which states that "*for an individual to bring about*

societal change, one must discover the underlying structures of society and in order to do this, one must carry out intense and directed questioning, must have a good theory about how the world works, and a historical orientation to better understand why things are the way they are now" (Neuman, 2003). Hence the critical social science approach aided the researcher in determining the political implications of the HSA on the concerned sectors of the Philippine society.

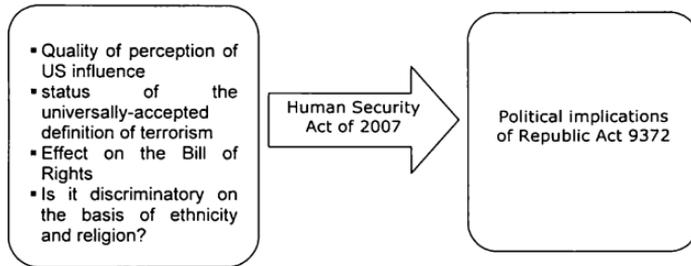
Theoretical Framework

Most of the major theories of terrorism in the field of political science are derived from theories of collective violence. It can be safely said that political science had a monopoly of theories of terrorism, followed by the disciplines of religion and economics. Sociological, psychological, and criminological theories have also certainly had a role to play with some relevance. Theorists pointed out that theology, religion and philosophy are essential factors in the study of terrorism. It is also a fact that about a quarter of all terrorist groups and about half of the most dangerous ones on earth are primarily motivated by religious concerns (<http://www.martinfrost.ws/htmlfiles/criminology.html>). Terrorists (or freedom fighters for some) believe that God approve their acts; moreover, demands for their action. Terrorists are also driven by the dashed hopes, broken dreams, and unfulfilled achievements of globalization where the rich-poor dichotomy widens. From this perspective, rich people (or nations) are seen as wanting power and wealth, and poor people (or nations) are seen as wanting justice (<http://www.martinfrost.ws/htmlfiles/criminology.html>).

The global spread of terrorism has a consequence in the form of countermeasures. These countermeasures range from increased security checks, greater police surveillance, improved search and seizure measures, to changes in the legal code, as well as changes in the organizational and ideological forms. Organizations dedicated to maintaining civil order emerge as well. But these things are not the only effects terrorism brings.

Resort to legislation as a solution would just escalate the levels and amounts of terrorism. The idea that legislation is a magical cure-all is just a "conceptual palliative more than a pragmatic solution" (Yohan, 1977). It addresses the consequences of terrorism but leaves its causes untouched. Thus, it does not only insure higher levels of punishment but also increase sophistication in terrorist crimes.

Conceptual Framework



Since the study aims to establish a correlative relationship between the HSA and the issues attached to it, and its political implications, the researcher used the independent variable-dependent variable structure; where the factors such as the quality of perception on United States influence, status of the universally-accepted definition of terrorism, effect on the Bill of Rights, and question of whether it is discriminatory based on ethnicity and religion, served as the independent variables which affect the political implications of the implementation of R.A 9372 (dependent variable).

The efforts of various nations to pass anti-terror legislations have been met with a lot of objections, debates and criticisms from the various sectors of the society. The bases of these objections, according to *The Anti-Terror Bill: A Human Rights Critique*, ranges from the absence of universally-accepted definition of terrorism to the question on the real intention of the legislation and its effects on the fundamental rights and freedoms of the people.

In the Philippines, one of the major criticisms to the HSA is that it is strongly pushed as a response to the call of the United States to its allied nations or the "Coalition of the Willing" to enact anti-terror measures in the wake of the 9/11 attacks (Salvador, 2006). In this regard, the researcher intended to find out whether the quality of perception of United States influence on the legislation of the HSA is high or low.

The HSA has become the subject of heated debates for being violative of the Bill of Rights. Section 4 states that "*persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment. There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the same.*" Critics argue that through this provision mere conspiracy makes anyone liable of the crime whereas most penal laws require a direct relation to the crime committed. In the light of this matter, the researcher aimed to determine whether the HSA is violative or supportive of the Bill of Rights.

Another factor considered is the alleged discrimination posed by the HSA. Generally, terrorist activities are often associated with a group or sector of the society, specifically the Muslims of Arabs; thus, there is the danger that the profiling of terrorists will always be biased against ethnic or religious formation particularly Islam (Andag & Retuerma, 2006). In the Philippines, members of the Muslim community

are usually profiled and associated with terrorist activities. This is so because it is commonly believed that terrorist groups operating in the country are connected with Muslim groups like the Abu Sayyaf. Accordingly, the researcher intended know whether or not the HSA has discriminatory tendencies with preconceived notion based on ethnicity and religion.

With the abovementioned factors, that is, the issues associated with the HSA, the researcher intended to determine the political implications that come with the implementation of R.A. 9372.

RESEARCH DESIGN AND METHODOLOGY

Research Design

In lieu of the established objective of the study which is, generally, to determine the political implications on the concerned sectors of the Philippine society, that is, political opposition and members and supporters of mass organizations, of the implementation of Republic Act (RA) 9372, this research is intended to be descriptive and analytical. The factors considered to contribute to the contentions on HSA were validated and eventually determining the political implications of the HSA as the research progresses; thus, the use of such design will be useful in attaining the research objectives.

Data Collection

Data Set	Data Sources	Method of Data Collection
Political implications on the concerned sectors of the society	Representatives of mass organizations ✓ Task Force Detainees of the Philippines ✓ KARAPATAN ✓ Commission on Human Rights Scholarly journals	Key Informant Interview Literature review
Factors that brought about the legislation	Experts on policy-making Scholarly journals Government records	Key Informant Interview Literature review
Reasons for challenging the HSA	Representatives of mass organizations Legislators Scholarly journals	Key Informant Interview Literature review

The first data set focused on the political implications of the HSA on the concerned sectors of the Philippine society, that is, the political opposition and members and supporters of mass organizations. Key informant interviews were conducted. Key informants were chosen primarily on the basis of their knowledge on the research topic. The researcher consulted scholarly journals as well to further strengthen the information provided by key informants.

The second data set focused on the legal and socio-political factors that brought about the legislation of the HSA. This was done by consulting second-

hand literature which includes books, government records, credible journals, newspaper articles, and past studies related to the research topic. Key informant interviews with experts in the field of policy-making and political analysts were integral sources of data for this study.

The third data set seeks to discover the reasons of certain institutions and individuals to challenge the HSA. This was done by conducting key informant interviews with personalities from the political opposition and legislators as well as the members and supporters of mass organizations. Second-hand literature reviews were also conducted on scholarly journals.

Triangulation

Triangulation was done through the use of different data gathering techniques and various data sources. Sources included the authors/sponsors and critics of the RA 9372. The researcher also subscribed to government documents in order to arrive at an unbiased conclusion at the end of the study.

Validation

To ascertain the integrity and reliability of the study, the researcher chose respondents who are well-informed of the subject being studied. The researcher intended to review relevant literature to further validate the conclusion.

Credibility of interpretation is guaranteed by the researcher through the preservation of records of interview, field notes and the process for data analysis. The researcher also gathered data from different data sets to check inconsistencies.

Data Analysis

Data obtained was analyzed primarily using the qualitative method. In addition, quantitative methods were used to further strengthen the dominant qualitative design of the research.

Quantitative Data – The researcher analyzed the gathered data using descriptive statistics specifically the measures of central tendency. Furthermore, the researcher used mode to summarize the information collected from the respondents.

Quantitative content analysis was utilized via the transcriptions of the interviews to be conducted in order to establish basic accuracy of the recurring themes and sub-themes from the mass of words from the interview.

Qualitative Data – “The analytic memo is a memo or discussion of thoughts and ideas about the coding process that a researcher writes to himself or herself” (Neuman, 2003). Throughout the research process, sudden reflections and ideas come out. In this regard, the researcher took note of these thoughts as a form of mental processing whether in the field or not.

Interviews were either audio-recorded or video-recorded depending on the discretion of participant. Minutes of the interview were transcribed verbatim. Analysis of data gathered required the systematic arrangement of raw data into themes and sub-themes; thus, the researcher used open coding.

LIMITATION OF THE STUDY

Since the Act under study is of national concern, the researches focused on the proceedings of the HSA on the Senate. However, in terms of legislative history, the researcher also took into consideration the House of Representatives. The researcher gathered data mainly from the Senate which includes journals and privilege speeches as well as press statements of senators.

The methodology of the study provided for the triangulation of sources by setting the criteria in choosing the key informants. However, due to the busy schedule of the senators and the time constraint, the researcher failed to obtain the proponents' side on the issues at hand. To provide remedy, the researcher relied on secondary sources which present the point of view of the authors and sponsors.

ETHICS

Consent forms were given to participants inclusive of the information about the following: (a) a brief description of the procedure of the research; (b) reasons for doing the study; (c) identification of the researcher; (d) researcher's contact number;

(e) a statement that the participation is completely voluntary; (f) potential indirect benefits; (g) potential users of findings; and (h) measures for confidentiality and protection of identity.

Participants were given time to study the consent forms. To make sure that everything about the research is clear, the researcher discussed important details about the study before starting each interview.

Since the topic of the study is sensitive, one of the risks in participating in the study is harassment from government authorities. Protection of data and identity of participants was carefully addressed.

Confidentiality of recorded information, such as papers and tapes, and anonymity of informants were protected through the following measures: (a) records, field notes and documents were kept in a secured place; (b) names of participants were replaced with pseudo names.

There are no perceived direct benefits to participants. Participants were informed that the study has no funding for fees for participation. Indirect benefits, on the other hand, may be derived from the airing of the participants' experiences, views and insights regarding the subject to the readers, thus providing the venue for ensuring public awareness on the issue. Copies of research results were given to concerned authorities.

CHAPTER II INSTRUMENTS OF COUNTERTERRORISM

Many years since the end of World War II, the world is still plagued by conflicts. A multiplicity threats has emerged to bother the global community where anyone can be victimized by sudden, brutal death in the hands of people who are ready to resort to violence in order to achieve an end. Innovations in technology form part of the threat of modern terrorism, which operates by way of mass communications and advanced technology. Technological advancements at present like physically destructive means or biological and chemical weapons contribute to the increase in scale of damage inflicted upon targets. Media, as well, is used to cause the global audience to be intimidated by the threats of violence.

As noted in the book, *The Struggle against Terrorism*, the author described the basic nature of terrorism in this situation:

"If you are filled with rage because the twentieth century is as imperfect as the others, or because the injustice that hurts you most has not been removed from the world, or just because you cannot get other people to agree with you, you are entitle grab the first person you see on the street and hold him at gunpoint in a cellar unit until the government buys you off."

What are the crucial elements of modern terrorism? According to Lineberry, there is, first of all, the grievance and the fanaticism which rationalize the use of

terrorist means towards an ideological agenda. Then, there are the vulnerable targets. There is also the fascination on the part of the mass media. Lastly, there is the response to the attack. It is the ability of the terrorists to provoke the public to panic and the concerned authorities to take action which gives the terrorists the power to manipulate and be in control. In this regard, terrorism must not be ignored.

The horror of modern terrorism is that everyone is a potential victim. As a response, governments have taken stricter security measures to combat terrorism. These policies undertaken by governments include the several instruments of counterterrorism which include diplomacy, criminal justice system, intelligence and surveillance machineries, financial controls as well as police and military operations.

Diplomacy, as it is known, is an instrument of international relations. It is defined by many authors as the "art of negotiation." In the light of counterterrorism, diplomats were rarely able to apply their diplomatic skills directly to the terrorists. Yet diplomacy has a role to play in countering terrorism. It is a part of the efforts which rely heavily on the engagement with foreign groups and states. Leading states, whose interest is to combat the violence and threats connected with terrorism, use persuasion as well as assistance to influence foreign governments to undertake steps and measures aimed at curbing the activity of terrorists groups. For instance, the United States periodically engages several foreign governments in broad multifunctional counterterrorist exchanges (Pillar, 2001).

Apart from bilateral diplomacy, multilateral diplomacy helps counterterrorism efforts. First, multilateral resolutions can provide a formal structure for making demands and implementing responses. This is reflected in the efforts of the UN Security Council in case of the Libya and the Pan Am 103. The Council adopted Resolution 731 which condemned international terrorism and called on the Libyan government to cooperate in finding out who are responsible in the Pan Am disaster. Second, it reinforces international norm against the use of terrorism. This trend is manifested in UN General Assembly's increasing denunciations of terrorism. Third, multilateral diplomacy helps counterterrorism by providing common standards which facilitate cooperation on certain matters (Pillar, 2001).

To provide grounds and to further strengthen counterterrorist efforts, governments have legislated and applied criminal laws which have become an increasingly large part of United States efforts to provide counteractions against international terrorism. In this regard, arrests and prosecutions of terrorists are frequently used as scorecards of success (Simonsen & Spindlove, 2003). Commitment to prosecute terrorists may help reduce terrorism in four ways: (1) putting a terrorist in prison prevents further attacks from happening; (2) it is believed by analysts that movements and operations of terrorists are impeded by their knowledge that they are wanted by the authorities; (3) when a government is completely committed to its goal of eradicating terrorism, other governments are encouraged as well to act forcefully against terrorism and to sustain public

awareness of the problem at hand; and, (4) the likelihood of being caught and punished deters some terrorists from attacking.

With the stated advantages offered by criminal justice system, limitations as well are present. The deterrent effect of criminal system is variable and uncertain (Simonsen & Spindlove, 2003). Fear of imprisonment causes some terrorists to hesitate. However, for others, accomplishment of an ideological agenda through their glorious (for the terrorists) deed may be more important than the possibility of getting caught and prosecuted. Another limitation is that criminal justice system only provides temporary interruption in the terrorist attacks. It does not guarantee a complete halt in the operations of the terrorist organizations since the terrorists caught are those of low-level rank in the organization. The fact that the leaders of terrorist groups are still in the position to direct terrorist attacks entail that the threats and violence associated with terrorism will continue.

Another tool employed by governments and other institutions as a counteraction to terrorism is financial controls by way of freezing assets and prohibition of material support to terrorists. Financial controls have been a focus of attention of governments and other institutions to impose sanctions on wrongdoers. Money has often been described as a key to international terrorism and thus to countering terrorism and its manifestations. Track it and the responsibility for terrorist attacks will become clear; Interdict it and terrorism will be reduced as its financial "lifeblood" dries up (Wenger & Zimmermann, 2003).

Money is also the subject of international conventions on terrorism. For example, the International Convention on the Suppression of the Financing of Terrorism which was adopted by the UN General Assembly on December 9, 1999. This convention requires governments to criminalize the provision of collection of funds for terrorist attacks and to seize or freeze funds known to be allocated for terrorist purposes, and mandates cooperation on investigations and extraditions in cases involving financial support to terrorism.

Financial control efforts, although backed up by laws and enforcement agencies, are still hindered from realizing goals and achieving success. According to Clayton Northouse, terrorists usually have multiple channels for storing and moving funds which makes it hard for the financial control laws to be fully implemented. Indeed, it is difficult to track down the money that flow in the network of terrorists and their supporters.

Last instrument of counterterrorist policy is the close observation and monitoring of suspected terrorists. Intelligence is one of the most valuable resources in countering terrorism. An effective intelligence and surveillance effort, according to Lineberry, must not only catch bombers, but uncover and smash their elaborate support auxiliaries as well. This is reflected in the adoption of a "Big Brother" model by the British police in the 1990s. In this strategy, civilian police forces maintain watchful eyes on the communities where they serve. Closed circuit

television cameras were also installed to monitor the major cities as well as the major motorway systems.

Intelligence and surveillance contribute to counteract terrorism by uncovering terrorist plots in time (for measures to be taken to remove the threat) and by putting the targets out of reach. Occasionally this takes place. It does not happen often due to the fact that intelligence on terrorist threats is seldom sufficient to curb plots or to put targets out of reach. In addition, specific information on terrorist threats is rare because there are few informers that could provide such information, and those sources are hard to get since individuals with the most information often have possible involvement in the past terrorist attacks. Thus, terrorist-related intelligence provides little direct or conclusive information about terrorist attacks. It does not provide a great deal of information that is potentially useful.

With the limitations of each instrument of counterterrorist policy, the need for coordination has become necessary. No single approach or instrument can make a counterterrorist policy effective. Officials of governments as well as law enforcement agencies must consider the use of these instruments. Partnership between and among instruments of counterterrorist policy becomes a crucial strength in order to combat terrorism. For instance, once a terrorist attack occurs, intelligence has a key role to play in every counterterrorist operation along with the other instruments in determining responsibility of the crime of terrorism and locating and capturing the

perpetrators. Thus, these instruments are complementary and must be used in concert.

CHAPTER III
BACKGROUND OF REPUBLIC ACT 9372

LEGISLATIVE HISTORY

The September 11, 2001 attacks in the United States spurred world-wide panicked against terrorism. In response, states in the international community have legislated bills with the objective of countering and combating terrorist attacks nationally as well as internationally. The Philippines as a principal ally to the United States gave its immediate support to the war on terrorism and passed a bill addressing this global issue.

The Philippine Senate and the House of Representatives each had processed a draft of an Anti-Terrorism Bill to assert its importance and urgency. There were a number of anti-terror bills that were principally sponsored by different legislators. In 2005, a Senate Bill and a House Bill were finally submitted which represented and consolidated all the other bills against terrorism. For the Lower House, Congresswoman Imee Marcos, together with twenty-seven co-authors, on October 11, 2005 filed the House Bill 4839 which is shortly entitled "the Anti-terrorism Act of 2005" (www.congress.gov.ph). The following day, the bill's first reading was conducted; immediately, President Gloria Macapagal-Arroyo certified the bill as urgent through a memorandum to House Speaker Jose de Venecia. Also, it was at once approved by the Committees on Justice and Foreign Affairs, and then referred to the Committee on Rules (www.congress.gov.ph).

The House of Representatives significantly set the periods of sponsorship and interpellation as well as its succeeding readings expeditiously. On the same day of the House Bill's filing and first reading, the Committee on Rules had immediately set November 22, 2005 as the date for the second reading and floor discussion about the provisions of the HB 4839. The period of sponsorship was scheduled on November 29 wherein Representative Simeon Datumanong, Antonio Cuenco, and Marcelino Libanan who were Chairman of the Committee of Justice, Chairman of the Committee on Foreign Affairs, and Vice Chairman of the Committee on Justice respectively, gave their justifications on why the bill should be passed immediately and its perceived advantageous effects for the nation. On the other hand, the period of interpellations was set from December 12 to 14 of the same year. During this scheduled time, Representatives Crispin Beltran, Benigno Aquino III, Edcel Lagman, and Liza Maza discussed and stressed the disadvantages and ambiguities the provisions of the said Anti-Terror Bill will cause.

On December 14, 2005, the Lower House' version of the ATB had passed its second reading. On the same day, the different committees gave their suggested corrections and the period of individual amendments began. Meanwhile, on January 16, 2006, the bill was reconsidered to introduce further amendments. The period of individual amendments continued until April 4, 2006 (www.congress.gov.ph). During these sessions, various representatives presented their recommended amendments for the provisions of the bill. On the last day of giving individual amendments, the reconsidered measure was approved by the

house on its third reading (www.congress.gov.ph). The house voted on its approval and produced 117 affirmations, twenty-eight refusals and no abstains. On April 5, the lower house transmitted the bill to Senate.

The counterpart Anti-terror bill filed in the Senate was likewise processed in a speedy manner compared to other bills. Manuel Villar Jr. filed a parallel Anti-terror bill (Senate Bill 2317) on October 12, 2005 which was co-sponsored by Senators Panfilo Lacson, Juan Ponce Enrile, Jinggoy Estraday, Ramon Magsaysay, and Alfredo Lim. On the same day as its submission, President Arroyo also considered SB 2137 as urgent and certified its immediate enactment (www.senate.gov.ph). Villar recommended in his sponsorship speech the approval of the bill in substitution of Senate Bill Nos. 735, 831, 871, 1736 and 1768.

The period of sponsorship and interpellation for the ATB in the Philippine Senate started May 22 2006 and lasted on October 4, 2006. During these periods, Senator Aquilino Pimentel introduced ninety-eight amendments in response to the contentious provisions of SB 2317 related to human rights abuses. Ninety-six out of these recommendations were approved (Yap, 2007). After numerous sessions for amending the bill's provisions and introducing some 'safeguards, Senator Juan Ponce Enrile commented that the bill was already sufficient and already meeting the needs of national security (Yap, 2007). In addition, Senator Enrile stated that any further amendments will be introduced after its implementation wherein concrete reasons would be elicited for changes to push through. To end the long debate,

Sen. Enrile agreed to Pimentel's proposals and saying that "We can amend it. We'll see first if there's grounds to amend it" (Yap, 2007)

However, in October 2, Senators Mar Roxas and Jamby Madrigal declared their firm objections on the bill. Senator Madrigal states the they are legislating martial law and asserted that the bill "will create a shadow criminal justice system that in turn will be used as an instrument of a greater terror perpetrated by people in power against their critics and political opponents" (San Juan, 2007). She also stated in her press release the freedom and human rights guaranteed by the Constitution should not be stifled in order to achieve national security (Madrigal, 2007). Human security and human rights goes hand in hand and are not alternatives (Madrigal, 2007). Senator Madrigal believes that the Anti-Terror Bill contains vague and sweeping provisions that practically abolish "the rights to freedom of expression and association, the liberty of movement, the prohibition against arbitrary detention, and the rights to the presumption of innocence and fair trial" (San Juan, 2007).

Furthermore, the justifications given by Senator Mar Roxas opposing the passage of the Anti-terror were similar to the statements given by Senator Madrigal. Senator Mar Roxas basically voted against the passage of the Anti-terror bill because he believes that the "fight against terror requires urgent operational reforms over measures that could impair civil liberties" (Roxas, 2007). In pursuing these operational reforms, the databases of key departments and agencies, like the Department of National Defense, Department of Foreign Affairs, Bureau of

Immigration, Philippine National Police, National Bureau of Investigation, on the anti-terror front need to be able to cooperate with one another and "share crucial information to identify bombers, sharpen the manhunt and tighten the noose against terrorists" (Roxas, 2007). Moreover, Roxas stated that the operational gaps of these agencies need to be addressed first before implementing a stringent Anti-Terror Law (Roxas, 2007). Roxas likewise suggested that the implementation of the Human Security Act should come with a set of implementing rules and regulations that will "provide clear and definite boundaries on how the provisions of the HSA are to be implemented by our men in uniform and prosecutors" (Roxas, 2007). Furthermore, this set of implementing rules and regulations will basically shield the people against human rights abuses.

Despite the clear justifications of the opposing senators, the motion to close the interpellation period was affirmed and concluded by October 4, 2006. On the 11th day of the month, amendments from the committees were given. On November 8, 2006 the senators individually started to give their suggested amendments on the provisions of the Anti-Terror Bill (www.senate.gov.ph). The period for individual amendments continued until February 6, 2007 and on this day the bill was approved on its second reading still with having the consideration of amending some of its provisions (www.senate.gov.ph). The following day after its second reading approval, the senate's version of the ATB was already approved on the third reading. On its ratification, the senate produced a total of sixteen affirmative votes, two opposing votes, and no abstentions.

After the Anti-Terror Bills in both House of Representatives and Senate were approved on its third reading, the House of Representatives on February 2, 2007 requested to form a conference committee which aims to integrate the provisions of House Bill 4839 and Senate Bill 2137. Both houses have agreed to form a conference committee on the same day of the following year (www.congress.com.ph). The committee composed of ten congressmen from the lower chamber and nine from the upper house. In February 8, the conference committee reported to the Senate and recommended that the senate's version of the Anti-Terror bill will be adopted and be approved as the final version. In the same day, the conference committee report was approved by the Senate. Consequently, the report submitted by the conference committee was approved by the House of Representatives by February 19 (www.senate.gov.ph).

Once the consolidated version of the bills had been signed and approved by both Houses, it was then transmitted to the President on February 27 and was officially signed into law and given an approved action on March 6 of the same year (www.senate.gov.ph). The RA 9372 was then created and ratified having the title of "An Act to Secure the State and Protect Our People from Terrorism" and in short, the "Human Security Act of 2007". According to this Act, its provisions will be effective two months after the national elections in May 2007 (p30, sec62, RA 9372).

SUMMARY OF PROVISIONS

The instated goals of the Law are to "secure the state and protect life, liberty, and property from acts of terrorism" Thus, the sphere of jurisdiction was covered through these goals in the RA 9372 or the "Human Security Act of 2007". The different provisions covered such considerations as the technical matters pertaining to the definition, the enforcement, the classification of persons included, measures to be undertaken for knowledge of the act thereof, the entities involved (including institutions), and the sanctions for the acts noted under the said Law.

The first portion included the definitional matters – those involving "terrorism". The third section delineated crimes punishable under the Revised Penal Code which are also covered by the scope of the definition. The section also defined terrorism as any act "creating a condition of widespread and extraordinary fear and panic among the populace" in forcibly demanding an unlawful pursuit from the government.

The succeeding fourth to sixth sections elucidated on the indirect participation of individuals or entities in the said act. It elaborated on those who could be involved in the commission of a "terroristic" act, and upon proof, the sanctions to be inflicted upon them. Terms such as conspirators, accomplices and accessories were legally explained.

Sections seven to sixteen involve the surveillance and the different considerations incorporated with it. These sections elaborated on the required grounds for filing an authorization for surveillance, the procedures to be undertaken for such action to be within the law, the right of the person under surveillance to know and to inquire on the details of the measure undertaken, the limits of the measure with regard to time (e.g. expiration of surveillance authorization), the duties of the authorities concerned (e.g. Court of Appeals), the custody, disposition, application and evidentiary value of the materials used for the surveillance, and the penalties to be inflicted upon malicious utilization of the measure.

Section seventeen of the Law included (or reiterated in this case) in the list of defined "terrorists" organizations, associations or a group of persons (conspirators). They are defined as those "organized for the purpose of engaging in terrorism".

Sections eighteen to twenty five elucidates on the conception of detention with regard to perceived "terrorists" by the state. This includes the nature of detention (without judicial warrant of arrest), the period of detention, differentiated in times of peace and emergency situations; the legal consequences of the detention, and the rights and measures for protection of a person or an entity described thereof under detention.

The twenty-sixth section elucidates on the restriction of a detainee to travel. Sections twenty-seven to forty-three tackle matters regarding the opening and

unproven charge of "terrorism" to a person or entity shall be compensated with damages of a specific amount and span.

Sections fifty-three to fifty-six elucidated on the committees and institutions or agencies that will take responsibility of the enforcement and supervision of the Law. This includes the Anti-Terrorism Council – its nature and functions delineated in sections fifty-three to fifty-four, the Commission on Human Rights and the Grievance Committee.

Section fifty-six talks about extraordinary rendition. It is stated that no person suspected, detained or convicted of the "crime of terrorism" shall be subjected to rendition to another country unless it is legally necessary and secured by the destination country.

Section fifty-nine created a legislative Oversight Committee for the checking on the implementation of the Human Security Act.

CHAPTER IV FINDINGS AND DISCUSSIONS

Terrorism has posed a serious threat on the global community, specifically international security, long before September 11 attacks. However, because of this incident, the capabilities of heightening fear and panic among the general public in order to challenge the authority of governments has been known.

The efforts of various nations, including the Philippines, to enact anti-terror laws have been met with debates, objections and criticisms ranging from the lack of universally-accepted definition of terrorism to its effects on the fundamental rights and freedoms of the people.

ARROYO ADMINISTRATION'S INTERNATIONAL COMMITMENT TO COMBAT TERRORISM

As the threat of terrorism, which has been intensified by the potential accessibility of weapons of mass destruction, challenges the stability and security of states in the post-Cold War era, it has become imperative for the states and the international community to address this problem not just at the national level but also on the regional and international level. In response to this, the United States government under the administration of George W. Bush, through the United Nations, spearheaded measures to combat the threat posed by terrorism, along with other members of the international community which support the war on terror. Such measures include legislation of anti-terrorism laws. However, critics say that such initiatives of legislating laws are strongly pushed as a response to the call of

the United States to its allied nations, known as the "Coalition of the Willing," to enact anti-terror laws in the wake of the 9/11 attacks in 2001 (Andag & Retuerma, 2006).

At the regional level, the Arroyo administration has initiated and signed three agreements indicating its adherence to the fight against terrorism which emerges as a challenge that threatens the Asia-Pacific region (Bajao, 2004). First was during the 7th ASEAN in Brunei on November 5, 2001, when the ASEAN Heads of States/Governments issued a declaration on joint action to counter terrorism. Second was during the ASEAN Special Ministerial Meeting on Transnational Crime where President Arroyo proposed to combat terrorism on a Regional Operational Convention by holding multilateral simulation exercises. Third is the signing of the Trilateral Agreement of Exchange of Information and Establishment of Communication Procedures by the Philippines, Indonesia and Malaysia on May 7, 2002.

The Arroyo administration, being one of the key players in the United States-led Global War on Terror (GWOT), endorsed the anti-terrorism legislation and classified the anti-terrorism bill as an "urgent bill." As a strong ally of the United States and as a charter member of the United Nations, the Philippine Government has adopted measures to support the international campaign against terrorism which include the following: (1) participating in the International Counter-Terrorism Coalition and working with the United Nations; (2) working closely with the United

States on a broad spectrum of efforts against terrorism; (3) promoting partnership with Malaysia and Indonesia for a Trilateral Regional Coalition against terrorism; (4) making available Philippine airspace, airports, and seaports, for use as staging and transit points; (5) contributing logistical support in the form of supplies, medicine, and medical personnel; (6) providing combat troops if there is an international call for it, and with the concurrence from the Congress; and (7) preventing the flow of funds to terrorist groups through the Philippines by passing and implementing the Anti-Money Laundering Bill, which was signed into in 2003 (Bajao, 2004).

DEBATE ON THE DEFINITION OF TERRORISM

Terrorism is a complex issue (Clamor, 2008). Most discussions on the issue of terrorism as well as the measures and means of combating it have always been challenged by the problem of defining the work "terrorism." While the term has been frequently used and its practice generally opposed, there is no commonly agreed definition of what terrorism is. The search for a universally-accepted definition of terrorism is still an ongoing process. Although there have been attempts at the international level to define the word "terrorism," efforts have been consistently impeded by conflicting interests and power struggles among states.

The first attempt to arrive at a universally-accepted definition of terrorism was made under the League of Nations in the draft Convention for the Prevention and Punishment of Terrorism of 1937 (Andag & Retuerma, 2006). The draft convention defined terrorism as, "*all criminal acts directed against a State and intended or*

calculated to create a state of terror in the minds of particular persons or group of persons or the general public" (Article 1 of the 1937 League of Nations Convention for the Prevention and Punishment of Terrorism).

However, the said convention failed to acquire legal recognition under international law due to the failure of ratification and the eventual dissolution of the League of Nations in 1946.

The second attempt was made by the United Nations. For several years, the UN General Assembly has created several ad hoc committees whose primary task is to come up with an operative definition of terrorism. However, due to the lack of consensus among member states, these committees have consistently been unsuccessful. It cannot be denied, though, that the United Nations has contributed significantly in the fight against terrorism by establishing international norms against terrorism.

In UN Secretary General Kofi Annan's progress report on his Millennium Development Goals entitled "In Larger Freedom: Towards Development, Security and Human Rights For All," he endorsed the definition of terrorism as any actions, *"intended to cause death or serious bodily harm to civilians on non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act."*

Another attempt was made in 1988 by A.P. Schmid a terrorism expert. The Schmid definition of terrorism states that:

"Terrorism is an anxiety-inspiring method of repeated violent actions, employed by (semi) clandestine individual, group or state actors, for idiosyncratic, criminal, or political reasons, whereby—in contrast to assassination—the direct targets or violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience[s]), turning in into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought."

The North Atlantic Treaty Organization's (NATO) Military Concept for Defense Against Terrorism promotes another definition of terrorism. It defines terrorism as *"the unlawful use or threatened use of force or violence against individuals or property in an attempt to coerce or intimidate governments or societies to achieve political, religious, or ideological objective."*

The European Union (EU) has come up with its own definition which is outlined in Article 1 of the Framework Decision on Combating Terrorism in 2002.

The EU definition states that terrorist offenses are certain criminal acts set out in a list comprised largely of serious offenses against persons and property which, *"given their nature or context, may seriously damage a country or an international organization when committed with the aim of: (1) seriously intimidating a population; or (2) unduly compelling a government or international organization to perform or abstain from performing any act; (3) or seriously destabilizing or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organization."*

With the previously state definitions of terrorism, it is evident that governments/states are the primary targets; thus, excluded from possible participation in any terrorist acts. The Organization of Islamic Conference provides a definition which opposes the non-exclusion of states as possible perpetrators.

The OIC's Convention of Combating International Terrorism states that *"terrorism cannot be justified in any way, and that it should therefore be unambiguously condemned in all its forms and manifestations, and in all its actions, means and practices, whatever its origin, causes or purposes, including direct or indirect actions of states."* The same convention defined terrorism as *"any act of violence or threat thereof, notwithstanding its motives or intentions, perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honor, freedoms, security or rights of exposing the environment or any facility or public or private property to hazards*

or occupying or seizing them, or endangering a national resource or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent states."

The two countries recognized as the leaders of the fight against terrorism, the United States and Great Britain have not come up with a common definition of terrorism. The United States defined terrorism as "*activities that (a) involve acts dangerous to human life that are a violation of the criminal laws of the US or of any state, that (b) appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping, and, (c) occur primarily within the territorial jurisdiction of the US.*"

In the British Terrorism Act of 2000, terrorism is defined to include not only violent offenses against persons and physical damage to property, but also acts "*designed to seriously interfere with or seriously to disrupt an electronic system.*"

Apparently, almost every serious attempt to define the term "terrorism" sponsored by governments excludes themselves from the definition which makes it a complex issue. The basic reason for this lies on the conflict interests of sovereign states and the power struggles behind every undertakings of these states. As a result, the capacity of states as well international organizations to address the complexity of the problem of terrorism is limited.

In the Philippine context, the HSA has been criticized by various sector including the academe and human rights community for defining terrorism vaguely and all-encompassing. It is being questioned due to the lack of clear standards that will define and determine the intent of a terrorist attack. If the definition is vague, then it is subject to multiple interpretations (Clamor & Medina, 2008). For instance, any action perceived to destabilize the government can be interpreted as inciting to terrorism. According to Atty. Medina of the Ateneo Human Rights Center, it (vague definition) gives the law enforcers "unbridled discretion in interpreting the provisions of the law."

A petition was filed before the Supreme Court to declare the HSA as unconstitutional. Petitioners argue that the definition provided by the law is "plainly vague and broad at the same time, inviting so much speculation, disagreement, subjectivity and arbitrariness."

At the international level, the HSA has also been questioned. In the words of Martin Scheinin, the United Nations' Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, "... *there are some positive aspects of the definition of terrorist acts in the Human Security Act but the end result is an overly broad definition which is seen to be at variance with the principle of legality and thus incompatible with Article 15 of the International Covenant on Civil and Political Rights.*"

HSA AND THE BILL OF RIGHTS – VIOLATIVE OR SUPPORTIVE?

The HSA is also objected by various groups, most especially by human rights activist, primarily due to its provisions. It is violative of the Bill of Rights (Clamor, Medina & Mejia, 2008). According to Jigs Clamor of Karapatan, based on their own investigation, there are several provisions found in the HSA that violates the Bill of Rights which include warrantless arrests and indefinite or arbitrary detention. He pointed out as well that a person, on mere suspicion, can be subject to surveillance, interception and wiretapping and that the state was given the power to control and freeze the bank accounts of a person suspected to be terrorist or connected to a terrorist organization.

Atty. Medina said that the HSA is confronted with issues mainly of human rights concerns. For him, HSA allows violations to right to privacy, right to due process, presumption of innocence, right against unreasonable searches and seizures, freedom of expression, speech and assembly and freedom of association. A person, who is suspected to be a terrorist, can be surveilled, intercepted and wiretapped and can be subject to house arrest. Bank accounts can also be investigated and sequestered by law enforcers. All the illustrations mentioned are encroachments on the normal rights of the people through the exercise of police power (Medina, 2008). Thus, the implementation of the HSA curtails the essence of democracy.

R.A. 9372 is also questioned in terms of its international standard. Aside from being violative of the Bill of Rights, it also infringes Article 15 of the International Convention on Civil and Political Rights which provides for the right of the accused to due process. On March 12, 2007, Martin Scheinin called on the Arroyo administration to review and amend the law before fully implementing it.

HSA AND ITS DISCRIMINATORY TENDENCIES

With the bulk of terrorist activities associated with a sector of society, specifically the Muslims, the danger is posed by the government's profiling of terrorist that will, according to the book, *The Anti-Terror Act of the Philippines: A Human Rights Critique*, always be based on and biased against ethnic or religious formation, particularly Islam.

Abubakar Uy, Secretary General of Suara Bangsamoro in Southern Mindanao Region, argues that HSA undermines the peace negotiation between the government and the Moro National Liberation Front, Moro Islamic Liberation Front and the National Democratic Front because these groups are often linked with the Abu Sayyaf Group or the Jemaah Islamiyah. Atty. Medina also believes that HSA has bias against Muslims. He asserted that the police and other law enforcement official have the inclination to suspect a person as a terrorist on the basis of that person being Muslim-looking. As a result, this discrimination leads to arbitrary arrests and violations of the rights of the Muslim community

However, according to Atty. Mejia, Executive Director of the Commission on Human Rights, maintained that the discriminatory tendency of the HSA is not mentioned in the law. The law does not mention the word "Muslim." According to her, this issue posed against HSA is not all about HSA tagging individuals as terrorists based on ethnicity and religion. It is a matter of consciousness among people when it comes to describing the commission of a crime. For instance, when a Muslim commits a crime, there is always an adjective preceding the word "criminal."

