

JOURNAL NO. 95

VOL. III, September 29, 1986

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Monday, September 29, 1986

CALL TO ORDER

At 10:05 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Cirilo A. Rigos, to wit:

O God of truth and justice, as we face the duties of this day, grant us the wisdom to discern whatever is true and good and honorable, and the grace to subordinate our individual judgment to the greater wisdom of the majority. Make us conscious of our responsibility, so that we may act and speak with candor, and exemplify in our behavior the dignity and nobility of our position.

As we come closer to the end of our work, may we find happiness in the thought that our labors will not be in vain. Teach us to cherish in our hearts the bond of friendship we have developed in this Commission. Help us transcend our differences without becoming unfaithful to our principles and convictions.

May this day be another fruitful day in the life of the nation and may our participation in the making of this historic event be both meaningful and significant.

We pray in Jesus name.

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary-General of the Commission called the Roll and the following Members responded:

Bacani, T. C. Guingona, S. V.C.

Bengzon, J. F. S Jamir, A. M. K.

Bennagen, P. L Monsod, C. S.

Bernas, J. G. Nieva, M. T. F

Rosario Braid, F Padilla. A. B.

Calderon, J. D. Muñoz Palma, C.

De Castro, C. M Rama, N. G
Colayco, J. C. Regalado, F. D
Concepcion, R. R. Rigos, C. A.
Davide, H. G. Rodrigo, F. A
Foz, V. B. Suarez, J. E.
Sumulong, L. M Treñas, E. B
Tan, C. Uka, L. L
Tingson, G. J. Villacorta, W. V.

With 28 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A.M.

Abubakar Y. R.
Natividad, T. C
Aquino, F. S.
Nolledo, J. N.
Azcuna, A. S
Ople , B. F.
Garcia, E. G. De los Reyes, R. F
Gascon, J. L. M. C Romulo, R. J
Lerum, E. R Samiento, R. V
Maambong, R. E Tadeo, J. S. L

P.M.

Quesada, M. L. M

Mr. Rosales was sick.

Mr. Villegas notified the Constitutional Commission, through the Secretariat, of his absence.

Messrs. Alonto and Laurel were absent.

READING AND APPROVAL OF THE JOURNAL

On motion of Mr. Calderon, there being no objection, the reading of the Journal of the previous session was dispensed with and the said Journal was approved by the Body.

REFERENCE OF BUSINESS

On motion of Mr. Calderon, there being no objection, the Body proceeded to the Reference of Business.

REFERRAL TO COMMITTEE AND ARCHIVES OF COMMUNICATIONS

Upon direction of the Chair, the Secretary-General read the titles of the following Communications which were in turn, referred/sent by the Chair to the Committee hereunder indicated and to the Archives:

Communication No. 1022 — Constitutional Commission of 1986

Letter from Mr. Gilberto L. Tizon, Sr. of 229 Del Rosario Street, Ubanon, Catbalogan, Samar, inviting attention to the proliferation of electric cooperatives imposing exorbitant rate

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 1023 — Constitutional Commission of 1986

Letter from Ms. Romelita A. de Vera of Maryknoll College Foundation, Diliman, Quezon City, expressing trust and confidence in the able leadership of the President of the Constitutional Commission of 1986, that despite differences of opinion, the Commission is expected to come up with a good Constitution

TO THE ARCHIVES

Communication No. 1024 — Constitution Commission of 1986

Letter from Mr. Ramon R. Leuterio of 105 P. Cruz Street, Mandaluyong, Metro Manila, expressing support to the draft Constitution regardless of how it may finally come out, saying that the country needs a Constitution to preserve its democratic institutions

TO THE ARCHIVES

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 31 ON PROPOSED RESOLUTION NO. 531 ON THE ARTICLE ON GENERAL PROVISIONS

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of proposed Resolution No. 531 (Committee Report No. 31), entitled:

Resolution proposing to incorporate in the Constitution an Article on General Provisions and a Section in the Transitory Provisions.

Thereupon, the Chairman and Members of the Committee were recognized by the Chair.

Mr. Rama stated that the parliamentary status would be the continuation of the period of amendments.

PROPOSED AMENDMENT OF MR. PADILLA

On paragraph 1 of Section 11, Mr. Padilla proposed to restore, in lieu thereof, paragraph 1, Section 7, Article XV of the 1973 Constitution, to wit:

THE OWNERSHIP AND MANAGEMENT OF MASS MEDIA SHALL BE LIMITED TO CITIZENS OF THE PHILIPPINES OR TO CORPORATIONS, COOPERATIVES, OR ASSOCIATIONS WHOLLY-OWNED AND MANAGED BY SUCH CITIZENS.

Mrs. Rosario Braid accepted the amendment on behalf of the Committee.

Thereafter, Mr. Rama asked for a vote on paragraph 1 of Section 11. Additionally, Mr. Davide informed that Section 11(1) has three paragraphs, the Body would vote only on the first paragraph, and that he would propose an amendment on the second paragraph. He affirmed, upon the Chair's inquiry, that the first paragraph has no relation to the second and third paragraphs.

Mrs. Rosario Braid confirmed Mr. Davide's observation.

Mr. Padilla thereafter restated his proposal to amend the first paragraph of Section 11(1), to read:

THE OWNERSHIP AND MANAGEMENT OF MASS MEDIA SHALL BE LIMITED TO CITIZENS OF THE PHILIPPINES, OR TO CORPORATIONS, COOPERATIVES OR ASSOCIATIONS WHOLLY-OWNED AND MANAGED BY SUCH CITIZENS.

Mr. Rodrigo observed that the proposed amendment is not exactly a verbatim reproduction of the 1973 Constitutional provision because of the addition of the word "cooperatives" to which, however, he has no objection.

There being no objection, the amendment was approved by the Body.

PROPOSED AMENDMENT OF MR. JAMIR

Mr. Jamir proposed to delete the second and third paragraphs of Section 11(1).

REMARKS OF MR. FOZ

Mr. Foz remarked that it was his understanding that if approved by the Body, the motion to delete would not preclude further amendments by substitution to the two paragraphs.

EXPLANATION OF MR. JAMIR

Mr. Jamir explained that during the interpellation of Mr. Monsod in last Friday's session (September 26), at which time Mr. Foz was sponsoring on behalf of the Committee, the said second and third paragraphs were found quite confusing and impossible to reformulate to suit the intent of the first paragraph. He added that publishers consider the second paragraph somewhat confiscatory in character for which reason they are 100% opposed to it. He informed that Mr. Treñas is a cosponsor of the proposal.

FURTHER REMARKS OF MR. FOZ

Mr. Foz, explaining the rationale behind the provisions, stated that the first paragraph which seeks to limit media ownership would prevent media monopolies and democratize media in the country.

Adverting to the past regime, he noted that the Filipinos had seen the example of a powerful businessman in the administration party who, through his control of three TV stations and one major newspaper, dominated a significant portion of mass media.

Media monopoly, he stated, is an abuse or perversion of the freedom of the press by an individual, company or companies. He observed that the danger lies in placing in the hands of such an individual or group, a weapon of manipulating the vehicles of public opinion to influence the public mind and advance his or its selfish economic and political influence to the prejudice of the larger public interest and welfare. He called for regulation of the right of an individual or group, through corporations or associations, to acquire or own mass media establishments which will result in monopolies with harmful effects to the public.