Through the aid of interviews with key informants, it was validated that the legislation and eventual passage of R.A. 9372 is influenced primarily by the United States and that the HSA has provisions which are violative of the Bill of Rights. The absence of a universally-accepted definition of what terrorism is further expands the abuses of the law enforcement agencies and officials once the law is fully implemented.

CHAPTER V ANALYSIS & CONCLUSION

HSA AND US INFLUENCE

President Gloria Macapagal-Arroyo's focus in her administration, aside from economic development, is that of improvement in national security. Being a "strong global player in the fight against terror," (<http://www.gov.ph/news/default.asp?i=17332>) President Arroyo has insisted on enacting such a law and has considered this an urgent bill in compliance with the prescriptions of the United States. The GWOT, according to an anonymous respondent, is basically a war used by the United States and its allies to further extend their political, economic and military interests in the world. Thus, R.A. 9372 is an offshoot of the 9/11 attacks in 2001, the United States-led GWOT and the emergence of al-Qaeda linked terrorist groups in the Philippines such as the Abu Sayyaf Group.

VAGUELY DEFINED "TERRORISM"

R.A. 9372 has been continually objected by various individual and groups, specifically human rights activists for its vague and all-encompassing definition of "terrorism." The petitioners' position before the Supreme Court is that the law is broad and vague that it is susceptible to and invites arbitrary and even malicious interpretations (Vital, 2007). According the Jose Diokno of the Free Legal Assistance Group (FLAG), the law's definition of terrorism is vague and ambiguous; thus, highly susceptible to abuses. Edre Olalia of the International Association of

Peoples' Lawyers maintained that "the HSA does not define the term with sufficient clarity and specificity and that "it leaves so much discretion to the police officer, Anti-Terrorism Council (ATC), Department of Justice (DOJ) and eventually the courts to determine these without any sufficient standard in the law itself, contrary to the principles of due process and non-delegation of legislative powers, among others." Without objective and clear standards to guide the law enforces, the law gives license to law enforces to decide whether a particular person is engaged in a terrorist organization or not. Worse, it can be interpreted to include all acts in pursuit of legitimate dissent (Madrigal, 2006).

HSA AND ITS VIOLATION OF THE BILL OF RIGHTS

R.A. 9372 has sparked a several number of debates, objections and criticisms from the time of its drafting until its yet-to-be implementation. These criticisms are summarized in the table below:

PROPONENT	PROVISION	CRITIC
<ul style="list-style-type: none"> ▪All the element must be present for a group or an individual to be charged of terrorism – coercion, violence, objective ▪Double jeopardy means charging a suspect twice for the same offense or the same elements of the crime, and in this case, a suspect is not being 	Section 3 - Definition of Terrorism	<ul style="list-style-type: none"> ▪Many of the acts that are normally associated with terrorism are within the purview of the Revised Penal Code. ▪Double jeopardy ▪curtails the rights of the people to political verbal expression and violates their right to due process because of its vagueness

charged for murder or homicide; killing is only a part of the definition of the crime.		and for being overbreadth
<ul style="list-style-type: none"> ▪The proscription of any organization as a terrorist organization and the responsibility of members of a terrorist organization are covered in separate sections of the measure: Section 18 covers the proscription of an organization, association, or group of persons as terrorist organization; and Section 19 refers to the penalty for membership in a terrorist organization, association or group of persons. 	Section 4 – Conspiracy to Commit Terrorism	<ul style="list-style-type: none"> ▪too broad ▪It seems that any terrorist act of a member of an organization automatically characterizes the entire organization as a terrorist group. ▪Violates the right to due process because it presumes the existence, and dispenses with proof beyond reasonable doubt. ▪Violates Art. 3, Sec. 4. "No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." ▪Violates Art. 3, Sec. 18. "No person shall be detained solely by reason of political beliefs and aspirations."
	Section 5 - Accomplice	▪void for being vague and overbroad
▪Not allowed without authorization from a court	Section 7 - Surveillance of	▪Violates Art. 3, Sec. 3. The privacy of communication

<p>▪Nobody can operate secretly or covertly to intrude into the liberties of the people, their right to privacy, the sanctity of communication and the guarantee of homes that cannot be searched without a judicially authorized search warrant.</p>	<p>Suspects and Interception and Recording of Communications</p>	<p>and correspondence shall be inviolable.</p>
	<p>Section 17 – Proscription of Terrorist Organizations, Association, or Group of Persons</p>	<p>▪Violates Art. 3, Sec. 4. "No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances" ▪Violates Art. 3, Sec. 8. "The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies, for purposes not contrary to law shall not be abridged."</p>
<p>▪Requires an arresting officer to keep a very precise record of when the arrest was made, who executed the arrest, who</p>	<p>Section 18 - Period of Detention Without Judicial Warrant of Arrest</p>	<p>▪Dangerous and difficult provision ▪Anyone can be charged on the basis of a witness' testimony</p>

<p>handled the suspect after his arrest, and all such pertinent matters up to his entry into custodial safekeeping.</p> <ul style="list-style-type: none"> ▪Custodial authorities would be required to maintain a logbook to record the time of the suspect's detention as well as the results of the medical examination to establish his physical condition at the time of his arrest. ▪Ensure that the first duty of the arresting officer is to report to a judicial authority to precisely avoid the excesses being committed by other countries in their fight against terrorism (rendition). ▪Countercharges 		<ul style="list-style-type: none"> ▪Abuse of powers on the part of law enforcement agents ▪Coercive measures applied on the detainee ▪Arbitrary detention ▪Violates Art. 3, Sec. 2 "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable." ▪Violates Art. 3, Sec. 1. "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." ▪Paragraph 1 - unconstitutional for it authorizes unreasonable searches and seizures by dispensing with the requirements of probable cause. ▪Paragraph 2 - it imposes a non-adjudicative or administrative function upon a trial judge.
	Section 19 - Period of	▪Authorizes even Directors

	Detention in the Event of an Actual or Imminent Terrorist Attack	of the Commission on Human Rights to extend detention of suspects without limits, is void for being contrary to Sec. 2, Art. III and Sec. 18, Art. VII, Constitution.
	Section 26 – Restriction on Travel	<ul style="list-style-type: none"> ▪Violates an accused person's right to due process, right to bail and right to travel, and right against <i>incommunicado</i> detention.
<ul style="list-style-type: none"> ▪Possible abuse is constrained by the power of the court since the provision could not be implemented without a written order from a court ▪The application ex-parte to look into bank accounts, and the order of the court, including the authorization of the Anti-Terrorism Council, and all materials issued by the court in connection with any such acts, would become classified information which could not be revealed without the authorization of the court to be used as evidence in a case. 	Section 39 – Seizure and Sequestration	<ul style="list-style-type: none"> ▪Abuse of police power ▪A bank deposit or account could be cleared or transferred by the time the authorities apply for a court order for examination. ▪Violates the right to due process.

	Section 41 - Disposition of the Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Record	▪Paragraph 2 - bill of attainder and violates due process because it allows the forfeiture of a convicted terrorist's assets without evidence of their connection with the crime of terrorism nor any procedure.
	Section 54 – Functions of the Council	▪Paragraph 4 - violates the right to privacy and contradicts Secs. 14 and 32, RA 9372.

R.A. 9372 is contains provisions that directly encroach the basic civil liberties of the people especially those who are vocal of their oppositions to the administration. Among these provisions are:

- *Surveillance* - With the HSA, the unwanted Big Brother has indeed arrived (Tapang, 2007). Operating under such a vague definition of "terrorism," the law can be used to violate a person's right to privacy. As a result, HSA extends the right of the state as well as its law enforcement agencies and officials to conduct surveillance against individuals and groups suspected of being terrorists. Even persons suspected of being accomplices and accessories may be placed under surveillance by the police and other law enforcers. According to Prof. Roland Simbulan, it seems that being "psychics" is added to the job description of the police and military officials since the conduct of surveillance and other

instruments of counterterrorism provided in the law are on the basis of mere suspicion. Authorizing the surveillance of suspected terrorists as well as interception and wiretapping violate the right to privacy of communication of individuals as stated in the United Nations International Convention on Civil and Political Rights.

- *Warrantless arrest and indefinite detention* – Section 18 of R.A. 9372 provides for warrantless arrest of suspected terrorists and their detention for up to three days without charges. Nevertheless, Section 19 allows the detention of a suspected terrorist for more than three days in the event of an actual or imminent terrorist attack provided that a written approval from an official of the Human Rights Commission or a judge of the municipal regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest is obtained by the law enforcement official. These provisions are violative of human rights against illegal detention and arbitrary detention without charges as well as granting non-judicial institutions, such as the Commission on Human Rights, prosecutorial powers which is contrary to the mandate of the Commission on Human Rights.

- *House arrest* – Section 26 states that even in cases evidence of guilt is not strong; the suspected member of a terrorist organization may be put under house arrest. The suspected terrorist is restricted from traveling and is banned from using telephones, cellphones, internet and other means of communications

with people outside the residence unless ordered the court. This provision violates that right to free travel. In addition, curtailing the rights of the accused even in the absence of strong evidence violates the principle of presumption of innocence.

- *Opening and controlling bank deposits, accounts and records* – Sections 27-30 provide that the police may be allowed to open and control bank deposits, accounts and records of financial institutions belonging to "suspected terrorists." Even so, freezing and sequestration of such accounts and records are allowed. According to FLAG, the power to examine bank deposits and finances of persons or entities suspected of involvement in terrorism or conspiracy to commit terrorism is particularly alarming wherein law enforcers are licensed to inquire into the bank accounts and records of persons who are suspected to be terrorists or connected to terrorist organizations.

HSA AS A TOOL FOR POLITICAL REPRESSION

With the vague and all-encompassing definition of "terrorism" provided by the law, various forms of people's legitimate protest actions may be suppressed. Street demonstrations against the administration may be deemed as terrorist-related activities to justify the dispersal of protest actions. Given this context, the HSA is seen an attempt to silence all forms of political dissent under the pretext of fighting terrorism. Because the threshold for suspicion is vague, anyone can be a suspect (Tapang, 2007). Workers' strikes, peasant struggles and people's protest on

various social issues may be categorized as acts of terrorism. Accordingly, HSA can be used as a tool for harassment against affected political sectors, groups, and associations. HSA then can be used as a tool for persecution against sectors, groups, organizations perceived by the government to be its enemies, and may ensnare and entangle not only the "usual suspects" – members of the much-maligned "leftist groups" and alleged "front organizations" – but also people's organizations who would want to speak up and be counted as vigilant denizens of this country (Kaw, 2008). Thus, the HSA serves as virtual license for rampant human rights violations, especially of those who are vocal in opposing the government.

To quote Senator Madrigal in her speech, *Legislating Insecurity through State Terrorism*, "in the name of fighting terrorism, we have seen human, civil, and political rights set aside in order to confer upon governments unprecedented powers over those they view as their enemies." Thus, it will be used as an instrument of a greater terror perpetrated by people in power against their critics and political opponents (Madrigal, 2006).

CHAPTER VI RECOMMENDATIONS

With the several objections and controversies surrounding HSA, the security of the people should be at the center of the debate and strategies in combating terrorism. Strategies and policies aimed at protecting the people and ensuring human security means "protecting the vital core of all human lives in ways that enhance human freedom and human fulfillment" (Commission on Human Rights cited in Andag & Retuerma, 2005). It follows that any legislation which seeks to secure the people should not terrorize the people it purportedly protects. Human protection policies and legislations should create an environment where human rights norms and freedoms are not curtailed. Thus, the researcher strongly suggests that in combating terrorism or any criminal act, human security should be above national security.

According to Amnesty International as quoted by Senator Madrigal in her speech, *"security and human rights are not alternatives; they go hand in hand. Respect for human rights is the route to security, not an obstacle to it. The route to security is through respect for human rights, not their violations."* National security should not be used as an excuse to stifle the freedoms and the human rights as guaranteed by the Constitution (Madrigal, 2006). It cannot be denied that under the guise of fighting the threat of terrorism, human rights can be gravely abused by law enforcers; thus, there should be a balance between the need to address and

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APPENDICES



University of the Philippines-Manila
Padre Faura Street Ermita, Manila
(Date)

Dear Sir/Madam:

Greetings!

I am Maristelle Jean S. Tiamson, a fourth year BA Political Science student from the University of the Philippines, Manila. I am conducting a research regarding the Human Security Act of 2007. The purpose of this research is to know the factors that stimulate the creation of the law, to find out its political implications on the concerned sectors of the society, that is, the political opposition and the members and supporters of mass organizations, and to identify the reasons that motivate certain institutions and individuals to challenge it.

In lieu of the aforementioned research objective, I would like to request your kind participation in this study as a key informant. To be more specific, I would like to request for a personal, recorded interview for the purpose of obtaining the needed information concerning the research topic.

I am very much willing to comply with any requests concerning the date, time and place of the interview.

If you have any questions, you can me through my email address (maris.tiamson@gmail.com) or mobile phone (09158890351/09228531614).

Immediate response to this request would be greatly appreciated.

Thank you and hoping for your kind consideration on this request.

Very truly yours,

Maristelle Jean S. Tiamson

Noted by:

Prof. Jalton Taguibao
Political Science Committee

INFORMED CONSENT

This form proves that I am knowledgeable of the subject matter being studied as a respondent. My participation was formally requested and the researcher did not resort to any form of coercion so as to obtain my consent. I was guaranteed that my privacy would be protected. I was also given the option of anonymity and confidentiality. I was given assurance that the information I will be providing would be used exclusively for academic purposes. No form of modification or distortion would be employed on the information. The information that I will be relaying would be properly cited by the researcher.

For purposes of ethical consideration, I am giving the assurance that no form of incentive was provided and that my participation in this endeavor would not yield any benefit on my part.

Name of Respondent
(Signature over printed name)

Date

Republic of the Philippines
Congress of the Philippines
Metro Manila
Thirteenth Congress
Third Special Session

Began and held in Metro Manila, on Monday, the nineteenth day of
February, two thousand seven.



[REPUBLIC ACT NO. 9372]

AN ACT TO SECURE THE STATE AND PROTECT OUR
PEOPLE FROM TERRORISM

*Be it enacted by the Senate and House of Representatives of
the Philippines in Congress assembled:*

SECTION 1. *Short Title.* – This Act shall henceforth be
known as the “Human Security Act of 2007.”

SEC. 2. *Declaration of Policy.* – It is declared a policy
of the State to protect life, liberty, and property from acts of
terrorism, to condemn terrorism as inimical and dangerous to
the national security of the country and to the welfare of the
people, and to make terrorism a crime against the Filipino
people, against humanity, and against the law of nations.

In the implementation of the policy stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution. *

The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace-building, addressing the roots of conflict by building state capacity and promoting equitable economic development.

Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. It is to be understood, however, that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.

SEC. 3. Terrorism. - Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

- a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
- b. Article 134 (Rebellion or Insurrection);
- c. Article 134-a (Coup d'Etat), including acts committed by private persons;
- d. Article 248 (Murder);
- e. Article 267 (Kidnapping and Serious Illegal Detention);
- f. Article 324 (Crimes Involving Destruction),

or under

- (1) Presidential Decree No. 1613 (The Law on Arson);
- (2) Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
- (3) Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
- (4) Republic Act No. 6235 (Anti-Hijacking Law);
- (5) Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
- (6) Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

SEC. 4. *Conspiracy to Commit Terrorism.* – Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.

There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the same.

SEC. 5. *Accomplice.* – Any person who, not being a principal under Article 17 of the Revised Penal Code or a conspirator as defined in Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts shall suffer the penalty of from seventeen (17) years, four months one day to twenty (20) years of imprisonment.

SEC. 6. *Accessory.* – Any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice under Articles 17 and 18 of the Revised Penal Code, takes part subsequent to its commission in any of the following manner: (a) by profiting himself or assisting the offender to profit by the effects of the crime; (b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery; (c) by harboring, concealing, or assisting in the escape of the principal or conspirator of the crime, shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Notwithstanding the above paragraph, the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of subparagraph (a).

SEC. 7. *Surveillance of Suspects and Interception and Recording of Communications.* – The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, upon a written order of the Court of Appeals, listen to, intercept and record, with the use of any mode, form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

Provided, That surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.

SEC. 8. *Formal Application for Judicial Authorization.* – The written order of the authorizing division of the Court of Appeals to track down, tap, listen to, intercept, and record communications, messages, conversations, discussions, or spoken or written words of any person suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall only be granted by the authorizing division of the Court of Appeals upon an *ex parte* written application of a police or of a law enforcement official who has been duly authorized in writing by the Anti-Terrorism Council created in Section 53 of this Act to file such *ex parte* application, and upon examination under oath or affirmation of the applicant and the witnesses he may produce to establish: (a) that there is probable cause to believe based on personal knowledge of facts or circumstances that the said crime of terrorism or conspiracy to commit terrorism has been committed, or is being committed, or is about to be committed; (b) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained; and, (c) that there is no other effective means readily available for acquiring such evidence.

SEC. 9. *Classification and Contents of the Order of the Court.* – The written order granted by the authorizing division of the Court of Appeals as well as its order, if any, to extend or renew the same, the original application of the applicant, including his application to extend or renew, if any, and the written authorizations of the Anti-Terrorism Council shall be deemed and are hereby declared as classified information: *Provided*, That the person being surveilled or whose communications, letters, papers, messages, conversations, discussions, spoken or written words and effects have been monitored, listened to, bugged or recorded by law enforcement authorities has the right to be informed of the acts done by the law enforcement authorities in the premises or to challenge, if he or she intends to do so, the legality of the interference before the Court of Appeals which issued the written order. The written order of the authorizing division of the Court of Appeals shall specify the following: (a) the identity, such as name and address, if known, of the charged or suspected person whose communications, messages,

conversations, discussions, or spoken or written words are to be tracked down, tapped, listened to, intercepted, and recorded and, in the case of radio, electronic, or telephonic (whether wireless or otherwise) communications, messages, conversations, discussions, or spoken or written words, the electronic transmission systems or the telephone numbers to be tracked down, tapped, listened to, intercepted, and recorded and their locations or if the person suspected of the crime of terrorism or conspiracy to commit terrorism is not fully known, such person shall be subject to continuous surveillance provided there is a reasonable ground to do so; (b) the identity (name, address, and the police or law enforcement organization) of the police or of the law enforcement official, including the individual identity (names, addresses, and the police or law enforcement organization) of the members of his team, judicially authorized to track down, tap, listen to, intercept, and record the communications, messages, conversations, discussions, or spoken or written words; (c) the offense or offenses committed, or being committed, or sought to be prevented; and, (d) the length of time within which the authorization shall be used or carried out.

SEC. 10. *Effective Period of Judicial Authorization.* – Any authorization granted by the authorizing division of the Court of Appeals, pursuant to Section 9(d) of this Act, shall only be effective for the length of time specified in the written order of the authorizing division of the Court of Appeals, which shall not exceed a period of thirty (30) days from the date of receipt of the written order of the authorizing division of the Court of Appeals by the applicant police or law enforcement official.

The authorizing division of the Court of Appeals may extend or renew the said authorization for another non-extendible period, which shall not exceed thirty (30) days from the expiration of the original period: *Provided*, That the authorizing division of the Court of Appeals is satisfied that such extension or renewal is in the public interest: *Provided, further*, That the *ex parte* application for extension or renewal, which must be filed by the original applicant, has been duly authorized in writing by the Anti-Terrorism Council.

In case of death of the original applicant or in case he is physically disabled to file the application for extension or

renewal, the one next in rank to the original applicant among the members of the team named in the original written order of the authorizing division of the Court of Appeals shall file the application for extension or renewal: *Provided, That*, without prejudice to the liability of the police or law enforcement personnel under Section 20 hereof, the applicant police or law enforcement official shall have *thirty (30) days* after the termination of the period granted by the Court of Appeals as provided in the preceding paragraphs within which to file the appropriate case before the Public Prosecutor's Office for any violation of this Act.

If no case is filed within the thirty (30)-day period, the applicant police or law enforcement official shall immediately notify the person subject of the surveillance, interception and recording of the termination of the said surveillance, interception and recording. The penalty of ten (10) years and one day to *twelve (12) years of imprisonment* shall be imposed upon the applicant police or law enforcement official who fails to notify the person subject of the surveillance, monitoring, interception and recording as specified above.

SEC. 11. *Custody of Intercepted and Recorded Communications.* - All tapes, discs, and recordings made pursuant to the authorization of the authorizing division of the Court of Appeals, including all excerpts and summaries thereof as well as all written notes or memoranda made in connection therewith, shall, within forty-eight (48) hours after the expiration of the period fixed in the written order of the authorizing division of the Court of Appeals or within forty-eight (48) hours after the expiration of any extension or renewal granted by the authorizing division of the Court of Appeals, be deposited with the authorizing Division of the Court of Appeals in a sealed envelope or sealed package, as the case may be, and shall be accompanied by a joint affidavit of the applicant police or law enforcement official and the members of his team.

In case of death of the applicant or in case he is physically disabled to execute the required affidavit, the one next in rank to the applicant among the members of the team named in the written order of the authorizing division of the

Court of Appeals shall execute with the members of the team that required affidavit.

It shall be unlawful for any person, police officer or any custodian of the tapes, discs and recording, and their excerpts and summaries, written notes or memoranda to copy in whatever form, to remove, delete, expunge, incinerate, shred or destroy in any manner the items enumerated above in whole or in part under any pretext whatsoever.

Any person who removes, deletes, expunges, incinerates, shreds or destroys the items enumerated above shall suffer a penalty of not less than six years and one day to twelve (12) years of imprisonment.

SEC. 12. *Contents of Joint Affidavit.* – The joint affidavit of the police or of the law enforcement official and the individual members of his team shall state: (a) the number of tapes, discs, and recordings that have been made, as well as the number of excerpts and summaries thereof and the number of written notes and memoranda, if any, made in connection therewith; (b) the dates and times covered by each of such tapes, discs, and recordings; (c) the number of tapes, discs, and recordings, as well as the number of excerpts and summaries thereof and the number of written notes and memoranda made in connection therewith that have been included in the deposit; and (d) the date of the original written authorization granted by the Anti-Terrorism Council to the applicant to file the *ex parte* application to conduct the tracking down, tapping, intercepting, and recording, as well as the date of any extension or renewal of the original written authority granted by the authorizing division of the Court of Appeals.

The joint affidavit shall also certify under oath that no duplicates or copies of the whole or any part of any of such tapes, discs, and recordings, and that no duplicates or copies of the whole or any part of any of such excerpts, summaries, written notes, and memoranda, have been made, or, if made, that all such duplicates and copies are included in the sealed envelope or sealed package, as the case may be, deposited with the authorizing division of the Court of Appeals.

It shall be unlawful for any person, police or law enforcement official to omit or exclude from the joint affidavit any item or portion thereof mentioned in this Section.

Any person, police or law enforcement officer who violates any of the acts proscribed in the preceding paragraph shall suffer the penalty of not less than ten (10) years and one day to twelve (12) years of imprisonment.

SEC. 13. *Disposition of Deposited Materials.* – The sealed envelope or sealed package and the contents thereof, which are deposited with the authorizing division of the Court of Appeals, shall be deemed and are hereby declared classified information, and the sealed envelope or sealed package shall not be opened and its contents (including the tapes, discs, and recordings and all the excerpts and summaries thereof and the notes and memoranda made in connection therewith) shall not be divulged, revealed, read, replayed, or used as evidence unless authorized by written order of the authorizing division of the Court of Appeals, which written order shall be granted only upon a written application of the Department of Justice filed before the authorizing division of the Court of Appeals and only upon a showing that the Department of Justice has been duly authorized in writing by the Anti-Terrorism Council to file the application with proper written notice the person whose conversation, communication, message discussion or spoken or written words have been the subject of surveillance, monitoring, recording and interception to open, reveal, divulge, and use the contents of the sealed envelope or sealed package as evidence.

Any person, law enforcement official or judicial authority who violates his duty to notify in writing the persons subject of the surveillance as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

SEC. 14. *Application to Open Deposited Sealed Envelope or Sealed Package.* – The written application with notice to the party concerned to open the deposited sealed envelope or sealed package shall clearly state the purpose or reason: (a) for opening the sealed envelope or sealed package; (b) for revealing or disclosing its classified contents; (c) for replaying, divulging, and or reading any of the listened to, intercepted,

and recorded communications, messages, conversations, discussions, or spoken or written words (including any of the excerpts and summaries thereof and any of the notes or memoranda made in connection therewith); and, (d) for using any of said listened to, intercepted, and recorded communications, messages, conversations, discussions, or spoken or written words (including any of the excerpts and summaries thereof and any of the notes or memoranda made in connection therewith) as evidence.

Any person, law enforcement official or judicial authority who violates his duty to notify as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

SEC. 15. *Evidentiary Value of Deposited Materials.* – Any listened to, intercepted, and recorded communications, messages, conversations, discussions, or spoken or written words, or any part or parts thereof, or any information or fact contained therein, including their existence, content, substance, purport, effect, or meaning, which have been secured in violation of the pertinent provisions of this Act, shall absolutely not be admissible and usable as evidence against anybody in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.

SEC. 16. *Penalty for Unauthorized or Malicious Interceptions and/or Recordings.* – Any police or law enforcement personnel who, not being authorized to do so by the authorizing division of the Court of Appeals, tracks down, taps, listens to, intercepts, and records in whatever manner or form any communication, message, conversation, discussion, or spoken or written word of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

In addition to the liability attaching to the offender for the commission of any other offense, the penalty of ten (10) years and one day to twelve (12) years of imprisonment and the accessory penalty of perpetual absolute disqualification from public office shall be imposed upon any police or law

enforcement personnel who maliciously obtained an authority from the Court of Appeals to track down, tap, listen to, intercept, and record in whatever manner or form any communication, message, conversation, discussion, or spoken or written words of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism: *Provided*, That notwithstanding Section 13 of this Act, the party aggrieved by such authorization shall be allowed access to the sealed envelope or sealed package and the contents thereof as evidence for the prosecution of any police or law enforcement personnel who maliciously procured said authorization.

SEC. 17. *Proscription of Terrorist Organizations, Association, or Group of Persons.* - Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

SEC. 18. *Period of Detention Without Judicial Warrant of Arrest.* - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: *Provided*, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under

Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided*, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify any judge as provided in the preceding paragraph.

SEC. 19. Period of Detention in the Event of an Actual or Imminent Terrorist Attack. – In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals

nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned: *Provided, however*; That within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

SEC. 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.* - The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days.

SEC. 21. *Rights of a Person under Custodial Detention.* - The moment a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism is apprehended or arrested and detained, he shall forthwith be informed, by the arresting police or law enforcement officers or by the police or law enforcement officers to whose custody the person concerned is brought, of his or her right: (a) to be informed of the nature and cause of his arrest, to remain silent and to have competent and independent counsel preferably of his choice. If the person cannot afford the services of counsel of his or her choice, the police or law enforcement officers concerned shall immediately contact the free legal assistance unit of the Integrated Bar of the Philippines (IBP) or the Public Attorney's Office (PAO). It shall be the duty of the free legal assistance unit of the IBP or the PAO thus contacted to immediately visit the person(s) detained and provide him or her with legal assistance. These rights cannot be waived except in writing and in the presence of the counsel of choice; (b) informed of

the cause or causes of his detention in the presence of his legal counsel; (c) allowed to communicate freely with his legal counsel and to confer with them at any time without restriction; (d) allowed to communicate freely and privately without restrictions with the members of his family or with his nearest relatives and to be visited by them; and, (e) allowed freely to avail of the service of a physician or physicians of choice.

SEC. 22. Penalty for Violation of the Rights of a Detainee. – Any police or law enforcement personnel, or any personnel of the police or other law enforcement custodial unit that violates any of the aforesaid rights of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Unless the police or law enforcement personnel who violated the rights of a detainee or detainees as stated above is duly identified, the same penalty shall be imposed on the police officer or head or leader of the law enforcement unit having custody of the detainee at the time the violation was done.

SEC. 23. Requirement for an Official Custodial Logbook and its Contents. – The police or other law enforcement custodial unit in whose care and control the person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism has been placed under custodial arrest and detention shall keep a securely and orderly maintained official logbook, which is hereby declared as a public document and opened to and made available for the inspection and scrutiny of the lawyer or lawyers of the person under custody or any member of his or her family or relative by consanguinity or affinity within the fourth civil degree or his or her physician at any time of the day or night without any form of restriction. The logbook shall contain a clear and concise record of: (a) the name, description, and address of the detained person; (b) the date and exact time of his initial admission for custodial arrest and detention; (c) the name and address of the physician or physicians who examined him physically and medically; (d) the state of his health and

physical condition at the time of his initial admission for custodial detention; (e) the date and time of each removal of the detained person from his cell for interrogation or for any purpose; (f) the date and time of his return to his cell; (g) the name and address of the physician or physicians who physically and medically examined him after each interrogation; (h) a summary of the physical and medical findings on the detained person after each of such interrogations; (i) the names and addresses of his family members and nearest relatives, if any and if available; (j) the names and addresses of persons who visit the detained person; (k) the date and time of each of such visits; (l) the date and time of each request of the detained person to communicate and confer with his legal counsel or counsels; (m) the date and time of each visit, and date and time of each departure of his legal counsel or counsels; and, (n) all other important events bearing on and all relevant details regarding the treatment of the detained person while under custodial arrest and detention.

The said police or law enforcement custodial unit shall upon demand of the aforementioned lawyer or lawyers or members of the family or relatives within the fourth civil degree of consanguinity or affinity of the person under custody or his or her physician issue a certified true copy of the entries of the logbook relative to the concerned detained person without delay or restriction or requiring any fees whatsoever including documentary stamp tax, notarial fees, and the like. This certified true copy may be attested by the person who has custody of the logbook or who allowed the party concerned to scrutinize it at the time the demand for the certified true copy is made.

The police or other law enforcement custodial unit who fails to comply with the preceding paragraph to keep an official logbook shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

SEC. 24. *No Torture or Coercion in Investigation and Interrogation.* – No threat, intimidation, or coercion, and no act which will inflict any form of physical pain or torment, or mental, moral, or psychological pressure, on the detained person, which shall vitiate his free-will, shall be employed in his investigation and interrogation for the crime of terrorism

or the crime of conspiracy to commit terrorism; otherwise, the evidence obtained from said detained person resulting from such threat, intimidation, or coercion, or from such inflicted physical pain or torment, or mental, moral, or psychological pressure, shall be, in its entirety, absolutely not admissible and useable as evidence in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.

SEC. 25. Penalty for Threat, Intimidation, Coercion, or Torture in the Investigation and Interrogation of a Detained Person. – Any person or persons who use threat, intimidation, or coercion, or who inflict physical pain or torment, or mental, moral, or psychological pressure, which shall vitiate the free-will of a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of twelve (12) years and one day to twenty (20) years of imprisonment.

When death or serious permanent disability of said detained person occurs as a consequence of the use of such threat, intimidation, or coercion, or as a consequence of the infliction on him of such physical pain or torment, or as a consequence of the infliction on him of such mental, moral, or psychological pressure, the penalty shall be twelve (12) years and one day to twenty (20) years of imprisonment.

SEC. 26. Restriction on Travel. – In cases where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court.

He/she may also be placed under house arrest by order of the court at his or her usual place of residence.

While under house arrest, he or she may not use telephones, cellphones, e-mails, computers, the internet or other means of communications with people outside the residence until otherwise ordered by the court.

The restrictions abovementioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him or earlier upon the discretion of the court on motion of the prosecutor or of the accused.

SEC. 27. *Judicial Authorization Required to Examine Bank Deposits, Accounts, and Records.* – The provisions of Republic Act No. 1406 as amended, to the contrary notwithstanding, the justices of the Court of Appeals designated as a special court to handle anti-terrorism cases after satisfying themselves of the existence of probable cause in a hearing called for that purpose that: (1) a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, (2) of a judicially declared and outlawed terrorist organization, association, or group of persons; and (3) of a member of such judicially declared and outlawed organization, association, or group of persons, may authorize in writing any police or law enforcement officer and the members of his/her team duly authorized in writing by the anti-terrorism council to: (a) examine, or cause the examination of, the deposits, placements, trust accounts, assets and records in a bank or financial institution; and (b) gather or cause the gathering of any relevant information about such deposits, placements, trust accounts, assets, and records from a bank or financial institution. The bank or financial institution concerned shall not refuse to allow such examination or to provide the desired information, when so ordered by and served with the written order of the Court of Appeals.

SEC. 28. *Application to Examine Bank Deposits, Accounts, and Records.* – The written order of the Court of Appeals authorizing the examination of bank deposits, placements, trust accounts, assets, and records: (1) of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) of any judicially declared and outlawed terrorist organization, association, or group of persons, or (3) of any member of such organization, association,

or group of persons in a bank or financial institution, and the gathering of any relevant information about the same from said bank or financial institution, shall only be granted by the authorizing division of the Court of Appeals upon an *ex parte* application to that effect of a police or of a law enforcement official who has been duly authorized in writing to file such *ex parte* application by the Anti-Terrorism Council created in Section 53 of this Act to file such *ex parte* application, and upon examination under oath or affirmation of the applicant and the witnesses he may produce to establish the facts that will justify the need and urgency of examining and freezing the bank deposits, placements, trust accounts, assets, and records: (1) of the person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) of a judicially declared and outlawed terrorist organization, association or group of persons; or (3) of any member of such organization, association, or group of persons.

SEC. 29. *Classification and Contents of the Court Order Authorizing the Examination of Bank Deposits, Accounts, and Records.* - The written order granted by the authorizing division of the Court of Appeals as well as its order, if any, to extend or renew the same, the original *ex parte* application of the applicant, including his *ex parte* application to extend or renew, if any, and the written authorizations of the Anti-Terrorism Council, shall be deemed and are hereby declared as classified information: *Provided*, That the person whose bank deposits, placements, trust accounts, assets, and records have been examined, frozen, sequestered and seized by law enforcement authorities has the right to be informed of the acts done by the law enforcement authorities in the premises or to challenge, if he or she intends to do so, the legality of the interference. The written order of the authorizing division of the Court of Appeals designated to handle cases involving terrorism shall specify: (a) the identity of the said: (1) person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) judicially declared and outlawed terrorist organization, association, or group of persons; and (3) member of such judicially declared and outlawed organization, association, or group of persons, as the case may be, whose deposits, placements, trust accounts, assets, and records are to be examined or the information to be gathered; (b) the identity of the bank or financial institution where such

deposits, placements, trust accounts, assets, and records are held and maintained; (c) the identity of the persons who will conduct the said examination and the gathering of the desired information; and, (d) the length of time the authorization shall be carried out.

SEC. 30. Effective Period of Court Authorization to Examine and Obtain Information on Bank Deposits, Accounts, and Records. – The authorization issued or granted by the authorizing division of the Court of Appeals to examine or cause the examination of and to freeze bank deposits, placements, trust accounts, assets, and records, or to gather information about the same, shall be effective for the length of time specified in the written order of the authorizing division of the Court of Appeals, which shall not exceed a period of thirty (30) days from the date of receipt of the written order of the authorizing division of the Court of Appeals by the applicant police or law enforcement official.

The authorizing division of the Court of Appeals may extend or renew the said authorization for another period, which shall not exceed thirty (30) days renewable to another thirty (30) days from the expiration of the original period: *Provided*, That the authorizing division of the Court of Appeals is satisfied that such extension or renewal is in the public interest: and, *Provided, further*, That the application for extension or renewal, which must be filed by the original applicant, has been duly authorized in writing by the Anti-Terrorism Council.

In case of death of the original applicant or in case he is physically disabled to file the application for extension or renewal, the one next in rank to the original applicant among the members of the team named in the original written order of the authorizing division of the Court of Appeals shall file the application for extension or renewal: *Provided*, That, without prejudice to the liability of the police or law enforcement personnel under Section 19 hereof, the applicant police or law enforcement official shall have thirty (30) days after the termination of the period granted by the Court of Appeals as provided in the preceding paragraphs within which to file the appropriate case before the Public Prosecutor's Office for any violation of this Act.

If no case is filed within the thirty (30)-day period, the applicant police or law enforcement official shall immediately notify in writing the person subject of the bank examination and freezing of bank deposits, placements, trust accounts, assets and records. The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the applicant police or law enforcement official who fails to notify in writing the person subject of the bank examination and freezing of bank deposits, placements, trust accounts, assets and records.

Any person, law enforcement official or judicial authority who violates his duty to notify in writing as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

SEC. 31. Custody of Bank Data and Information Obtained after Examination of Deposits, Placements, Trust Accounts, Assets and Records. – All information, data, excerpts, summaries, notes, memoranda, working sheets, reports, and other documents obtained from the examination of the bank deposits, placements, trust accounts, assets and records of: (1) a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of any such organization, association, or group of persons shall, within forty-eight (48) hours after the expiration of the period fixed in the written order of the authorizing division of the Court of Appeals or within forty-eight (48) hours after the expiration of the extension or renewal granted by the authorizing division of the Court of Appeals, be deposited with the authorizing division of the Court of Appeals in a sealed envelope or sealed package, as the case may be, and shall be accompanied by a joint affidavit of the applicant police or law enforcement official and the persons who actually conducted the examination of said bank deposits, placements, trust accounts, assets and records.

SEC. 32. Contents of Joint Affidavit. – The joint affidavit shall state: (a) the identifying marks, numbers, or symbols of the deposits, placements, trust accounts, assets, and records examined; (b) the identity and address of the bank or financial institution where such deposits, placements, trust accounts,

assets, and records are held and maintained; (c) the number of bank deposits, placements, trust accounts, assets, and records discovered, examined, and frozen; (d) the outstanding balances of each of such deposits, placements, trust accounts, assets; (e) all information, data, excerpts, summaries, notes, memoranda, working sheets, reports, documents, records examined and placed in the sealed envelope or sealed package deposited with the authorizing division of the Court of Appeals; (f) the date of the original written authorization granted by the Anti-Terrorism Council to the applicant to file the *ex parte* application to conduct the examination of the said bank deposits, placements, trust accounts, assets and records, as well as the date of any extension or renewal of the original written authorization granted by the authorizing division of the Court of Appeals; and (g) that the items enumerated were all that were found in the bank or financial institution examined at the time of the completion of the examination.

The joint affidavit shall also certify under oath that no duplicates or copies of the information, data, excerpts, summaries, notes, memoranda, working sheets, reports, and documents acquired from the examination of the bank deposits, placements, trust accounts, assets and records have been made, or, if made, that all such duplicates and copies are placed in the sealed envelope or sealed package deposited with the authorizing division of the Court of Appeals.

It shall be unlawful for any person, police officer or custodian of the bank data and information obtained after examination of deposits, placements, trust accounts, assets and records to copy, to remove, delete, expunge, incinerate, shred or destroy in any manner the items enumerated above in whole or in part under any pretext whatsoever.

Any person who copies, removes, deletes, expunges, incinerates, shreds or destroys the items enumerated above shall suffer a penalty of not less than six years and one day to twelve (12) years of imprisonment.

SEC. 33. *Disposition of Bank Materials.* - The sealed envelope or sealed package and the contents thereof, which are deposited with the authorizing division of the Court of Appeals, shall be deemed and are hereby declared classified information,

and the sealed envelope or sealed package shall not be opened and its contents shall not be divulged, revealed, read, or used as evidence unless authorized in a written order of the authorizing division of the Court of Appeals, which written order shall be granted only upon a written application of the Department of Justice filed before the authorizing division of the Court of Appeals and only upon a showing that the Department of Justice has been duly authorized in writing by the Anti-Terrorism Council to file the application, with notice in writing to the party concerned not later than three days before the scheduled opening, to open, reveal, divulge, and use the contents of the sealed envelope or sealed package as evidence.

Any person, law enforcement official or judicial authority who violates his duty to notify in writing as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

SEC. 34. Application to Open Deposited Bank Materials.

– The written application, with notice in writing to the party concerned not later than three days of the scheduled opening, to open the sealed envelope or sealed package shall clearly state the purpose and reason: (a) for opening the sealed envelope or sealed package; (b) for revealing and disclosing its classified contents; and, (c) for using the classified information, data, excerpts, summaries, notes, memoranda, working sheets, reports, and documents as evidence.

SEC. 35. Evidentiary Value of Deposited Bank Materials.

– Any information, data, excerpts, summaries, notes, memoranda, work sheets, reports, or documents acquired from the examination of the bank deposits, placements, trust accounts, assets and records of: (1) a person charged or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of such organization, association, or group of persons, which have been secured in violation of the provisions of this Act, shall absolutely not be admissible and usable as evidence against anybody in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.

SEC. 36. *Penalty for Unauthorized or Malicious Examination of a Bank or a Financial Institution.* – Any person, police or law enforcement personnel who examines the deposits, placements, trust accounts, assets, or records in a bank or financial institution of: (1) a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of such organization, association, or group of persons, without being authorized to do so by the Court of Appeals, shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

In addition to the liability attaching to the offender for the commission of any other offense, the penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel, who maliciously obtained an authority from the Court of Appeals to examine the deposits, placements, trust accounts, assets, or records in a bank or financial institution of: (1) a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of such organization, association, or group of persons: *Provided*, That notwithstanding Section 33 of this Act, the party aggrieved by such authorization shall upon motion duly filed be allowed access to the sealed envelope or sealed package and the contents thereof as evidence for the prosecution of any police or law enforcement personnel who maliciously procured said authorization.

SEC. 37. *Penalty of Bank Officials and Employees Defying a Court Authorization.* – An employee, official, or a member of the board of directors of a bank or financial institution, who refuses to allow the examination of the deposits, placements, trust accounts, assets, and records of: (1) a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of such judicially declared and outlawed organization, association, or group of persons in said bank or

financial institution, when duly served with the written order of the authorizing division of the Court of Appeals, shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

SEC. 38. Penalty for False or Untruthful Statement or Misrepresentation of Material Fact in Joint Affidavits. – Any false or untruthful statement or misrepresentation of material fact in the joint affidavits required respectively in Section 12 and Section 32 of this Act shall constitute a criminal offense and the affiants shall suffer individually the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

SEC. 39. Seizure and Sequestration. – The deposits and their outstanding balances, placements, trust accounts, assets, and records in any bank or financial institution, moneys, businesses, transportation and communication equipment, supplies and other implements, and property of whatever kind and nature belonging: (1) to any person suspected of or charged before a competent Regional Trial Court for the crime of terrorism or the crime of conspiracy to commit terrorism; (2) to a judicially declared and outlawed organization, association, or group of persons; or (3) to a member of such organization, association, or group of persons shall be seized, sequestered, and frozen in order to prevent their use, transfer, or conveyance for purposes that are inimical to the safety and security of the people or injurious to the interest of the State.

The accused or a person suspected of may withdraw such sums as may be reasonably needed by the monthly needs of his family including the services of his or her counsel and his or her family's medical needs upon approval of the court. He or she may also use any of his property that is under seizure or sequestration or frozen because of his/her indictment as a terrorist upon permission of the court for any legitimate reason.

Any person who unjustifiably refuses to follow the order of the proper division of the Court of Appeals to allow the person accused of the crime of terrorism or of the crime of conspiracy to commit terrorism to withdraw such sums from sequestered or frozen deposits, placements, trust accounts, assets and records as may be necessary for the regular

sustenance of his/her family or to use any of his/her property that has been seized, sequestered or frozen for legitimate purposes while his/her case is pending shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

SEC. 40. Nature of Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records. – The seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records belonging to a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism shall be deemed as property held in trust by the bank or financial institution for such person and the government during the pendency of the investigation of the person suspected of or during the pendency of the trial of the person charged with any of the said crimes, as the case may be and their use or disposition while the case is pending shall be subject to the approval of the court before which the case or cases are pending.

SEC. 41. Disposition of the Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Record. – If the person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism is found, after his investigation, to be innocent by the investigating body, or is acquitted, after his arraignment or his case is dismissed before his arraignment by a competent court, the seizure, sequestration and freezing of his bank deposits, placements, trust accounts, assets and records shall forthwith be deemed lifted by the investigating body or by the competent court, as the case may be, and his bank deposits, placements, trust accounts, assets and records shall be deemed released from such seizure, sequestration and freezing, and shall be restored to him without any delay by the bank or financial institution concerned without any further action on his part. The filing of any appeal on motion for reconsideration shall not state the release of said funds from seizure, sequestration and freezing.

If the person charged with the crime of terrorism or conspiracy to commit terrorism is convicted by a final judgment of a competent trial court, his seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records shall be automatically forfeited in favor of the government.

Upon his or her acquittal or the dismissal of the charges against him or her, the amount of Five hundred thousand pesos (P500,000.00) a day for the period in which his properties, assets or funds were seized shall be paid to him on the concept of liquidated damages. The amount shall be taken from the appropriations of the police or law enforcement agency that caused the filing of the enumerated charges against him/her.

SEC. 42. Penalty for Unjustified Refusal to Restore or Delay in Restoring Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records. – Any person who unjustifiably refuses to restore or delays the restoration of seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records of a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism after such suspected person has been found innocent by the investigating body or after the case against such charged person has been dismissed or after he is acquitted by a competent court shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

SEC. 43. Penalty for the Loss, Misuse, Diversion or Dissipation of Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records. – Any person who is responsible for the loss, misuse, diversion, or dissipation of the whole or any part of the seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records of a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

SEC. 44. Infidelity in the Custody of Detained Persons. – Any public officer who has direct custody of a detained person under the provisions of this Act and who by his deliberate act, misconduct, or inexcusable negligence causes or allows the escape of such detained person shall be guilty of an offense and shall suffer the penalty of: (a) twelve (12) years and one day to twenty (20) years of imprisonment, if the detained person has already been convicted and sentenced in a final judgment of a competent court; and (b) six years and one day to twelve (12) years of imprisonment, if the detained

person has not been convicted and sentenced in a final judgment of a competent court.

SEC. 45. *Immunity and Protection of Government Witnesses.* – The provisions of Republic Act No. 6981 (Witness Protection, Security and Benefits Act) to the contrary notwithstanding, the immunity of government witnesses testifying under this Act shall be governed by Sections 17 and 18 of Rule 119 of the Rules of Court: *Provided, however,* That said witnesses shall be entitled to benefits granted to witnesses under said Republic Act No. 6981.

SEC. 46. *Penalty for Unauthorized Revelation of Classified Materials.* – The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any person, police or law enforcement agent, judicial officer or civil servant who, not being authorized by the Court of Appeals to do so, reveals in any manner or form any classified information under this Act.

SEC. 47. *Penalty for Furnishing False Evidence, Forged Document, or Spurious Evidence.* – The penalty of twelve (12) years and one day to twenty (20) years of imprisonment shall be imposed upon any person who knowingly furnishes false testimony, forged document or spurious evidence in any investigation or hearing under this Act.

SEC. 48. *Continuous Trial.* – In cases of terrorism or conspiracy to commit terrorism, the judge shall set the case for continuous trial on a daily basis from Monday to Friday or other short-term trial calendar so as to ensure speedy trial.

SEC. 49. *Prosecution Under This Act Shall be a Bar to Another Prosecution under the Revised Penal Code or any Special Penal Laws.* – When a person has been prosecuted under a provision of this Act, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for any offense or felony which is necessarily included in the offense charged under this Act.

SEC. 50. *Damages for Unproven Charge of Terrorism.* – Upon acquittal, any person who is accused of terrorism shall be entitled to the payment of damages in the amount of Five hundred thousand pesos (P500,000.00) for every day that he or she has been detained or deprived of liberty or arrested without a warrant as a result of such an accusation. The amount of damages shall be automatically charged against the appropriations of the police agency or the Anti-Terrorism Council that brought or sanctioned the filing of the charges against the accused. It shall also be released within fifteen (15) days from the date of the acquittal of the accused. The award of damages mentioned above shall be without prejudice to the right of the acquitted accused to file criminal or administrative charges against those responsible for charging him with the case of terrorism.

Any officer, employee, personnel, or person who delays the release or refuses to release the amounts awarded to the individual acquitted of the crime of terrorism as directed in the paragraph immediately preceding shall suffer the penalty of six months of imprisonment.

If the deductions are less than the amounts due to the detained persons, the amount needed to complete the compensation shall be taken from the current appropriations for intelligence, emergency, social or other funds of the Office of the President.

In the event that the amount cannot be covered by the current budget of the police or law enforcement agency concerned, the amount shall be automatically included in the appropriations of the said agency for the coming year.

SEC. 51. *Duty to Record and Report the Name and Address of the Informant.* – The police or law enforcement officers to whom the name of a suspect in the crime of terrorism was first revealed shall record the real name and the specific address of the informant.

The police or law enforcement officials concerned shall report the informant's name and address to their superior officer who shall transmit the information to the Congressional Oversight Committee or to the proper court within five days

after the suspect was placed under arrest or his properties were sequestered, seized or frozen.

The name and address of the informant shall be considered confidential and shall not be unnecessarily revealed until after the proceedings against the suspect shall have been terminated.

SEC. 52. *Applicability of the Revised Penal Code.* – The provisions of Book I of the Revised Penal Code shall be applicable to this Act.

SEC. 53. *Anti-Terrorism Council.* – An Anti-Terrorism Council, hereinafter referred to, for brevity, as the "Council," is hereby created. The members of the Council are: (1) the Executive Secretary, who shall be its Chairperson; (2) the Secretary of Justice, who shall be its Vice Chairperson; and (3) the Secretary of Foreign Affairs; (4) the Secretary of National Defense; (5) the Secretary of the Interior and Local Government; (6) the Secretary of Finance; and (7) the National Security Advisor, as its other members.

The Council shall implement this Act and assume the responsibility for the proper and effective implementation of the anti-terrorism policy of the country. The Council shall keep records of its proceedings and decisions. All records of the Council shall be subject to such security classifications as the Council may, in its judgment and discretion, decide to adopt to safeguard the safety of the people, the security of the Republic, and the welfare of the nation.

The National Intelligence Coordinating Agency shall be the Secretariat of the Council. The Council shall define the powers, duties, and functions of the National Intelligence Coordinating Agency as Secretariat of the Council. The National Bureau of Investigation, the Bureau of Immigration, the Office of Civil Defense, the Intelligence Service of the Armed Forces of the Philippines, the Anti-Money Laundering Council, the Philippine Center on Transnational Crime, and the Philippine National Police intelligence and investigative elements shall serve as support agencies for the Council.

The Council shall formulate and adopt comprehensive, adequate, efficient, and effective anti-terrorism plans, programs,

and counter-measures to suppress and eradicate terrorism in the country and to protect the people from acts of terrorism. Nothing herein shall be interpreted to empower the Anti-Terrorism Council to exercise any judicial or quasi-judicial power or authority.

SEC. 54. *Functions of the Council.* – In pursuit of its mandate in the previous Section, the Council shall have the following functions with due regard for the rights of the people as mandated by the Constitution and pertinent laws:

1. Formulate and adopt plans, programs and counter-measures against terrorists and acts of terrorism in the country;
2. Coordinate all national efforts to suppress and eradicate acts of terrorism in the country and mobilize the entire nation against terrorism proscribed in this Act;
3. Direct the speedy investigation and prosecution of all persons accused or detained for the crime of terrorism or conspiracy to commit terrorism and other offenses punishable under this Act, and monitor the progress of their cases;
4. Establish and maintain comprehensive data-base information systems on terrorism, terrorist activities, and counter-terrorism operations;
5. Freeze the funds property, bank deposits, placements, trust accounts, assets and records belonging to a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism, pursuant to Republic Act No. 9160, otherwise known as the Anti-Money Laundering Act of 2001, as amended;
6. Grant monetary rewards and other incentives to informers who give vital information leading to the apprehension, arrest, detention, prosecution, and conviction of person or persons who are liable for the crime of terrorism or conspiracy to commit terrorism;

7. Establish and maintain coordination with and the cooperation and assistance of other nations in the struggle against international terrorism; and

8. Request the Supreme Court to designate specific divisions of the Court of Appeals and Regional Trial Courts in Manila, Cebu City and Cagayan de Oro City, as the case may be, to handle all cases involving the crime of terrorism or conspiracy to commit terrorism and all matters incident to said crimes. The Secretary of Justice shall assign a team of prosecutors from: (a) Luzon to handle terrorism cases filed in the Regional Trial Court in Manila; (b) from the Visayas to handle cases filed in Cebu City; and (c) from Mindanao to handle cases filed in Cagayan de Oro City.

SEC. 55. *Role of the Commission on Human Rights.* - The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act; and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, accused of, or detained for the crime of terrorism or conspiracy to commit terrorism.

SEC. 56. *Creation of a Grievance Committee.* - There is hereby created a Grievance Committee composed of the Ombudsman, as chair, and the Solicitor General, and an undersecretary from the Department of Justice (DOJ), as members, to receive and evaluate complaints against the *actuacions of the police and law enforcement officials* in the implementation of this Act. The Committee shall hold office in Manila.

The Committee shall have three subcommittees that will be respectively headed by the Deputy Ombudsmen in Luzon, the Visayas and Mindanao. The subcommittees shall respectively hold office at the Offices of Deputy Ombudsmen. *Three Assistant Solicitors General designated by the Solicitor General, and the regional prosecutors of the DOJ assigned to the regions where the Deputy Ombudsmen hold office shall be members thereof. The three subcommittees shall assist the*

Grievance Committee in receiving, investigating and evaluating complaints against the police and other law enforcement officers in the implementation of this Act. If the evidence warrants it, they may file the appropriate cases against the erring police and law enforcement officers. Unless seasonably disowned or denounced by the complainants, decisions or judgments in the said cases shall preclude the filing of other cases based on the same cause or causes of action as those that were filed with the Grievance Committee or its branches.

SEC. 57. *Ban on Extraordinary Rendition.* - No person suspected or convicted of the crime of terrorism shall be subjected to extraordinary rendition to any country unless his or her testimony is needed for terrorist related police investigations or judicial trials in the said country and unless his or her human rights, including the right against torture, and right to counsel, are officially assured by the requesting country and transmitted accordingly and approved by the Department of Justice.

SEC. 58. *Extra-Territorial Application of this Act.* - Subject to the provision of an existing treaty of which the Philippines is a signatory and to any contrary provision of any law of preferential application, the provisions of this Act shall apply: (1) to individual persons who commit any of the crimes defined and punished in this Act within the *terrestrial domain*, interior waters, maritime zone, and airspace of the Philippines; (2) to individual persons who, although physically outside the territorial limits of the Philippines, commit, conspire or plot to commit any of the crimes defined and punished in this Act inside the territorial limits of the Philippines; (3) to individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes on board Philippine ship or Philippine airship; (4) to individual persons who commit any of said crimes within any embassy, consulate, or diplomatic premises belonging to or occupied by the Philippine government in an official capacity; (5) to individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes against Philippine citizens or persons of Philippine descent, where their citizenship or ethnicity was a factor in the commission of the crime; and (6) to individual persons who, although physically outside the

territorial limits of the Philippines, commit said crimes directly against the Philippine government.

SEC. 59. *Joint Oversight Committee.* - There is hereby created a Joint Oversight Committee to oversee the implementation of this Act.

The Oversight Committee shall be composed of five members each from the Senate and the House in addition to the Chairs of the Committees of Public Order of both Houses who shall also Chair the Oversight Committee in the order specified herein. The membership of the Committee for every House shall at least have two opposition or minority members. The Joint Oversight Committee shall have its own independent counsel.

The Chair of the Committee shall rotate every six months with the Senate chairing it for the first six months and the House for the next six months. In every case, the ranking opposition or minority member of the Committee shall be the Vice Chair.

Upon the expiration of one year after this Act is approved by the President, the Committee shall review the Act particularly the provisions that authorize the surveillance of suspects of or persons charged with the crime of terrorism. To that end, the Committee shall summon the police and law enforcement officers and the members of the Anti-Terrorism Council and require them to answer questions from the members of Congress and to submit a written report of the acts they have done in the implementation of the law including the manner in which the persons suspected of or charged with the crime of terrorism have been dealt with in their custody and from the date when the movements of the latter were subjected to surveillance and his or her correspondences, messages, conversations and the like were listened to or subjected to monitoring, recording and tapping.

Without prejudice to its submitting other reports, the Committee shall render a semi-annual report to both Houses of Congress. The report may include where necessary a recommendation to reassess the effects of globalization on terrorist activities on the people, provide a sunset clause to

or amend any portion of the Act or to repeal the Act in its entirety.

The courts dealing with anti-terrorism cases shall submit to Congress and the President a report every six months of the status of anti-terrorism cases that have been filed with them starting from the date this Act is implemented.

SEC. 60. *Separability Clause.* – If for any reason any part or provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall remain and continue to be in full force and effect.

SEC. 61. *Repealing Clause.* – All laws, decrees, executive orders, rules or regulations or parts thereof, inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SEC. 62. *Special Effectivity Clause.* – After the bill shall have been signed into law by the President, the Act shall be published in three newspapers of national circulation; three newspapers of local circulation, one each in Ilocos Norte, Baguio City and Pampanga; three newspapers of local circulation, one each in Cebu, Iloilo and Tacloban; and three newspapers of local circulation, one each in Cagayan de Oro, Davao and General Santos City.

The title of the Act and its provisions defining the acts of terrorism that are punished shall be aired everyday at primetime for seven days, morning, noon and night over three national television and radio networks; three radio and television networks, one each in Cebu, Tacloban and Iloilo; and in five radio and television networks, one each in Lanao del Sur, Cagayan de Oro, Davao City, Cotabato City and Zamboanga City. The publication in the newspapers of local circulation and the announcements over local radio and television networks shall be done in the dominant language of the community.

After the publication required above shall have been done, the Act shall take effect two months after the elections are held in May 2007.

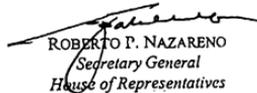
Thereafter, the provisions of this Act shall be automatically suspended one month before and two months after the holding of any election.

Approved,


JOSE DE VENEZIA JR.
*Speaker of the House
of Representatives*

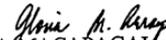

MANNY VILLAR
President of the Senate

This Act which is a consolidation of Senate Bill No. 2137 and House Bill No. 4839 was finally passed by the Senate and the House of Representatives on February 8, 2007 and February 19, 2007, respectively.


ROBERTO P. NAZARENO
*Secretary General
House of Representatives*


OSCAR G. YABES
Secretary of the Senate

Approved: **MAR 06 2007**


GLORIA MACAPAGAL-ARROYO
President of the Philippines

O



POMA Hologram # 39152



Senator Edgardo Angara
March 30, 2008

1. Do you believe that there is terrorism in the Philippines?

The ways of global trade and the face of global terror have radically changed. Trade and terror no longer operate under the rules and norms the world is familiar with. The bipolar world of two superpowers is behind us and so is the world with tariff walls. Hence, it is upon us to fully grasp the changes and act accordingly.

2. What is the policy framework of the HSA of 2007?

The law has the following provisions: the procedure for the surveillance of suspects and interception and recording of communications; the process for judicial authorization to examine bank deposits, accounts and records; and others.

The law's major policy is for the State to protect life, liberty and property from acts of terrorism and condemns crimes against humanity that pose danger to the national security of the country and to the welfare of the people. It also provides that the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the constitution at all times.

3. What are the factors that motivated the formulation of the HSA?

Major shifts in global trade and the changing face of global terrorism made it imperative on policymakers to undertake the necessary studies and adjustments on the anti-terrorism bill.

4. What motivated you to sponsor/ challenge this bill?

The Anti-Terrorism bill has undergone drastic refinement and is already a balance of the two main issues of protecting human rights and security of the state. Even the opposition in the Senate has deemed fit to pass it.

5. Anti-terrorism bill 101

Like I said, it raised a lot of human rights issues and was seen as a threat to human rights when it was introduced. But it has undergone practically an overhaul and is a better bill now. The measure is better than the Patriot Act of US President George W. Bush, or the antiterrorism measures in Britain because of the safeguards put into the law. In the UK, you can go to any judge and get a warrant. Only trained law enforcement agencies can enforce the Philippines' antiterrorism act. No Tom, Dick or Harry of a judge can issue a warrant. It will be the responsibility of the Court of Appeals.

Violations or abuse in the implementation of the law can result in 10 to 12 years' imprisonment of the enforcing authority. There are also built-in safeguards in intelligence eavesdropping.

7. Is the HSA an adequate or flawed measure to address the security issues of the country with regard to terrorism? Why?

Any law's effectiveness depends on how it is implemented. The challenge now is to enforce it properly. It will require strong institutions.

8. Is there any possibility that the HSA would be subject to abuse once fully implemented?

Just as any law, no matter how good, can be subject to abuse, it is possible that the HSA be abused in the form of illegal arrests.

9. What do you think are the political implications on the concerned sectors of society – political opposition and members and supporters of mass organizations?

I can not really speak for them. It would be better to ask them directly on how the anti-terror bill affects them.

10. What do you think are the reasons for certain institutions, like CBCP, to challenge the HSA?

Likewise, you'd have to ask them.

Interview with Atty. Carlos P. Medina, Jr.
 Ateneo Human Rights Center
 Rm. 101 APS Building, Rockwell Drive, Makati City
 March 18, 2008

What do you know about the security situation in the Philippines prior to the legislation of the HSA?

Malabo ang security situation. May series of violence sa Mindanao, wala sa Luzon at Visayas. ... so what really triggered the legislation of the ATB is the US GWOT. Aside from that part tayong sinasabi nilang Coalition of the Willing.

Is HSA an adequate or flawed tool to address the security issues of the Philippines with regard to terrorism?

Sa tingin ko, ano sya, flawed. Maraming syang issues at problems particularly relating to human rights. kasi ito allows violations to right to privacy, pwede kang i-wiretap. And then yung freedom of movement of someone suspected terrorist, pwede siyang i-house arrest, hindi sya pwedeng gumamit ng mga, may mga provisions kasi dyan na bawal ka gumamit ng communication devices while on house arrest. And then ung mga back accounts mo, pwedeng tingnan at i-sequester. So lahat yan mga encroachment sya on normal rights ng mga tao. now, hindi naman absolute ang rights ng mga tao e. may mga limitations at pwede syang, pwedeng mag-interfere ang government in the exercise of police power. Police power naman, in the name of public interest and general welfare, meron naming power ang state. Human Security Act is basically a police power exercise. So para maging valid naman sya as police power exercise, dapat malinaw kung ano ba yung conduct which is intended to be punished. Kasi kung hindi mo alam kung ano ung behavior na punishable, then hindi mo alam kung ano ung dapat mong gawin. Yung ung problema ng HSA, kasi medyo vague ung definition ng terrorist act, ng terrorism. Titignan mo ung definition, nakalagay doon an act, meron syang criminal acts. Distinct sya, marami. And then sinasabi that they cause widespread fear and panic among the populace. So, isa yan. There must be fear and panic which makes it relative. Kasi, in different areas of the country, some people are more fearful, some are not. Siguro in some areas in Mindanao, pumutok ung bomba, ung mga tao parang balewala, tuloy lang sa ginagawa nila. May baril na dyan sa harap nila, okay lang. Dito may pumutok, panic lahat. So depende sya sa area. Kung walang widespread fear and panic, walang terrorist act. Ngayon, sinong magsasabi na merong widespread fear? Titignan mo ngayon yung reaction ng tao. and also because meron kang demand on the government to perform an unlawful act. That's part of the definition kung titignan mo. Maalala mo na ung, sino ba ung may-ari ng pre-school sa Manila? Hinostage ung mga bata, pinasok nya sa bus. Ispitin mo ung mga bata hinostage, criminal act yan diba? Kidnapping. Now, terrorist ba yan o hindi? (me saying that it is terrorist if the incident sowed fear and panic) okay. So what was his demand? (me saying the demand is about education) lawful ba un o hindi? (me: lawful) lawful, so hindi sya terrorist. Kahit meron widespread fear, kahit na pumasok sya sa enumeration of crimes. at sinasabi nya na I am doing this demand on the government is to take care of their education in the future. How can that be an unlawful demand? So hindi na sigurado ngyon. Ano ba ang terrorism at ano ang hindi terrorism? Yan ang problema dito sa batas na ito. Mahirap labanan ang isang bagay na hindi mo alam kung ano ba talaga ang nilalabanan mo. Halimbawa, ang NPA binomba and cellsite ng Globe. Terrorist ba yan o hindi? Sinabi nila, why are we doing this? Because we want the government to reform. The act is unlawful but the demand is lawful. Yan ang problema. So ngyon hindi mo na alam. Pag sinabi ng NPA na patayin ito so that there will be political reforms in the society. Unlawful

demand? Hindi. Terrorist ba? So if you apply the definition of the law, hindi. That is part of the problem. Yun yung sa tingin kong flaw ng HSA.

What are the visible strengths and flaws of the HSA?

Of course ung strengths is to address the security situations. Hindi naman natin sinasabing walang terorista e. dapat talaga i-address ung terrorist problem pero ang problema is you have to do it in a way which makes it clear na ung rights ng mga tao are not violated.

Do you think that the HSA will be subjected to abuse by the enforcement agencies once fully implemented?

Oo naman kasi sila ung magsasabi na 'uy teka unlawful demand yan. Uy teka, widespread fear.' (me saying the counter charges to arbitrary detention) oo, yun naman ang problema nila. Kasi isa yan sa mga requirements ng US e, ang magkaroon ng HSA, anti-terrorism laws. In fact, minamadali nga yan sa pagbisita ni George Bush noon. So malakas, syempre mahina lang naman tayo. We depend on US help, military, economic, financial, Balikatan. Malakas talaga ang US influence sa atin. (me asking about US interest in the legislation of HSA) kasi meron silang anti-terrorism war. Partner nila tayo e, kailangan nila ng supporters/allies. Db a nga meron tinatawag na Coalition of the Willing?

View on the following variables:

✓ *Quality of perception of US influence – high or low influence in the legislation?*

Oo, mataas/malaki ang impluwensiya ng US sa pagkakaroon natin ng anti-terrorism law. Kasi isa yan sa mga requirements ng US e, ang magkaroon ng HSA, anti-terrorism laws. In fact, minamadali nga yan sa pagbisita ni George Bush noon. So malakas, syempre mahina lang naman tayo. We depend on US help, military, economic, financial, Balikatan. Malakas talaga ang US influence sa atin. (me asking about US interest in the legislation of HSA) kasi meron silang anti-terrorism war. Partner nila tayo e, kailangan nila ng supporters/allies. Db a nga meron tinatawag na Coalition of the Willing?

✓ *Status of the universally-accepted definition of terrorism*

So far, wala pa talagang universally-accepted definition of terrorism.

✓ *Effect on the Bill of Rights – is it supportive or violative?*

Violative. Mainly because vague ang definition ng terrorism sa batas na yan. You are not informed of what behavior is punishable. It allows surveillance, warrantless arrest, matagal na detention. Lahat naman ito ay mga limitations pero dapat maganda ung reasons. Kung ang basis e vague definition, mahirap. Magkakaroon ng iba't-ibang interpretations.

✓ *Discriminatory tendencies on the basis of ethnicity and religion*

Siguro sa Mindanao, isipin nila agad terrorist. Yun ang problema jan. kung mukhang terorista, suspect ka agad. Kung taga-Pakistan ka, taga-India, taga-Afghanistan ka, oopps teka suspect ka kaagad. Yun ang problema dito. Meron ethnicity, merong religion. Pag Muslim, isipin nila baka terorista to. Yun ang problema sa HSA, sa tingin ko, may bias e

What do you think are the political implications of the HSA on the political opposition and the members and supporters of mass organizations?

Pwede ngang gamitin ito laban sa kanila pero kinakabahan pa rin ung government dahil sa half a million na fine. Pero kung wala siguro yan, pwede na nila target-in kahit sinong, sa tingin, nila e kalaban ng government.

Do you see HSA a tool for the suppression of the political opposition?

Possible. pwedeng gamitin sya. Yan ang nakakatakot pag vague ang definition. Of course, we cannot argue based on the possibility of abuse. Kasi lahat naman inaabus. So hindi sya talaga very strong argument. Pero may tendency nga na kung vague ang definition, tayo hindi natin masyado malinaw. Akala mo alam mo na pero certain situations will not fall under the definition of terrorism in the law. And you will always interpret it in favor of the suspect, of the accused. Kung tayo mismo, hindi pa sya malinaw, lalo na sa ordinaryong tao. kung hindi malinaw, madaling abusuhin. Kasi ngyon, parang nagkakaroon ng leeway ang law enforcers na gamitin sya based on their own understanding. That's the danger.

What do you think are the reasons for certain institutions, like CBCP, to challenge the HSA?

I think ang concern ng CBCP and other institutions ay ung tendency to violate human rights, to lead to violations of human rights. kasi this is an anti-conflict. Meron war ngyon on terrorism. This is an anti-terrorism instrument. Yung terrorism ngyon is being played in the context of war conflict. Alam mo naman sa conflict, yung katotohan medyo nagugulo. Many people would want to see everything in black or white. Pag black, baril. May tendency tayo to simplify things. Ito ung danger dito. Kung hindi malinaw ang law and it will lead to violations of human rights, very high ang probability that it will lead into abuses because the tendency in the context which is being used, tendencies not to nuance anymore.

Do you think that the exclusion of "state terrorism" in the law gives the government more power?

Yan naman ang problema sa international definition. It does not include terrorism by the state. Kumbaga, yung dalawang definition na naglalaban is terrorism from above and terrorism from below. From above, ito ung state terrorism. From below, ito ung iba-ibang armed groups. Ngyon pag sinabi nilang terrorism from above, number one ang US. Terrorism from below JI, ASG, AQ. Ung international definitions na yan, naglalaban sila ng viewpoint. Kung sasabihin mong, it includes state terrorism, then, many will say US, UK, France, lahat ng super power siguro sasabihin nila terrorist yan. Sila naman ayaw nila ng isang definition lang which will make them terrorists.

Suggestions para maging effective ang implementation?

I will go along with suggestions na i-review sya. Gawin syang mas realistic at mas human rights friendly. Ibabalanse mo talaga ung exercise of police power and human rights. kasi ako mismo, sa tingin ko, kailangan i-address ang issue of terrorism not at the expense human rights.

Email Interview with Atty. Eugene Kaw
Office of Senator Mar Roxas
March 24, 2008

1. Do you believe that there is terrorism in the Philippines?

Yes, I believe that there is terrorism in the Philippines, as can be seen from the bombings experienced from 2000 – 2007 in various parts of the country, e.g. Metro Manila, Davao City, Zamboanga City, etc.

2. What is the policy framework of the Human Security Act of 2007 (HSA)?

Sec. 2 of RA 9372:

It is declared a policy of the State to protect life, liberty, and property from acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the law of nations.

In the implementation of the policy stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.

The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace-building, addressing the roots of conflict by building state capacity and promoting equitable economic development.

Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. It is to be understood, however that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.

3. What are the factors that motivated the formulation of the HSA?

The factors that motivated the formulation of the HSA are: (a) Philippines' international commitment to combat global terrorism; (b) Elimination of domestic and local terrorism.

4. With regard to the legislative history of the HSA, what were the issues raised during the interpellation period?

For the issues raised during the period of interpellation on Senate Bill No. 2731, may I direct your attention to the following:

5/22/2006	Interpellation of Senator(s) AQUILINO Q. PIMENTEL JR.;
5/23/2006	Sponsorship speech of Senator Enrile;
5/30/2006	Interpellation of Senator(s) ALFREDO S. LIM and EDGARDO J. ANGARA;

6/5/2006	Interpellation of Senator(s) AQUILINO Q. PIMENTEL JR. and RODOLFO G. BIAZON;
6/7/2006	Interpellation of Senator(s) AQUILINO Q. PIMENTEL, JR. and PANFILO M. LACSON;
[THIRD REGULAR SESSION]	
7/26/2006	Interpellation of Senator MIRIAM DEFENSOR SANTIAGO;
8/1/2006	Interpellation of Senator(s) PANFILO M. LACSON and AQUILINO Q. PIMENTEL JR.;
8/14/2006	Interpellation of Senator(s) RAMON A. REVILLA JR.;
8/14/2006	Remarks of Senator(s) FRANKLIN M. DRILON;
8/14/2006	Senator Revilla, Jr. was made as coauthor;
8/23/2006	Interpellation of Senator(s) FRANKLIN M. DRILON;
8/28/2006	Interpellation of Senator(s) FRANKLIN M. DRILON;
9/4/2006	Interpellation of Senator(s) FRANKLIN M. DRILON;
9/18/2006	Interpellation of Senator(s) RICHARD "DICK" J. GORDON;

Given the foregoing dates, please see the relevant 13th Congress journals at http://senate.gov.ph/lis/leg_sys.aspx?congress=13&rtype=journal . From there you can derive the issues that were raised by the senators who interpellated the sponsor/s of the human security act.

5. What do you think are the factors that motivated Senator Roxas to sponsor / challenge the bill?

The factors that motivated Senator Roxas to vote against Senate Bill No. 2731 (that eventually became RA 9372) are: (a) Possible human rights violations; (b) possible violations of the people's constitutional rights of freedom of speech, freedom to peaceably assemble, and due process; and (c) possible abuses by the government authorities in the implementation of RA 9372.

6. Is HSA an adequate or a flawed measure to address the security issues of the Philippines with regard to terrorism? Why do you say so?

In my opinion as a lawyer, I believe that HSA is a flawed measure because of the dangerous tendency of its abuse against innocent people. In my opinion, RA 9372's inclination is to suppress constitutional rights more than to punish terrorist activities. The following are, in my view, some of the infirmities of RA 9372 or HSA:

a) Section 3 of RA 9372 curtails the rights of the people to political verbal expression and violates their right to due process because of its vagueness and for being overbreadth.

b) Section 4 of RA 9372, which criminalizes conspiracy to commit terrorism, violates the right to due process because it presumes the existence, and dispenses with proof beyond reasonable doubt, of some of the elements of terrorism, which are "sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand."

- c) Section 5 of RA 9372 is void for being vague and overbroad.
- d) Section 17 of RA 9372 is unconstitutional because it violates the right of free expression, association and assembly.
- e) Paragraph 1, Sec. 18 of RA 9372 is unconstitutional for it authorizes unreasonable searches and seizures by dispensing with the requirements of probable cause.
- f) Paragraph 2, Sec. 18 of RA 9372 is unconstitutional because it imposes a non-adjudicative or administrative function upon a trial judge.
- g) Section 19, RA 9372, which authorizes even Directors of the Commission on Human Rights to extend detention of suspects without limits, is void for being contrary to Sec. 2, Art. III and Sec. 18, Art. VII, Constitution.
- h) Section 26, RA 9372, which imposes conditions on bail, violates an accused person's right to due process, right to bail and right to travel, and right against incommunicado detention.
- i) Section 39, RA 9372, which authorizes the sequestration of assets of mere suspects, violates the right to due process.
- j) Paragraph 2, Sec. 41 of RA 9372 is a bill of attainder and violates due process because it allows the forfeiture of a convicted terrorist's assets without evidence of their connection with the crime of terrorism nor any procedure .
- k) Paragraph 4, Sec. 54 is illegal because it violates the right to privacy and contradicts Secs. 14 and 32, RA 9372.

The very fact that the HSA sends a chilling effect to the exercise of the people's constitutional rights already makes it a flawed measure. One's exercise of constitutional and political rights must always be done freely and totally, without any statutory or legal impediment and without fear of persecution or harassment.