He underscored that press freedom is not a right which belongs to an editor, publisher or proprietor of a newspaper, TV or radio station as an individual but as a member of the press.

The basic role of the press, he maintained, is to invigorate the marketplace of ideas, a concept enunciated by Justice Holmes which postulates that the people will discover the truth from the welter of ideas, information and events aired or reported in media. If such is the role of the press, he opined that limitations must really be provided so that no individual, family or corporation will be allowed to monopolize or place at his or its command mass media establishments or propaganda machines to control the minds of men for ulterior purposes.

A media monopoly, he observed, aims to dominate a marketplace and induce the buying public, with neither the inclination nor the discernment needed to discriminate and make proper conclusions out of the confusion, to accept a given slant, a sensationalized account or a reduction of the truth and thus be misled with costly consequences.

He stated that even granting without accepting the validity of the marketplace theory as making for a democratic choice by the people, concentration of ownership in mass media defeats the objective of this theory.

He informed that in media monopolies, there is diminution in the marketplace of views aired or reported by the people and that instead of being exposed to as many different views as possible, the reading public is subjected to the barrage of limited views or opinions. He stated that to effectively counteract the tendency of monopolization of the media, the limitation must not only operate horizontally but also vertically and therefore a newspaper owner should be barred from owning TV or radio stations. Diversification of ownership, he stressed, will encourage would be investors to service the rural areas or communities of which there are still many to be served by mass media.

He observed that instead of deleting the provision, it can be modified to express the idea in a more effective way. On the third paragraph of Section 11(1), he noted that it need not be mandatory but can be reformulated to express the desire to encourage a setup in which the workers and employees of media establishments can be part-owners or can acquire stocks in a kind of stock option arrangement.

Mr. Jamir insisted on his amendment to delete and adverted to Mr. Foz' observation that the deletion would not prejudice further amendments.

OBSERVATIONS OF MR. REGALADO

Mr. Regalado observed that in the previous deliberations, the Body had fully appreciated the concern of Mr. Foz against monopolies although Mr. Jamir correctly stated that the Members found some difficulty in the terms used in Section 11 and that the Journal would show that the Committee Members and the interpellants could not agree on the phrase "one form of commercial mass media", in the concept of single market and that even the word "family" was not properly defined by the Committee. He stated that the controversy can be clarified if there can be a common stand on just what would be "one form of commercial mass media" inasmuch as there are some permutations in the explanation in the concept of a single market and in the limitation or circumscription of "family". He stressed that there was no objection to the objective but that there was confusion in the formulation.

REMARKS OF MR. MONSOD

Mr. Monsod stated that he believes that the objective of regulating or prohibiting the monopolies referred to by Mr. Foz would be better addressed by a different formulation of the text. Thereupon, he supported the amendment to delete the second and third paragraphs without prejudice to a reformulation.

Specifically, with respect to the shares provided for the third paragraph, he informed that the first section of the Article on National Economy already covers the concern that Mr. Foz wanted to emphasize and that there is likewise a section in the same Article on the role of cooperatives which would also cover mass media cooperatives.

PARLIAMENTARY SITUATION

At this juncture, Mr. Rama stated that the parliamentary situation calls for a vote on the motion to delete, subject to the understanding that it is without prejudice to a reformulation of the said paragraphs.

He asked that the Body vote on the motion to delete.

VOTING ON MR. JAMIR'S AMENDMENT BY DELETION

Thereupon, submitted to a vote, and with 22 Members voting in favor and 10 against, the amendment to delete the second and third paragraphs of Section 11(1) was approved by the Body.

PROPOSED AMENDMENT OF MR. MONSOD

Thereafter, Mr. Monsod proposed the reformulation of the second paragraph of Section 11(1), to read:

CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA. NO COMBINATION IN RESTRAINT OF TRADE OR UNFAIR COMPETITION SHALL BE ALLOWED.

Mr. Monsod explained that the amendment would address the problems Mr. Foz reused in that it would protect the public from monopolies or combinations in restraint of trade or unfair competition. He stated that the proposal is in harmony with the provision on monopolies, combinations in restraint of trade and unfair competition in the Article on National Economy and Patrimony.

Mrs. Rosario Braid accepted the proposed amendment on behalf of the Committee.

RESTATEMENT OF MR. MONSOD'S AMENDMENT

Upon request of the Chair, Mr. Monsod restated his proposed amendment, to wit:

CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA. NO COMBINATION IN RESTRAINT OF TRADE OR UNFAIR COMPETITION SHALL BE ALLOWED.

INQUIRIES OF MR. VILLACORTA

In reply to Mr. Villacorta's query on whether "monopoly" would refer to cross ownership of different forms of mass media, Mr. Monsod stated that it would depend on whether there is control, as the intent of the Committee formulation is to prohibit majority cross ownership.

He confirmed that "control" means majority ownership.

INQUIRIES OF MR. OPLE

In reply to Mr. Ople's query whether the reformulated section would, in effect, be an Anti-Trust provision, especially applicable to commercial mass media, Mr. Monsod answered in the affirmative.

He also affirmed that constitutional control is restricted to combination in restraint of trade, monopolies and unfair competition.

On whether combinations in restraint of trade is synonymous with monopolies, Mr. Monsod explained that monopolies refer to markets controlled by one person or entity while combinations in restraint of trade refer to several entities acting in concert in restraint of trade such as when prices are cartelized.

On whether the Lopez and Roces families are guilty of establishing a monopoly with their tri-media operation of the ABS-CBN Network, Mr. Monsod stated that tri-media ownership per se is not harmful but complications on interpretation of the stratification and reclassification of what constitutes a monopoly should be left to Congress for the protection of public interest.

Reacting thereto, Mr. Ople stated that, based on precedents here and abroad, enterprising media companies trying to establish synergies of operation should not be subjected to legal or constitutional censure provided that they have the capital to organize tri-media operations. He stated that a monopoly arises when state policy and law extend assistance to a single company to have exclusive control of a market. He stated that there are other companies, aside from ABS-CBN, that engage in tri-media operations, and as long as there is no law restricting entry into this field, no monopoly is created. He expressed agreement with Mr. Monsod that the test of a monopoly situation is exclusive control of the market reinforced by state policy.

Additionally, MF. Monsod stated that the mandate also applies to the government for which reason, no distinction is made between private and public in the reformulated section and in the Article on National Economy and Patrimony.

INQUIRY OF MR. REGALADO

In reply to Mr. Regalado's query whether the provision would peculiarly apply only to mass media independent of or in addition to the present safeguards already existing in the Anti-Trust laws, Mr. Monsod stated that jurisprudence on the interpretation of the phrases would be controlling. He stated, however, that since the mandate proceeds from a constitutional provision, it would be possible that Congress would define or refine in a more detailed manner the safeguards that would be peculiar or applicable to mass media.

INQUIRIES OF MR. SUAREZ

In reply to Mr. Suarez' query whether the phrase "regulate or prohibit monopolies in commercial mass media" envisions a situation where monopolies in commercial mass media would be allowed except that they may be properly regulated by Congress, Mr. Monsod answered in the affirmative, advertent to the points raised by Mr. Rigos during his interpellations last September 27, 1986. He stated that since mass media plays a very important role in the life of the people, it would be counterproductive to prohibit the establishment of mass media in areas not covered by it, and regulation thereof would be the appropriate remedy.