7. Is there any possibility that the HSA will be subject to abuse once fully implemented?

Yes. Please see answers to question nos. 6 and 8.

8. What do you think are the political implications on the concerned sectors of the society—political opposition and members and supporters of mass organizations?

Given the answers in question no. 6, HSA can be used as a tool for harassment against affected political sectors, groups, and associations. HSA then can be used as a tool for persecution against sectors, groups, organizations perceived by the government to be its enemies.

9. What do you think are the reasons for certain institutions and individuals to challenge the HSA?

We cannot speak for other institutions and individuals but we think it's because of the possibility of government abuse in the implementation of the HSA.

10. What are your final words?

HSA strikes at the very core of not only of an individual's freedom of expression, but also that of the people's organizations and associations. In other words RA 9372 may deal a vital blow not just to freedom of speech – itself already a frightening scenario – but to freedom of expressive association as well: that is, the right to associate and advocate public or private viewpoints. HAS, therefore, has a chilling effect on both free expression and free association because the aggregation of individual members' fears directly affects the vitality of the organization.

HSA may ensnare and entangle not only the "usual suspects" – members of the much-maligned "leftist groups" and alleged "front organizations" -- but also people's organizations who would want to speak up and be counted as vigilant denizens of this country, including their spokespersons, *i.e.*, lawyers, members of the media, political analysts, commentators, and activists.

It must always be remembered that in cases involving liberty, the scales of justice should weigh heavily against government and in favor of the people, specially the poor, the oppressed, the marginalized and the weak.

Atty. Jacqueline B. Veloria Mejia
 Commission on Human Rights
 Commonwealth Avenue, U.P. Complex, Diliman, Quezon city
 March 18, 2008

Do you believe that there is terrorism in the Philippines?

In the context of the definition of "terrorism" in the HSA, there is terrorism in the Philippines. But since, there is no universally-accepted definition of "terrorism," it is hard to say that there really is terrorism in the Philippines. *or vice versa. I'm not sure. Hindi na-record ung umpisa*

... and to coerce the government to give in to an unlawful demand. What is the demand of all these [terrorist groups]? There are no specific demands coming from some of them. There is no collective demand coming from terrorist groups. You cannot pinpoint that there is a concerted effort among all these groups to create chaos, to create panic, to create fear among the Filipino people. And when they say that this one is a terrorist act, there are no pronouncements coming from these alleged terrorist groups asking the government to do something. Because there must be a demand as stated in the law, the government is supposed to be coerced into giving into an unlawful demand. When you look at all these things, all the acts of violence, probably serious acts of violence or under the definition of the law, the groups who are alleged to be responsible for the terroristic acts do not, beforehand, demand anything unlawfully from the government. They just do the act. I think it is an issue of peace and order and implementation of the law. The issue of this series of violence being committed should be looked at in a holistic perspective. Why are people easily swayed into joining a group? Is it because of the ideology that they have prior to their acceding into being a member of the group?

What do you think about the Human Security Act of 2007 (HSA) with regard to the security situation in the Philippines at present?

Well if you're going to base it on the continuing number of extra-judicial killings and enforced disappearances and alleged torture committed by, of course, the agents of the state, you would say that there is no effect. There has been no study yet on whether the HSA has improved the security situation in the country. In the first place, I'm not very certain whether the law enforcement agencies, particularly those mentioned in the Act, have already implemented the law. If you're going to base in on reports, there has been no case that has been filed against an individual or a group of individuals saying that they have violated the HSA. And if you're going to look at the provisions of the law and how the law enforcement agencies look at perceive the law, they would say that they are kind of fearful in implementing, at least for some of those provisions. What if the court finds out this particular person is not a member of a terrorist group. That particular person can file a case against us. Like there is a fine of 500, 000 or 50, 000 per day of detention. I'm not sure of the amount. So we are saying, 'we don't want to be charged.' Why is there a perception like that? Probably, they are really not very sure whether particular person or groups of individuals have violated the law, the anti-terrorism law. There is also an issue of constitutionality of the Act itself. There are 20 petitions, 4 consolidated petitions, filed by 29 individuals and organizations questioning the constitutionality of the HSA. These petitions are still pending before the Supreme Court.

Do you think that the HSA will be subject to abuse once fully implemented?

Yes, there is a possibility that the Act might be subject to abuse just like all the other laws that are being implemented. Because one there is also a need for a greater advocacy and information campaign with regard to provisions of the law. There are gaps in the law that would make it easier for law enforcement agencies to violate or abuse the provisions.

What do you think are the political implications on the concerned sectors of the society—political opposition and the members and supporters of mass organizations? *answered the question on behalf of the Commission because she belongs to the CHR*

If you're going to look at the HSA, with regard to two provisions, Section 19 and Section 55. Section 19 provides for the period of detention in the event of an actual or imminent terrorist attack. So if a person is believed to be part of a terrorist group and is going to be involved in an actual act or imminent terrorist attack, he can be detained. The period of detention, that would not be arbitrary, would be three days. That is 72 hours. [if a person is to be detained] More than three days, if there are no charges filed against that particular person, the arresting officers can be charged with arbitrary detention. In this case, if this person is to be detained for more than three days, there has to be a written approval by the Commission on Human Rights. It says here in the law, the approval should be written by a municipal, city, provincial or regional officer of a Commission on Human Rights. The author of the law probably does not know that there is only one Human Rights Commission in the Philippines. When you say "a," you are saying that there are several Human Rights Commissions here. They don't know that there are no offices of the Commission on Human Rights at the municipal, city or provincial level, only on the regional level. In the first place, they should not have given this particular function to the CHR because the CHR is a national institution that protects the fundamental rights and freedom. One of the basic fundamental rights of the people is the right to liberty. And then we are going to be asked to give the written approval for longer detention of a particular person because charges have not yet been filed against him? That is contradictory to the mandate of the CHR. So we were saying, how come this was included?

Do you know the story behind the approval of this law? According to sources, this was submitted in. of course when you pass a law, there has to be a bicameral committee between the Lower House and the Senate. They had to pass this because they have to because at that time there are series of acts of violence particularly in Mindanao. So they had to pass the law. They had to go on overtime. When they went on overtime, some of the congressmen and the senators had to leave. The discussion was only between Senator Enrile and Pimentel. I think it was our Chair (Quisumbing) who pointed out to Senator Enrile that "bakit ninyo kami binigyan ng ganito? In the first place, wala naman kaming municipal, city o provincial offices. Meron lang kaming regional." As the CHR, wala naman kaming karapatan magsabi na 'o sige, you have my approval to detain this person longer than three days.' It's against the [constitutional] mandate. I think this has to be further studied by the implementing agencies of the government. This is an issue, for us. Definitely, we will not implement this because it is against our mandate.

Section 55 provides for the role of the Commission. It says here "The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act." So it is us and we have concurrent jurisdiction to prosecute. It is actually contradictory when you want the CHR to implement a particular provision and at the same time prosecute violations in the

implementation of the Act itself. The CHR is not a prosecuting body. It is an investigative body and its findings are recommendatory in nature. With regard to this particular provision, you have given the CHR prosecutory power which is contrary to its mandate, not contrary but it is not part of its mandate and it is not also indicated in the Constitution. If you look at this section, you will say that this is unconstitutional because you have given the Commission prosecutory power and its not within its mandate. Kung ibabase mo sa dalawang provisions pa lang ng bill, masasabi na hindi pinag-aralan ito. Talagang ni-rush. Ni-rush sya because they want to show the US that we can also be their ally in the fight against terrorism.

What makes it worse is that they have not even informed us about this. When they were discussing this at the technical level, they did not even ask the position of the Commission. They did not even ask us to be part of the technical working group and then all of a sudden, the CHR is indicated in two provisions here. Kung titignan mo pa yung ibang substantive provisions, there are limitations. There are processes that you need to follow prior to surveilling the person, prior to a law enforcer surveilling a person etc. Siguro ang isa sa mga rason kung bakit hindi nai-implement ito is because it is tedious on the part of the law enforcement. Pag-aralan mo ang Sections 7, 8, at 9. Ito yung mga procedural requirements prior to you implementing the other provisions of the law. I don't know whether the agents of the government, particularly those who are supposed to be implementing majority of the provisions here, have had trainings. Probably they've had some but not deeper training on this one – how to implement it and what are the things they are supposed to do. Kung ibabase mo sya dun sa pag-iimplement ng ating mga batas na subject to abuse, what more itong HSA na, una, hindi pa naman masyadong naiintindihan.

Ang issue dito with regards to human rights perspective is your right to privacy, your right to communication, and your right to liberty. Kasi even your bank deposits can also be known if you are perceived to be a terrorist but of course following the procedural requirements of the law.

Tapos meron syang mga penalties. Kung tatanungin mo ang mga pulis sasabihin sayo, pano yan if the court finds out na hindi naman pala tama ay kami ang mapepreso ng 10 taon.

Sa amin kasi sa Commission, it's more of protection. Kasi when you are part of the state, it is supposed to be your obligation to respect human rights first and foremost. But if you have a law such as this which is subject also to interpretation by those who are going to implement it. I don't know if there is a need for implementing guidelines so that there would be lesser abuse of the provisions or whether there is also a need, definitely there is a need, for information campaign particularly for the police and other law enforcement agents who are mandated by the law to implement the law itself.

Side comment → it is always subject to abuse particularly so if the enforcement agencies are not properly trained on how to implement. I'm looking at it on the human rights perspective. For a lawyer like me, there is really a need to re-study this.

What do you think is the effect of the HSA on the Bill of Rights? Is it supportive or violative?

It is violative of the Bill of Rights. I already said earlier. The right to privacy, the right to security, freedom of movement, privacy of communication kasi pwede ka nila i-intercept e. pwede ka nila i-wiretap.

Do you think that HSA discriminates based on ethnicity and religion?

Well, it does not say so here in the law. It is not mentioned here of the word "Muslim" <me explaining the book, ATB: a human rights critique> ah kasi naman yung mga acts of violence committed ay sa Mindanao tapos most of those involved are members either of ASG or MNLF or MILF, yung mga rogue members. You cannot generalized, but in the case of ASG, it is really known as a terrorist group, as an illegal group. Even before this issue was raised, this HSA, they are raising an issue na. when you say, this particular individual committed a crime hindi lang a terrorist act. There is always an adjective preceding the word "criminal". When it is Muslim, a Muslim committed a murder. Pero when it is a Christian, you don't say that. You say, this particular individual. You do not say the ethnicity or the religion of the person. So it's not only about the HSA, it is a consciousness of all of us that when we describe the commission of an act, we need to be very objective and not use terms which might indicate that there is bias against a particular group of persons based on their ethnicity or religion. Hindi lang dito e, malaking issue na yan before pa na wag naman iddescribe yung isang tao as Muslim criminal. Hindi mo naman sinasabing Christian criminal. Just pure and simple "criminal" is an objective description.

Side comment → there is no need actually for this law. Crimes constituting acts of terrorism are already punishable by the RPC. (personal opinion) I don't know, maybe they are just trying to consolidate everything under one thing to make things easier for them.

Jigs Clamor
 KARAPATAN
 Healing Zone, Kamias Road, Quezon City
 March 18, 2008

Do you believe that there is terrorism in the Philippines?

First, on our part sa KARAPATAN, we do believe that terrorism is a complex issue given that there is no universally-accepted definition of what terrorism is. However, if we are going to take into account of just the essence of "terrorism," sowing fear and panic among the populace, there is terrorism. On the part of human rights violations victims, actually, they see terrorism as coming from the state and with that, we call it state terrorism. Supposedly, the state is, its main mandate is, to protect its own citizens, however, in our case, the state becomes the terrorist. How is that so? For example, the United States state security forces, the mere presence of the United States security state forces in communities in the country sides, they already threaten or harass or intimidate the community people.

What do you think about the Human Security Act of 2007 (HSA) with regard to the security situation in the Philippines at present?

The HSA itself is not really securing the Filipino people. In fact, parang ano sya e, benign na pagpapakita lang na meron daw diumanong terorismo. If you're going to look into the sections, it doesn't define what terrorism really is. It merely defines the acts of terrorism. For example, yung binanggit nila na sowing fear and panic among the populace in relation to other existing crimes found and punishable under the Revised Penal Code. Yung dating common crimes now constitute an act of terrorism. Yun ung problema nya. With regard to the security situation in the Philippines at present, in fact, the question is: meron nga ba talagang terrorism? Or is it the state that creates terrorism? In terms of security situation, another point is that the Philippines, without asking support from the United States government, already laid down its country. For example, by encouraging them or coming into an agreement with the US to address the issue of terrorism saying that the Philippines is a haven of terrorists, stating JI and ASG.

Is HSA an adequate or a flawed tool to address the security issues of the Philippines with regard to terrorism?

Basically, the HSA is a flawed tool and, in fact, it is violative of the Constitution, based on our own investigation. There are several provisions/sections found in this particular Act that violates the Bill of Rights of its citizens – 1. warrantless arrests, indefinite detention, 2. on mere suspicion you can be subject to surveillance without you knowing that the state already tags you as a terrorist, 3. the state was given the function of controlling and freezing your bank accounts without you knowing it again on mere suspicion. May mga ganun. At the same time, itong HSA does not really address the root cause of terrorism and it did not recognize the lack of definition, universal definition of what terrorism is. Until now kasi it is an ongoing debate e. and in fact, when the United Nations Special Rapporteur Martin Scheinin knew about the HSA, he encouraged the Philippine Government to reconsider. According to him, there are numerous provisions that are, again, flawed. It is like being questioned in terms of its international standard. May mga problema sya. It is stated that it is violative of the Article 15 of the International Convention on Civil and Political Rights. Pano yan? So there is this right of the accused to due process. Halimbawa you are a suspect, babasahin sa kung ano ung nilabag mo in layman's term. So dito sa HSA, walang ganun. So, it is violative of the ICCPR.

What motivated you to support/challenge the HSA?

Being a member of the human rights community/organization, actually, there are several provisions wherein it is really violative of the Constitution, specifically the Bill of Rights. This motivated us to really challenge the HSA.

Supposedly, a law should have an implementing rules and regulations, before it should be implemented. In this case, wala syang ganun. Wala siyang IRR, basta inimplement na sya. Parang ni-rush na sya, this has something to do with the US. In 2001, nagkaroon kasi ng Global War on Terror and the Philippines under Mrs. Arroyo already laid down the ground for the US, in terms of countering acts of terrorism. Ung ongoing joint military, Balikatan, exercises. For us, it violative of the national sovereignty kasi if there is an internal problem or affair or internal conflict happening in the Philippines, the Philippine government has to address the problem not the external problem, I am referring to the United States. Just this year, we received a report alleging that the US soldiers were involved dun sa massacre sa "panamaw, sulu" according to them un daw ay balwarte ng mga ASG, may mga terorista daw, mga ganun. Sabi ko nga, on mere suspicion, kahit walang malinaw na ebidensya, pwede nang labagin ang karapatan. Binabanggit sa provision na ito, even the evidence is weak you can be detained. May problema talaga sya, malaking problema.

Do you think that the HSA will be subject to abuse once fully implemented?

In our context, without having HSA, the state security forces already abused some of the provisions found in this Act. For example, yung surveillance, according to them, on mere suspicion, they tag this particular organization. Because this organization has been very vocal in critiquing the present administration. Now , naging subject sila for surveillance. Ang problema dito sa HSA, ung dating illegitimate, ung dating illegal na ginagawa ng state security forces now in this particular Act, they are trying to legitimize ung mga acts na ito.

What do you think are the political implications on the concerned sectors of the society—political opposition and the members and supporters of mass organizations?

FYI, KARAPATAN and other progressive organizations already filed before the SC questioning the constitutionality of the HSA. Sa pagtingin ng mga nasa different sectors, given that there is no clean overly broad definition and it can be subject to numerous abuse. Given ung sa context natin sa Pilipinas, ung mga security forces are not really aware of the law, specifically dun sa rights ng mga tao. concretely, halimbawa ung sa simpleng pag-aresto, sa karanasan namin, most of the law enforcement officers, they don't know about the Miranda Rights. ito ung pag hinuhuli ka, sinasabi sayo kung ano ung mga karapatan mo. Basta huhulihin ka na lang nila. Ilan lang ang napansin naming, halimbasa, ung NBI medyo binabanggit nila kasi ung iba sa kanila abogado. Pero down the level, ung police, soldiers na wala naming legal authority, ginagawa yan. Sa bahagi naming, ung political implications nya, basically, parang sa Pilipinas. Sabi ko nga kanina wala tayong universally-accepted definition of what terrorism is and yet the Philippines has come up with a particular law that is overly broad ung definition. Ang tingin naming, it's a superfluous. Given na ung sections and provisions dito sa HSA are already penalized under the RPC. Binabanggit ko nga lang kanina, kumbaga, ung dating common crimes ngayon ay acts of terrorism na. so medyo malaking implication ito. Kung dati sasabihin na criminal ka lang, ngayon terorista ka na. for example, if a particular sector of the society asked the government, concretely GMA, to step down. If you're going to look into the provisions, pwede itong i-interpret ng gobyerno that this

particular sector or group is coercing the government. Therefore, liable sila under this particular Act kasi binabanggit dito na to sow or to create fear and panic among the populace by coercing the government. For example, if you are just merely practicing your rights, particularly your right to expression, freedom of expression and assembly, but since you are expressing, coercing the government. Kung ganun ang magiging interpretation, pwede kang managot dito. So far, dahil pending ung mga naka-file na petitions sa SC, hindi pa. so this year, we can expect na itong HSA will be subject into an oral argument in terms of its constitutionality.

Do you think that the following issues posed against HSA will extend the alleged abuses of the enforcement agencies?

Actually, on the part of the _____, this becomes a tool for a new repression. Parang this will further violate the rights of the people. Given that the law enforcement agencies are not really aware of the particular rights of the people.

✓ **Quality of perception of US influence – high or low US influence?**

Comment off the record

✓ **Status of the universally-accepted definition of terrorism**

In 2006, there is an attempt by the UN to discuss the terrorism. However, it was not discussed kasi marami pang kailangan pag-usapan in terms of the complexity of the issue of terrorism. Hindi natuloy, wala pa rin.

✓ **Effect on the Bill of Rights – is it supportive or violative?**

Already answered

✓ **Discriminatory tendencies on the basis of ethnicity and religion**

Sa experience ng US, sinasabi sa mga literature na dahil ikaw ay Muslim-looking, dahil ikaw ay Muslim, they already associate you dun sa tinatawag nilang terorista. That is discriminative on the part of ethnicity and religion. Lalo na kung Muslim kasi, terrorism hindi lang naman yan sa usapin ng religion at ethnicity. Historically, for example, you are going to call the bombing of Hiroshima e hindi ba terorismo yon? Yung sa bahagi ng Pilipinas na pinatay ung daan-daan nating mga kababayan, hindi ba terorismo yon? This is coming from the US. That is the reason why some of the groups have come up with state terrorism. State terrorism kasi hindi lang estado. For example, a super power state against a weak, subordinate state. That can also be called state terrorism. In fact, this is very clear dun sa tinatawag na Geneva Declaration on Terrorism.

✓ **Perception of opposition personalities on HSA – is it perceived as a tool to suppress the political opposition?**

Yes, for example, in the case of Senator Jamby Madrigal, she already filed a complaint praying for a petition for certiorari before the SC. According to her, HAS is violative of the Constitution and not only Senator Madrigal. Other progressive groups and party lists have also questioned. In fact, they asked for the repeal of this particular law. I am referring to Bayan Muna, Gabriela, Anakpawis. Sa bahagi nila sa Congress, they come up with a House Resolution asking, basically, to repeal this law.

What are your final words?

Basically, this is our position. Given the complexity of terrorism, it is a law that will really not address the root causes of terrorism unless the government will really further look into these particular causes. In particular, yung rights supposedly of the concerned sectors of the society should be viewed dun sa kanilang rights of mainly exercising this right. It should not be viewed as act of terrorism kasi if you disrupted, madali para sa gobyerno na sabihing terorismo yan. In fact, yung recent Makati rallies, sinabing may mga terorista daw. Until now, wala naman malinaw na resulta ng investigations. So itong HSA will become a tool for further violating the rights of the people.

TFDP Statement on Human Security Act of 2007

"Woe to those who enact unjust statutes and who write oppressive decrees, depriving the poor of justice, robbing the weakest of my people of their rights." (Isaiah 10:1)

Inspired by the leaders of the Catholic Church pastoral exhortation to build a society more human, more worthy of the human person, we gathered today to discuss, contemplate, and discern the different provisions of the Human Security Act of 2007 (HSA) otherwise known as the Anti-Terror Law, the social and political implication of its implementation, and its moral dimension based on the framework of upholding human dignity and protecting human rights.

We believe that it is indeed part of government's responsibility to protect its citizens against acts that could endanger life and human security, however we are alarmed that the provisions of the HSA clearly provides the legal mantle that would further violate constitutionally guaranteed rights. Discerning on the provisions of the HSA, we are deeply troubled that the law violates the right to due process by allowing the arrest of suspected terrorists even without the virtue of a warrant or the preconditions for a warrantless arrest. The law also violates the right to privacy and the right to be secure in their persons by institutionalizing "terrorist profiling", surveillance and interception of private communications. The law also expands the 36 hour detention period which multiplies the risk of torture and other forms of human rights violations being committed to suspects under custody.

We feel that instead of building community and strengthening the principle of solidarity the HSA will only exacerbate the already deteriorating state of human rights in the country, feed the continued existence of a coercive environment and growing culture of impunity, and further the political agenda and ambition of one small group by using the law to curtail any opposition against the administration of President Gloria Macapagal Arroyo.

As religious and as members of the lay faithful we must work for the common good by participating directly in social, economic, and political affairs so as to transform society into one wherein the dignity of the human person is respected, protected, and fulfilled. And as such it is our moral obligation to take a firm, but enlightened stand against the provisions of the HSA that violates and curtail human rights.

In the words of our Church leaders "when human authority goes beyond the limits willed by God, it makes itself a deity and demands absolute submission; it becomes the Beast of the Apocalypse, an image of the power of the imperial persecutor." We must never allow this to happen. Peace and justice must prevail.

We embrace the cry and call of the marginalized by asserting that the "Human Security Act" will worsen extra-judicial killings, culture of death, and human rights violations. At present, urban militarization includes both deployment of military troops in urban poor communities with demolition threat and deployment of military personnel in schools and universities to promote this so-called "Anti-Terrorism Law." In the rural areas, militarization and the culture of violence and death bring untold suffering to our poor brothers and sisters. It is from their side, it is from their bosom that we, religious and lay faithful cry out to the heavens and say:

**DENOUNCE THE CULTURE OF DEATH!
 JUNK THE HUMAN SECURITY ACT!
 NO TO STATE TERRORISM!
 JUSTICE TO VICTIMS OF EXTRA-JUDICIAL KILLINGS!
 JUSTICE TO VICTIMS OF HUMAN RIGHTS VIOLATIONS!
 PROMOTE PEACE BASED ON JUSTICE!
 DEFEND OUR LIFE! PROTECT OUR DIGNITY!**



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**THIRTEENTH CONGRESS
SECOND REGULAR SESSION**

Senator Angara requested that he be furnished with the information in the next day's session.

Asked if his proposal that government should absorb not less than P200 billion also covers the stranded contract costs of NPC, Senator Enrile said that this would cover both the stranded contract costs and the stranded debts of NPC.

As regards the distributors, apart from Meralco, that are eligible to recover their stranded costs, Senator Enrile requested the technical staff to provide Senator Angara with the list of all the 19 eligible private distribution utilities as well as the cooperatives with IPP contracts, and to include therein information on the IPP contracts per distribution utility, the megawattage, contracted price of electricity on a take-or-pay basis, and an aggregation of the stranded costs to be recovered.

Senator Enrile explained that the measure does not seek to quantify all of the stranded contract costs and debts but simply establishes the regime under which they could make a claim from the universal levy of their stranded debts in the case of NPC, and their stranded contract costs for NPC and the private distribution utilities.

In the case of stranded contract costs, Senator Enrile adverted to Section 4 (AAA) on page 9 of the bill, to wit:

Stranded contract costs of NPC or of a distribution utility refer to the excess of the contracted cost of electricity under the eligible Independent Power Producer (IPP) contracts of NPC or of a distribution utility over the actual selling price of that contracted electricity from such IPP contracts in the market; *Provided*, that IPP contracts, to be deemed eligible, had been approved by the ERB on or before December 31, 2000.

Senator Enrile explained that the bill was so worded because even if ERC approved the IPP contracts on or before December 31, 2000, the claim on the universal levy is not automatic under the proposed provision because it would only make the distributors eligible to apply for stranded costs recovery. He added that it would be up to the ERC to approve or disapprove the amount to be recovered from the universal levy so that the public shall have

a chance to scrutinize the contracts when these are exposed to public hearings.

Senator Angara asked how many of the more than 40 IPPs that applied for recovery from the universal levy have received eligibility. Senator Enrile requested the technical people to provide Senator Angara with the information, including data on cross-ownership, and the list of distribution utilities that have investments in power plants and vice-versa.

At this point, Senator Angara said that he would continue his interpellation at some other time.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2232

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:03 p.m.

RESUMPTION OF SESSION

At 6:12 p.m., the session was resumed.

COMMITTEE REPORT NO. 34 ON SENATE BILL NO. 2137 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34) entitled

AN ACT TO DEFINE AND PUNISH THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM, AND FOR OTHER PURPOSES.

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

Thereupon, the Chair recognized Senator Villar, Sponsor of the measure. *X*

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MOTION OF SENATOR VILLAR

Senator Villar clarified that a new version of the bill, a consolidation of the provisions of the original bill under Committee Report No. 34 and other aspects from the bill filed by Senator Enrile, had been prepared. He recalled that he had started the sponsorship of the original bill last year and, in fact, the senators had been briefed by officials of the United Nations Office on Drugs and Crime on the subject of terrorism, the transcripts of which were appended to the Committee Journal.

Senator Villar stated that Senator Enrile would take over the sponsorship of the bill, in deference to the latter, a senior member of the Committee who originally crafted the bill in the 10th Congress.

Upon motion of Senator Villar, there being no objection, the new version of the bill was adopted as the working draft.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:15 p.m.

RESUMPTION OF SESSION

At 6:15 p.m., the session was resumed.

REMARKS OF SENATOR ENRILE

At the outset, Senator Enrile thanked Senator Villar for allowing him to sponsor an urgent and delicate piece of legislation that the Executive has asked Congress to enact.

He informed the Body that upon his return to the Senate in 1995, he filed an anti-terrorism bill, believing then and up to this time, that there has been a strong need to craft a law to aid government and the law enforcement agencies deal with the emerging threat to national security. He said that his original bill was inadequate since it simply enumerated possible acts of terrorism. He stated that as a law practitioner, he recognizes that an anti-terrorism law must be well-defined to be an effective instrument of social control over behaviors that are not conducive to peace and tranquility. He stressed that he tried to craft a new version of the bill filed in 2005 which defines terrorism as a crime and defines its participants in accordance

with the manner by which the Revised Penal Code defines the participants in any given crime, be they principal participants or participants by indispensable participation or inducement. He stated that he tried to visualize the other crimes that could spring from the crime of terrorism, thus, he included conspiracy to commit terrorism and proposal to commit terrorism. He noted that people who participated indirectly or cooperated in the commission of a terrorist act should be equally called to answer for their conduct, thus, he also defined the accomplices and accessories, and the penalties that should be imposed on them.

Senator Enrile stated that he also dealt with the manner of collecting and handling the necessary evidence to enable prosecutors to bring perpetrators to justice; the manner of handling persons arrested on suspicion of being terrorists; the manner of dealing with associations suspected of being involved in terrorism; and the penalties to be imposed on members of associations proscribed by law. He said that these provisions are incorporated in the bill so that no innocent persons shall be coerced to admit that they are terrorists. Moreover, he pointed out that the bill imposes rigid obligations and responsibilities on law enforcement agencies that would implement the law. He stated that these agencies would be armed with the necessary tools to effectively and efficiently perform the jobs of protecting society, at the same time according to the suspect all human consideration and opportunities to enable him to defend himself until he is pronounced a terrorist by a court of law. Having been the custodian of detainees during a critical time in history, he emphasized that he had provided for the rights of a detained person precisely to prevent abuses in the implementation of the law.

In closing, he stated that he would deliver an extended explanation of the measure at the proper time.

INTERPELLATION OF SENATOR PIMENTEL

Asked by Senator Pimentel if the term "terrorism" is defined in the bill, Senator Enrile replied in the affirmative, adding that the elements of the crime of terrorism are also indicated.

On Senator Pimentel's observation that the terrorists of today could be considered the heroes of tomorrow, Senator Enrile agreed that a terrorist of one group could be the freedom fighter of another, thus they should be isolated from real terrorists. *ps*

Senator Pimentel pointed out the need to be careful in defining "terrorism" which even the United Nations is finding difficult to do as he added that it is futile to declare war on something that is ill-defined. Further, he asserted that if the Body is unable to define "terrorism," it should concentrate on *ex post facto* acts to show that they constitute terrorism such as assessing the extent of damage of a bomb explosion to people and property.

Senator Enrile clarified that even if someone exploded a bomb today, he would not be considered a terrorist under the present definition because there must be accompanying acts like murder for which he could be convicted and executed. He said that even the assassin of a government official would not be immediately considered a terrorist but a murderer if the other elements included in the definition are not present. He pointed out the need to isolate the crime of terrorism from the other crimes defined in the Revised Penal Code.

Senator Pimentel expressed the need for a seminal definition of "terrorism" since many of the acts that are normally associated with terrorism are within the purview of the Revised Penal Code.

Senator Enrile stated that "terrorism" is defined in the bill as follows: Any person who, acting in any of the manner described in Paragraphs 1, 2, and 3 of Article 17 of the Revised Penal Code, uses or, having the ability or capability to do so, threatens to use assassination, kidnapping, hostage-taking, hijacking, bombing, dynamiting, destructive flooding, biological or chemical agent or agents, nuclear device or devices, arson, the destruction of the main water reservoir or water supply system, the destruction of the environment, the serious disruption of the electric power or communications systems of the country, or the destruction of any other strategic infrastructures of the nation, or any other form of violence similar or analogous to any of those enumerated herein, in order to inflict widespread fear, anxiety or panic among the populace, so as to coerce a government, a political authority, or a population to comply, with a given demand, or, even without such coercion and demand, so as to cause great injury, damage, and or destruction to a population, a government, or a political authority shall be guilty of the crime of terrorism and shall suffer the penalty of *reclusion perpetua* or death, at the discretion of the court. He said that not only an individual or group who had

consummated the act of terrorism would be guilty of the crime.

Asked whether all the elements of the crime must be present for an individual or group to be charged with terrorism, Senator Enrile replied in the affirmative. He said that an individual or group who had sent a letter to the President or any high official, which threatened to blow up a building if these officials do not comply with certain demands, would only be guilty of extortion if the individual or group was not proven to be capable of committing the crime. Likewise, he stated that a certain group that goes on strike in front of the Napocor building is not guilty of terrorism until it is proven to have the capability or the means of exploding a bomb.

MANIFESTATION OF SENATOR PANGILINAN

Senator Pangilinan manifested that Senators Arroyo and Osmeña have requested that they be allowed to interpellate on the bill at a later date.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:37 p.m.

RESUMPTION OF SESSION

At 6:37 p.m., the session was resumed.

REMARK OF SENATOR PANGILINAN

Senator Pangilinan stated that the budget deliberations would begin in the next day's session and continue until Friday.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session suspended until ten o'clock in the morning of the following day.

It was 6:38 p.m.

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SCHOOL AND APPROPRIATING
FUNDS THEREFOR

To the Committees on Education, Arts and
Culture; and Finance

COMMITTEE REPORT NO. 34
ON SENATE BILL NO. 2137
(Continuation)

Upon motion of Senator Pangilinan; there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34) entitled

AN ACT TO DEFINE AND PUNISH THE
CRIME OF TERRORISM, THE CRIME
OF CONSPIRACY TO COMMIT
TERRORISM, AND THE CRIME OF
PROPOSAL TO COMMIT TERRORISM,
AND FOR OTHER PURPOSES.

Thereupon, the Chair recognized Senator Enrile for his sponsorship speech.

SPONSORSHIP SPEECH OF SENATOR ENRILE

In sponsoring Senate Bill No. 2137, Senator Enrile delivered the following speech:

It is my privilege and honor to stand in this Body to sponsor this very urgent and very delicate piece of legislation which, when enacted, will redound to the greater security and protection of our people and our nation.

Background

Terrorism is one of the most ruthless and destructive instruments in any international, internal, ethnic or religious war in contemporary history. So serious has terrorism become that it has since caught the attention of the international community, not only because of its brutality but also because of the frequency and ferocity with which it has inflicted itself on innocent and harmless civilians.

Over the years, terrorism has evolved in its types, forms and objectives and has since become a global phenomenon. While it had been the September 11, 2001, or the 9/11 tragedy as it is now popularly called, which highlighted the need for the international community to be more vigilant and aggressive in combating terrorism, various literature indicate that terrorism drew its original meaning from the "Reign of Terror" of the French Revolution. Subsequently, it acquired

a wider interpretation to mean "a system of terror" and anyone who furthered his views by a system of coercive intimidation was already considered a terrorist.

Even more recently, the term "terrorism," like "guerilla," has been used in so many different context and interpretations as to become almost meaningless, covering almost any, if not necessarily, political act of violence. Inasmuch as all notions are nowadays compelled to fight terrorism, the fact that there is no single definition that can possibly cover all the varieties of terrorism that have appeared throughout history is one factor that constrains us to do so. However, the pervasiveness of terrorism should not be belittled not only because terroristic activities continue to take place in various countries all over the world but also because of the fact that although the number of victims in these instances is comparatively small, terrorism undermines government authority. It may have this effect by showing that democratic governments are unable to respond effectively.

But, is it realistic to expect governments which are incapable of stamping out crimes — drug peddling, illegal immigration, smuggling, kidnapping, gambling, pornography, prostitution, vandalism, large-scale swindling, and corruption — to have full success in the battle against terrorism? If governments could not protect all of the citizens all of the time against smugglers and thieves, how could they protect everyone against terrorist attacks?

It may well be that, as some argued, terrorism constitutes a potentially serious domestic threat but much experiences show that democratic societies seldom take effective measures against potential threats. Only when the threat becomes clear and present are the authorities and the public sufficiently challenged to agree on the adoption of measures that will hopefully put an end to terrorism or at least to cause a drastic decline in terrorist activities.

Need for an Anti-Terrorism Law

That was why, more than ten years ago, I filed an anti-terrorism bill in the Tenth Congress in the hope of coming up with a law that will adequately and effectively contain, if not eliminate, the threat of terrorism to our society and people. However, the consideration of that measure was overtaken by events.

But now, the Senate is once more called upon to enact a law that endeavors to reconcile, on one hand, the necessity for an adequate legal device to enable our law-enforcement authorities

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to respond effectively to the problem of terrorism, and, on the other hand, the need to protect civil liberties and political rights of our people, hence, this bill.

Senate Bill No. 2137

The working draft of Senate Bill No. 2137, as presented to the members of this Body during the session of May 22, presents, among others, a more precise definition not only of the crime of terrorism but the crime of conspiracy to commit terrorism and the crime of proposal to commit terrorism as well.

Under Section 3, the bill defines the elements of the crime of terrorism that will distinguish the same from the other crimes that are already in the purview of the Revised Penal Code. Moreover, it strengthens the legal processes by which the problem of terrorism may be addressed and, at the same time, it contains provisions that may well be regarded as safeguard measures in order to protect the rights and interests of our citizenry.

Furthermore, the bill proposes to establish an anti-terrorism council that will serve as the central policymaking, supervising and coordinating, and monitoring body of the government on all matters concerning domestic and international terrorism.

Allow me to put on record that the working draft is a consolidation of vital provisions sourced from the original committee report as previously sponsored by the chairman of the Committee on Public Order and Illegal Drugs; and Senate Bill No. 2187, which this Representation filed earlier this year. As much as practicable, this Representation tried to address all the issues and concerns raised by the other members of this Chamber in the respective bills that they also filed. But in the consideration of any other bill, this Representation is also open to further clarifications and the refinements of this piece of legislation.

On another note, security matters are not just confined to States acting alone in alliance with each other or in adversarial relations with other States. Terrorism and other crimes are examples of security issues that cross national borders.

In an increasingly globalized interdependent world, States realize that such threats weaken their authority and also undermine the expansion of a global civil society. Hence, such threats are best dealt with on a cooperative and multilateral basis.

With the enactment of this measure, not only do we endeavor to provide better security

and greater protection for our people within our own territory, but we also hope to strengthen our position in the international community in a collective effort to combat terrorism.

Having said all of these, I, once again, urge our colleagues to lend their support to the immediate enactment of this bill.

RESERVATIONS TO INTERPELLATE

Senator Pangilinan manifested that Senators Osmeña, Biazon, Pimentel, Arroyo and Lacson have made reservations to interpellate on the bill at a later date.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SPECIAL ORDER

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of Committee Report No. 55 on Senate Bill No. 2226 to the Calendar for Special Orders.

COMMITTEE REPORT NO. 55 ON SENATE BILL NO. 2226

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second Reading, Senate Bill No. 2226 (Committee Report No. 55), entitled

AN ACT TO MANDATE THE USE OF BIOFUELS IN THE TRANSPORT SECTOR, ESTABLISHING FOR THIS PURPOSE THE PHILIPPINE BIOFUEL PROGRAM, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

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

The Chair recognized Senator Defensor Santiago for the sponsorship. *pd*

jailing or imposing harsher penalties, to those guilty of oppressive implementation of this proposed law.

For one, since the anti-terrorism law is for the good not only of the Filipinos but all nations and the entire humanity, I do not think our law enforcers bound to implement it could conveniently use the law in furthering selfish and illegal missions other than to stop terrorism which is the real danger sought to be averted because all the eyes of the world will be focused on them.

It will be embarrassing and disheartening to our government, once our global partners eventually learn, that in the far-flung Philippines, the anti-terrorism law is being used for some unlawful objectives and partisan political activities.

Not only that, I am sure sanctions against the officials of our government involved in such abuses could be meted by international agencies. Let us remember that our anti-terrorism law seeks to protect humanity from terrorism and consequently, the international community, especially freedom-loving nations, should be interested in finding out and punishing the real terrorists, not the innocent ones.

Second, to avert and curb abuses, we can increase the penalty for those abusive law enforcers and provide effective but immediate mechanisms for their apprehension, disarming, immediate detention, prosecution and punishment.

In this way, they will not allow themselves to be used as tools by unscrupulous politicians or officials, civilian or military, in implementing the law to suit their personal aggrandizement or political agenda, or to use the terrorism law in demanding hefty bribes or consummating corrupt practices.

Finally, since the anti-terrorism law has extra-territorial effect as such, a crime committed anywhere in the world is punishable elsewhere. Law enforcement officials and agencies from other countries will certainly get involved in the day-to-day ongoing investigation, apprehension and capture of the suspected terrorists in our country; thus, any military or police operation against suspected terrorists will, in effect, be the subject of inquiry by international police agencies. Foreign governments will, thus, condemn our government officials responsible for such should they find out that our police or military agencies are merely utilizing this law for unwarranted

purposes. Perhaps, they might even be the first ones to ask us to arrest, prosecute and impose penalties on our oppressive police and military officials.

Parenthetically, inclusion of an additional provision defining and enumerating what would constitute misapplication or abuse in the implementation of this legislation by the authorities, with corresponding severe penalty for each is, therefore, to serve as an effective deterrence for such abuses or misapplication.

Specifically, I recommend that for the violation for any of the provisions, let death or *reclusion perpetua* be the maximum imposable penalty in criminal offenses. The adjudication of which must be completed within ninety (90) days, while in administrative aspect, summary proceeding shall be held and completed within thirty (30) days from the filing thereof, with summary dismissal as the corresponding administrative penalty.

I, therefore, urge my colleagues to rally behind the passage of the anti-terrorism bill.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the privilege speech of Senator Lim to the Committee on Public Order and Illegal Drugs.

COMMITTEE REPORT NO. 34 ON SENATE BILL NO. 2137

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE
CRIME OF TERRORISM, THE CRIME
OF CONSPIRACY TO COMMIT
TERRORISM, AND THE CRIME OF
PROPOSAL TO COMMIT TERRORISM,
AND FOR OTHER PURPOSES.

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

Thereupon, the Chair recognized Senator Enrile,
Sponsor of the measure. #

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REMARKS OF SENATOR ENRILE

For a proper understanding of the bill and the magnitude of the problem, Senator Enrile entered into the Record of the Senate the following historical background of terrorism:

Terrorism drew its original meaning from the "Reign of Terror" of the French Revolution. Subsequently, it acquired a wider meaning to mean "a system of terror." A terrorist was anyone who furthered his views by a system of coercive intimidation.

Even more recently, the term "terrorism" (like guerilla) has been used in so many different senses as to become almost meaningless, covering almost any, and not necessarily political, act of violence.

No definition of terrorism can possibly cover all the varieties of terrorism that appeared throughout history: peasant wars and labor disputes, and brigandage have been accompanied by a systematic terror, and the same is true of general wars, civil wars, revolutionary wars, wars of national liberation and resistance movements against foreign occupiers. It also happened in our country during the Japanese occupation.

Terrorism may come from the upper class or the lower class. It may rise as a part of (a) religious protest movements, (b) political revolts, or (c) social uprisings.

Among the earliest terrorist movements was *Sicarii* in AD 66-73. It was a highly organized religious sect consisting of men of lower orders active in the Zealot struggle in Palestine.

Its members attacked their enemies by daylight with a short sword called "*sica*," from whence *Sicarii* was derived. They prefer to attack their victims on holidays when crowds congregated in Jerusalem because, to them, great crowds were, in themselves, a sort of darkness. They considered "murder as a fine art." They were extremists, nationalists, and anti-Roman party. Their victims were the moderates, the Jewish peace party. They destroyed the house of Ananias, the high priest, and the palaces of Herodian dynasts. They burned granaries, sabotaged Jerusalem's water supplies, and annihilated the bands of moneylenders to prevent recovery of debts. They were anti-rich. They refused political allegiance to any earthly power, and also rejected priests as intermediaries. To them, God alone and no one else was considered as Lord. They regarded martyrdom as something

joyful, and that a sinful regime was no longer in authority.

The *Assassins* were the offshoots of the *Ismailis* who appeared in the 11th century and were suppressed only by the *Mongols* in thirteenth. Based in Persia, now Iran, they spread to Syria. They tried twice to kill *Saladin*, but they failed.

Hassan Sibai, their first leader, realized early on that his group was too small to confront the enemy in open battle. So, he decided that a planned, systematic, long-term campaign of terror carried out by a small disciplined force could be a most effective political weapon. They always operated in complete secrecy. Their weapon was always a dagger not only because it was easy to conceal, but also because, to them, "murder was a sacramental act."

The *Assassins* were governed by an almost ascetic discipline. They courted death and martyrdom, and were firm believers in a new millennium. Although they were a small group, they fought to defend their religious autonomy and their way of life against those who wanted to suppress them.

The *Thuggee* from whence the word "bug" had its origin sprang from India. They strangled their victims with a silk tie and their choice of victims was quite indiscriminate. Its devotees thought the origin of *Thuggee* was derived from an act of sacrifice to the goddess "*Kali*" which "had a fatal attraction". The thugs had contempt for death, but they never wanted to terrorize the government or the population.

In China, terrorism was practiced by militant secret societies that existed among river pirates, outlaws in the hills, and even among respectable city dwellers. Each secret society had its "enforcer." Some engaged in criminal extortion, killers for hire, operators of gambling houses — we see this also in our day — and smugglers.

Some had distinct political aims: they were anti-Manchu and loathed foreigners. They were behind the Boxer Rebellion and helped *Sun Yat-sen*. The most well known among them was the Red Spears of the 1920s. They resemble more the Mafia of Italy and the United States than modern political terrorist movements.

Then the *Ku Klux Klan*. There were three of them. The first Klan was a product of the Reconstruction period. It was a secret and with a violent association proscribing emancipated Negroes. ✓

The second Klan stood for white supremacy and espoused other cause, like patriotism, and attacked bootleggers, craphshooters, and even wife-beaters.

The third Klan was a part of establishment politics in the South, both on the local and state levels.

Then, in our time, systematic terrorism began in the second half of the 19th century. There were several distinct categories: (a) Russian revolutionaries against an autocratic government; (b) radical nationalist groups such as the Irish, Macedonians, Serbians and Armenians fighting for autonomy or national independence; and (c) anarchists who believed in the doctrine of "propaganda by deed." In the United States, systematic terrorism began with working-class terrorism. In Spain, it was both agrarian terrorism and industrial terrorism. Systematic terrorisms were connected with the rise of democracy and nationalism, and were based on grievances such as oppression of minorities, denial of independent nationhood and rule of autocratic governments. Paradoxically, movements of armed protests succeeded only in areas where there were no violent repressions against them.

Of all the movements, the Russian *Narodnaya Volya* was the most important by far, although its operation lasted only from January 1878 to March 1881.

It conducted political assassinations of governors, ministers, and important personages, including blowing up trains and exploding mines in the Winter Palace of the Tsar.

The second wave of terrorism in Russia was by the Social Revolutionary Party. It carried out the assassination of Sipyagu, Minister of the Interior; Bogolepov, Minister of Education; the Grand Duke Serge Alexandrovich; and Stolyun, the Prime Minister of Russia.

The third wave of political terror after the Bolshevik seizure of power in 1917 involved the killing of the Communist leaders and the wounding of Lenin himself.

Irish terrorism was triggered by agrarian unrest. The United Irishmen carried it out in 1791, its policy of open force in the 1760s was an unmitigated failure. A group called "Dynamiters" resorted to the use of explosives. Its most spectacular operation was the Phoenix Park murders. Its operation continued off and on from the 1860s to the 1970s.

Armenian terrorism was essentially against Turkish oppression. It began in 1890s and was shortlived. It ended in disaster because the Armenians faced an enemy less patient and good-natured.

We see, this is the paradox of terrorism. The more we apply it, the more we generate counter-terror.

After 1918, it resumed in the form of assassinations of Turkish leaders and the killings of Armenian political leaders and church dignitaries.

The Inner Macedonian Revolutionary Organization (IMRO) was a separatist organization directed against the Turks. It started as an underground civilian propaganda society. After a few years, it turned into a military movement, preparing both for systematic terror and for mass insurrection. But Macedonia did not gain independence because of the terror. It was partitioned in favor of Greece, Bulgaria and Serbia.

From this historical background, I gathered that the essential elements of terrorism are:

1. *Coercion* – to inflict an extraordinary fear or anxiety on an indirect target through an intentional and actual use of violence or through a threat of violence by the perpetrator or perpetrators against a direct instrumental human or material target or targets in order to coerce the primary target to do or not to do a demanded power outcome.
2. *Violence* – killings, exterminations, assassinations, kidnappings, hijackings, bombings, dynamiting, arson, and other forms of massive violence.
3. *Objective* – the desired objective could be political power, economic power or religious power.

INTERPELLATION OF SENATOR LIM

Asked by Senator Lim whether there was reason for the political opposition to be apprehensive over the possibility that the anti-terrorism bill could pave the way for acts of oppression and abuses, Senator Enrile explained that without the bill, the government would not be able to address the problem of terrorism as a crime nor arrest the growing propensity of law enforcement agents to abuse their powers. Moreover, he doubted whether the people who arrested the "UMDJ-5" would have dared done what they did if the proposed Act were in force. ^M

He believed that the custodial authorities would have been imprisoned since a provision in the bill binds them to strict rules of conduct in their manner of handling any person placed under their custody.

In fact, to minimize the possibility of coercive measures being applied on a detainee, Senator Enrile said that custodial authorities would be required to maintain a logbook to record the time of the suspect's detention as well as the results of the medical examination to establish his physical condition at the time of his arrest. Moreover, he stated that a detainee could avail of the services of a physician and would be allowed to freely communicate with his relatives and lawyers.

On whether acts of deception or misinformation were involved in the arrest of the "UMDI-5" considering that certain officials publicly denied that the arrest and detention of the five men actually happened, Senator Enrile replied in the affirmative. He pointed out that under the bill, the moment a person is apprehended for the crime of terrorism, the arresting party is strictly required to maintain a log of the detainee's every movement during the 15-day period that he could be held by the authorities without the latter being liable for arbitrary detention. He said that the log would include not only the names of the detainee's visitors, doctors, lawyers and relatives but also the times he was interrogated and the results of medical examinations conducted each time he was taken in and out of his cell.

On whether the bill contains safeguards for detainees, Senator Enrile explained that under the bill, law enforcement agents, under certain conditions, are given all the privileges and power to get evidence through such means as wiretapping, checking of bank accounts and surveillance, thus doing a way with the need to resort to torture. Moreover, he adverted to Section 22 (*Rights of a Person under Custodial Detention*); Section 23 (*Penalty for Violation of the Rights of a Detainee*); Section 24 (*Requirement for an Official Custodial Logbook and Its Contents*); Section 25 (*No Torture or Coercion in Investigation and Interrogation*); and Section 26 (*Penalty for Threat, Coercion, or Torture in the Investigation and Interrogation of a Detained Person*) which protect the rights of a person under detention.

Senator Enrile stated that when death or serious permanent disability occurs as a consequence of the use of threat, intimidation or coercion as a

consequence of the infliction on the victim of physical pain or torment, or mental or moral pressure, the penalty shall be *reclusion perpetua* to death at the discretion of the regional trial court.

But Senator Lim noted that some unscrupulous law enforcement agents circumvent the laws. He asked how the bill could be strengthened so that enforcement agents who conducted an investigation, an inquest fiscal who reviewed the case, and a judge who knowingly overlooked violations of the law would be charged. He believed that a strong provision on the matter would deter government officials from committing acts of abuses and oppressions. Senator Enrile called attention to a provision that any person who knowingly furnishes false testimony, false documents, spurious evidence in any investigation under the proposed Act shall be guilty and suffer the penalty of *reclusion temporal*.

Asked how crimes such as insurrection, rebellion and sedition could be distinguished from the crime of terrorism, Senator Enrile replied that precisely, he did not define "terrorism" but defined a crime that he characterized as terrorism. He asserted that nobody can define terrorism because it is a generic term that covers a very wide area. He explained that Section 3 of the bill enumerates the means to commit terrorism, to wit:

Any person who, acting in any manner described in Paragraphs 1, 2 and 3 of Article 17 of the Revised Penal Code, uses or, having the ability or capability to do so, threatens to use assassination, kidnapping, hostage-taking, hijacking, bombing, dynamiting, destructive flooding, biological or chemical agent or agents, nuclear device or devices, arson, the destruction of the main reservoir or water supply system, the destruction of the environment, the serious disruption of electric power or communication systems of the country, or the destruction of any strategic infrastructure of the nation, or any other form of violence similar or analogous to any of those enumerated herein in order to inflict widespread fear, anxiety or panic among the populace so as to coerce a government, a political authority, or a population to comply with a given demand, or, even without such coercion and demand, so as to cause great injury, damage, and/or destruction to a population, a government, or a political authority shall be guilty of the crime of terrorism and shall suffer the penalty of *reclusion perpetua* or death, at the discretion of the court."

He explained that the "indirect primary target" is the government and the "direct human or material target" is the population. He said that there must be a demand which could be political, economic or religious in nature.

Asked whether a group of oppositionists who march in the streets demanding that the President resign could be considered terrorists, Senator Enrile replied in the negative.

Senator Lim opined that there is ground for apprehension that the proposed Act could be an instrument to repress dissent and encourage dictatorial acts on the part of the Administration.

Asked whether Section 3 could be expanded to include the indiscriminate destruction of lives and properties, Senator Enrile responded that there is no need because if he, for instance, exploded a bomb in the hall and killed everyone in it, he could not be a terrorist but a murderer; if he destroyed the water source and flooded Manila or if he caused panic to coerce the government but did not make any demand, he could not be a terrorist, but he could be prosecuted for other crimes under the Revised Penal Code. Moreover, he said that even if Ka Roger has ordered the killing of all the soldiers that his troops can find, he cannot be a terrorist because he did not make any demand to remove the government; he is directly fighting the government for a political purpose. He stated, however, that if someone exploded a bomb that caused the death of thousands of people, just like 9/11, he would be covered by the second part of Section 3.

Asked if there is a categorical statement in the bill that terrorism shall be regarded as a crime against humanity in general and against the family of nations such that the terrorist could be arrested and prosecuted even in his own country, although he committed the act elsewhere, Senator Enrile replied that there is no international law on terrorism at the moment.

Asked to comment on the practice of the United States government of asking for the custody of a person suspected to be a terrorist in other countries like England or France if the latter refused to take cognizance of the case, Senator Enrile stated that the U.S. has the nuclear weapons and the power to make its will prevail. In brief, he said, international law is the will of the stronger. At this point, he cautioned the Members against covering a wider

geographical area in the bill which the government might not be able to handle.

Citing the movie *Munich* that depicted the execution by the Mossad of Palestinian terrorists who brutally murdered Israeli athletes during the Munich Olympics, Senator Lim asked on the basis of the Israeli government's action, supposing it was factual, when the crime occurred in Germany. In reply, Senator Enrile stated that in the movie, the Israelis did not base its act on law but simply used the force of might to execute the terrorists. However, he clarified that in a situation where the crime was committed in the Philippines and the perpetrators moved out of its jurisdiction, the government could request the country where they escaped to hand them over through an extradition treaty.

Senator Lim asserted that Israel has gained the respect of other nations because it has exerted all means to survive and protect and defend its citizenry. Agreeing with Senator Lim, Senator Enrile stated that the government could organize that kind of system without any fanfare and eliminate anybody that it considers to be a terrorist. But that is operating outside the law, he said.

Senator Lim manifested that at the proper time, he would introduce amendments to the bill.

INTERPELLATION OF SENATOR ANGARA

Preliminarily, Senator Angara congratulated Senator Enrile for a very intelligent presentation of a grave threat to the nation's security. He noted that terrorism is not a novel contemporary event but a long-standing ancient practice.

Adverting to the Russian terrorist group, Narodnaya Volya, asked why it targeted governors, ministers and other important political personages, Senator Enrile said that this tactic was intended to immobilize the leadership and paralyze the government, the ultimate intent being to seize power.

Asked whether making a false threat of terrorism would be considered a crime under the proposed Act, Senator Enrile clarified that it was not his formulation but was added when the bills were consolidated. He noted that there are, in fact, certain provisions like the Declaration of Policy that should be removed since it is the function of the government to stamp out crimes. 18

Anent the recent arrest of the "UMDJ-5," Senator Enrile opined that the incident would not have happened if the Anti-Terrorism Law were in force at the time of the incident.

Asked whether there is any guarantee that law enforcement agencies would follow the strictures of the proposed Act, Senator Enrile replied that law, just like power, is susceptible to abuse. He stated that a well-written law would instill some caution in the authorities against resorting to shortcuts. He observed that some law enforcement officers do have the propensity to act in a certain manner because the penalties for illegal arrest or illegal detention are very light. He explained that if the arresting party is found guilty of arbitrarily detaining a suspect for not more than three days, the penalty of *arresto mayor* to *prision correccional* would be imposed on him. However, he argued that if the proposed Act were to impose a heavier penalty on illegal detention, a rational person would take caution before committing such act.

Senator Angara asserted that based on experience, the slow wheel of justice and the likelihood that the guilty can get off the hook easily embolden a person to resort to shortcuts. Senator Enrile agreed with the premise, stating that if the people cannot rely on the integrity and credibility of law enforcement agents, prosecutors and judicial system, then there is no need for a law.

Senator Angara stated that he was taught in law school that to test the validity of a law, one must think of the worst case about the law to find out whether it can be made more effective. He expressed misgivings about giving more powers, under the proposed Act, to untrustworthy law enforcers, and to a judiciary that is too slow and perhaps unfaithful to its mandate. He said that the authorities should be counseled to exercise their powers more scrupulously.

Senator Enrile suggested that Senator Angara craft a provision that would attain greater safety and security for the citizenry, preserve their liberties and prevent abuses by law enforcement agencies.

Senator Angara proposed that there be an orientation on the anti-terrorism bill for law enforcement agencies and judges; and that the terrorism council set up a continuing orientation and training for the protection of the citizenry.

Senator Enrile agreed, saying that a special court could handle anti-terrorism cases, including corollary cases that flowed from abuses committed in the enforcement of the law. Further, he suggested the creation of a special task force that would implement the law. He said that any provision that Senator Angara would introduce to that effect would be welcome.

As to whether the detention of a suspect for 15 days without charges would not impair his civil liberties, Senator Enrile said that sufficient safeguards are provided for in the bill. He believed that the 15 days, given the nature of the crime, would give prosecutors and investigators enough time to prepare a good case against the perpetrators.

Asked what relief would be available to a suspected citizen whose privacy had been violated but the evidence turned out, if not maliciously false, at least untrue, Senator Enrile replied that the materials obtained would remain forever classified and anyone who would use the materials for any purpose would be penalized to a maximum twelve years imprisonment. He said that the provision covers any unauthorized person, whether a private citizen, senator, member of the police, military or government law enforcement agency, judicial officer or civil servant. He clarified that even the accidental discovery of the classified information would result in a criminal offense. He expressed willingness to accept an amendment, at the proper time, which would require the State to provide civil damages to an aggrieved party.

Asked whether the Anti-Terrorism Council could share the spying network of the National Security Agency of the United States which is reputed to have the most elaborate spying system in the world, Senator Enrile expressed the view that the law could authorize the Council to enter into an executive agreement with the NSA solely for anti-terrorism activity by recasting the provision on mutual assistance and cooperation between the Philippines and the U.S.

Senator Angara expressed anxiety on the provision granting the police and the military the power to open up bank accounts. He asked how the Anti-Money Laundering Council would interact with the Anti-Terrorism Council on the matter.

Senator Enrile admitted that he did not involve the AMLC but confined the power to the court

system. He explained that the materials obtained in the examination of bank accounts would be available only to the courts when such materials are presented as evidence. He affirmed that the opening of the bank account would be initiated by a petition from the police, military or other law enforcement agencies and the court would receive evidence *ex parte*. He informed the Body that even the court order would be treated as confidential document and not even the bank could disclose it. He said that all persons involved in the operation would be identified and required to execute the necessary affidavits.

Senator Angara maintained that complications could arise when a prominent businessman, for example, would be suspected of being a member or supporter of a terrorist organization and his bank account could be opened. He said that if it turned out that the suspicion was not true, the businessman's bank account would already have been opened and known to many people in the bank, in the law enforcement agency and in the court. He argued that despite the requirement of secrecy, even the tightest secret can be betrayed.

Senator Enrile conceded that the Body could not anticipate all situations. But he expressed openness to an amendment to better safeguard the interests of and prevent injury to persons because of mistakes of fact. He agreed to a provision which would grant civil compensation to innocent victims even as he conceded to limit the implementation of the law to a special task force trained for the purpose, with the proper identification and under a responsible commander in order to identify the persons liable for punishment should they abuse the powers granted under the law. Senator Angara stressed that as the Body elaborates on the rights of people covered by the law, it must also elaborate on the obligations of people involved in implementing the law.

Relative to the powers of the AMLC, Senator Enrile cited Section 11 of Republic Act No. 9194 granting AMLC the authority, upon order of a competent court, to inquire into bank deposits suspected of being related to an unlawful activity.

Senator Angara pointed out that the AMLA also allows the filing of appeals before the Court of Appeals.

At this point, Senator Angara said he would continue his interpellation in the afternoon.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 12:31 p.m.

RESUMPTION OF SESSION

At 12:32 p.m., the session was resumed.

TWELFTH ADDITIONAL REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Emma Lirio-Reyes, read the following matters and the Chair made the corresponding referrals:

COMMITTEE REPORTS

Committee Report No. 73, submitted by the Committee on Local Government on House Bill No. 4937, introduced by Representative Nicolas, *et al.*, entitled

AN ACT CONVERTING THE MUNICIPALITY OF MEYCAUYAN IN THE PROVINCE OF BULACAN INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF MEYCAUYAN,

recommending its approval with amendments.

Sponsor: Senator Lim

To the Calendar for Ordinary Business

Committee Report No. 74, submitted by the Committee on Local Government on House Bill No. 4899, introduced by Representative Alvarez (G.), entitled

AN ACT TO INCLUDE CERTAIN PARCEL OF LANDS ACQUIRED BY ACCRETION AS PART OF THE TERRITORIAL JURISDICTION OF

Asked to give an update on the privatization of Transco, Senator Enrile reported to the Body that it started only recently and the submission of bids is expected to last up to 18 weeks.

Finally, Senator Angara requested that a time line be submitted as he would propose deadlines for certain activities.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2232

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

SUSPENSION OF SESSION

Upon motion of Senate President Drilon, the session was suspended.

It was 3:59 p.m.

RESUMPTION OF SESSION

At 4:21 p.m., the session was resumed.

ANNOUNCEMENT OF SENATOR PANGILINAN

Senator Pangilinan informed the Body that at the request of Senator Gordon, a demonstration of the different automated voting machines would be held in the session hall. He added that the machines were being presented anew as some members were not present during the initial demonstration.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:22 p.m.

RESUMPTION OF SESSION

At 4:56 p.m., the session was resumed.

COMMITTEE REPORT NO. 34 ON SENATE BILL NO. 2137 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on

Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM AND FOR OTHER PURPOSES.

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Angara for his interpellation.

INTERPELLATION OF SENATOR ANGARA (Continuation)

At the outset, Senator Angara recalled that in his earlier interpellation, he and Senator Enrile had agreed that (1) law enforcers tasked to implement the provisions of the proposed Act should be specially trained officials of the military and police; and (2) special courts to try cases involving terrorism should be designated.

Queried whether the authorized revelation of classified materials would be considered a new crime, Senator Enrile replied in affirmative, explaining that depending on the nature of their contents, the law classifies national documents as "Top Secret," "Secret," and "Confidential" and bear the warning "Disclosure is Prohibited by Law." He said that the bill provides that court orders for wiretaps and examination of bank accounts of suspected persons or organizations ought to be sequestered and remain confidential unless their revelation is authorized by the court. He said Section 43 criminalizes any unauthorized revelation of materials so that evidence and documents would be further preserved.

As regards the materials that would be deemed classified, Senator Enrile replied that they refer to all the papers contained in the envelope of the court order. He cited Section 29 (*Classification and Contents of the Court Order Authorizing the Examination of Bank Deposits, Accounts and Records*), Section 12 (*Custody of Intercepted and Recorded Communications*), Section 13 (*Contents of Affidavit*), and Section 14 (*Disposition of Deposited of Materials*) which describe the materials that are deemed classified.

To the suggestion that Section 29 be rewritten to define classified material as more than just the

written court order, Senator Enrile said that he would welcome amendments at the proper time.

To the suggestion that Section 8 be also amended to include electronically copied or digitized documents as classified materials, Senator Enrile agreed. He explained that the provision was based on the wording of the Anti-Wire Tapping Law. He also proposed that Section 10 (*Classification and Contents of the Order of the Court*) be rewritten as it deals with the classification of wiretapped materials.

Asked if the act of sequestration under Section 28 (*Seizure and Sequestration*) is similar to that conducted by the Presidential Commission on Good Government (PCGG), Senator Enrile explained that under the bill, the court could order the seizure of the bank accounts of a person charged with the crime to keep it from being used to fund any terrorist activity. On the other hand, he said that the court could issue a sequestration order against a suspect to keep him from spending such money.

On whether the petition for seizure and sequestration is a separate proceeding from the petition to open a bank account, Senator Enrile said that the latter is an incident of the criminal case. He proposed that the matter be clarified because the seizure or forfeiture should be done upon conviction of the person while a sequestration is applicable only to a person under trial.

Amend Section 40 (*Making False Threats of Acts of Terrorism*), Senator Enrile doubted if it should be included in the bill since the threat could just be a prank. Senator Angara believed that the bill should be confined to addressing the crime of terrorism as a crime to conspire, commit or propose to commit terrorism alone, without other crimes created alongside it. He pointed out that it is hard enough to define "terrorism" as it is and adding new crimes would make it harder for law enforcers to implement the law. Moreover, he said that the Revised Penal Code already has a provision against pranksters and perpetrators of malicious mischief.

Senator Enrile opined that since Senate Bill No. 2137 is a proposed criminal law, there is no need to have a declaration of policy because the purpose of government is to protect life, liberty and property. He urged caution in the styling of the bill, particularly with the statement concerning borderless and heinous crimes, as it would be studied by other countries.

Further, he stated that a provision concerning the issuance of rules and regulations for implementing the Anti-Terrorism Law is unnecessary. He said that the crime should be clearly defined and once the bill is enacted into law, it immediately becomes enforceable and applicable. No one, he said, should be delegated to add to anything that Congress has written as a criminal statute.

On another matter, Senator Enrile doubted if appropriating a budget for the proposed Anti-Terrorism Council should be included in the bill considering that the measure aims only to criminalize terrorism. He stated that the financial support for the Council should be provided for in another statute.

Amend Section 40, Senator Angara opined that probation and pre-bargaining may not be applicable to a terrorist or even a conspirator to terrorism; but it may be too harsh for the one disclosing classified information. Therefore, he said, the mitigating medium of probation or pre-bargaining may as well be applied. Senator Enrile stated that the probation law should be applied depending on the penalties involved which are mostly above *prison correccional*.

Senator Angara wondered if pre-bargaining should be excluded because it is a technique in prosecution in exchange for the testimony and cooperation of the witness or of the conspirator and it gives an advantage to the State. Senator Enrile said that he would not have any objection to include a pre-bargaining technique; in fact, he was for the deletion of all these provisions to let the existing laws operate.

In the absence of an enabling provision, Senator Angara asserted that probation would not be applicable and pre-bargaining would no longer be allowed by the court. Senator Enrile replied that it could be included in the statute.

On Section 49, Senator Angara noted that the Anti-Terrorism Council is too big a body as it is composed of the President as chair; the secretaries of the DOJ, DILG, DND, DFA and DOTC; the National Security Adviser; and such other members that may be appointed by the President.

Senator Enrile admitted that he prefers to include only the President, and the secretaries of the DOJ, DFA, DILG and DND. Senator Angara commented that the DILG, the DFA and the DND would be enough and the National Security Adviser should

only be part of the Secretariat; then the open-ended provision "and such other members that may be appointed by the President" should be deleted. Senator Enrile agreed.

Asked on the meaning of the phrase "the President may designate a primary agency," Senator Enrile said that there is a need to recast the whole text and he would be grateful if Senator Angara could help do it. Senator Angara expressed willingness to do so.

Senator Enrile noted that while the special courts serve as the special implementing law enforcers, the NBI can be tapped as the lead agency for this group. Senator Angara opined that it may be better not to inject all the bureaucracy in the bill.

On another matter, Senator Angara pointed out the need to include a provision to ensure a measure of civil indemnity to those who may have been mistakenly victimized as a result of the implementation of the law, and to place heavy responsibility on law enforcement officers to exercise utmost care and fidelity to their duties, in order to balance the tremendous immunity given to them. Senator Enrile acknowledged the need to have a reporting system to the Council.

Adverting to Section 53, Senator Angara suggested that the provision be more specific in authorizing the Council to negotiate special arrangements with international or foreign agencies in sharing information and data about terrorism. Senator Enrile agreed.

Asked how the Anti-Terrorism Law could be extended outside the jurisdiction of the Philippines, Senator Enrile admitted that there is a need to reward the pertinent provision of the law to make it applicable to Filipino nationals who are outside the country but committed terrorist acts within Philippine territorial jurisdiction. He said that the country's criminal laws would end at the border of the Republic except in the five cases mentioned in the Revised Penal Code.

In reply to another query, Senator Enrile stated that a foreigner who has committed terrorist acts within Philippine jurisdiction shall be subject to extradition.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:27 p.m.

RESUMPTION OF SESSION

At 5:27 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

MANIFESTATION OF SENATOR PANGILINAN

Senator Pangilinan stated that the session would be suspended to enable the Body to go into caucus to discuss amendments to the GAB.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:28 p.m.

RESUMPTION OF SESSION

At 6:57 p.m., the session was resumed.

NEXT DAY'S AGENDA

Senator Pangilinan stated that during the caucus, it was agreed that the next day's session would be the final day for the interpellations on the GAB and in the agenda are the budgets of the following: DOTC, DA, DoT, DOE and its attached corporations and subsidiaries, BCDA, Clark Development Authority, Poro Point Management Corporation, John Hay Management Corporation, Philippine Economic Zone Authority, SBMA, Zamboanga City Economic Zone Authority, Cagayan Economic Zone Authority and Duty Free Philippines.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:58 p.m.

RESUMPTION OF SESSION

At 7:13 p.m., the session was resumed. #



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 87

Thursday and Monday

June 1 and 5, 2006

**THIRTEENTH CONGRESS
SECOND REGULAR SESSION**

RELATIONS COMMISSION. AMENDING FOR THIS PURPOSE ARTICLES 213, 214, 215 AND 216 OF P.D. NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

To the Archives

COMMUNICATONS

Letter from Governor Armando M. Tetangco Jr. of the *Bangko Sentral ng Pilipinas*, providing the Senate a copy of the printed version of the *Bangko Sentral ng Pilipinas* Inflation Report for the First Quarter of 2006.

To the Committees on Economic Affairs; and Banks, Financial Institutions and Currencies

Letter from Assistant Clerk of Court, Felipa B. Anana, of the Supreme Court, quoting hereunder, for the information of the Senate, resolution of the Court *En Banc* dated April 25, 2006:

A.M. No. 06-4-15-SC. – Re: Senate Resolution No. 77 (P.S. Res. No. 478), entitled *Expressing the Sense of the Senate that the Signature Campaign to Introduce Changes to the Constitution through Barangay Assemblies Initiated by the Department of the Interior and Local Government is illegal.* – The Court Resolved to NOTE the Letter dated March 29, 2006 of Senate Secretary Oscar G. Yabes, furnishing the Court with a signed copy of Senate Resolution No. 77 (Proposed Senate Resolution No. 478), entitled *Expressing the Sense of the Senate that the Signature Campaign to Introduce Changes to the Constitution through Barangay Assemblies Initiated by the Department of the Interior and Local Government is illegal*, which was adopted by the Senate on March 29, 2006,” Puno, J., on leave Chico-Nazario, J. on officin: leave.

To the Committee on Constitutional Amendment, Revision of Codes and Laws

COMMITTEE REPORT

Committee Report No. 75, submitted by the Committee on Banks, Financial Institutions and Currencies

re PRIVILEGE SPEECH OF SENATOR ENRIE DELIVERED ON FEBRUARY 1, 2005 AND PROPOSED SENATE RESOLUTION NO. 166 – “RESOLUTION DIRECTING THE COMMITTEE ON BANKS, TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ALLEGED ILLEGAL SALE OF UNREGISTERED AND HIGH RISK SECURITIES BY STANDARD CHARTERED BANK, WHICH RESULTED IN BILLIONS OF PESOS OF LOSSES TO THE INVESTING PUBLIC,”

recommending the adoption of the recommendations made therein and their immediate implementation.

Sponsors: Senator Angara and the Members of the Committee on Banks, Financial Institutions and Currencies

Dissenting: Senator Serge Osmeña

To the Calendar for Ordinary Business

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 10:38 a.m.

RESUMPTION OF SESSION

At 10:38 a.m., the session was resumed.

COMMITTEE REPORT NO. 34 ON SENATE BILL NO. 2137 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM, AND FOR OTHER PURPOSES.

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

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

INTERPELLATION OF SENATOR PIMENTEL

At the outset, Senator Pimentel expressed the view that the country needs an anti-terrorism law as the old methods of combating a crime which had not yet been conceived in 1932 when the Revised Penal Code was passed, would not suffice. Nonetheless, he admitted that he has second thoughts about the bill because of the penchant of the Arroyo Administration to use a normally good law to harass people and to attain certain objectives.

Senator Enrile acknowledged that such is a valid fear because any law, no matter how well crafted, could be abused. However, he believed that the measure, which was crafted to address a given social problem and control an aberrant behavior, could minimize the possibility of abuse. He added that precisely, the purpose and thrust of the measure is to criminalize terrorism in the country's criminal justice system by defining the crime of terrorism not as a behavior but by establishing the elements of that crime so that anybody who commits acts with those attendant elements would be punished. On the other hand, he said that unless those elements are present, even if the person committed the behavioral acts enumerated in Section 3, he would not be considered a terrorist but he would be punished under other laws.

On the concerns raised by Senator Pimentel, Senator Enrile said that the measure provides very strict rules in handling a person taken into custody for the crime of terrorism. For instance, he pointed out that once a person is placed under custodial control of any law enforcement agency because of the suspicion that he is a terrorist, the custodial body must establish a record of the arrest, identify the person arrested, the time of arrest and place of confinement; the person must be allowed, under pain of very heavy punitive sanction, to contact his family, doctor and lawyer; and there must be physical examination if he is taken in or out of his place of detention for interrogation to prevent torture. If torture is inflicted on the person during detention or during interrogation, he said that the evidence taken from him will be considered inadmissible and non-usable in any proceeding, and the people who threatened or inflicted pain on him will be punished under the provisions of the proposed Act.

Senator Pimentel remarked that while people should be punished for committing torture, it would be useless if the victim died. Stressing the need to put the necessary safeguards in the law to prevent abuses, he adverted to a *New York Times* article of May 26 accusing the U.S. President and the U.S. Attorney General of grasping power without limits and who "cannot be trusted to keep legitimate police activity from turning into political persecution." He pointed out that in the country's recent experience, five supporters of President Estrada, at least one of them accused of rebellion, were picked up by unidentified armed men, who brought them to an unknown place and tortured them. He believed that it was through the intervention of Senator Enrile who called up the top brass of the AFP to give cautionary advice that led to the admission of the ISAFP that the five men were in their custody. He wondered what makes men so brutal in a country that is supposed to be Christian.

Senator Pimentel recalled that he was one of those who were picked up by some of the men of then Secretary of National Defense Enrile during martial law, based at least on an Arrest, Search and Seizure Order (ASSO) or Presidential Detention Action (PDA) which put on record that a certain person was picked up by the military and was now in its custody. He explained that he had to advert to the martial law times and to the circumstances obtaining in the country at the present time to prove that the measure is not being crafted in a vacuum.

Asked if the use by law enforcement agencies of certain surveillance devices and computer networks like Echelon or computer programs like Carnivore and Magic Lantern could be allowed by law to ferret out suspected terrorists in the country, Senator Enrile said that all surveillance activities such as examination of bank accounts and wiretapping or eavesdropping with electronic devices and equipment even of known terrorists would not be allowed without any authorization from a court. He explained that this authorization could be issued in writing by the court, identifying precisely the persons who will operate and are authorized to do the surveillance activity, and these persons will report to the court through an affidavit that they are going to execute the activity. He said that all documents gathered through such activities would be in the possession of the court. Thus, he said, nobody can operate secretly or covertly to intrude into the liberties of the people, their right to privacy, the sanctity of communication and the guarantee of

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homes that cannot be searched without a judicially authorized search warrant. Even if the authorities arrest a person without a warrant, the arresting authority must properly log or record the manner by which the person was handled.