He confirmed that this would be an exception to the rule against monopolies in commercial mass media, leaving to Congress the definition of terms of the exception, balancing the interests of the public to communication or information as against the dangers of monopoly.

Mr. Suarez observed the second sentence seems to be irrelevant in relation to the first sentence because the second sentence is a blanket statement governing all kinds of enterprises including commercial mass media.

On the possibility of separating the second sentence to make it a general provision operational against all forms of enterprises, Mr. Monsod stated that Section 21 of the Article on National Economy and Patrimony already serves such purpose.

He also confirmed that the second sentence would specifically apply to commercial mass media.

INQUIRY AND MODIFICATION BY MR. BERNAS

In reply to Mr. Bernas query on whether no prohibition or regulation would be allowed which in any way impairs freedom of speech or of the press, Mr. Monsod answered in the affirmative.

Mr. Bernas proposed to modify the provision by deleting the second sentence, in reply to which, Mr. Monsod stated that he would not object considering that it is already contained verbatim in Section 21.

Mr. Bernas stated that the first sentence would be sufficient since it is general enough to cover the sense of the second sentence.

PROPOSED MODIFICATION OF MR. PADILLA

Adverting to Articles 186 and 189 of the Revised Penal Code, Mr. Padilla observed that unfair competition is made to appear as a lesser crime than monopoly and combination in restraint of trade. He proposed to modify the provision to read as follows:

CONGRESS SHALL REGULATE MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE IN COMMERCIAL MASS MEDIA,

stating that he would like to place monopolies and combinations in restraint of trade in the same category.

On the deletion of the word "prohibit", Mr. Padilla stated that there may be a situation whereby nobody would want to go into mass media, and "regulate" amounts to control, which in some circumstances, may justify prohibition.

In reply to Mr. Monsod's query whether "regulate" would include "prohibit", Mr. Padilla answered in the affirmative, stating that to start the provision with the word "prohibit" would preclude other circumstances.

Mr. Monsod pointed out that his formulation is "regulate or prohibit".

SUSPENSION OF SESSION

At this juncture, upon request of Mrs. Rosario Braid, the Chair suspended the session.

It was 10:55 a.m.

RESUMPTION OF SESSION

At 11:07 a.m., the session was resumed.

MODIFIED AMENDMENT

Upon resumption of session, Mrs. Rosario Braid read the formulation of the proposal, with Messrs. Foz, Monsod, Bacani, Bengzon, Suarez, Villacorta Padilla and Gascon as coauthors, to wit:

CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA. NO COMBINATIONS IN RESTRAINT OF TRADE OR UNFAIR COMPETITION IN COMMERCIAL MASS MEDIA SHALL BE ALLOWED.

MR. DAVIDE'S AMENDMENT TO THE AMENDMENT

Mr. Davide proposed an amendment to the amendment by changing the words "mass media" in the second sentence to THEREIN; and after "monopolies", to add the phrase WHEN THE PUBLIC INTEREST OR GENERAL WELFARE SO REQUIRES.

Mrs. Rosario Braid accepted the amendment on behalf of the Committee.

SUGGESTION OF MR. MONSOD

Mr. Monsod suggested PUBLIC INTEREST to harmonize it with the Article on National Economy and Patrimony, to which Mr. Davide acceded.

INQUIRY OF MS. AQUINO

In reply to Ms. Aquino's queries, Mr. Monsod denied that the proposal contemplates prior licensing; however, it would contemplate an aggressive campaign to diffuse ownership which is already mandated in the Article on National Economy and Patrimony because it is a policy of the State to encourage broad ownership. He gave the assurance that it would not, in any way, mean regulation by licensing.

Additionally, Mr. Foz stated that in the peculiar case of the broadcast media, there has to be some kind of licensing because broadcast media is different in that there has to be assignments of the air waves. Mr. Bengzon, however, pointed out that licensing would apply with respect to assignments of frequencies but not with respect to operation.

INQUIRY OF MR. OPLE

On Mr. Ople's query, Mr. Foz affirmed that there would be no requirement for newspapers to register for the purpose of doing business and that at present anybody may publish without registering except for strictly business purposes.

MR. PADILLA'S AMENDMENT TO THE AMENDMENT

Mr. Padilla proposed to amend the amendment to read:

IN COMMERCIAL MASS MEDIA, CONGRESS SHALL REGULATE MONOPOLIES AND MAY PROHIBIT COMBINATIONS IN RESTRAINT OF TRADE OR UNFAIR COMPETITION WHEN THE PUBLIC INTEREST SO REQUIRES.

Reacting thereto, Mr. Monsod suggested that the Body approve the amendment as introduced by the Committee and leave the alignment of the sections to the Committee on Style.

SUSPENSION OF SESSION

At this juncture, the session was suspended.

It was 11:15 a.m.

RESUMPTION OF SESSION

At 11:18 a.m., the session was resumed.

APPROVAL OF THE AMENDMENT

Upon resumption of session, Mrs. Rosario Braid read the final formulation of the amendment, to wit:

CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA WHEN THE PUBLIC INTEREST SO REQUIRES. NO COMBINATIONS IN RESTRAINT OF TRADE OR UNFAIR COMPETITION THEREIN SHALL BE ALLOWED.

Submitted to a vote, with 28 Members voting in favor and none against, the amendment was approved by the Body.

APPROVAL OF SECTION 11(1)

Mrs. Rosario Braid restated the entire Section 11(1), to wit:

THE OWNERSHIP AND MANAGEMENT OF MASS MEDIA SHALL BE LIMITED TO CITIZENS OF THE PHILIPPINES, OR TO CORPORATIONS, COOPERATIVES OR ASSOCIATIONS WHOLLY-OWNED AND MANAGED BY SUCH CITIZENS.

CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA WHEN THE PUBLIC INTEREST SO REQUIRES. NO COMBINATIONS IN RESTRAINT OF TRADE OR UNFAIR COMPETITION THEREIN SHALL BE ALLOWED.

There being no objection, Section 11(1) was approved by the Body.

REMARKS OF MR. MONSOD

At this juncture, Mr. Monsod inquired from the Committee whether it would withdraw the references to Commercial telecommunications in Section 11(2) on the ground that the issue had already been discussed and resolved in the Article on National Economy and Patrimony.

Thereafter, he read into the record the minutes of the proceedings relative to Mr. Davide's amendment increasing the minimum Filipino ownership to 75%.

REMARKS OF MR. PADILLA

Mr. Padilla agreed to the proposed deletion of references to commercial telecommunications. He stated that since Section 2 refers only to "advertising and commercial telecommunications", the deletion of the words "commercial telecommunications establishments" would leave the reference only to advertising. Thereupon, he suggested that Section 2 be deleted without prejudice to inserting a section on advertising. In reply, Mrs. Rosario Braid stated that it was really the intent of the Committee to have a separate provision on advertising and that the discussion was confined only to equity on telecommunications.

On the Chair's query with respect to Mr. Monsod's reference to the transcript of proceedings on the two-thirds issue, Mrs. Rosario Braid stated that the Committee would submit to the ruling of the Chair.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query, Mr. Monsod affirmed that when the Body voted on Mr. Davide's amendment in connection with the Article on National Economy and Patrimony, the Members were thinking in terms of ownership of public utilities; however, the Committee also made it clear that telecommunications is part of public utilities.