Senator Pimentel said that in the United States, the American Civil Liberties Union has filed suits, some of which are still pending, questioning the right of U.S. law enforcement agencies by virtue of the U.S. Patriot Act, to conduct survey, sneak into and search the homes and offices of the occupants in their absence and to use such devices such as Magic Lantern and Carnivore. Senator Enrile assured that these would not be authorized in the law since Section 1 of the Bill of Rights of the Constitution clearly states that, "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws," and Section 2 mandates that, "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall be issued except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

Senator Pimentel stated that since these constitutional provisions were copied from the U.S. Constitution, there is danger that what is being done in America would be copied in the Philippines. Stating that he has not read the U.S. Patriot Act, Senator Enrile reiterated his assurance that these practices would not be placed in the nation's statutes.

Senator Pimentel said that the U.S. Patriot Act also allows the use of the "Pen Register," an electronic device that records all numbers dialed from a particular phone line. Senator Enrile said that under the measure, the authorities should get permission from the court to authorize the surveillance, and the materials obtained in the course of such an authorized surveillance will be impounded and cannot be revealed and used without authority from the court.

Senator Pimentel said that while he and Senator Enrile are supreme believers in the rule of law, there are things that are still being done even if they are prohibited. He stressed the need to be a

little more careful in crafting the law so as not to give those in power an opportunity to abuse the rights of the people. Further, he stated that the measure should also disallow the use of the trap and trace device that records the originating phone numbers of all incoming calls on a particular phone line. This particular electronic surveillance device, he pointed out, provides to law enforcement all of the target's communications, including those that are irrelevant to the investigation, which is a continuing intrusion into the privacy of the individual. He said that there are personal matters in one's life, particularly the right to communicate freely and in full confidentiality with others, which must not be trampled by the officiousness of government agents.

Senator Enrile explained that under the measure, a law enforcer shall be allowed to record the target's communications with the use of surveillance devices only if the regional trial court has authorized him to do so. Nonetheless, he said that he would specify in the bill that targets for surveillance must be clearly identified before the authorizing judge.

Senator Pimentel stated that at the proper time, he would also propose that law enforcers who have been assigned to arrest suspects must not be involved in the gathering of intelligence reports. Legislators, he said, should ensure the protection of the Filipino's liberties not only in theory, as a provision in the Constitution, but in actual practice. Senator Enrile stated that he would craft additional safeguards at the proper time to address the particular concern. Nevertheless, he pointed out that as suggested by Senator Angara, he would request the Supreme Court to designate a special court to handle surveillance concerns. He added that he would also require that law enforcers who apply for judicial authorization should come from a special police force that shall be established to serve as an instrument of the Anti-Terrorism Council in the implementation of the law.

Senator Pimentel pointed out that the biggest danger to the life and liberty of the suspect occurs from the moment of his arrest until his surrender to the court. He recalled that in 1983, he was arrested in his house in Cagayan De Oro City by authorities for alleged ambushes committed in Cebu and two lawmen told his wife that he would be brought to Camp Alagar when the fact was he was instead brought to the Lumbia airport and made to board a Nomad twin-engine plane for a flight to Cebu, without the knowledge of his family who suffered from

anxiety, pain and anguish during that time. In view thereof, he expressed the need for a specific provision that shall compel arresting lawmen to immediately notify the arrestee's family and the judicial authority about the arrest and place of detention, and require the court to operate on a 24-hour basis. Senator Enrile said that he would welcome the proposal at the proper time, adding that the Commission on Human Rights (CHR) could also be made to work with the court on a 24-hour basis.

Senator Pimentel added that the arresting team should also be required to bring the arrestee before a public physician for physical examination prior to bringing him to the place of detention, which is important in prosecuting cases of torture. Senator Enrile welcomed the proposal.

On another matter, Senator Pimentel noted that among the earliest terrorists groups was the Sicarii, which participated actively in the Zealot struggle and fought against Roman occupation; that a more recent terrorist group was the Irgun, under Menachem Begin, who fought against the British authorities and bombed the King David Hotel in 1946. He pointed out that Jumo Kenyatta was considered a terrorist before he became the President of Kenya, as well as Nelson Mandela of South Africa, Archbishop Macarius of Cyprus, Ahmed Ben Bella of Algeria, and Andres Bonifacio of the Philippines. However, he said that even the U.S. government has no clear definition of "terrorist."

Senator Enrile expressed hope that Senator Pimentel would help in crafting the necessary provisions to improve the measure.

INTERPELLATION OF SENATOR BIAZON

Preliminarily, Senator Biazon pointed out three areas of the bill that need to be examined: 1) the definition of terrorism, who the terrorists are and what acts are included in the definition; 2) the manner of arresting and detaining suspected terrorists; and, 3) the penalties in view of a move to repeal the Death Penalty Law.

Asked on the definition of terrorism and the acts that are considered terrorist acts, Senator Enrile replied that terrorism is not defined as a behavior but what is considered to be a crime of terrorism. He pointed out that terrorist behaviors are only included in the definition as means of committing the

crime, but committing such behaviors does not make one a terrorist unless the other elements are present.

Senator Enrile said that Section 3 of the bill defines a crime of terrorism as "Any person, who, acting in any of the manner described in Paragraphs 1, 2 and 3 of Article 17 of the Revised Penal Code, uses or, having the ability or capability to do so, threatens to use assassination, kidnapping, hostage-taking, hijacking, bombing, dynamiting, destructive flooding, biological or chemical agent or agents, nuclear device or devices, arson, the destruction of the main water reservoir or water supply system, the destruction of the environment, the serious disruption of the electric power or communications system of the country, or the destruction of any other strategic infrastructures of the nation, or any other form of violence similar or analogous to any of those enumerated herein, in order to inflict widespread fear, anxiety or panic among the populace to coerce a government, a political authority, or a population to accede to or comply with a given demand or even without such coercion and demand, so as to cause great injury, damage and or destruction to a population, a government, or a political authority shall be guilty of the crime of terrorism and shall suffer the penalty of *reclusion perpetua*, or death, at the discretion of the court." He pointed out that even if one carries out an assassination for pleasure, he is not a terrorist; but if he carries out an assassination by exploding a mini-nuclear device, then he can be a terrorist as he will inflict great injury and damage.

Senator Biazon noted that the first element is the act itself and the second element is the intention to sow widespread fear, anxiety or panic among the populace. He then asked if "populace" in the bill refers to the general populace. Senator Enrile replied that it refers to a "community" as defined in the dictionary.

Senator Biazon recalled that when he was the brigade commander in Davao, the NPAs were in the habit of collecting revolutionary taxes from businessmen and *sari-sari* store owners and when a *sari-sari* store owner refused, the rebels killed some store owners to inflict fear among them. Asked if the incident would fall under the phrase "to inflict widespread fear, anxiety or panic among the populace," Senator Enrile replied in the affirmative and explained that a specific sector of society is a part of the populace. However, he clarified that in the incident cited, the crime was extortion and if

there was a killing, it was murder depending upon the attendant qualifying circumstances. Further, he stated that a terrorist act differs from pure extortion if it involves coercing a government, a political authority or an entire population. He pointed out that while there was an element of terrorism in that incident, it is not the kind of terrorism that is being criminalized.

On whether the serious disruption of electric power or communications system is included in Section 3, Senator Enrile explained that what is contemplated is a situation where the entire community is immobilized because of the disruption of its communications system. Blowing up several segments of the transmission line, for instance, is vastly different from blowing up just one electric post which can be repaired easily, he said. He clarified that if the entire series of communication towers that links a wide area of community is destroyed and lives will be disrupted for a considerable length of time, then it could be considered a terrorist act. It would depend on the magnitude of the act and the presence of the other elements, meaning there was panic and there was a demand, he said. He admitted there are difficulties in defining terrorism and expressed hope that they would find a way to make it clearer.

On the provision that an organization may be declared as a terrorist organization, Senator Enrile said the organization has to be proscribed by the court in the form of a decision based on evidence.

On the possibility that a splinter group of an organization could commit a terrorist act, Senator Biazon asked how it would affect the organization. Senator Enrile stated that if the group would operate and commit, as part of its tactical effort, those activities mentioned in the bill with the other elements present, then the organization could be considered a terrorist organization. The techniques and tactics should be a part of their effort to topple the government, he said.

Senator Enrile clarified that the difference between a guerilla group and a terrorist group lies in strategic objective: the former aims to build a army to destroy the army of the government and the latter normally operates in a small group. However, he noted that there are guerilla organizations like the VRMO-MNP that engage in terrorist activities as part of its tactics. He stated that if such acts mentioned in the proposed measure are committed with the other elements present, then the group could

be classified as a terrorist group and its organization could be proscribed as a terrorist organization, if there is evidence that it sanctions such tactics to propagate its guerilla effort through "propaganda by deed."

Referring to the phrase "to comply with a given demand," Senator Enrile explained that it means to require the release of certain people, for example, the "Batasan Five."

Senator Biazon asked if the demand by some sectors of society for the President to resign could be considered an element, Senator Enrile replied that it would, if it was accompanied by other elements like hijacking, blowing up of facilities or assassinations.

Senator Biazon queried whether membership in an organization proscribed by the court as a terrorist group would classify him as a terrorist.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 11:42 p.m.

RESUMPTION OF SESSION

At 11:42 p.m., the session was resumed.

In answer to the query, Senator Enrile cited Section 18 (*Proscription of Terrorist Organizations, Association, or Group of Persons*) and Section 19 (*Penalty for Membership in a Terrorist Organization, Association or Group of Persons*).

Asked if CCP-NPA leader Jose Maria Sison could be charged under the bill, Senator Enrile replied that he could, if he performs overt terrorist acts or knowingly and willfully remains a member of the organization.

On whether an ultra-rightist group or a civil society group demanding the resignation of the President that entered into a tactical alliance with the NPA could be proscribed as a terrorist organization, Senator Enrile replied in the negative. He believed that as is practiced in criminal law, every doubt must be decided in favor of innocence rather than guilt. However, he clarified that if there is concrete evidence to establish a conspiracy such that the ultra-rightist group know,

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understood and agreed with the purpose and tactics of the NPA, then they could be charged as co-conspirators.

With respect to the reported assassination plot against the President and Cabinet members, Senator Enrile explained that it would be considered a conspiracy if it is proven that there was an active agreement between the two parties and other elements of the crime are present. He said that a person or group responsible for the assassination of a czar or a king will not be considered a terrorist unless the other elements of the crime are satisfied.

Thereafter, Senator Biazon manifested that he would continue his interpellation at a later time.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

COMMITTEE REPORT NO. 72 ON SENATE BILL NO. 2254 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, Senate Bill No. 2254 (Committee Report No. 72) entitled

AN ACT ABOLISHING THE DEATH PENALTY.

Thereupon, the Chair recognized Senator Pimentel, Sponsor of the measure, and Senator Biazon, for his interpellation.

REMARKS OF SENATOR PIMENTEL

Senator Pimentel recapitulated the arguments for the abolition of the death penalty: 1) the Constitution prohibits cruel and unusual punishment and there is no penalty more cruel and unusual than one which takes away the life of a person; 2) the death penalty is not a deterrent as shown in various local and foreign surveys and studies; 3) the death penalty prohibits or prevents the restorative aspect of penology which is the rehabilitation of a person; and 4) lethal injection used to carry out the death penalty involves the injection of sedatives, paralyzants and chemicals to stop the heart is not painless. He cited the case of

Scott Dawn Carpenter, an American convict, who had violent seizures after undergoing lethal injection. He also noted that British studies showed that 43% of those punished by lethal injection experienced pain prior to death.

INTERPELLATION OF SENATOR BIAZON

At the outset, Senator Biazon stated that he coauthored the Death Penalty Law that was passed in the 9th Congress, but in view of the unreliability of the justice system in ensuring that only the guilty are punished, he was inclined to vote for a repeal of the law.

Senator Biazon noted the great difference between Commonwealth Act No. 408, which embodies the Articles of War, and the Revised Penal Code, particularly in the composition of the courts and the appreciation of evidence. For instance, he noted that the Articles of War prescribes death sentences for crimes committed during war time such as murder, rape, espionage, and treason. He asked whether the enactment of the bill into law would repeal the provisions of the Articles of War dealing with the imposition of the death penalty. To obviate any doubt, Senator Pimentel suggested that the repealing clause should state that all imposition of death penalty in the Philippines, whether by civilian or military authorities, would be proscribed. He confirmed that this would amend Commonwealth Act No. 408 to include those guilty of espionage against the government such as foreign agents and civilians who connived with them. However, he noted that espionage is no longer a problem in the Philippines since even foreign embassies are aware of matters discussed in Cabinet meetings.

Senator Biazon pointed out that like rebellion, the selling of arms and ammunition to enemies of the State by a soldier is the highest form of treason as it would lead to the death of his comrades. Relative thereto, he asked if Senator Pimentel would advise him to reconsider a bill imposing the death penalty by firing squad on a soldier who was convicted of selling arms and ammunition to enemies of the State. Senator Pimentel replied in the affirmative as believed that there should be uniformity in the application of the law in favor of the accused. However, he clarified that he does not want these people to go scot-free. He suggested that they be meted out life imprisonment without parole, which is the next highest penalty after death.



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 89

Tuesday and Wednesday

June 6 and 7, 2006

**THIRTEENTH CONGRESS
SECOND REGULAR SESSION**

I would like to make a manifestation of my support for the Senate's approval of Senate Bill No. 2254, "An Act Abolishing the Death Penalty."

As much as I would have liked to participate in the voting on Third Reading, I was not able to do so because I was in the heat of discussions on the 2006 General Appropriations Act, a measure that we would also like to pass before the *sine die* adjournment of Congress.

As one of the principal authors of the measure abolishing the death penalty, I believe that death, as a penalty for crime, has no place in a society that claims to strongly uphold freedom and human rights.

The death penalty, aside from being an inhuman, cruel and degrading punishment, has never been proven to deter crime more effectively than other punishments. Worse, the penalty might even be imposed on the innocent.

Hence, it is but just to impose the penalty of *reclusion perpetua* or life imprisonment instead of the death penalty in cases where the law prescribes the death penalty.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 7:12 p.m.

RESUMPTION OF SESSION

At 7:14 p.m., the session was resumed.

NEXT DAY'S SCHEDULE

Senator Pangilinan informed the Body of the schedule for the next day's session, as agreed upon by the Members, to wit:

10:00 a.m. to 11:30a.m.	<i>Anti-Terrorism Bill (Senators Lacson and Revilla have reservations to interpellate on the measure)</i>
11:30 a.m. to 2:00 p.m.	<i>Biofuels Act BCDA Bill</i>
2:00 p.m. to 3:00 p.m.	<i>Automation Bill Adjournment Call To Order</i>
3:00 p.m.	<i>Biofuels Act BCDA Bill Automation Bill</i>

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 7:15 p.m.

RESUMPTION OF SESSION

At 7:16 p.m., the session was resumed.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session suspended until ten o'clock in the morning of the following day.

It was 7:17 p.m.

RESUMPTION OF SESSION

At 11:17 a.m., Wednesday, June 7, the session was resumed with Senate President Drilon presiding.

COMMITTEE REPORT NO. 34 ON SENATE BILL NO. 2137

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE
CRIME OF TERRORISM, THE CRIME
OF CONSPIRACY TO COMMIT
TERRORISM, AND THE CRIME OF
PROPOSAL TO COMMIT TERRORISM,
AND FOR OTHER PURPOSES.

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

The Chair recognized Senator Enrile, Sponsor of the measure, and Senator Pimentel for his interpellation.

INTERPELLATION OF SENATOR PIMENTEL

Asked by Senator Pimentel whether the terrorist acts enumerated in Section 3 of the bill are also covered by the Revised Penal Code and laws that define criminal activities, Senator Enrile replied in

the affirmative, clarifying that if the assassination, for instance, of a high government official was accompanied by a demand for the government to do or not to do something, then it would be under the ambit of Section 3 and not considered an ordinary crime of murder under the Revised Penal Code. Similarly, he pointed out that in the case of kidnapping, if a group of children were kidnapped for ransom but there was no coercion of the government or a population for that matter, it would only be a case of ordinary kidnapping under the Revised Penal Code. He said that the same also applies to cases of arson, possession and use of explosives, and many other things.

Asked whether the said crimes are considered heinous and punishable by death under the Death Penalty Law, Senator Enrile replied that it would depend upon the aggravating circumstances which are not offset by the qualifying circumstances.

Senator Pimentel noted that, in reality, the bill is directed towards maintaining the processes of government and while the object of the terrorist act could be civilians, ultimately, the act would put pressure on government.

Asked if these acts are equivalent to *lése majesté* that was instituted to protect the sovereign from the criticism of his subjects, Senator Enrile replied in the negative.

Since that particular act is already penalized under the Code, Senator Pimentel asked how the passage of the bill could be justified at this point just because it was accompanied by certain circumstances that qualify as an offense under the bill. He noted that since kidnapping and assassination are penalized with grave penalties, there is no longer a need to craft other laws to ensure the imposition of grave penalties. In response, Senator Enrile stated that if the purpose of the kidnapping or hijacking, for instance, is not to coerce or intimidate a government or a populace or a political authority, it is not covered by the provision of the Act; but if the purpose of the act of killing, bombing, hijacking, or committing destruction is to compel an indirect primary target, like the government or a political authority or a population, to perform or not to perform an act demanded by the perpetrator, then it is covered by this Act.

Asked why people who commit these acts could not be charged with rebellion or insurrection, Senator

Enrile replied that the phenomenon of terrorism in this age has attained a magnitude that requires a greater use of formerly unauthorized techniques of criminal prevention and criminal suppression.

Senator Pimentel noted that the bill speaks of motives which are in the hearts and minds of people, but not of techniques which are something else because they can use the latest technologies available. He observed that there is an element that cannot be verbalized in the anti-terrorism bills all over the world and that is the connivance with foreign elements. He proposed that the element of foreign connivance or conspiracy with foreign terrorists be made part and parcel of the description of the acts being proscribed to differentiate them from the criminal activities within the purview of the Revised Penal Code.

Senator Enrile stated that in crafting his version of the Anti-Terrorism Law, he studied the history of terrorism and he learned that there are situations where terrorism happens internally, like in Macedonia and Armenia where it was waged against the Turks or in old Palestine where it was waged against the British. He said that if it is an internal insurgency like what the MILF and the CPP/NPA are pursuing and there is no use of the instruments of terrorism enumerated in the definition, the insurgents would not be considered terrorists; but the moment they use hostageing, hijacking, kidnapping, and make a demand, as part of their tactics, to gain momentary propaganda value for themselves, then they would fall under the definition.

Senator Pimentel stated that diminishing the powers of government is already covered in the Revised Penal Code and falls under the purview of insurrection where the objective, among others, is to diminish the jurisdiction of government over certain areas of the country, and maybe, the distinguishing element is the presence or the complicity of foreign elements which would make it completely different from crimes under existing laws.

Senator Enrile expressed openness to consider suggestions to make the law clear and tight enough so that it would not become an instrument of oppression. He stressed the need to be careful in clarifying the concepts to be introduced as criminal acts. He underscored the cardinal principle of criminal law that an act without a criminal intent is not punishable. He stated that with the help of Senator Pimentel, the Committee could write a better law.

providing for all possibilities that are confined within controllable limits.

Senator Pimentel commended Senator Enrile for the assurance that the Committee was trying to craft a law that not only addresses the problem of terrorism, especially the concerns of the United States, but also protects the fundamental rights of the people. He acknowledged that Senator Enrile has tried hard to put safeguards in the bill and the many ideas coming out during the debates could do it some good. He hoped that the language of the bill could be refined so that it does not end up covering crimes that already fall within the ambit of the Code, or increasing their penalties.

In response, Senator Enrile stated that he would consider a proposal to include the element of foreign participation in the commission of the crime of terrorism as he observed that all the insurgency movements in the Philippines, except the *Katipunan*, had an element of foreign influence. He cited Aguinaldo who was reported to have met American officials in Hong Kong before he launched the revolution against Spain; and the CPP-NPA which has been influenced, funded and armed through these years by foreign communist states or communist organizations. He stated that even today's global terrorism has links to Al Qaeda and its religious theme has its beginnings in the 11th century. He stated that if the act was confined to the country and carried out by Filipinos who wanted to supplant the government, the latter would not be considered terrorists under the bill.

To the observation that the U.S. Constitution has a proviso that the right of the people to bear arms shall not be infringed which is not found in the Philippine Constitution, Senator Enrile emphasized that the bill is not intended to destroy the revolutionary spirit of the Filipino people because only time will tell when they might need to exercise the right to remove an oppressive government.

On whether a sunset provision could be included in the bill, Senator Enrile stated that it could be done, depending on the assessment of the global situation by the country's security agencies. He noted that the situation could improve a decade or two but the extension of the sunset provision must be done through an act of Congress. He pointed out that even the proclamation of martial law is limited to the suspension of the writ of *habeas corpus* and Congress may extend or suspend it.

Asked whether the bill identifies all the possible electronic devices that could be used for surveillance, Senator Enrile replied that it could be provided for in the bill and subject to the limitations that the Body may wish to impose.

On the observation that the laws of the land are written in English which is not understandable to all Filipinos, hence, the need for simplicity in the language of the bill, Senator Enrile stated that the Body could provide for the manner of the commission of the acts as well as their magnitude to distinguish acts of terrorism from ordinary criminal acts.

As regards the arrest of a suspect, Senator Pimentel posited that the greatest danger to his security is the period from his arrest to his surrender to a judicial authority during which he could be tortured or executed or simply vanished. He proposed that the bill impose a primary obligation on the arresting officer to produce the body of the suspect before he is brought to his place of detention. Senator Enrile agreed, stating that the proposed Act could require an arresting officer to keep a very precise record of when the arrest was made, who executed the arrest, who handled the suspect after his arrest, and all such pertinent matters up to his entry into custodial safekeeping.

Senator Pimentel clarified that more than a record, he wanted to ensure that the first duty of the arresting officer is to report to a judicial authority to precisely avoid the excesses being committed by other countries in their fight against terrorism. Senator Enrile stated that the arresting officer could be required to immediately report to the Commission on Human Rights or the Anti-Terrorism Council or the court that ordered the surveillance.

Further, Senator Pimentel proposed that a government doctor be assigned to the judicial authority to examine the suspect and determine his medical condition. Senator Enrile agreed as he noted that this would prevent the suspect from accusing the arresting officer of manhandling him, a common tactic that is resorted to by terrorists in order to raise a defense.

Senator Pimentel manifested that he would prepare his proposals and introduce them at the proper time.

Senator Enrile agreed that the nation's experience relative to the mishandling of criminal suspects must be inputted in the crafting of the legislation.

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Senator Pimentel recalled that during martial law, a warrant of arrest was served each time he was arrested and his family was told why he was arrested and where he would be brought, unlike the present practice of masked men without IDs barging into private homes and manhandling citizens. Stating that he wanted to foreclose such danger, he reiterated that certain acts of surveillance allowed under the bill must be precisely defined such as "trap and trace authority." He believed that people must be forewarned of the things that could be done legally under the Act.

Senator Enrile informed the Body that his original formulation was refined by additional provisions. He explained that the bill contemplates a greater leeway for security forces to surveil, eavesdrop and intercept information with every known device available under the supervision and control of the court. He agreed that an enumeration of what these devices are and the definition of "proscription" would make the provisions more easily understandable.

Senator Pimentel insisted that the prohibitions against abuse must be applicable not only to citizens but also to alien residents of the country. He recalled that in the aftermath of 9/11, the U.S. security forces made sweeping arrests, especially of people with alien-sounding names who were denied equal protection under the U.S. Constitution. Senator Enrile expressed willingness to accept an amendment, at the proper time, that would ensure equal protection of the law to whoever is found within the territorial limits of the Philippines.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan stated that Senator Lacson would interpellate on the measure in the afternoon's session.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 12:02 p.m.

RESUMPTION OF SESSION

At 12:03 p.m., the session was resumed.

COMMITTEE REPORT NO. 47 ON HOUSE BILL NO. 2478 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of House Bill No. 2478 (Committee Report No. 47), entitled

AN ACT GRANTING THE RADIO MARIA FOUNDATION, INC. A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN FOR RELIGIOUS AND NON-COMMERCIAL PURPOSES RADIO BROADCASTING STATIONS IN THE PHILIPPINES.

Senator Pangilinan stated that the parliamentary status was the period of individual amendments.

TERMINATION OF THE PERIOD OF INDIVIDUAL AMENDMENTS

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

APPROVAL OF HOUSE BILL NO. 2478 ON SECOND READING

Submitted to a vote, and there being no objection, House Bill No. 2478 was approved on Second Reading.

SUSPENSION OF CONSIDERATION OF HOUSE BILL NO. 2478

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 12:04 p.m. 



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 3

Wednesday, July 26, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

**PARLIAMENTARY INQUIRY
OF SENATOR BIAZON**

Asked by Senator Biazon whether the Committee on Rules had already resolved the issue raised by Senator Lacson on the determination of the Majority and Minority in the Chamber. Senator Pangilinan replied that preliminary inquiries and research had already been made and as Chair of the Committee on Rules, he would need the concurrence of the Committee members so that he could take the necessary action on the matter on Monday.

Senator Biazon pointed out that he had raised the matter in view of the procedural role of the Minority Leader in every deliberation or debate in the Chamber. Senator Pangilinan said that until there is an official act of the Body, the status quo shall be maintained.

Saying that he was being caught in a crossfire, Senator Pimentel declared that he would give up the position of Minority Leader should anybody wish to take over. Nonetheless, he reminded the Body that during the opening session of the Third Regular Session, only the Office of the Senate President became vacant because of Senate President Drilon's resignation.

SUSPENSION OF SESSION

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

It was 4:32 p.m.

RESUMPTION OF SESSION

At 4:33 p.m., the session was resumed.

REMARKS OF SENATOR BIAZON

Senator Biazon stated that he was not pursuing any position in the Chamber and would give away his two committees to anybody who is interested. He said that he was only after the resolution of the matter that was referred to the Committees on Rules.

The Chair stated that the matter would be discussed on Monday.

**COMMITTEE REPORT NO. 34
ON SENATE BILL NO. 2137
(Continuation)**

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

**AN ACT TO DEFINE AND PUNISH THE
CRIME OF TERRORISM, THE CRIME
OF CONSPIRACY TO COMMIT
TERRORISM, AND THE CRIME OF
PROPOSAL TO COMMIT TERROR-
ISM, AND FOR OTHER PURPOSES.**

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

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Defensor Santiago for her interpellation.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 4:36 p.m.

RESUMPTION OF SESSION

At 4:40 p.m., the session was resumed.

**INTERPELLATION
OF SENATOR DEFENSOR SANTIAGO**

Senator Defensor Santiago expressed the view that the enactment of the Anti-Terrorism Act of 2006 would signal to the country's foreign partners its determination to establish the legal basis for the fight against terrorism. However, she noted that the Declaration of Policy in the bill gives the impression that the country's policy emphasizes primarily short-term prevention and punishment. She inquired into the possibility of including in the bill a provision that expresses the country's determination to address the root causes of terrorism, which is consistent with the declaration at the Copenhagen Summit of the Asia-Europe Meeting on September 2002 and to which the President subscribed.

Senator Defensor Santiago stated that in international law, terrorism is a crime of serious

international concern. She said that the international community, through the United Nations Security Council, and the General Assembly, and the International Law Commission, has repeatedly affirmed that terrorism violates fundamental human rights in the United Nations Charter and terrorist acts are wrongful regardless of the perpetrator, the underlying ideological motivation or the means employed. She stated that the Senate's effort in enacting the proper legislation to deter and penalize acts of terrorism is of great significance, if not long overdue. She pointed out that there are some provisions that require serious scrutiny as these might offend some of the basic human rights enshrined in the Constitution.

Senator Enrile believed that there is no need for a declaration of policy in the bill because by imposing sanctions on the aberrant behavior of members of society, the State is exercising the highest prerogative as a sovereign state.

Adverting to Section 2 of the bill, Senator Defensor Santiago noted that there appears to be an imbalance between the first and second paragraphs thereof regarding "respect for fundamental rights and freedoms of the people guaranteed under the Philippine Constitution" and "cooperation will all nations in the fight against the same." She surmised that the wording envisages international cooperation exclusively from the point of view of terrorism and ignores international human rights instruments and conventions. She then suggested that the phrase "and under international human rights conventions and instruments ratified by the Philippines" be added at the end of the first paragraph.

Secondly, she noted that Section 2 condemns terrorism as a crime against humanity and the law of nations. However, she pointed out that in order to signal the Philippines' determination to pursue the fight against terrorism on a principled basis, the government should consider announcing its intention to ratify international conventions against terrorism as well as the Rome Statute of the International Criminal Court which has been ratified by over 100 states.

On Section 3, Senator Defensor Santiago suggested that the definition of "terrorism" include a qualification that the act is intended to obtain some military, political or philosophical end which is in congruence with the general definition of "terrorism" under international law. Senator Enrile agreed, saying that

this is precisely the reason the Committee inserted the aspect of coercion or demand of the terrorist in the section.

Asked on the distinction between the acts enumerated in the bill and crimes punishable under the Revised Penal Code, Senator Enrile said that for instance, the act of assassination would be punished in accordance with the elements provided in the Revised Penal Code unless the other elements found in Section 3 are present, in which case, these crimes would simply be considered as acts leading to the commission of the crime of terrorism. He welcomed the suggestion to rephrase Section 3 at the appropriate time to distinguish the acts punishable under the bill from the acts punishable under the Revised Penal Code.

Senator Defensor Santiago pointed out that with the passage of the law abolishing the death penalty, the Philippines has joined the international campaign for the abolition of the death penalty. She said that the word "death" on page 4, line 14 of the bill should therefore be removed. Senator Enrile replied that the penalty is an object of compromise even as he stressed that he voted against the death penalty when it was first proposed in the House of Representatives.

Senator Defensor Santiago expressed concern that the provision, if left unmodified, might draw criticisms from the members of the European Union which have abolished the death penalty and are waging an international campaign for its abolition. She pointed out that the EU's main objection is that the provision would prevent its members from extraditing suspects to the Philippines if they are to be charged with an offense punishable by death. Senator Enrile expressed no objection to adopting life imprisonment as the maximum penalty for the crime of terrorism.

Senator Defensor Santiago observed that the bill appears to be replete with vague terms and has no operational definitions of threshold offenses or the minimum number of elements for the crime to be deemed to have been committed. Moreover, she noted that the bill has terms which are wholesale descriptions of acts that are punishable by very grave consequences such as *reclusion perpetua*, but which might not be apropos to the crime committed. In reply, Senator Enrile clarified that Section 3 in the May 22, 2006 version is one continuous sentence that contains certain elements of the crime. 16

Relative thereto, Senator Defensor Santiago noted that the element of depriving or threatening to deprive somebody of his liberty contained in an earlier version of the bill has been deleted from the present version. Senator Enrile clarified that if a person takes hostages without making any demands or coercing a primary target in order to accomplish a certain objective, then the act is not considered terrorism.

To the observation that the present version no longer includes the element of "causing risk to health or safety of the general public," Senator Enrile pointed out that the statement is rather vague. For instance, he explained that if an individual poisons the La Mesa Dam reservoir without making a demand, causing panic or coercing the government to do a certain act, then he would be punished for a crime other than terrorism.

Asked to clarify the clause "destruction of any other strategic infrastructure of the nation" on lines 7 and 8 of page 2, Senator Enrile pointed out that if the act of destroying infrastructure, such as blowing up a major bridge in the metropolis, is aimed at isolating the seat of government and demanding the removal of the President, otherwise, more damages would be inflicted, then that would be an act of terrorism; but if there is no demand and the elements stated in the definition are not concurrent, then the perpetrators would be punished for crimes other than terrorism. Moreover, he explained that "strategic infrastructure" refers to things that are very essential to the economic, social and political life of the nation. He said that he would welcome a refinement of the particular provision because he approximated during the drafting of the bill the possible targets of terrorist attacks like airports, international trading facilities, fuel supply depots, among others.

On whether cell sites are considered critical communication infrastructure, Senator Enrile explained that the damage to one cell site could be repaired easily but the destruction of the entire system, which is the strategic infrastructure, would immobilize it.

Adverting to line 6, Senator Defensor Santiago asked whether dynamite fishing which threatens the ecological security of the waters is considered a destruction of the environment. Senator Enrile clarified that the provision contemplates massive destruction like burning forests. He admitted that the

provision should be amended and limited to essential acts that threaten society. For instance, he said, blowing up the country's geothermal plants or hydro-electric dams to the extent of causing panic and disruption of the economy, coupled with certain demands or threats would be considered as terrorism act.

Even as she acknowledged that the utilization of technological means does not detract from the terrorist character of the act, Senator Defensor Santiago said that the parameters set by the bill should be calibrated to suit acts that are clearly of a terrorist nature. For instance, she pointed out that there is an overwhelming recognition that the internet is a tool that may be utilized to engage in terrorist activities. She cited individuals who use hacking techniques called "hacktivism" in order to make a political statement or promote a political cause; those who engage in cyberterrorism defined as the premeditated politically motivated attack against information and computer systems, programs and data resulting in violence against noncombatant targets; or those who cause serious harm and loss of life or severe damage to infrastructure. She expressed optimism that these examples may serve as a guide for setting the parameters of cyberterrorism that the measure clearly intends to include as part of the definition of "terrorism."

Senator Enrile replied that said acts would not come under the definition unless they are accompanied by the other elements of terrorism where the primary element is the coercion of the government and society to accede or not to accede to a given demand. If the act of killing, bombing, hostage-taking, or any other form of violence, was done simply to do damage without these other elements, he said that the act would be punished under the ordinary punitive provisions.

Senator Defensor Santiago observed that the most controversial aspect of the concept of terrorism in the global age is really how to define terrorism. Referring to lines 8 and 9 of Section 3, she said that the acts defined as terrorism include "any other form of violence similar or analogous to any of those enumerated herein," a phrase that is too broad. She stressed the need to specify that the acts contained therein should be in furtherance of, incident to, or in connection with an act of terrorism defined in the rest of Section 3. Senator Enrile expressed no objection to adopting such a language. *AB*

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Adverting to Section 4, *Conspiracy to Commit Terrorism*, Senator Defensor Santiago expressed concern that the provision, being too broad, could be challenged as being unconstitutional as it seems that any terrorist act of a member of an organization automatically characterizes the entire organization as a terrorist group. She asked if the acts included in Section 4 would be limited to those which the organization itself adopts as its own considering the grave implications of such characterization.

Senator Enrile replied that the proscription of any organization as a terrorist organization and the responsibility of members of a terrorist organization are covered in separate sections of the measure: Section 18 covers the proscription of an organization, association, or group of persons as terrorist organization; and Section 19 refers to the penalty for membership in a terrorist organization, association or group of persons. He clarified that what Section 4 contemplates is a situation where two or more persons come together and agree to commit the acts that spell the crime of terrorism including all its elements, in which case, they would be punished as co-conspirators.

Senator Defensor Santiago stated that under Section 18, the assumption is that there is a terrorist organization which consists of several members. However, she believed that in a situation wherein only one member of the group commits an act of terrorism, such act should not automatically qualify the entire group as a terrorist group. Senator Enrile shared the same observation as he agreed that the section should be interpreted in a manner that the terrorist act in question has been adopted by the organization as its own.

On another matter, Senator Enrile informed the Body that the Committee would propose the deletion of Section 42, *Immunity from Prosecution*, because it contradicts another provision on the penalty imposed on people who manufactured evidence against the person accused of the crime of terrorism. Senator Defensor Santiago observed that Section 42 affords a loophole for the government to use by means of subpoena *duces tecum* tapes, sounds, pictures, images, recordings or any other form of recorded evidence which may have been obtained in violation of R.A. No. 4200, the Anti-Wire Tapping Act. She opined that it would be better to delete Section 42 and for another section to reiterate that the recordings to be submitted must have been obtained in accordance with law.

Asked whether there is any mention of the Anti-Money Laundering Act (AMLA) in the present bill, Senator Enrile replied in the negative, explaining that the thrust of the measure regarding the matter is that opening the bank account of a person suspected to be a terrorist under the definition should be the subject matter of an inquiry by a court. He affirmed that Sections 27 and 38 provide the procedure as regards a bank depositor found by a court to be indeed a terrorist or belongs to a terrorist organization.

Senator Defensor Santiago pointed out that under the AMLA, the order to freeze monetary instrument or property is issued by the Court of Appeals; however, under the bill, the order is issued by the Regional Trial Court (RTC). In any event, she said, the determination of probable cause lies with a court of justice and not with an administrative body such as the Anti-Money Laundering Council. Senator Enrile stated that the bill contemplates that the seizure and sequestration should be part of the criminal proceedings.

But Senator Defensor Santiago opined that before the actual trial, it is always better to determine whether the case should be judicial rather than administrative in nature. Senator Enrile replied that he would have no objection should the Body feel that it would be better to elevate the case to the Court of Appeals. However, he said that since an appeal would involve analysis of facts which would eventually go up to the appellate courts, primarily the Court of Appeals, it would be better to confine it in the RTC. Senator Defensor Santiago agreed.

As regards Section 8, Senator Defensor Santiago expressed concern that the provision might be subjected to constitutional attack for its vagueness and overbreadth. She said that if the intent is to create an exception to RA 4200, the section should include the proper safeguards or rules of procedure to prevent possible abuse of discretion. She cited *Estrada vs. Sandiganbayan*, wherein the Supreme Court held that:

A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects - It violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.

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The overbreadth doctrine, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

In response, Senator Enrile suggested that said provision be deleted and replaced with a more generalized statement. He added that the procedure to implement Section 8 is covered by the following sections: Section 9 – *Formal Application for Judicial Authorization*; Section 10 – *Classification and Contents of the Order of the Court*; Section 11 – *Effective Period of Judicial Authorization*; Section 12 – *Custody of Intercepted and Recorded Communications*; Section 13 – *Contents of Affidavit*; Section 14 – *Disposition of Deposited Materials*; Section 15 – *Application to Open Deposited Sealed Envelop or Sealed Package*; and Section 16 – *Evidentiary Value of Deposited Materials*.