Mr. Suarez contended that he could not recall the Body voting on the term "commercial telecommunications" as encompassed within the term "public utilities", to which Mr. Monsod replied that the Journal reflected telecommunications as part of public utilities, as well as jurisprudence.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid recalled that during the meetings of the Committee on National Economy and Patrimony, it was decided that anything that had to do with communication technology would be taken out of the Committee and transferred to the Committee on General Provisions, which was the reason why the Committee on General Provisions, wanted the ruling of the Chair that telecommunications traditionally belong to public utilities.

She pointed out that the development during the past decade has made the present telecommunications facilities not only as carriers of telex, cable or neutral messages but also as carriers of culture, economic and political information considering the developments in technology with respect to computer communications, distance learning and global technology. She stated that, while the Committee was not insisting on the separation of telecommunications from the traditional classification, it wanted the issue to surface so that in the future Congress may organize a study of telecommunications and separate its commercial uses. She also stated that the Philippines is the only country that has not used satellite communications for uses other than commercial, unlike other countries which have been using satellite communication facilities for disaster warning systems, for agriculture, for health delivery and education. She noted that studies have shown that those who own the facilities have access to power and to almost all the economic and political power.

Reacting thereto, Mr. Monsod stated that the Body agreed with Mrs. Rosario Braid on the matter, the reason being that the Body approved said section on communication and information and its role in nation-building.

REMARKS OF MR. SUAREZ

Mr. Suarez observed that the two problems involved in Section 11(2), are: 1) substantive, in the sense that it requires a categorical and unequivocal definition of the term "public utilities" — whether or not this includes the term "commercial mass communications"; and 2) procedural, in the sense that this may have already been foreclosed in the light of the discussion on the Article on National Economy and Patrimony.

Mr. Suarez maintained that this matter is not foreclosed and assuming that it is, it should not prevent the Body from taking up such a vital provision considering that the Commission, without suspending the Rules, had time and again acted on its own and reconsidered many of the provisions already approved.

Responding thereto, Mr. Monsod read the following transcript of proceedings when Mr. Foz raised the question as to whether or not telecommunications is included in the definition of "public utilities":

MR. FOZ. — I would like to ask a few clarificatory questions to the proponent. By the term "public utilities", to what are we referring? Will you give some examples, Your Honor?

MR. DAVIDE. — Not only commercial telecommunications, but you have corporations supplying electric power; even the matter of supplying ice, that is a public utility.

Mr. Monsod recalled that a subsequent discussion took place between Mr. Bernas and the Committee in which the former precisely asked that telecommunications be made an exception, thereby admitting that it is part of public utilities. He stressed that the issue was resolved by the Body.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 11:38 a.m.

RESUMPTION OF SESSION

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

REMARKS OF THE CHAIR

The Chair noted that the transcript of proceedings of the Article on National Economy and Patrimony contains sufficient discussions to show that commercial telecommunications was considered part of public utilities, taking into account Mr. Bernas' statement that the Body could proceed to vote on the equity ratio provided that it would not foreclose the question of management of public utilities. The Chair stated that there was no question that commercial telecommunications was considered part of public utilities when the Body decided on the 60:40 equity ratio as evidenced by the fact that the Chair ruled that any change would entail a motion for reconsideration.

The Chair stated that her attention was invited to the fact that Section 11(2) of the Committee Report would, in effect, contravene what had been agreed upon in public utilities in the Article on National Economy and Patrimony.

REMARKS OF MR. SUAREZ

Mr. Suarez observed that the transcript of proceedings would show that commercial telecommunications was cited as an example of what may constitute public utilities but there was no categorical statement that public utilities include commercial telecommunications or vice-versa.

REMARKS OF MR. RODRIGO

Mr. Rodrigo recalled that commercial telecommunications was included when the Body voted on the 60:40 equity ratio although he clarified that the ratio was not really 60:40 but "at least 60 percent of the capital of which is owned by Filipinos". He stressed that as worded, Congress could increase the Filipino equity to 75% or even

100%.

REMARKS OF MR. ROMULO

Mr. Romulo adverted to the precedent that when Mr. Padilla attempted to restore the phrase "imminent danger thereof" in the Article on the Executive, Mr. Bernas raised a point of order on the ground that it was already excluded from the Article on the Bill of Rights, which point of order was sustained. He further maintained that the records of the proceedings would show that the discussions then were focused on telecommunications in Section 15 of the Article on National Economy and Patrimony.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid argued that when commercial telecommunications was discussed at that time she merely projected the viewpoint of the Filipino owners of telecommunications systems and that she reserved discussion of other perspective such as their possible uses and functions for development considering that in the past regime, telecommunications was used exclusively for commercial purposes.

REMARKS OF MR. VILLACORTA

In support of reconsidering the question by suspending the Rules, Mr. Villacorta adverted to relevant portions of the study by the Philippine Chamber of Communications, Inc., entitled "A Second Look at the Controversial Issue of What the Foreign Equity Limit Should be for Vital Public Utilities", to wit:

"Using P1.2 billion as the total foreign investment figure, a divestment as a result of a new 75-25 ratio between foreign equity to Filipino equity participation would not require P1.2 billion as it is now claimed but only 15% of P1.2 billion. This is only equal to P180 million the total amount involved in divestment in case the 75-25 ratio is finally approved. If the equity rule is 1/3, then the amount is much less as it will be only six and two-thirds percent of P1.2 billion. This will only be P80 million."

PARLIAMENTARY INQUIRY OF MR. BENGZON

At this juncture, Mr. Bengzon inquired whether Mr. Villacorta was seeking a reconsideration of the ruling of the Chair or filing a motion to suspend the Rules.

Mr. Villacorta, in turn, inquired whether the Chair had already made a ruling to terminate the discussion of the issue, to which the Chair replied that it had not yet made a definite ruling. The Chair clarified that the ruling was only to the effect that commercial telecommunications was already discussed and made part of the decision of the Body on equity ratio in public utilities.

On Mr. Bengzon's query, the Chair affirmed that a ruling had already been made and allowed Mr. Villacorta to wind up his remarks.

CONTINUATION OF MR. VILLACORTA'S REMARKS

Mr. Villacorta stated that he was not challenging the Chair's ruling but that he would like to read portions of the study which he considers vital information that could guide the Body in its future decisions, to wit:

"Certainly, the Ayalas, the Siguion-Reynas, the Marcoses, the Benedictos, Africas and Nietos of the Filipino counterpart groups could easily afford to pay off their foreign multinational partners' shares if only P80 to P180 million are involved. In fact, if these Filipinos will not buy the shares, we are sure that in view of the financial performance of the stocks of GMCR, ETPI and PHILCOM in the past where they have given such high and very

attractive returns, there will be many interested new investors.

"It was also claimed that PLDT is 100% Filipino-owned. This is not true since PLDT has a high ratio of foreign ownership. The difference is that in the case of PLDT the foreign owners are composed of many foreign investors while in the case of PHILCOM, GMCR, and ETPI, they have respectively only foreign multinationals as partners.

"We wish to ask the Honorable Commissioners to please distinguish between foreign investors whose goal is to make their investments yield the highest possible returns and foreign multinationals which not only want to make money but also want to control and dominate local companies."

REMINDER OF THE CHAIR

At this juncture, the Chair reminded Mr. Villacorta that his time had already expired.

Mr. Villacorta asked for the deferment of the voting until such time that the material he was reading shall have been distributed to the Members, to which the Chair suggested that the portions which Mr. Villacorta was not able to read be inserted into the records as part of his statements.

(The following are the portions which the Chair directed for insertion into the records.)

"In fact, PLDT used to be a 100% foreign-owned and controlled public utility. It was owned by GTE Corp., a U.S. telecommunications company. When PLDT was Filipinized in the seventies, GTE pulled out of PLDT and new Filipino investors (Cojuangco, Yuchengco, et. al.) move in. Later on, PLDT listed its shares in the U.S. stock exchanges and now has many foreigners as shareholders (per last PLDT 1985 annual report, PLDT has 6,237 Americans and 8,573 of various nationalities owning about 6% of the total outstanding capital stock of PLDT).

"It was also argued by Commissioner Ricardo Romulo based on the letters to him by the Filipino partners of those 3 IRCs that 'there is no danger to national security because these carriers deal only with commercial messages and not government messages involving matters of State security'.

"This is a big lie: the 3 IRCs serve almost all of the government offices, agencies and bureaus. The 3 IRCs are, without any doubt, handling government messages. For example, the Ministry of Foreign Affairs (MFA) has telex installations from 3 IRCS and is using them very extensively. A simple check with the MFA should prove or disprove this point. In fact, when President Corazon Aquino went to Singapore and Indonesia, Malacañang contracted the services of PHILCOM for the presidential party's communications facilities.

"Commissioner A. Padilla said that 'Sec. 15 is substantially the same as Sec. 5 of the 1973 Constitution' and in fact, what he did not say, is that this 60:40 rule was even in the 1935 Constitution. We believe that after more than 50 years and after 12 years from the abrogation of the Laurel-Langley agreement, we Filipinos deserve even perhaps a 6.67 percent increase in our ownership of vital public utilities; if a 15 percent increase (in the case of 75:25 rule) is not acceptable to the majority of the ConCom Commissioners.

"Commissioner R. Romulo also claimed in his speech before the plenary session that PHILCOM's only foreigner is not the GENERAL MANAGER of the company but is only involved in technical operations. According to Commissioner R. Romulo: 'In PHILCOM, there is only one non-Filipino and his office principally relates to the technical aspects of our firm. We hope that we have not heard him right because this is not true. Everyone in the telecommunications industry knows that PHILCOM'S John P. Feely is PHILCOM'S EVP and General Manager and is concerned with more than just technical operations. It is also not true that these IRCs do not have any management or operating agreement of some kind with their foreign partners.

"It should also be pointed out that the main arguments presented by Commissioner R. Romulo during the debate

on this particular section were only based on the appeal of 3 international record (telecommunications) carriers with 40% foreign participation and did not take into account the interests of other telecommunications carriers as well as the many other public utilities in the country.

"This does not relate to the fact that Section 15 involves all types of public utilities and is not limited to telecommunications only. The other types of public utilities, which are not at present controlled or dominated by foreign multinationals, like airlines, shipping companies, transportation, firms, electric power companies, and other public utilities should also be taken into account. Does ConCom believe that it would be to the best interest of the country and its people if PAL will be owned by United Airlines; MERALCO by General Power; MWSS, LRT, PNR and other public utilities by foreign multinationals or even PLDT if it will be owned and controlled by AT&T? We quote Commissioner Felicitas Aquino: 'when dealing with public utilities the primordial concern should be the benefit to Filipinos, hence they should be effectively controlled by Filipinos.'

"DOMSAT, in today's Business Day, is being offered for sale to an Indonesian company. Are we willing to have our own domestic satellite communications carrier, a monopoly operation, controlled by foreigners? If DOMSAT falls into the hands of foreigners, will PHILCOMSAT follow?

"Do the ConCom Commissioners believe that what is good for the 3 foreign multinationals (RCA, ITT and Cable Cable and Wireless PLC) and for their Filipino partners, as well as their employees, are necessarily good for the Philippines and for all the Filipinos? They should read Middy's 'Public Pulse' where Filipinos (from various walks of life and who are not 'constrained' by their business, personal or official connections) thought otherwise. We thought that the ConCom is dedicated to the forming of a pro-Filipino, pro-people Constitution. The present clause on the limitation on foreign equity in vital public utilities as drafted by the 1986 ConCom appears to be too pro-foreign multinational to us as it appeared to the five ConCom Commissioners who walked out after that Saturday plenary session.

"We only hope and pray that the other ConCom Commissioners (particularly those who voted against the Davide resolution) see the truth and respond to our appeal for real nationalism and for their sincere love for country and people and allow some gains for Filipinos in the controversial issue of foreign equity in vital public utilities. The Filipinization of these public utilities should be enshrined in our country's new Constitution for the common good of our country and people."

MOTION OF MR. VILLACORTA

Mr. Villacorta moved that the Body defer voting on the matter under deliberation, to which the Chair replied that what should be decided is whether the Body should suspend the rules considering that Section 11(2) is in effect a reconsideration of what had already been decided in the Article on National Economy and Patrimony with respect to public utilities. The Chair explained that a unanimous vote is necessary for a motion for reconsideration to prosper under the Rules.

APPEAL FOR RECONSIDERATION OF THE RULING OF THE CHAIR

At this juncture, Ms. Aquino appealed for reconsideration of the ruling of the Chair, stating that the requirement for the suspension of the Rules is very stringent. She requested the Chair for a more liberal interpretation, considering that the Committee Report was submitted before the decision of the Commission on the pertinent provision in the Article on National Economy and Patrimony was made. She urged that the discussion should not be foreclosed on a matter of technicality.

REMARKS OF MR. MONSOD

Mr. Monsod took exception to Ms. Aquino's remarks by pointing out that the discussion is on the amended Committee Report dated September 1, 1986 which was well after the vote on the particular issue on August 3, 1986.

INQUIRY OF MR. VILLACORTA

Mr. Villacorta asked if the Body could forego with technicality on such a crucial question, to which the Chair replied that it is not a question of technicality and that the Body should abide by certain Rules. The Chair stated that a motion for reconsideration would not be possible and that what could not be done directly, should not be done indirectly.

Mr. Villacorta pointed out that voting on the particular issue was based on the information submitted by Ayala Corporation and other companies, which data are being questioned by the report he just read.

REMARKS OF MR. MAAMBONG

Mr. Maambong stated that the Committee Report which contains the provision in question was actually Committee Report No. 31 submitted on July 16, 1986, ahead of the consideration of the Article on National Economy and Patrimony.

FURTHER REMARKS OF MR. MONSOD

Mr. Monsod maintained that the Committee had all the opportunity to amend and, in fact, submitted an amended report dated September 1, 1986.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid stated that the report submitted on September 1, 1986 was an amended version based on the new provisions inserted therein and she admitted that the Committee did not consider the other provisions that were earlier approved in the Article on National Economy and Patrimony.

Reacting thereto, Mr. Monsod maintained that the Committee is not exempt from taking cognizance of what happened on August 23, 1986.