Noting that the government would be intruding into the privacy of a person and the sanctity of his home in its fight against terrorism, Senator Defensor Santiago proposed that said provision contain the following safeguards:

1. The judge should be required to personally examine the peace officer in the same manner as when the judge determines probable cause in the issuance of a search warrant;
2. There should be particularity of description as regards the type of information aside from the peace officer's certification that the information is relevant. This provision should conform to the requirement for the issuance of a search and/or an arrest warrant under the Constitution and the Rules of Court;
3. Further, the person subject of the surveillance or wiretapping should be specified. Following jurisprudence, no arrest or search warrant can be served to a John Doe. There should be a qualification that a person has been subject to continuous surveillance prior to the wiretapping as it would engender the belief that he is guilty of terrorist activities.

Senator Enrile welcomed proposals to improve the bill.

As regards the provision that, "The provider of wire or electronic communication service, lender,

custodian or other person shall install or assist the installation of such device in accordance with the court order" in the earlier version, Senator Enrile clarified that it could be retained in the present version if it would further safeguard the rights of the people.

Senator Defensor Santiago observed that there is an unequivocal prohibition in RA No. 4200 against the secret recording of any private communications unless authorized by all the parties to it. She queried if there is a provision in the bill that the secret recording could be authorized with the consent of only one party. Senator Enrile stated that the provision was purposely removed because if terrorists are subjected to surveillance, the presumption is that the two parties to the conversation are of like minds.

Senator Defensor Santiago placed on record her objection to the provision since it would do away with court intervention by simply obtaining one party's written consent. She said that the matter would have raised serious concerns about the protection of the targeted individual's right to privacy and she foresees that duress would be exerted on the parties to give their consent or be used as accomplices to spring traps on unsuspecting victims.

Senator Defensor Santiago observed that technological advances in communication and surveillance should be also taken into consideration since the bill dwells only on the present technology. Senator Enrile suggested that the phrase "devises of any other suitable means" be used.

Asked who would chair the meetings of the Anti-Terrorism Council in the absence of the chairman, who happens to be the President, Senator Enrile said that since there are two vice-chairs – the Secretary of Justice and the Secretary of the Interior and Local Government – the section could be amended by identifying a senior vice-chair and a junior vice-chair.

As regards page 20, line 8, Senator Defensor Santiago asked about the functions of the support agencies of the Council. Senator Enrile stated that the Bureau of Immigration gathers information on aliens coming into and going out of the country; the Office of Civil Defense deals with disasters in case a terrorist act has occurred; the Anti-Money Laundering Council deals with clandestine deposits; and the Intelligence Service of the Armed Forces

and the Philippine National Police have investigative services. He agreed that the provision needs refinement.

Senator Defensor Santiago pointed out that if the intention of the bill is to create a task force to be headed by the Executive, it should be granted sufficient personnel of its own instead of relying on support agencies, otherwise, it would not be able to execute its functions. She said she would introduce amendments to the provision at the proper time.

Citing the definition of terrorism in Section 3, Senator Defensor Santiago asked if there should be a provision on acts taking place in extra-territorial places such as diplomatic premises belonging to or being occupied by Philippine government entities. Senator Enrile replied that since the embassies abroad form part of Philippine territory, Philippine criminal laws would apply to any act committed therein. He posed no objection to a provision punishing foreigners who committed acts of terrorism within the territorial jurisdiction of Philippine foreign missions.

Senator Defensor Santiago stated that she would propose the amendment at the proper time.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:46 p.m.

RESUMPTION OF SESSION

At 5:49 p.m., the session was resumed.

RESERVATIONS TO INTERPELLATE

Upon resumption, Senator Pangilinan stated that Senators Madrigal, Lacson, Revilla, Osmeña, Drilon and Roxas had made reservations to interpellate on the bill.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan informed the Body that he had furnished all the Members with copies of the

proposed calendar of floor debates on the priority measures identified last May, namely, the anti-terrorism bill, election automation bill, biofuels bill, amendments to the EPIRA, and the BCDA law, as well as the tax relief and special economic zones tax incentives measures. He gave assurance that the schedule would not be finalized until after he shall have received all inputs from the Members.

At this juncture, Senator Osmeña recalled that no matter how the leadership of the Chamber or of the nation wanted to prioritize a bill, deep reservations by one or two senators could delay the passage of a measure. Instead, he suggested that the leadership take a consensus as to what noncontroversial measures could easily be passed. He disclosed that he had submitted to Senator Pangilinan a list containing three bills which could be passed by the end of August, another three by the end of September, and a final three by the end of October. He reminded the Body that budget debates start in November and with elections in 2007, Congress would adjourn by early February for the campaign period.

Senator Pangilinan acknowledged the list of bills submitted by Senator Osmeña. He reiterated that the schedule he had distributed was merely a proposal in order to facilitate floor debates. He assured the Body that he would confer with the leaders of the Majority and the Minority and the chairmen of the affected committees in order to draw up a common agenda.

The Chair stated that the matter could be discussed in a caucus.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Monday, July 31, 2006.

It was 5:55 p.m.

I hereby certify to the correctness of the foregoing.

OSCAR G. ABDES
Secretary of the Senate
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Approved on July 31, 2006



REPUBLIC OF THE PHILIPPINES

Senate

Pasay City

Journal

SESSION NO. 5

Tuesday, August 1, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

COMMITTEE REPORT NO. 34
ON SENATE BILL NO. 2137

(Continuation)

Upon motion of Senator Cayetano, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE
CRIME OF TERRORISM, THE CRIME
OF CONSPIRACY TO COMMIT
TERRORISM, AND THE CRIME OF
PROPOSAL TO COMMIT TERRORISM,
AND FOR OTHER PURPOSES.

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

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Lacson for his interpellation.

INTERPELLATION OF SENATOR LACSON

(Continuation)

At the outset, Senator Lacson recalled that he had expressed unequivocal support for the passage of the bill before Congress went on *sine die* adjournment. But he confessed to having certain misgivings after he heard the President's SONA last July 24.

Replying to Senator Lacson's queries, Senator Enrile expressed the view that whether the SONA is an expression of the President's national policy on certain matters would depend on her pronouncements; for example, a pronouncement of an all-out war against rebels would be a statement of policy bearing on the security of the country. As to the praise heaped by the President on Maj. Gen. Jovito Palparan who is widely perceived to be responsible for the extrajudicial killings of members of militant groups, he pointed out that the President as the commander-in-chief of the armed forces would not publicly criticize her operating generals. At any rate, he maintained that there was no solid evidence against General Palparan that would prove his guilt beyond reasonable doubt.

Senator Lacson expressed concern that the President's public expression of support for a general perceived in some quarters, rightly or wrongly, to be responsible for said killings indicated her national policy on national security and the passage of the bill

under her administration might see the end of the political opposition.

Senator Enrile rejoined that it is precisely the function of Congress to enact a law which would shackle the arbitrariness of the Executive Department. He concurred that Congress could exercise its oversight function anytime, and with respect to the bill, great efforts have been exerted to remove or, at the very least, minimize the possibility of abuse.

Senator Lacson asked whether the recent announcement of President Macapagal Arroyo that only God could judge her was not a dangerous proposition in relation to the measure. Senator Enrile replied that even as the statement has no bearing on the enactment of the law, it is an infinite statement that anyone, even himself, could claim because, indeed, only an omnipotent being could judge whether or not one is saying the truth, who knows what a person is, what he has been and what he would be.

INTERPELLATION OF SENATOR PIMENTEL

Saying that God only judges a person when he is already dead, Senator Pimentel believed that General Palparan, Mrs. Arroyo and those who hold public office would be judged by the sovereign people who put them in office. Senator Enrile agreed that the people could vote or drive public officials out of power or chastise them. He added that if a case is filed against these officials, then the judicial system would judge them.

Senator Pimentel noted that there seems to be a pattern of executing people who are associated with the party list *Bayan Muna*, or the like, which is perceived to be a party run by communist rebels, especially since another killing took place in Metro Manila a couple of hours after the shooting of the Clavers. He said that the extrajudicial executions of people associated with *Bayan Muna* are blamed on General Palparan who happens to be assigned in the places where the executions took place.

Senator Enrile pointed out that there has been fragmentation and intense factionalism in the erstwhile monolithic communist movement in the country particularly after the EDSA revolution, as evidenced by the rise of at least four major factions in the one-party system, including the affirmists, rejectionists and reformists who are reportedly killing each other. He said that while there are also suspicions that

some elements in the military are involved in the extrajudicial killings, these are mere suspicions at the moment, without hard, real and concrete evidence to prove the guilt or innocence of one or the other. Until such turmoil in the country is settled, he said, the people have to go through the social spasm in the society that is also happening elsewhere, with the hope that sooner or later the details of each of the killings could be looked into.

Senator Pimentel argued that even in the absence of hard evidence, the country's political leaders should check the tide of executions that might or might not have been sanctioned by the authorities because they are responsible for the security of the people. If indeed these people were executed by their party members, he said, the authorities should run after the killers and bring them to justice.

As one who handled the anti-insurgency problem for 17 years, Senator Enrile said that he knows that the problem is not confined to only some areas but engulfs the entire nation. He said that the people could expect outbursts of violence in a condition of insurgency and the police, military, and even the rebels are being shot at without people really knowing who is shooting at whom at this point. He added that any head of the defense department sitting in Camp Aguinaldo or head of the interior and local government would be at a loss as to who did what from Batanes to Taganac.

Senator Pimentel, however, pointed out that based on the pattern of the killings, the targets are unarmed members of *Bayan Muna* which is a legitimate opposition group in Congress. He said that he could not find any justification why people like Dr. Claver and his wife could be targets of execution. Senator Enrile said that while he agrees that something has to be done, he has to withhold judgment in the absence of facts as to whether or not the persons involved in these sordid events were persons who are called "farmers by day and soldiers by night." Further, he pointed out that from experience even of other societies, people who seem to be innocent are actually also participants in insurgency at certain times of the day. However, he clarified that he was not saying this in the case of Dr. Claver.

Senator Pimentel pointed out that since the assumption into office of Mrs. Arroyo in 2001, the total number of extrajudicial executions has risen to 740. Even without knowing the perpetrators, he stressed that Mrs. Arroyo should protect the innocent.

Despite his apprehensions and that of many people over the passage of the bill, Senator Pimentel clarified that he has spoken to media and to other people on the necessity of enacting an anti-terrorism law. Senator Enrile believed that even if Congress does not pass the law, the fact that the law does not exist would not mean that there would be no violent incidents. By its passage, he said, there is the possibility that the situation could be controlled.

Senator Pimentel reiterated that he was in favor of the passage of an anti-terrorism bill, but with the assurance that the fundamental rights of the people would not be abused. Senator Enrile agreed, as he acknowledged that the law is a very dangerous one that he has gone out of his way to tighten the provisions to ensure that those who would abuse it would be punished accordingly.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

COMMITTEE REPORT NO. 58 ON SENATE BILL NO. 2231 (Continuation)

Upon motion of Senator Cayetano, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2231 (Committee Report No. 58), entitled

AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COM- MISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES."

Senator Cayetano stated that the parliamentary status was the period of individual amendments. She manifested the desire of Senator Osmeña to propose his individual amendments at a later date.

Thereupon, the Chair recognized Senator Gordon, Sponsor of the measure. ✓



REPUBLIC OF THE PHILIPPINES

Senate

Pasay City

Journal

SESSION NO. 10

Monday, August 14, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

by Thailand is very small because, in reality, Filipinos use Thai varieties of fruits and vegetables. In the case of *lanzones*, she said that *longkong* is the variety brought from Thailand to the Philippines but whether the fruit is indigenous to the Philippines or to Thailand is unclear at present. Replying to a further query, she said that breadfruit is locally known as *rimas* which is the only variety found in the Philippines.

Asked about the single greatest benefit of the Treaty to the Philippines, Senator Defensor Santiago stressed that ratification would give the country a voice in the governing body. She pointed out that Philippine delegates are very articulate and persuasive and membership in the governing board would enable them to insert provisions in the Treaty which would preserve the national interest. On the other hand, she underscored that ratification would not necessarily compel the Philippines to share its fruits and vegetables unless it is according to the terms of the material standard agreement. Further, she explained that sharing access to the Philippines' genetic resources would be on a benefit-sharing basis, that is, the foreign country will pay the Philippine government part of the profit it makes from the access to the genetic resource, for example, abaca.

On the concern that the Treaty would be another WTO-type of debacle, Senator Defensor Santiago pointed out that the fierceness of the debates during the seven-year period indicated that the developing countries have realized what they have lost to the WTO and have become more militant of their rights. She pointed out that the Philippines is, in fact, trying to cut its losses through treaties like this on plant genetic resources.

Finally, Senator Madrigal expressed support for the ratification of the Treaty if indeed it would give developing countries a more even playing field.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

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

TERMINATION OF THE PERIOD OF AMENDMENTS

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

APPROVAL OF PROPOSED SENATE RESOLUTION NO. 472 ON SECOND READING

Upon motion of Senator Pangilinan, there being no objection, Proposed Senate Resolution No. 472 was approved on Second Reading.

SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 472

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

COMMITTEE REPORT NO. 34 ON SENATE BILL NO. 2137

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM, AND FOR OTHER PURPOSES.

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

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Revilla for his interpellation.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:19 p.m.

RESUMPTION OF SESSION

At 6:20 p.m., the session was resumed.

INTERPELLATION OF SENATOR REVILLA

At the outset, Senator Revilla manifested his support for the passage of the bill on terrorism which

has already become a fact of life. He pointed out that the question is not whether terrorism would happen but when, how it could be prevented, and how prepared government is to respond to the crisis.

Furthermore, Senator Revilla said that terrorism is a menace that constantly haunts society today, ready to strike any time and at any place and knows no race, color, religion or creed. He believed that terrorism would continue unless everyone in the world comes together and works to put an end to it. He said that the keys in the battle against terror are vigilance, meaningful cooperation and effective legislation.

Senator Revilla reiterated the urgent need for a framework whose mechanisms could effectively fight the threats of terrorism and put terrorists and their supporters in jail. He said that it is the solemn duty of Congress to provide such a framework which would strengthen the power of the State to protect its citizens against terror and ensure that the rights of the people that are enshrined in the Bill of Rights remain sacred.

Senator Revilla averred that in the Revised Penal Code, crimes have three stages of commission, namely: (1) attempted crime – when the overt act committed by the offender does not produce all the essential elements of the crime; (2) frustrated stage – when the overt act of the offender produces all the essential elements but the effect of the crime is not produced due to supervening events beyond the suspect's control; and (3) consummated crime – when all the essential elements results in the crime itself.

Asked if the measure considers attempted terrorism and frustrated terrorism as crimes, Senator Enrile said that there are no such stages of commission in the crime of terrorism, hence, a person is guilty if, for instance, he causes a bomb to explode; if he threatens the government that he would cause a bomb to explode; and if he urges another person to bomb a public facility, in which case, the person who agrees also becomes guilty of conspiracy.

Noting that Section 3 includes the sabotage of communications systems such as the internet and other information systems as a crime, Senator Revilla asked if the 23-year old student who invented and sent the "I Love You" virus through e-mail on Mny 4, 2000, would be convicted of terrorism if the law was already in effect at that time.

Senator Enrile said that he had refined the measure by clarifying that the crime is deemed committed if it has caused massive injury and destruction to the Philippine government like massive paralysis of the power system or communications system. He said that the motive is immaterial as he pointed out that the crime of terrorism is committed if the threat causes widespread fear, anxiety and panic.

Asked if one who spreads a cell phone virus through text or multimedia message causing cell phones to bog down and adversely affecting businesses and the economy, would be considered a terrorist, Senator Enrile reiterated that it would depend upon the extent of the injury and damage inflicted on the country. He believed that terrorism was not committed if only a company was affected, explaining that the act must produce fear, anxiety and panic so great as to require the government to act affirmatively or negatively to a demand of the person doing the act.

In reply to another query, Senator Enrile said that the law would not consider as terrorists owners of factories and other establishments who intentionally dump their untreated toxic wastes in bodies of water like Laguna Lake and Pasig River, unless their purpose was to cause massive destruction to the environment. He admitted that it would be difficult to quantify the degree of massiveness which the courts would have to quantify. He surmised that one who blew up a tanker full of crude in Manila Bay thereby causing massive pollution because the government did not accede to his demands that his cohorts be released could be considered a terrorist.

For his part, Senator Drilon wondered how the situation of a Filipino student inserting a virus which caused massive damage would fall under an act of terrorism since Section 3 includes the element of coercing a government, a political authority or a population to comply with a given demand. Senator Enrile explained that he had revised the provision requiring that the act should cause great injury, damage and/or destruction to the Filipino people, similar to the fateful day in New York when there was no demand but the terrorists slammed two planes into two buildings that resulted in the death of thousands.

Senator Drilon surmised that the incident in New York was purely for the purpose of creating fear and destruction in pursuit of a stated purpose.

or a sub-political statement being made insofar as Al-Qaeda is concerned. In the case of the "I Love You" virus, he said that the prankster had absolutely no political agenda. Senator Enrile replied that the act would be considered terrorism if it causes paralysis of the government's communications system coupled with a demand from the perpetrators.

Replying to another query of Senator Drilon, Senator Enrile confirmed that the crime of terrorism would be determined by the extent of the damage rather than any other element, adding that the only standard available in the bill, as far as the second part is concerned, is massive damage and destruction. Admitting that he had difficulty in trying to include a situation like the New York incident when he was drafting the bill, he expressed no objection to remove that part of the definition.

Senator Drilon clarified that he sees no problem covering situations like the September 11 bombings in New York, or the bombing of the underground train in London, and in Spain. He explained that he only wants terrorism to be qualified by some other element, perhaps to include political or ideological purpose or the pursuit of political or ideological belief.

Senator Revilla noted that Section 3 provides that terrorism may be committed through threat and use of violence, force, coercion or intimidation as long as it is intended to create or sow a state of danger, panic, fear or chaos to the general public, while Section 40 deals with the false threats of terrorism. He asked how the enforcement agencies could determine whether the threat is true or false, and whether to apply Section 3 or Section 40 in determining the fact. Senator Enrile replied that he would propose the deletion of Section 40 at the proper time.

On whether the act of spreading bomb threats through text messaging is considered a terrorist act under the bill, Senator Enrile replied in the negative, saying that a separate legislation should be crafted to address that particular concern.

Asked whether the Revised Penal Code shall have a suppletory effect to the proposed Act, Senator Enrile replied in the negative.

On whether the State or any of its agents can commit the crime of terrorism, Senator Enrile stated

that in totalitarian countries, there is the so-called state terrorism. However, he said that rebels would always consider the counter-insurgency effort of the government as state terrorism, which is a common characterization given by people who would like to supplant the government and impose a totalitarian government.

In closing, Senator Revilla manifested his desire to become coauthor of the bill, to which Senator Enrile agreed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:44 p.m.

RESUMPTION OF SESSION

At 6:44 p.m., the session was resumed.

PROPOSED SENATE RESOLUTION NO. 540

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Resolution No. 540, entitled:

RESOLUTION DECLARING THE FULL
SUPPORT OF THE PHILIPPINE
SENATE FOR UN SECURITY
COUNCIL RESOLUTION 1701
CALLING FOR AN END TO THE
2006 LEBANON WAR.

With the permission of the Body, only the title of the resolution was read without prejudice to the insertion of its full text into the Record of the Senate.

ADOPTION OF PROPOSED SENATE RESOLUTION NO. 540

Upon motion of Senator Pangilinan, there being no objection, Proposed Senate Resolution No. 540 was adopted by the Body.

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REPUBLIC OF THE PHILIPPINES

S e n a t e

Palay City

Journal

SESSION NO. 13

Monday, September 4, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

AN ACT GRANTING THE MINDANAO JOCKEY AND COUNTRY CLUB, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN DAVAO CITY.

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

The Chair recognized Senator Arroyo for the sponsorship.

**SPONSORSHIP SPEECH
OF SENATOR ARROYO**

Senator Arroyo stated that there are at present only two clubs operating in the country: the Manila Jockey Club in Carmona, Cavite; and the Philippine Jockey Club in Sta. Ana, Manila. He recalled that the Manila Jockey Club started its operations in 1867 and was given a congressional franchise in 1972, while the Philippine Racing Club was organized in 1937 and was granted a congressional franchise to operate and maintain a racetrack in the Province of Rizal in 1995. He cited other racing clubs, to wit:

- Metro Manila Turf Club, established under Republic Act No. 7978 in 1995 and amended under Republic Act No. 8298 in 1997, supposedly in Caloocan but it never became operational;
- Phil-Asia Racing Club established under Republic Act No. 8446 in 1998, a racetrack in Rizal, Tarlac, Pampanga, Batangas or Quezon, but failed to commence operations three years after the effectivity of the granted franchise, hence, the franchise *ipso facto* was revoked; and
- Starland Racing Corporation established under Republic Act No. 8511 in 1998, a racetrack in Batangas, but also failed to commence operation, hence, its franchise was also revoked.

Senator Arroyo stated that the Committee is recommending the grant of a racetrack license to Mindanao Jockey Country Club as it was not fair that only Metro Manila has racetracks. He reported

that the Committee studied whether the organizers were solid people so that the Club would not suffer the same fate as the other racing clubs that were granted licenses but failed to operate. He stated that the initial capital of the organizers was only P20 million but if granted a license, it would be increased to correspond to what is needed. He said that the organizers are headed by Antonio Floreindo as the chairman, Rodolfo del Rosario as the president, Linda Lagdameo as the treasurer, and Lita Aguirre as the secretary. If granted a franchise, he assured the Body that the group would proceed to enlarge the company and the Committee strongly believes that it would prosper as Davao City is booming. He endorsed the bill and asked for the support of the Body.

REMARK OF SENATOR PANGILINAN

Senator Pangilinan informed the Body that Senator Ejercito Estrada (J), manifested his desire to interpellate Senator Arroyo on the measure but asked that he be given time to study the committee report.

**SUBSIDIARY MATTER
OF HOUSE BILL NO. 4487**

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

**COMMITTEE REPORT NO. 34
ON SENATE BILL NO. 2137
(Continuation)**

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM, AND FOR OTHER PURPOSES.

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

The Chair recognized Senator Enrile, Sponsor of the measure, and Senator Drilon for the continuation of his interpellation. *ff*

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INTERPELLATION OF SENATOR DRILON (Continuation)

Preliminarily, Senator Drilon informed the Body that he just received the version of the bill with the proposed amendments as of August 31 but there are other versions, specifically dated August 23 and May 22.

On the definition of terrorism, asked by Senator Drilon when one gets prosecuted for rebellion, insurrection or *coup d'etat* or for terrorism, Senator Enrile replied that rebellion is a public uprising while a *coup d'etat* is a sudden attack. He pointed out that if in the course of rebellion, some elements in the rebellious group committed terrorist acts as defined in the bill, they would be liable for the crime of terrorism.

Upon further query, Senator Enrile confirmed that one could be liable for the crime of *coup d'etat* under Article 134-A of the Revised Penal Code, as well as the crime of terrorism under the proposed Act. He admitted though that he could not recall a case where one charged with the crime of rebellion could be charged with another crime unless one crime is absorbed by the other.

Senator Drilon asked to be clarified on the legal possibility of that scenario considering that rebellion and *coup d'etat* are punishable under the Revised Penal Code, while terrorist acts are punishable under a special law. Senator Enrile stated that for as long as the people who are in rebellion against the government conduct the fighting in a manner where none of the elements under Section 3 of the proposed Act are present, they would be charged for the crime of rebellion or *coup d'etat*, as the case may be.

On whether the elements constituting the crime of *coup d'etat* are the same as the elements constituting the crime of terrorism, Senator Enrile replied that necessarily they are not as he pointed out that the takeover of a building by an armed group that is demanding something from government would not necessarily instill widespread and extraordinary fear, anxiety or panic among the populace. He observed that the NPAs have been in rebellion for 30 years but they have not really instilled that kind of fear that is attendant to a series of bombings and unabated killings. He stated that it is the same in the case of a *coup d'etat* but if a battalion of soldiers went out on the streets and assassinated a

lot of public officials and people, they would instill widespread fear. In this situation, he said, it would be up to the prosecuting authorities to decide whether the soldiers shall be charged with the crime of terrorism or *coup d'etat*.

Asked if there are situations where a crime of terrorism and, at the same time, a crime of *coup d'etat* could be committed, Senator Enrile said that it is possible. He clarified that there could be a situation where the *coup d'etat* was already an accomplished fact but if it becomes protracted and the other elements defined in the law are present, the crime of *coup d'etat* could translate itself into a crime of terrorism.

On whether two offenses arising from the same act could be prosecuted, Senator Enrile stated that if he were the Justice Secretary, he would select the case easiest to prove and he would end there.

On whether a provision could be included in the bill that the prosecution under the proposed Act would bar prosecution for the same offense under the Revised Penal Code or vice versa, Senator Enrile stated that he would consider the proposed amendment at the proper time. At this point, he read the Supreme Court ruling on *Baylosis vs. Chavez*, G.R. No. 95136, to wit:

What the Court stated in said cases about rebellion absorbing common crimes committed in the course of furtherance must be viewed in the light of the fact that at the time they were decided, there were no penal provisions defining and punishing, as specific offenses, crimes like murder committed in the course of or as part of rebellion.

Senator Enrile clarified that the High Court was referring to the case of *Hernandez, et al.* and to similar cases. He stated that if the NPAs, for instance, committed violent acts enumerated in Section 3 of the proposed Act as part of their military tactics and strategy to cow the government and the people into doing something in order to attain an objective, and if the other elements are present, the NPAs could be committing the crime of rebellion and the crime of terrorism. The same, he said, would apply in the case of soldiers who had already staged a *coup d'etat* and went further and committed acts enumerated in the proposed Act.

Senator Drilon expressed concern that under the bill, a regional trial court (RTC) judge could authorize the examination of bank accounts and records of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; or the judge could also order the tapping of his communications "upon examination under oath or affirmation of the applicant and the witnesses he may produce to establish that there are reasonable grounds to believe that the crime of terrorism or the crime of conspiracy to commit terrorism has been committed, is being committed or is about to be committed." He noted that the crime of terrorism includes and punishes the mere threat to assassinate, kidnap, hijack, or the commission of such acts enumerated in Section 3, in order to promote the terrorists' political or religious beliefs, thereby coercing government to give in to a given demand, and under Section 9 of the bill, the RTC judge can authorize the tapping and recording of a conversation on the ground that the crime of threatening to commit terrorism is about to be committed. He wondered how it would be possible for a witness to read the mind of a suspected terrorist. Senator Enrile said that at the proper time, he would welcome a better way of defining or limiting the act of terrorism.*

Senator Drilon pointed out that while Senator Enrile had already deleted the phrase "proposal to commit terrorism" in the August 31 draft, the implication that terrorism can be committed by a mere threat is very clear.

At this juncture, Senator Lacson requested that he be furnished with a copy of the August 31, 2006 draft. Senator Enrile said that the material being used as the subject of interpellation is still the May 22, 2006 draft. He explained that the August 31 draft is only a working draft containing his amendments to the bill which shall be presented to the Body at the proper time. Nevertheless, he posed no objection to providing the Members with copies of the latest draft.

For his part, Senator Drilon said that he was given a copy of the August 31 draft so that he could dispense with certain issues during his interpellation.

Senator Enrile explained that terrorism is committed by the overt act itself, conspiring to do it or threatening to do it. For instance, he said that one may be charged with terrorism if he threatens

the government or the people he wants to terrorize but not necessarily commit the act itself.

Senator Drilon argued that while a threat in itself is punishable under the Revised Penal Code as coercion, penalizing a mere threat with *reclusion perpetua* is too harsh. Moreover, he noted that as terrorism includes the threat to use the acts enumerated in Section 3 as a basis for judicial authorization for wiretapping, the proposed Act gives authorities broad powers which could be abused.

At this juncture, Senator Pimentel requested that the Members be provided a copy of the August 31 draft so that everyone could follow easily the plenary discussions. Senator Enrile expressed willingness to provide Senator Pimentel with a copy of the draft.

Senator Drilon suggested that the Body allow Senator Enrile to officially submit and introduce the August 31 draft as the working draft to facilitate the debates and obviate unnecessary questions on provisions that Senator Enrile is no longer keen on retaining.

Senator Enrile said that he was ready to provide the Members with copies of the August 31 draft which are already being printed. Nevertheless, he stated that he could remove the element of threat from the proposed Act and prepare a final draft.

To the suggestion that the working draft as of May 22, 2006 with the amendments of Senator Enrile as of August 31, 2006, be considered the official copy of the bill for purposes of debates and amendments, Senator Enrile agreed, saying that copies of the August 31 draft would be distributed the next day.

On another matter, Senator Drilon noted that the proposed Act, which requires a court order prior to the examination of a terrorist's bank deposits, would be amending the existing provisions of the Anti-Money Laundering Act (AMLA). He believed that the bill should follow the AMLA which is more expedient in terms of response considering that with the present technology, a bank deposit or account could be cleared or transferred by the time the authorities apply for a court order for examination. Senator Enrile said that he had included all limitations and safeguards in the measure to prevent its abuse. He also explained that the application *ex-parte* to look into bank accounts, and the order of the court, including the authorization of the Anti-Terrorism Council, and all materials issued by the court in

*As corrected by Senator Pangilinan on September 5, 2006

AB 44

connection with any such acts, would become classified information which could not be revealed without the authorization of the court to be used as evidence in a case.

Senator Enrile opined that there is a great danger of abuse if the Anti-Money Laundering Council would be allowed to go into the account of an individual suspected to be a terrorist. Even in the case of surveillance, he said, there must at least be a record of proceedings that an application was made under oath by witnesses so that when a person targeted for surveillance is proved innocent, he has recourse to go to court and charge the people who machinated against him.

Senator Drilon noted that for the past two or three years, the experience with the Anti-Money Laundering Law has been quite acceptable in the sense that the Anti-Money Laundering Council has been very prudent in the exercise of its authority.

As regards the provision on sequestration and freezing of assets, Senator Drilon said that one can file a sequestration application only when the examination is made and the freeze order cannot yet be enforced.

Senator Enrile stated that page 31, Section 38, spells out the nature of the seizure and sequestration; it does not say confiscation but simply that pending the investigation and trial of the person, assets are held in trust for him but if the person under investigation is found to be blameless, forthwith the seizure and sequestration would be lifted without any act on the part of anyone.

Senator Drilon stated that he would support any provision that would provide stricter standards for procedures in the case of terrorism as against other crimes covered by the AMLA.

Asked whether the authority could be given to a division of the Court of Appeals instead of the RTC, Senator Enrile replied that one of the powers granted to the Anti-Terrorism Council is to seek cooperation and assistance of the Supreme Court especially in the designation of specific RTCs to handle cases involving the crime of terrorism. Nonetheless, he said that he would not object to a proposal that instead of empowering the RTC to conduct examination of bank accounts or allowing wiretapping, the authority be granted only to a division of the Court of Appeals which, in fact, would make the work simpler.

Senator Drilon stated that the Court of Appeals has branches in Cagayan de Oro, Cebu and Manila and each division has three members. He argued that it is entirely possible for the RTC in some town in Mindanao to issue an authority to tap the telephone conversations of somebody in Manila.* Senator Enrile believed that the Supreme Court is capable of evaluating the capacity, probity and integrity of the members of the Judiciary. Senator Drilon stressed the need to balance the possible abuse of these powers in the hands of authorities, on the one hand, and protecting the rights of ordinary citizens against such possible abuses, on the other hand, without hampering the right of the State to protect itself. It is in this context that he was suggesting the amendments, he said.

As regards the provision that requires the maintenance of a logbook for persons who are apprehended and detained without warrant, Senator Drilon believed that it is a good provision because indeed one of the difficulties encountered by the citizenry is that when somebody is taken into custody and the incident is never made public, no amount of writs of *habeas corpus* filed before the courts could effectively produce the body of the missing person. Noting that there is nothing in the measure that requires that the arrest be made public, he asked if Senator Enrile would agree that such entries be made public and accessible to the media. Senator Enrile replied that there is a provision in the bill that the arrest would be open to the scrutiny of interested parties.

Senator Drilon recalled that the British authorities recently arrested suspected terrorists and they made a public announcement as to their identities. He asked if Senator Enrile would be amenable to including a provision that penalizes heavily the nondisclosure of arrests without warrant. Senator Enrile expressed no objection to the proposal. He invited the Body's attention to page 19, line 24 which states that "The police, military or other law enforcement custodial unit in whose care and control the person charged with or suspected for the crime of terrorism or the crime of conspiracy to commit terrorism has been placed under custodial arrest and detention shall keep a securely and orderly maintained official logbook which shall be open to and made available for the inspection and scrutiny of any interested party." He added that he would have no objection to imposing a penalty if there is no disclosure of the persons arrested and if the arresting officers do not inform the arrested person of his rights as a detainee. *AS*

*As corrected by Senator Pangilinan on September 5, 2006

At this point, Senator Drilon suspended his interpellation on the bill to allow him to study the proposed amendments in the version of August 31 version.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:56 p.m.

RESUMPTION OF SESSION

At 6:57 p.m., the session was resumed.

THIRD ADDITIONAL REFERENCE OF BUSINESS

The Secretary of the Senate read the following Message of the President of the Philippines, which the Chair referred to the Committee on Rules:

Letter from Her Excellency, President Gloria Macapagal Arroyo, certifying to the immediate enactment of Senate Bill No. 1745, entitled

AN ACT PROVIDING FOR COMPENSATION TO THE VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE REGIME OF FORMER PRESIDENT FERDINAND MARCOS, DOCUMENTATION OF SAID VIOLATIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES,

to address the urgent need of compensating and recognizing the heroism of all Filipinos who were victims of human rights violations during the regime of former President Ferdinand Marcos and taking into account the country's adherence to the Universal Declaration of Human Rights.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:59 p.m.

RESUMPTION OF SESSION

At 7:00 p.m., the session was resumed.

APPROVAL OF SENATE BILL NO. 1745 ON THIRD READING

In view of the presidential certification, upon motion of Senator Pangilinan, there being no objection, the Body considered, on Third Reading, Senate Bill No. 1745.

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

AN ACT PROVIDING FOR COMPENSATION TO THE VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE REGIME OF FORMER PRESIDENT FERDINAND MARCOS, DOCUMENTATION OF SAID VIOLATIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

RESULT OF VOTING

The result of the voting was as follows:

In favor

Arroyo	Madrigal
Cayotano	Osmeña
Drilon	Pangilinan
Ejercito Estrada (J)	Pimentel
Flavier	Recto
Lacson	Villar

Against

None

Abstention

Enrile
Gordon

With 12 senators voting in favor, none against and two abstentions, the Chair declared Senate Bill No. 1745 approved on Third Reading.

EXPLANATION OF VOTE BY SENATOR ENRILE

Casting a vote of abstention, Senator Enrile stated that while he does not have any special objection to the bill, he felt that the bill wants the government to pay those who rebelled against it.

Enrile



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 14

Wednesday, August 23, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

**SECOND ADDITIONAL
REFERENCE OF BUSINESS**

RESOLUTION

Proposed Senate Resolution No. 552, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON PUBLIC SERVICES TO CONDUCT AN INVESTIGATION ON THE OIL SPILL IN THE COASTAL WATERS OF GUIMARAS ISLAND THAT ALLEGEDLY OCCURRED BECAUSE OF THE FAILURE OF THE CHARTERED SHIP OWNER – SUNSHINE MARITIME DEVELOPMENT CORPORATION AND THE CHARTERING PARTY – PETRON CORPORATION TO OBSERVE DUE DILIGENCE AND EXERCISE PRECAUTIONARY MEASURES TO PREVENT THIS ENVIRONMENTAL TRAGEDY, WITH THE END IN VIEW OF ENACTING APPROPRIATE REMEDIAL LEGISLATION

Introduced by Senator M. A. Madrigal

To the Committee on Environment and Natural Resources

At this juncture, the Chair greeted Senator Pangilinan who would be celebrating his birthday the following day.

INQUIRY OF SENATOR ENRILE

Senator Enrile asked whether Senate Bill No. 2232 (proposed revision of the EPIRA) would be taken up within the day so that he can request the presence of the resource personnel.

Senator Pangilinan said that it would be taken up on Monday as Senator Osmeña has requested that he be allowed to resume his interpellation on that day.

**COMMITTEE REPORT NO. 34
ON SENATE BILL NO. 2137
(Continuation)**

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM, AND FOR OTHER PURPOSES.

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

The Chair recognized Senator Enrile, Sponsor of the measure, and Senator Drilon for his interpellation.

**INTERPELLATION
OF SENATOR DRILON**

At the outset, Senator Drilon commended Senator Enrile for sponsoring such a difficult piece of legislation. He said that the difficulty lies on the fact that a terrorist for one man can be a freedom fighter for the other. He said that he has not come across a definition of terrorism *per se* in international conventions and often, it is simply an enumeration of the acts constituting terrorism. He advised that extreme caution must be exercised in this aspect of the law because in the process of responding to the scourge of terrorism, the government might unnecessarily terrorize those who exercise their freedom to dissent and to criticize the government.

Senator Drilon observed that terrorism, as punished under the proposed measure, is in the nature of a *mala prohibita* which means that the prosecutor does not have to prove in court the intention to commit the offense; it is not an element as distinguished from the offenses punishable under the Revised Penal Code. Senator Enrile agreed, pointing out that the prosecutor would only need to prove the elements of the crime; hence, the willingness or intent to commit the *mens rea* need not be proven.