PARLIAMENTARY INQUIRY OF MR. DAVIDE

Mr. Davide noted that the discussion seemed to be on a so called "motion to suspend" which he never heard to have been presented, to which the Chair stated that from the remarks of Mr. Villacorta, it gathered that there was a motion to suspend the Rules.

SUSPENSION OF SESSION

Upon request of Mr. Suarez, the Chair suspended the session.

It was 12:04 p.m.

RESUMPTION OF SESSION

At 12:22 p.m., the session was resumed.

POINT OF INFORMATION OF MR. GUINGONA

At this juncture, Mr. Guingona pointed out that the Rules of the Commission states nothing about suspension of the Rules, although, under Rule XXII of the Rules of the Batasang Pambansa, the following sections would apply:

SECTION 124. "Only the Committee on Rules can move for the suspension of the rules."

SECTION 125. "No rule shall be suspended except by a vote of two-thirds of the members, a quorum being present."

Thereupon, he moved that the matter of whether reconsider or not be referred to the Committee on Rules.

Mr. Rama informed that the motion to reconsider calls for the suspension of the Rules by unanimous consent inasmuch as there is no recommendation from the Steering Committee.

The Chair stated that when the session was suspended, it was about to ask if there was any formal motion to suspend the Rules so that the mechanics could be discussed by the Body.

Mr. Guingona maintained that inasmuch as the Body is following the Rules of the Batasang Pambansa, the matter be referred to the Steering Committee to enable it to decide whether or not there should be a motion for reconsideration.

REMARKS OF MR. SUAREZ

Mr. Suarez, to clarify the parliamentary situation, informed that the Body is in the process of discussing paragraph 2 of Section 11 and that Mr. Monsod had urged the Committee to consider the wisdom and advisability of not pressing for the approval of the particular paragraph, although, the Committee had not made its position known on this appeal.

REMARKS OF MR. MONSOD

Mr. Monsod explained that he wanted the Committee to withdraw all references to commercial telecommunications on the ground that the matter had been closed and that if the matter has to be reconsidered it would require a suspension of the Rules.

He stated that if the Committee does not withdraw these references, he would oppose the motion for reconsideration inasmuch as it would require a suspension of the Rules.

The Chair stated that it was called upon to decide whether lines 24 and 25 would contravene the decision taken by the Body on the section relating to public utilities.

Mr. Monsod then inquired whether it would mean that paragraph 2 of Section 11 would not include any reference to commercial telecommunications.

MR. RODRIGO'S STATEMENT ON THE PARLIAMENTARY SITUATION

Mr. Rodrigo informed that Mr. Regalado presented an amendment to delete on lines 20 and 21 the words "and commercial telecommunications establishments" and on line 27 to also delete the words "and commercial telecommunications" based on: 1) substantive and 2) procedural grounds. On the second ground, Mr. Rodrigo

observed that Mr. Regalado gave the argument that it was already passed upon and decided by the Body when it discussed the Section on the Article on National Economy and Patrimony.

Upon inquiry of the Chair, Mr. Monsod affirmed that the amendment of Mr. Regalado was presented Saturday, last week.

Mr. Regalado also affirmed that in last Saturday is session, after the discussion of his proposed amendment, the Committee requested for a deferment of voting.

Mr. Monsod explained that the phrase should not have been included in the paragraph and its inclusion in the discussion would require a suspension of the Rules.

On inquiry of Mr. Suarez as to the issue before the Body, the Chair stated that Mr. Regalado has a pending motion to delete and Mr. Monsod's immediate appeal to the Committee gave rise to all the subsequent events.

Reacting thereto, Mr. Monsod pointed out that his motion is anterior to the motion of Mr. Regalado as the issue had already been closed.

MR. RAMA'S STATEMENT ON THE PALIAMENTARY SITUATION

Mr. Rama maintained that a motion calling for a point of order is a privileged motion which would, in effect, annul the previous motion to delete, which matter had been decided by the Chair. He stated that as far as the phrase is concerned, it has been deleted in view of the Chair's ruling that its inclusion is out of order. He noted that what is called for is a motion to suspend the Rules in order to put the phrase back in said paragraph. He stated that so far nobody has made such motion and that as things presently stand, the phrase had been eliminated.

INQUIRY OF MR. MAAMBONG

Mr. Maambong inquired whether the insertion of the phrase in Section 11 has been considered out of order and whether there is a motion seeking a ruling from the Chair to call the Committee out of order. He informed that the Committee Report was presented on July 16 and that if there was something in the Committee Report which should be deleted, then it should be so deleted. He stated that he cannot understand why the Committee should be called out of order.

CLARIFICATION OF MR. MONSOD

Mr. Monsod clarified that the point of order was that the phrase should not be considered at all inasmuch as the issue had been closed. He noted that for the phrase to be reinstated, it would require a suspension of the Rules.

REMARKS OF MR. NOLLEDO

Mr. Nollado opined that when the Committee made the Report, the 60:40 equity rule on public utilities was not yet being reconsidered, and since telecommunications is only a part of the whole gamut of public utilities, he stated that the Committee would not be precluded from making an exception to the 60:40 equity rule.

Adverting to his answer to the interpellation of Mr. Regalado, he stated that "public utility" is synonymous with "public service" which includes transportation, electric service and telecommunications, and since transportation alone covers land, air and water transportation, he stated that the Committee provided an exception to the whole gamut of public utilities, giving due credence to Mr. Regalado's motion to delete.

He stressed that any motion for reconsideration would be out of order.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session until two-thirty in the afternoon.

It was 12:36 p.m.

RESUMPTION OF SESSION

At 3:12 p.m., the session was resumed.

REMARKS OF THE CHAIR

Upon resumption of session, the Chair asked that the Body forego further discussion of the issue raised on Section 11(2) on the basis of its ruling in the morning session. The Chair stated that it was called upon to rule on two issues, namely, 1) whether the subject of "commercial telecommunications" was included in the discussion of the section on public utilities in the Article on National Economy and Patrimony, in view of which, it had to refer to the transcript of the proceedings on August 23, 1986 and subsequently ruled that the subject of commercial telecommunications was in fact included in the deliberations of the Body, the decision being a 60:40 ratio; and 2) what would happen to the phrase "two-thirds of whose voting stock or controlling interests is owned by such citizens. . ." on page 1, lines 24 and 25 of the Committee Report, the ruling being that the matter was closed. The Chair then asked that the Body resume the discussions from these premises to expedite the proceedings on Section 11(2).

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid stated that the Committee would accept the ruling of the Chair on the understanding that the issue of equity and ownership would not preclude other issues affecting the telecommunications industry which may be proposed by the Committee or other Members of the Commission.

She noted that all the ASEAN countries have nationalized their telecommunications industry and that even the United States and the United Kingdom, which are owners of most multinational corporations, do not allow foreigners to control or manage their industries. She contended that the Philippines has the local capability and, if it needs foreign expertise, it could hire foreign consultants to work with the telecommunications industry, adding that Filipinos could always turn to multinational financing, if necessary. She stated that, at the proper time, the Committee could suggest a provision that could ensure the continuing study of this powerful technology. She stated that the Committee could withdraw the phrase on the telecommunications equity and retain the provision on advertising.

INQUIRY OF MR. BENGZON

In reply to Mr. Bengzon's query, the Chair stated that the words "and commercial telecommunications" appearing on Section 11, page 3, lines 20 and 21 and on line 27 are considered stricken off from sub-section 2, in view of which, said subsection would Solely relate to advertising.

PROPOSED AMENDMENT OF MR. PADILLA

In reply to Mr. Padilla's query, Mrs. Rosario Braid affirmed that with elimination of commercial telecommunications, paragraph 2 of Section 11 would only apply to advertising and, therefore, the only formulation of this particular provision would be in terms of management and equity for advertising.

Mr. Padilla stated that an advertising agency does not need any franchise certificate or other forms of authorization for its operation, in view of which, he proposed the following substitute amendment, to wit:

ADVERTISING AGENCY AS A PRIVATE ACTIVITY IMPRESSED WITH PUBLIC INTEREST SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CUSTOMERS AND THE PROMOTION OF THE GENERAL WELFARE.

Mrs. Rosario Braid stated that the Committee would accept the intent of the proposal except that it would like to add an additional sentence on equity, in view of which, the Committee accepted the first sentence without prejudice to adding another sentence.

INQUIRY OF MR. DAVIDE

In reply to Mr. Davide's query, Mrs. Rosario Braid affirmed that the proposal would not require ownership of advertising agencies to be wholly-owned, or owned to a certain percentage, by Filipino citizens, although the Committee would be willing to amend the 66-2/3 to a higher equity for Filipinos for purposes of advertising.

On the extent of control by multinational corporations in the advertising industry in the Philippines, Mrs. Rosario Braid stated that most of the advertising agencies are either wholly owned by multinationals or jointly owned with Filipinos. She stated that two of the advertising agencies wholly owned by multinationals are J. Walter Thompson and McCann Erickson while the others are joint ventures in favor of Filipino shareholders. In view thereof, it is necessary that protection be afforded Filipino citizens engaged in advertising.

PROPOSED AMENDMENT OF MR. DAVIDE

Thereafter, after Mr. Padilla's amendment, Mr. Davide proposed the following amendment, to wit:

ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS THE CONTROLLING STOCK OR INTEREST OF WHICH IS WHOLLY-OWNED BY FILIPINO CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING BUSINESS.

REMARKS OF MRS. QUESADA

Mrs. Quesada expressed full support of Mr. Davide's proposal on the ownership of advertising companies to be granted to Filipino citizens on the ground that the advertising industry is one area where the country has a pool of Filipino talents who are being employed by multinational advertising companies. She pointed out that advertising is one industry which is not capital intensive but talent intensive considering that people create advertising copy, produce TV spots, design marketing strategies and work out media plans for their clientele. She stressed that if the Constitution would foster self-reliance in the national economy, then the Members of the Commission must show their faith in the capacity of Filipino talents to manage their own advertising companies.

SUGGESTION OF MR. NOLLEDO

Mr. Nollado invited attention to the fact that the term "controlling stock or interest" may refer merely to 50 percent plus one, such that the law must specify the percentage that should be owned by Filipinos because 51 percent is already controlling.

In this connection, Mr. Nollado suggested that the proponent adopt a two-thirds/one-third equity, to which Mr. Davide acceded.

MODIFIED AMENDMENT OF MR. DAVIDE

Thereupon, Mr. Davide modified his amendment, to wit:

ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS TWO-THIRDS OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING BUSINESS, THE GOVERNING AND MANAGING BODIES OF SUCH CORPORATIONS OR ASSOCIATIONS SHALL BE EXCLUSIVELY VESTED IN CITIZENS OF THE PHILIPPINES.

MR. RODRIGO'S AMENDMENT TO THE AMENDMENT

Mr. Rodrigo proposed an amendment to the amendment by changing the word "two-thirds" to AT LEAST SIXTY (60) PERCENTUM.

Mr. Rodrigo explained that if the Commission had adopted the policy of just having at least sixty (60) percentum equity of corporations in the hands of Filipinos for more important industries, like public utilities, development and exploitation of the natural resources, and telecommunications, it would be absolutely illogical to demand more than sixty percent for advertising. He then inquired whether public interest involved in advertising is more important than public utilities.

He also stated that foreign investors who were invited by President Aquino to help remedy the economic crisis would be discouraged once they see that the Constitutional Commission had increased the equity of Filipinos for advertising to 66 2/3 percent.

Moreover, Mr. Rodrigo stated that his amendment did not ask for 60:40 equity but at least 60 percent of the capital, meaning that Congress may increase the 60 percent to 75 percent, noting that the Legislature would be composed of Senators and Representatives elected by the people. He further reminded the Members of the Commission that they were merely appointed.

Finally, he urged the Body to be uniform in its rule by granting 60 percent to all enterprises, like public utilities, development and exploitation of natural resources, telecommunications and advertising.

REMARKS OF MR. GARCIA

Responding thereto, Mr. Garcia stated that the advertising industry is critical and important considering that the shares of multinationals have increased from 43.2 percent in 1981 to 53 percent in 1985. He stressed that advertising affects the mentality of the consumers; that the average adult Filipino receives more advertising than other nationalities; that a study of the advertising industry in 1983 showed 76% of products advertised were all foreign brands; and that advertising in the country has, especially with the predominance of foreign orientation, created a consumption-oriented mentality with displaced urban bias, elitism and favorable image of foreign products. He then manifested his support of Mr. Davide's amendment to enlarge Filipino ownership and management so that national interest could really be effectively protected.

REMARKS OF MR. RODRIGO

Mr. Rodrigo opined that, while Mr. Garcia's arguments may be valid, those problems could not be remedied by just increasing the equity from 60% to 66-2/3%, but on the other hand, it could do greater harm because it would discourage foreign investors from coming to the Philippines.

REMARKS OF MRS. QUESADA

Mrs. Quesada expressed disagreement to Mr. Rodrigo's contention that advertising is not that important in the economy and to his position that, since the Commission has already given a 60:40 ratio for the other enterprises, it might as well be consistent and give the same equity share for advertising. She maintained that advertising is one area which affects value orientation and since the national leadership has embarked on a reorientation crusade of values for the Filipino people, then advertising plays an important role in molding the kind of orientation and the nationalist consciousness that people must adhere to. She then supported the position that the Filipino must have 100% ownership on the ground that the Philippines does not need foreign investments in advertising because it is not capital-intensive.

At this juncture, the Chair observed that Mr. Davide's amendment was 75%, not 100%, to which Mr. Bengzon—stated that it was 66-2/3%.

MOTION OF MR. BENGZON

Mr. Bengzon moved that the Body decide first on the issue of ownership and thereafter, the issue on the governing board and management body.

Mr. Rodrigo seconded the motion.

POINT OF INFORMATION OF MR. FOZ

Mr. Foz informed that at present, the management of multinational advertising agencies are already in the hands of Filipinos, to which Mr. Bengzon stated that it was precisely the reason why he was questioning the validity of bringing up the issue on management.

Mr. Foz, likewise, informed that under existing rules and regulations issued by the Board of Investments (BOI); the 70:30 equity in advertising is provided, although, this rule has not been implemented. He noted that Mr. Davide's proposal of 2/3 to 1/3 ratio is even lower than what has been provided under existing BOI rules.