Since terrorism is an offense punishable under a special law, Senator Drilon believed that there is no violation of the principle of double jeopardy if one is prosecuted under the proposed Act and the Revised Penal Code. Senator Enrile replied that if assassination is committed without the attendant elements in the definition of terrorism, that act of assassination could either be a homicide or a murder under the Revised Penal Code depending on the presence or absence of the elements of a crime of homicide or murder under the Revised Penal Code.

Drilon

Senator Drilon noted that the crime of assassination is presumably or without doubt a crime of murder under the Revised Penal Code because assassination would connote premeditation which would qualify killing as murder. Senator Enrile explained that he used the term "assassination" in the context of the root of the word "killing" with a certain degree of malice aforethought.

Senator Drilon expressed the view that the term "assassination" is a premeditated killing of a person and premeditation is an element which would qualify the homicide as murder. Senator Enrile said that the term "assassination" was derived from the word "assassins" who, in the olden days, tried to kill people with the use of a certain weapon to terrorize. He said that he used the term to describe an act of killing which, with the combination of other elements, could be an instrument to commit the crime of terrorism.

Assuming that the prosecution is not able to prove terrorism under this special law, Senator Drilon asked whether the accused could be prosecuted for murder under the Revised Penal Code. Senator Enrile replied in the affirmative, pointing out that the information would charge the accused with terrorism and allege the fact of killing. He explained that the accused would be charged with terrorism if the killing was used to foster, advance, propagate, and promote a religious, political, economic or social belief, or to sow or cause widespread fear, anxiety and panic among the populace in order to coerce the government to comply with a given demand. Therefore, he said, terrorism could be committed in two ways: killing that is obviously a part of an effort to advance, propagate and promote a religious, political, economic or social beliefs, as what is happening in some parts of the world; or to sow and cause widespread fear in order to coerce the government to comply with a given demand.

On whether a crime committed not in pursuit of a political, religious or ideological belief would also fall under the classification of terrorism, Senator Enrile replied that it would be as long as there is a demand to be complied or not to be complied with by the government. On a related matter, he pointed out that coercion is applicable only to persons, not to government.

While such an act is punishable under the Revised Penal Code, Senator Drilon expressed the view that the proposed measure would impose a heavier penalty for exactly the same act; hence, the question of

equal protection of the law becomes a consideration because for the same act, one is subjected to a heavier penalty under a special law and, in fact, that person is not placed in double jeopardy because these are two different laws. Senator Enrile replied that double jeopardy means charging a person twice for the same offense or the same elements of the crime, and in this case, he is not being charged for murder or homicide; the killing is only a part of the definition of the crime. Senator Drilon said that it is precisely the principle which would prevent the application of the prohibition against double jeopardy. He expressed the need to revisit said provision.

SUSPENSION OF SESSION

Upon motion of Senator Drilon, the session was suspended.

It was 6:29 p.m.

RESUMPTION OF SESSION

At 6:30 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

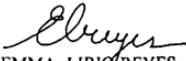
Senator Pangilinan informed the Body that Senator Drilon would continue his interpellation next week, and hopefully, Senators Roxas, Osmenia, Lacson and Madrigal would be ready to interpellate on the bill.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Monday, August 28, 2006.

It was 6:31 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO REYES
Acting Secretary

Approved on August 28, 2006



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 15

Monday, August 28, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

Netherlands, Senator Defensor Santiago believed that he underwent trial under a special *ad hoc* tribunal, and not under the International Criminal Court. In the case of General Augusto Pinochet of Chile, who was ordered arrested while he was recuperating and undergoing medical treatment in London, she believed that a Spanish court issued a warrant against the strongman for crimes against humanity that were alleged to have occurred during his rule.

Senator Defensor Santiago said that precisely, the cases emphasize one of the reasons why she believes that the Treaty should be ratified, that is, to prevent the reliance on an *ad hoc* tribunal instead of a permanent institution because the former would always likely be in favor of the victor. She pointed out that although treaties recognize universal jurisdiction over torture and disappearances, the British court issued mixed rulings on the possible extradition of General Pinochet to Spain from the United Kingdom where he sought refuge after his overthrow. This, she said, was an example of the vulnerability of the system of prosecution by a third-party state because the prospects for trial are very uncertain even for gross offenses and even for offenders who, like General Pinochet, granted themselves immunities from prosecution at home. However, she stated that in General Pinochet's case, international prosecutions, even on an *ad hoc* basis, were considered better. On the other hand, she said that the case of President Milosevich raises the issue of selective prosecution, another reason why the Philippines should ratify the Rome Statute to avoid the "victor's justice." She wondered why the UN created a court that could indict Radovan Karadzic and Milosevich but did not create such a court for the likes of Pol Pot of Cambodia.

Senator Pimentel recalled that Pol Pot died while he was being hunted down to answer for the massive human rights violations and the extermination of ethnic groups in Cambodia. He expressed support for the setting up of a tribunal that would operate under international norms and would no longer be subject to the whims and fortunes of individual countries which were oppressed by their own leaders.

Senator Defensor Santiago explained that the UN did not create a special court to try Pol Pot because when the decision was made by the UN Security Council, China simply vetoed the resolution to create a special court; thus, there is once again the issue of selective prosecution. For instance, she said,

there is a UN court to try perpetrators of ethnic murders in Rwanda but not in Congo.

Senator Defensor Santiago said that by approving the Treaty, the Philippines would be rejecting the system of selective prosecution or "victor's justice," as exemplified by the Nuremberg tribunal, and instead adopting universal jurisdiction by a permanent court.

In the case of the massive slaughter of East Timorese by Indonesian troops, Senator Defensor Santiago said that East Timor, which ratified the Treaty on September 6, 2006, is a state party; thus, a case could be filed against the Indonesian troops before the ICC as long as it is filed by the East Timorese government. Even if Indonesia is not a party to the Treaty, she said that the ICC would still have jurisdiction over the case because a provision of the Rome Statute states that even if a state is not a party to the Treaty, a case can still fall under its jurisdiction if it is filed by a state where the crime was committed, or by a state of which the victim or the accused is a national.

Senator Pimentel observed that a case could be made against other state leaders who were not directly responsible for the killings or oppression of their people and, subsequently, they would be made to answer before the ICC. Thus, he said that this would serve as fair warning to those who are holding power in the Philippines as well as in other countries.

REMARK OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago stated that raising clarificatory questions even after the adoption of the resolution should be considered a rare exception to the Rules of the Senate. Since a motion for reconsideration was granted and she was willing to be interpellated, she said that the proceedings should not, under any circumstance, be considered an example to be followed in parliamentary procedure.

Senator Pangilinan agreed, saying that it should not serve as a precedent for future acts of the Chamber.

COMMITTEE REPORT NO. 34 ON SENATE BILL NO. 2137 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on *AF*

Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM, AND FOR OTHER PURPOSES.

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

The Chair recognized Senator Enrile, Sponsor of the measure, and Senator Drilon for the continuation of his interpellation.

INTERPELLATION OF SENATOR DRILON
(Continuation)

Adverting to Section 3 of the bill on the elements of the crime of terrorism, Senator Drilon asked how one would be considered as having the ability or capability to assassinate, kidnap, take a hostage or do the other acts enumerated in the measure. Senator Enrile replied that a person is considered to have the ability or capability to commit an act of terrorism if he has the weapon, technological skill, courage, strength, willingness and sanity to do so.

Asked whether political influence would fall within the coverage of the phrase "ability or capability," Senator Enrile stated that one should have all the qualities of a brave and determined combatant.

Senator Drilon pointed out that the language of the proposed Act must be precise because it seeks to punish the offender with *reclusion perpetua* or death, if the death penalty were not abolished, and authorize the examination of bank accounts, tapping of telephone wires, and the 15-day detention of a person without judicial warrant of arrest. He said that he was trying to establish the elements which shall prove the commission of the crime of terrorism.

Senator Enrile clarified that he used the phrase "capability to do so" instead of the phrase "threatens to use." Nevertheless, he said that he has redrafted this particular portion of the proposed Act to make it clearer and he would introduce the amendments at the proper time.

Senator Drilon pointed out that the proposed Act seeks to also punish a person who has merely

threatened to use any form of violence enumerated in Section 3 but has been found to have the ability and capability to carry out such threat. The phrase "ability or capability," he said, should have a precise explanation.

Asked whether economic capacity would fall within the coverage of said phrase, Senator Enrile replied in the affirmative, explaining that in certain cases, it is necessary to establish that a person, who has threatened to bomb a place, has the money to buy the necessary materials or hire technicians to make a bomb.

Further, Senator Enrile stated that military or police training would not necessarily qualify a person to have the ability or capability to commit the crime of terrorism unless he was proven to have the technical equipment or know-how to produce the equipment to carry out the threat. He added that religious influence would not fall within the coverage of the phrase "ability or capability" because it is only part of a person's ideological bend and not a physical attribute. Nevertheless, he said that he would welcome a clearer definition of "terrorism" at the proper time.

On whether former Sen. Gringo Honasan would be considered a "terrorist" under the proposed Act, Senator Enrile said that based on the events that transpired, terrorism could not be spelled out. He stressed that all elements of the crime must be present for a person to be charged with terrorism.

Senator Drilon expressed the need for a very careful examination of the definition of "terrorism" because of the crime's serious implications. He pointed out that in the past several years, one was considered guilty of terrorism if the act was done in pursuit of a political, religious or ideological belief, and not of an economic belief.

Senator Enrile recalled that in the past, terrorist acts were committed because of agrarian activities and other similar economic conditions. Senator Drilon said that these crimes are certainly punishable under existing laws but not as an act of terrorism.

In reply to another query, Senator Enrile acknowledged that there may not be a definition of "social belief" in any law book or jurisprudence. He expressed willingness to accommodate amendments at the proper time.

Noting that assassination would not be any different from murder as punishable under the Revised Penal Code, Senator Drilon asked whether premeditation is an element of assassination, Senator Enrile replied that it is an element of murder. He said that he did not have premeditation in mind in the case of assassination, otherwise, he have used the term "murder."

Senator Drilon stated that he would like the matter clarified so that when the prosecutor comes before the court, he would know what element of assassination must be proven. Senator Enrile conceded that in assassination, motive, planning and premeditation exist. However, he clarified that the plan to kill a person is only an act of violence that leads to terrorism if all the elements accompany it.

Asked about a situation where a man acquitted for murder because of the prosecutor's failure to prove premeditation could be tried for the same offense but under the charge of terrorism following the filing of new information and *prima facie* evidence, Senator Enrile said that the person could no longer be prosecuted for the same crime. However, he clarified that if the accused was convicted for homicide which turned out to be part of a terrorist plot and if all other elements of the crime of terrorism were present, then he could be prosecuted not for murder but for the crime of terrorism. In this instance, he stated that premeditation is no longer a qualifying circumstance for the crime of murder but is part of the planning to commit the separate crime of terrorism. He pointed out that the term "assassination" is not used to spell out a crime for murder; rather, it describes the nature of the act of killing which leads to the crime of terrorism.

To the observation that assassination as an element of the crime of terrorism must be proven and as such, premeditation must also be proven, Senator Enrile said that the matter could be likened to an individual who committed kidnapping or arson as part of the crime of terrorism, in which case, he would be charged with the crime of terrorism.

At this juncture, Senate President Villar relinquished the Chair to Senate President Pro Tempore Flavio.

On whether an acquittal for the crime of murder, kidnapping or arson under the Revised Penal Code would bar prosecution for terrorism, Senator Enrile

said that a conviction for violent acts under Section 3 of the bill cannot be used to spell out another crime.

Asked if the acquittal for kidnapping or assassination bars prosecution for terrorism for the same act, Senator Enrile replied that a person acquitted by the court for one crime could not be held responsible for the same crime again.

To the suggestion that the bill be amended to state that prosecution for crimes punishable under the Revised Penal Code would bar prosecution for the same crimes under the proposed Act, Senator Enrile expressed willingness to consider the matter during the period of amendments.

As to the difference between kidnapping and hostage-taking, Senator Enrile said that a kidnaping involves an element of profit or benefit, whereas a hostage-taking is used as a means of coercion or self-defense.

On whether the elements of kidnapping under Article 267 of the Revised Penal Code are the same as those for hostage-taking under the bill, Senator Enrile said that it would depend on the circumstances surrounding the act. For instance, he said that taking hostages for ransom would constitute kidnapping, while threatening to blow up a plane full of passengers and coercing the pilot to divert the plane's destination or forcibly using people as human shields while making an escape would be considered hostage-taking.

Senator Drilon pointed out that the elements in the examples were the same as those under Republic Act 6235 (Anti-Hijacking Law). He suggested that the phrase "hostage-taking" under Section 3 be deleted. Senator Enrile agreed.

Asked if the use of explosives under the bill to carry out acts of bombing and dynamiting is the same as the acts punishable under Presidential Decree No. 1866, Senator Enrile said that he has not read that particular law. He clarified that he was referring to the experiences of other countries when bombs were set off in the midst of crowded areas such as theaters or transit cars. He said that he would be amenable to using the phrase "with the use of explosives" with the understanding that a bomb is not only an explosive but is also made up of other materials such as projectiles. *✍*

Senator Drilon opined that the phrase "massive and destructive flooding" is too broad which could give so much leeway to trial judges. He proposed that a more precise definition be crafted to avoid any question on its constitutionality. Senator Enrile replied that he could only think of a dam, for instance, being blasted to flood a city, a town or a community to bring about massive destruction. He said that the definition was crafted in such a broad manner to help the Members excise provisions that they could not agree upon. He expressed willingness to accept any proposal to improve the definition.

As regards "biological or chemical agent," Senator Enrile stated that biological agent would include anthrax, small pox and the like while chemical agent would include defoliants like yellow orange.

Upon further queries, Senator Enrile said that the Committee adopted the nomenclature of the *crime of rebellion* which consists of three stages of commission: 1) proposal; 2) conspiracy; and 3) the actual act of commission of the crime. He said that the Committee also revised the following phrases: "destruction of the main water reservoir or water supply system" to **PARALYZATION OF THE WATER SYSTEM**; "the destruction of the environment" to **MASSIVE DESTRUCTION OF THE ENVIRONMENT**; and the "serious disruption of electric power or communication system" to **PARALYZATION OF ELECTRIC POWER OR COMMUNICATION SYSTEM**.

Senator Drilon recalled that about 15 years ago, the country's air traffic controllers union went on strike, demanded higher pay, disrupted the communication lines in the airport, and prevented airlines from using the airport. If the measure were in force at that time, he asked whether such an act could be considered an act of terrorism. In reply, Senator Enrile stated that if the air traffic controllers compelled the government to accede to their demand, they would fall under the provision. Senator Drilon disagreed, saying that it was an act committed by a labor union in pursuit of an economic objective, therefore, the withdrawal of services by the air traffic controllers should not be punished with life imprisonment.

Senator Enrile stated that he would welcome a recasting of the provision as he invited Senator Drilon to draft the necessary qualifications to address such concerns. He noted that the sources of terrorism

in the current international condition are political ideologies and religious beliefs. He recalled that he put the phrase "economic belief" in the bill because in his readings on the history of terrorism, economic belief was part of the reason for some terrorist activities.

Senator Drilon asserted that what the Body is trying to address is the inadequacy of the present political system which has been attacked by those who profess to follow a better political system and which has given rise to violent acts. Senator Enrile replied that he would not be averse to limiting it to religious, political and ideological beliefs.

As regards the "Declaration of Policy," Senator Enrile explained that while there is no place for it in a criminal statute, he decided to include a reworded version in the special criminal statute to express the intent of the law.

Asked whether the proposed Act seeks to punish mere conspiracy even if it has not been carried out, Senator Enrile replied in the affirmative, pointing out that in rebellion, the agreement to commit the crime is punished.

On the crime of proposal to commit terrorism, Senator Drilon pointed out that Section 5 is a very dangerous and difficult provision because a person can be easily charged with the crime of proposal to commit terrorism on the basis of a witness' testimony, thereby allowing authorities to examine the accused's bank accounts, intercept and record his conversations, and take him into custody for 15 days without judicial warrant of arrest. He said that the dangerous consequence of the particular provision would make many of the Members very reluctant to support the measure. Senator Enrile said that part of the provision was lifted from RA 4200. Nevertheless, he expressed willingness to accept any amendment to clean up the proposed Act as he has no special interest in retaining the particular section. He said that at the proper time, he would also allow the deletion of the provision which punishes the mere act of threatening to commit terrorism.

Senator Drilon stated that he has no problem with Section 4 because there is enough jurisprudence to prove the elements of conspiracy. At this point, he said that he would suspend his interpellation for the meantime so that he could study the August 23 version of the bill. *ll*



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 13

Monday, September 4, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

AN ACT GRANTING THE MINDANAO JOCKEY AND COUNTRY CLUB, INC. A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN DAVAO CITY.

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

The Chair recognized Senator Arroyo for the sponsorship.

**SPONSORSHIP SPEECH
OF SENATOR ARROYO**

Senator Arroyo stated that there are at present only two clubs operating in the country: the Manila Jockey Club in Carmona, Cavite; and the Philippine Jockey Club in Sta. Ana, Manila. He recalled that the Manila Jockey Club started its operations in 1867 and was given a congressional franchise in 1972, while the Philippine Racing Club was organized in 1937 and was granted a congressional franchise to operate and maintain a racetrack in the Province of Rizal in 1995. He cited other racing clubs, to wit:

- ♦ Metro Manila Turf Club, established under Republic Act No. 7978 in 1995 and amended under Republic Act No. 8298 in 1997, supposedly in Caloocan but it never became operational;
- ♦ Phil-Asia Racing Club established under Republic Act No. 8446 in 1998, a racetrack in Rizal, Tarlac, Pampanga, Batangas or Quezon, but failed to commence operations three years after the effectivity of the granted franchise, hence, the franchise *ipso facto* was revoked; and
- ♦ Starland Racing Corporation established under Republic Act No. 8511 in 1998, a racetrack in Batangas, but also failed to commence operation, hence, its franchise was also revoked.

Senator Arroyo stated that the Committee is recommending the grant of a racetrack license to Mindanao Jockey Country Club as it was not fair that only Metro Manila has racetracks. He reported

that the Committee studied whether the organizers were solid people so that the Club would not suffer the same fate as the other racing clubs that were granted licenses but failed to operate. He stated that the initial capital of the organizers was only P20 million but if granted a license, it would be increased to correspond to what is needed. He said that the organizers are headed by Antonio Floreindo as the chairman, Rodolfo del Rosario as the president, Linda Lagdameo as the treasurer, and Lita Aguirre as the secretary. If granted a franchise, he assured the Body that the group would proceed to enlarge the company and the Committee strongly believes that it would prosper as Davao City is booming. He endorsed the bill and asked for the support of the Body.

REMARK OF SENATOR PANGILINAN

Senator Pangilinan informed the Body that Senator Ejercito Estrada (J), manifested his desire to interpellate Senator Arroyo on the measure but asked that he be given time to study the committee report.

**SUSPENSION OF CONSIDERATION
OF HOUSE BILL NO. 4487**

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

**COMMITTEE REPORT NO. 34
ON SENATE BILL NO. 2137
(Continuation)**

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

AN ACT TO DEFINE AND PUNISH THE CRIME OF TERRORISM, THE CRIME OF CONSPIRACY TO COMMIT TERRORISM, AND THE CRIME OF PROPOSAL TO COMMIT TERRORISM, AND FOR OTHER PURPOSES.

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

The Chair recognized Senator Enrile, Sponsor of the measure, and Senator Drilon for the continuation of his interpellation. *ff*

INTERPELLATION OF SENATOR DRILON (Continuation)

Preliminarily, Senator Drilon informed the Body that he just received the version of the bill with the proposed amendments as of August 31 but there are other versions, specifically dated August 23 and May 22.

On the definition of terrorism, asked by Senator Drilon when one gets prosecuted for rebellion, insurrection or *coup d'etat* or for terrorism, Senator Enrile replied that rebellion is a public uprising while a *coup d'etat* is a sudden attack. He pointed out that if in the course of rebellion, some elements in the rebellious group committed terrorist acts as defined in the bill, they would be liable for the crime of terrorism.

Upon further query, Senator Enrile confirmed that one could be liable for the crime of *coup d'etat* under Article 134-A of the Revised Penal Code, as well as the crime of terrorism under the proposed Act. He admitted though that he could not recall a case where one charged with the crime of rebellion could be charged with another crime unless one crime is absorbed by the other.

Senator Drilon asked to be clarified on the legal possibility of that scenario considering that rebellion and *coup d'etat* are punishable under the Revised Penal Code, while terrorist acts are punishable under a special law. Senator Enrile stated that for as long as the people who are in rebellion against the government conduct the fighting in a manner where none of the elements under Section 3 of the proposed Act are present, they would be charged for the crime of rebellion or *coup d'etat*, as the case may be.

On whether the elements constituting the crime of *coup d'etat* are the same as the elements constituting the crime of terrorism, Senator Enrile replied that necessarily they are not as he pointed out that the takeover of a building by an armed group that is demanding something from government would not necessarily instill widespread and extraordinary fear, anxiety or panic among the populace. He observed that the NPAs have been in rebellion for 30 years but they have not really instilled that kind of fear that is attendant to a series of bombings and unabated killings. He stated that it is the same in the case of a *coup d'etat* but if a battalion of soldiers went out on the streets and assassinated a

lot of public officials and people, they would instill widespread fear. In this situation, he said, it would be up to the prosecuting authorities to decide whether the soldiers shall be charged with the crime of terrorism or *coup d'etat*.

Asked if there are situations where a crime of terrorism and, at the same time, a crime of *coup d'etat* could be committed, Senator Enrile said that it is possible. He clarified that there could be a situation where the *coup d'etat* was already an accomplished fact but if it becomes protracted and the other elements defined in the law are present, the crime of *coup d'etat* could translate itself into a crime of terrorism.

On whether two offenses arising from the same act could be prosecuted, Senator Enrile stated that if he were the Justice Secretary, he would select the case easiest to prove and he would end there.

On whether a provision could be included in the bill that the prosecution under the proposed Act would bar prosecution for the same offense under the Revised Penal Code or vice versa, Senator Enrile stated that he would consider the proposed amendment at the proper time. At this point, he read the Supreme Court ruling on *Baylosis vs. Chavez*, G.R. No. 95136, to wit:

What the Court stated in said cases about rebellion absorbing common crimes committed in the course of furtherance must be viewed in the light of the fact that at the time they were decided, there were no penal provisions defining and punishing, as specific offenses, crimes like murder committed in the course of or as part of rebellion.

Senator Enrile clarified that the High Court was referring to the case of *Hernandez, et al.* and to similar cases. He stated that if the NPAs, for instance, committed violent acts enumerated in Section 3 of the proposed Act as part of their military tactics and strategy to cow the government and the people into doing something in order to attain an objective, and if the other elements are present, the NPAs could be committing the crime of rebellion and the crime of terrorism. The same, he said, would apply in the case of soldiers who had already staged a *coup d'etat* and went further and committed acts enumerated in the proposed Act. *js*

Senator Drilon expressed concern that under the bill, a regional trial court (RTC) judge could authorize the examination of bank accounts and records of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; or the judge could also order the tapping of his communications "upon examination under oath or affirmation of the applicant and the witnesses he may produce to establish that there are reasonable grounds to believe that the crime of terrorism or the crime of conspiracy to commit terrorism has been committed, is being committed or is about to be committed." He noted that the crime of terrorism includes and punishes the mere threat to assassinate, kidnap, hijack, or the commission of such acts enumerated in Section 3, in order to promote the terrorists' political or religious beliefs, thereby coercing government to give in to a given demand, and under Section 9 of the bill, the RTC judge can authorize the tapping and recording of a conversation on the ground that the crime of threatening to commit terrorism is about to be committed. He wondered how it would be possible for a witness to read the mind of a suspected terrorist. Senator Enrile said that at the proper time, he would welcome a better way of defining or limiting the act of terrorism.*

Senator Drilon pointed out that while Senator Enrile had already deleted the phrase "proposal to commit terrorism" in the August 31 draft, the implication that terrorism can be committed by a mere threat is very clear.

At this juncture, Senator Lacson requested that he be furnished with a copy of the August 31, 2006 draft. Senator Enrile said that the material being used as the subject of interpellation is still the May 22, 2006 draft. He explained that the August 31 draft is only a working draft containing his amendments to the bill which shall be presented to the Body at the proper time. Nevertheless, he posed no objection to providing the Members with copies of the latest draft.

For his part, Senator Drilon said that he was given a copy of the August 31 draft so that he could dispense with certain issues during his interpellation.

Senator Enrile explained that terrorism is committed by the overt act itself, conspiring to do it or threatening to do it. For instance, he said that one may be charged with terrorism if he threatens

the government or the people he wants to terrorize but not necessarily commit the act itself.

Senator Drilon argued that while a threat in itself is punishable under the Revised Penal Code as coercion, penalizing a mere threat with *reclusion perpetua* is too harsh. Moreover, he noted that as terrorism includes the threat to use the acts enumerated in Section 3 as a basis for judicial authorization for wiretapping, the proposed Act gives authorities broad powers which could be abused.

At this juncture, Senator Pimentel requested that the Members be provided a copy of the August 31 draft so that everyone could follow easily the plenary discussions. Senator Enrile expressed willingness to provide Senator Pimentel with a copy of the draft.

Senator Drilon suggested that the Body allow Senator Enrile to officially submit and introduce the August 31 draft as the working draft to facilitate the debates and obviate unnecessary questions on provisions that Senator Enrile is no longer keen on retaining.

Senator Enrile said that he was ready to provide the Members with copies of the August 31 draft which are already being printed. Nevertheless, he stated that he could remove the element of threat from the proposed Act and prepare a final draft.

To the suggestion that the working draft as of May 22, 2006 with the amendments of Senator Enrile as of August 31, 2006, be considered the official copy of the bill for purposes of debates and amendments, Senator Enrile agreed, saying that copies of the August 31 draft would be distributed the next day.

On another matter, Senator Drilon noted that the proposed Act, which requires a court order prior to the examination of a terrorist's bank deposits, would be amending the existing provisions of the Anti-Money Laundering Act (AMLA). He believed that the bill should follow the AMLA which is more expedient in terms of response considering that with the present technology, a bank deposit or account could be cleared or transferred by the time the authorities apply for a court order for examination. Senator Enrile said that he had included all limitations and safeguards in the measure to prevent its abuse. He also explained that the application *ex-parte* to look into bank accounts, and the order of the court, including the authorization of the Anti-Terrorism Council, and all materials issued by the court in

*As corrected by Senator Pangilinan on September 5, 2006

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connection with any such acts, would become classified information which could not be revealed without the authorization of the court to be used as evidence in a case.

Senator Enrile opined that there is a great danger of abuse if the Anti-Money Laundering Council would be allowed to go into the account of an individual suspected to be a terrorist. Even in the case of surveillance, he said, there must at least be a record of proceedings that an application was made under oath by witnesses so that when a person targeted for surveillance is proved innocent, he has recourse to go to court and charge the people who machinated against him.

Senator Drilon noted that for the past two or three years, the experience with the Anti-Money Laundering Law has been quite acceptable in the sense that the Anti-Money Laundering Council has been very prudent in the exercise of its authority.

As regards the provision on sequestration and freezing of assets, Senator Drilon said that one can file a sequestration application only when the examination is made and the freeze order cannot yet be enforced.

Senator Enrile stated that page 31, Section 38, spells out the nature of the seizure and sequestration; it does not say confiscation but simply that pending the investigation and trial of the person, assets are held in trust for him but if the person under investigation is found to be blameless, forthwith the seizure and sequestration would be lifted without any act on the part of anyone.

Senator Drilon stated that he would support any provision that would provide stricter standards for procedures in the ease of terrorism as against other crimes covered by the AMLA.

Asked whether the authority could be given to a division of the Court of Appeals instead of the RTC, Senator Enrile replied that one of the powers granted to the Anti-Terrorism Council is to seek cooperation and assistance of the Supreme Court especially in the designation of specific RTCs to handle cases involving the crime of terrorism. Nonetheless, he said that he would not object to a proposal that instead of empowering the RTC to conduct examination of bank accounts or allowing wiretapping, the authority be granted only to a division of the Court of Appeals which, in fact, would make the work simpler.

Senator Drilon stated that the Court of Appeals has branches in Cagayan de Oro, Cebu and Manila and each division has three members. He argued that it is entirely possible for the RTC in some town in Mindanao to issue an authority to tap the telephone conversations of somebody in Manila.* Senator Enrile believed that the Supreme Court is capable of evaluating the capacity, probity and integrity of the members of the Judiciary. Senator Drilon stressed the need to balance the possible abuse of these powers in the hands of authorities, on the one hand, and protecting the rights of ordinary citizens against such possible abuses, on the other hand, without hampering the right of the State to protect itself. It is in this context that he was suggesting the amendments, he said.

As regards the provision that requires the maintenance of a logbook for persons who are apprehended and detained without warrant, Senator Drilon believed that it is a good provision because indeed one of the difficulties encountered by the citizenry is that when somebody is taken into custody and the incident is never made public, no amount of writs of *habeas corpus* filed before the courts could effectively produce the body of the missing person. Noting that there is nothing in the measure that requires that the arrest be made public, he asked if Senator Enrile would agree that such entries be made public and accessible to the media. Senator Enrile replied that there is a provision in the bill that the arrest would be open to the scrutiny of interested parties.

Senator Drilon recalled that the British authorities recently arrested suspected terrorists and they made a public announcement as to their identities. He asked if Senator Enrile would be amenable to including a provision that penalizes heavily the nondisclosure of arrests without warrant. Senator Enrile expressed no objection to the proposal. He invited the Body's attention to page 19, line 24 which states that "The police, military or other law enforcement custodial unit in whose care and control the person charged with or suspected for the crime of terrorism or the crime of conspiracy to commit terrorism has been placed under custodial arrest and detention shall keep a securely and orderly maintained official logbook which shall be open to and made available for the inspection and scrutiny of any interested party." He added that he would have no objection to imposing a penalty if there is no disclosure of the persons arrested and if the arresting officers do not inform the arrested person of his rights as a detainee. *As corrected*

*As corrected by Senator Pangilinan on September 5, 2006

At this point, Senator Drilon suspended his interpellation on the bill to allow him to study the proposed amendments in the version of August 31 version.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:56 p.m.

RESUMPTION OF SESSION

At 6:57 p.m., the session was resumed.

THIRD ADDITIONAL REFERENCE OF BUSINESS

The Secretary of the Senate read the following Message of the President of the Philippines, which the Chair referred to the Committee on Rules:

Letter from Her Excellency, President Gloria Macapagal Arroyo, certifying to the immediate enactment of Senate Bill No. 1745, entitled

AN ACT PROVIDING FOR COMPENSATION TO THE VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE REGIME OF FORMER PRESIDENT FERDINAND MARCOS, DOCUMENTATION OF SAID VIOLATIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES,

to address the urgent need of compensating and recognizing the heroism of all Filipinos who were victims of human rights violations during the regime of former President Ferdinand Marcos and taking into account the country's adherence to the Universal Declaration of Human Rights.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:59 p.m.

RESUMPTION OF SESSION

At 7:00 p.m., the session was resumed.

APPROVAL OF SENATE BILL NO. 1745 ON THIRD READING

In view of the presidential certification, upon motion of Senator Pangilinan, there being no objection, the Body considered, on Third Reading, Senate Bill No. 1745.

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

AN ACT PROVIDING FOR COMPENSATION TO THE VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE REGIME OF FORMER PRESIDENT FERDINAND MARCOS, DOCUMENTATION OF SAID VIOLATIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

RESULT OF VOTING

The result of the voting was as follows:

In favor

Arroyo	Madrigal
Cayotano	Osmeña
Drilon	Pangilinan
Ejercito Estrada (J)	Pimentel
Flavier	Recto
Lacson	Villar

Against

None

Abstention

Enrile
Gordon

With 12 senators voting in favor, none against and two abstentions, the Chair declared Senate Bill No. 1745 approved on Third Reading.

EXPLANATION OF VOTE BY SENATOR ENRILE

Casting a vote of abstention, Senator Enrile stated that while he does not have any special objection to the bill, he felt that the bill wants the government to pay those who rebelled against it. *ps*



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 24

Monday, September 18, 2006

**THIRTEENTH CONGRESS
THIRD REGULAR SESSION**

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 3:46 p.m.

RESUMPTION OF SESSION

At 5:49 p.m., the session was resumed.

MANIFESTATION OF SENATOR LIM

Senator Lim informed the Body that he had requested the interested parties to furnish each other with a copy of their position paper and the proponents of the resolution to submit a reply for record purposes. He stated that after studying the pros and cons, the Committee would submit a recommendation to the Body.

**SUSPENSION OF CONSIDERATION
OF HOUSE JOINT RESOLUTION NO. 1**

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

**COMMITTEE REPORT NO. 34
ON SENATE BILL NO. 2137**

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2137 (Committee Report No. 34), entitled

**AN ACT TO DEFINE AND PUNISH THE
CRIME OF TERRORISM, THE CRIME
OF CONSPIRACY TO COMMIT
TERRORISM, AND THE CRIME OF
PROPOSAL TO COMMIT TERRORISM,
AND FOR OTHER PURPOSES.**

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Gordon for his interpellation.

INTERPELLATION OF SENATOR GORDON

Noting that there had been speculations that one of the planes commandeered by terrorists in the 9-11 attack had been shot down on orders of the U.S.

president, Senator Gordon wondered whether, in the case of the Philippines, the general welfare clause of the Constitution allows such pre-emptive action on the part of the President. Senator Enrile believed that there is no need for a law to empower the Executive to exercise the right to self-defense in the event of a clear and present danger of an attack against the people. He said that if the President, as commander-in-chief, is convinced that a plane is targeting any major facility to inflict damage, cause injury and loss of many lives, she is morally obligated to order the air force to shoot it down.

To the suggestion that the bill include a provision calling for an automatic review by Congress of such an action so that rules of engagement could be formulated, Senator Enrile pointed out that Senate Bill No. 2137 is intended to criminalize the acts of committing terrorism. However, he posed no objection to the suggestion as he pointed out that in a situation of clear and present danger, the President has the power to mobilize the armed forces to protect the people by whatever means possible.

Asked whether the use of extralegal means such as the torture of suspected terrorists could be justified under the excuse of protecting the people, Senator Enrile replied in the negative. He said that the bill provides law enforcement units with the necessary tools for gathering material evidence via surveillance and interception of communications to effect the apprehension and detention of suspected terrorists.

Senator Gordon noted that although the bill tries to give law enforcers much leeway to be effective in the war against terrorism, the reality is that the government does not have the funds, technical expertise and equipment to conduct long-term surveillance. Relative thereto, he asked whether torture tactics could be employed when the suspect or the source of information continues to frustrate the investigators by stonewalling. Senator Enrile believed that it is *not right to resort to extralegal means* like torture out of fear of terrorist acts. He maintained that it is enough to give law enforcement units the means to gather evidence beyond what is allowable under normal condition in a democratic society.

Senator Gordon expressed concern that Senate Bill No. 2137 goes against certain fundamental precepts of the Constitution. For instance, he adverted to Article VII, Section 18 of the Constitution which states that even under martial law, during the

suspension of the writ of habeas corpus; any person arrested or detained "shall be judicially charged within three days, otherwise he shall be released." He suggested that the 15-day detention limit being proposed in the bill be amended to a longer period of 60 or 120 days since three days might not be sufficient to conduct a full and thorough investigation.

For his part, Senator Enrile asserted that it is important to take into account the constitutional provision on detention under a very special condition like martial law. He agreed to the suggestion to adopt a longer detention period in a situation where the crime involves a very wide area and leave it to the Supreme Court to decide whether this is acceptable or not. He said that various provisions were inserted in the Constitution on matters that could have been handled by Congress.

Senator Gordon noted that in the case of *Marcos vs. Manglapus*, the Supreme Court ruled that, "To the President, the problem is one of balancing the general welfare and the common good against the exercise of rights of certain individuals."

However, Senator Enrile stressed that while the President, being in charge of national security, has to strictly adhere to the norms dictated by law, when there exists a clear and present danger that might mean the loss of many lives, it is also her responsibility or that of handlers of security matters to act on that danger.

On another matter, Senator Gordon stressed that while he was in favor of proscribing certain organizations in such situations, the right of the people under Article III, Section 8 of the Constitution to form unions, associations or societies for purposes not contrary to law should not be abridged.

He recalled that when the Anti-Subversion Law was in force, mere membership in the Communist organization was proscribed and was the basis for an arrest which was always challenged in the Supreme Court. Senator Enrile clarified that the provision in the bill proscribes organizations espousing terrorism as a tool to advance, propagate or promote religious or political beliefs, and the one that will proscribe is the courts based on a hearing.

Senator Gordon adverted to the statement made by Pope Benedict XVI which immediately triggered such worldwide controversy that his visit

to Turkey has been threatened. He posited that a terrorist threat could emanate from a group that seeks to discredit Muslims which creates a very dangerous situation. He noted that there are provisions in the bill that supposedly collide with the constitutional principles and the Bill of Rights and these, he said, should be harmonized.

In closing, Senator Gordon manifested his desire to be coauthor of the bill.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan stated that there are other senators who have made reservation to interpellate Senator Enrile on the measure. He said that the Committee would present a new working draft, addressing all the issues raised, and present it to the Body within the week.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2137

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:15 p.m.

RESUMPTION OF SESSION

At 6:16 p.m., the session was resumed.

SECOND ADDITIONAL REFERENCE OF BUSINESS

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

RESOLUTIONS

Proposed Senate Resolution No. 561, entitled

RESOLUTION FOR THE SENATE TO
INTERVENE IN THE SPECIAL
CIVIL ACTION FOR CERTIORARI
AND MANDAMUS FILED BY

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