REMARKS OF MR. PADILLA

Mr. Padilla stated that in his proposal which was accepted by the Committee, it has been provided that advertising agencies shall be regulated by law for the protection of consumers and the promotion of the general welfare. In view of the information given by Mr. Foz that the BOI may provide a rule of 70:30 equity, Mr. Padilla opined that this should be left to Congress to decide and the Commission should not decide this matter prematurely because this is part of private initiative. He pointed out that if the desire is to prohibit a fully-owned foreign corporation from engaging in advertising, then the government can do so through the Securities and Exchange Commission.

Mr. Padilla pointed out that even the President has been inviting not only foreign investments but also corporations fully-owned by foreigners to invest in the country and if such important aspect of the economy like investment in telecommunications is not required to be wholly-owned, he questioned the need of requiring even a 60:40 equity ratio for this private activity on advertising.

On Mrs. Quesada's claim that there are a lot of Filipino talents, Mr. Padilla opined that this could not be a reason for total prohibition or exclusion of foreign corporations especially in this very restrictive activity of advertising. He believed that any further provision should be disregarded because it is already included in the phrase "to be regulated by law".

SUGGESTION OF MR. BENGZON

Mr. Bengzon suggested that the Body vote on Mr. Padilla's amendment to the first sentence as the Committee has already accepted it, and thereafter, on Mr. Davide's amendment, as amended by Mr. Rodrigo.

MR. MAAMBONG'S PROPOSED AMENDMENT TO THE AMENDMENT

As proposed by Mr. Maambong, Mr. Padilla accepted the amendments to change the words "private activity" to BUSINESS ACTIVITY; and "agency", to AGENCIES.

MR. FOZ' PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Foz proposed the deletion of the word "agency", to which Mr. Padilla replied that advertising may not be done through an advertising agency alone.

Mr. Foz stressed that what is referred to in the provision is the placement of advertisements in the papers or in the broadcast media, to which Mr. Padilla maintained that there are different methods by which one could advertise and he disagreed that advertising is a continuous activity. He opined that the decision whether or not to delete the word "agency" be left to the Committee on Style.

MRS. NIEVA'S PROPOSED AMENDMENT TO THE AMENDMENT

Mrs. Nieva proposed the adoption of the phrase ADVERTISING INDUSTRY which, she opined, is more encompassing, and which Mrs. Rosario Braid accepted.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 3:52 p.m.

RESUMPTION OF SESSION

At 3:54 p.m., the session was resumed.

MR. PADILLA'S AMENDMENT AS REFORMULATED

Mrs. Rosario Braid read the new formulation of Mr. Padilla's amendment, to wit:

THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE.

Mr. Padilla insisted on the retention of the phrase "private business activity", to which Mrs. Rosario Braid replied that the advertising industry is generally known as a private business activity so that the phrase sought to be retained is a surplusage.

Mr. Padilla inquired on the rationale of eliminating the essence of advertising as a private business activity, in reply to which, Mr. Bacani stated that there is precisely a presupposition that it is a business activity.

Mr. Padilla maintained that there is a correlation between the first and the second phrases.

At this juncture, Mr. Bengzon asked that the Body vote on Mr. Padilla's amendment to retain the phrase "as a private business activity".

REMARKS OF MR. ABUBAKAR

Mr. Abubakar stressed that constitution making defines its very purpose, the powers and the 'limitations of government as well as individual rights. He pointed out that he has not come across any constitution that dealt on advertising, pointing out that this matter should be dealt with by law. He proposed the deletion of this provision and urged the Members to make the Constitution a document for all Filipinos to revere and if possible to recite.

VOTING ON MR. PADILLA'S AMENDMENT

Submitted to a vote, and with 10 Members voting in favor, 21 against and two abstentions, the Chair declared Mr. Padilla's amendment to retain the phrase "private business activity" lost.

PROPOSED AMENDMENT OF MR. GUINGONA

Mr. Guingona proposed the deletion of the words "and to promote the general welfare", explaining that this is a general objective which constitutes a superfluity.

Mrs. Rosario Braid asked that the amendment be put to a vote.

Mr. Foz stressed that the promotion of the general welfare is the very idea of categorizing the advertising industry as one impressed with public interest, to which Mr. Guingona pointed out that since there is already an expression about interest, it would subsume that concept of general welfare.

Mrs. Nieva objected to Mr. Guingona's proposed amendment, stating that it is not only the consumers' interest that is involved but the values of the whole society. Mr. Guingona argued that the values referred to are already taken care of by the expression "public interest".

VOTING ON MR. GUINGONA'S PROPOSED AMENDMENT

Submitted to a vote, and with 3 Members voting in favor and 25 against, the amendment was lost.

RESTATEMENT AND APPROVAL OF THE FIRST SENTENCE

Mrs. Rosario Braid read the first sentence, as amended, to wit:

THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE.

Submitted to a vote, and with 33 Members voting in favor, none against and 3 abstentions, the Body approved the first sentence, as amended.

PROPOSED AMENDMENT OF MR. DAVIDE

With the information that the ratio presently required by the Board of Investments is actually 70:30, Mr. Davide modified his earlier proposal so that it would read:

ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS AT LEAST SEVENTY PERCENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY.

MR. RODRIGO'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Rodrigo proposed the substitution of the word "seventy" to SIXTY, which Mr. Davide did not accept in view of the far-reaching significance of the business and the reasons earlier alluded to by Mr. Garcia and Mrs. Quesada. He added that the proposal would be a retrogression.

Mr. Rodrigo maintained that there is no inconsistency considering that the intent of his proposal is to harmonize it with the other provision of the Constitution, particularly on public utilities, development and exploitation of natural resources telecommunications, etc.

REMARKS OF THE CHAIR

The Chair stated that it is open to suggestions as to what should be voted first, although as a rule, Mr. Rodrigo's proposed amendment should be voted ahead, in response to which, Mr. Rodrigo stressed that an amendment to an amendment should first be voted upon.

REMARKS OF MR. PADILLA

Adverting to Mr. Foz' disclosure, Mr. Padilla stated that he has no knowledge of the so-called "declared policy of the BOI". He stressed that this "declared policy" should be regulated by law.

REMARKS OF MR. SUAREZ

Mr. Suarez invited attention to the fact that should Mr. Rodrigo's proposed modification be voted upon favorably, the 60:40 rule would prevail without prejudice to Mr. Davide's call for a vote on his main amendment. He pointed out that Mr. Davide's proposed amendment might turn out to be ridiculous if he insists on his proposed amendment after approval of Mr. Rodrigo's modification considering the involvement of figures and percentages, as pointed out by Mrs. Quesada.. He suggested, by way of liberal application of the rules, to vote first on Mr. Davide's proposed amendment.

REMARKS OF THE CHAIR

The Chair stated that the Members should decide on whose amendment to vote first.

REMARKS OF MR. RODRIGO

Mr. Rodrigo explained that should Mr. Davide's proposed amendment be voted down, he has nothing to amend; while a vote against his modification would in effect maintain the seventy percent, otherwise the seventy percent becomes sixty percent as he had proposed.

INQUIRY OF MR. DAVIDE

In reply to Mr. Davide's query whether his proposed amendment is accepted by the Committee, Mrs. Rosario Braid answered in the affirmative.

In view of the acceptance by the Committee, Mr. Davide suggested that voting would be a choice between Mr. Rodrigo's amendment or that of the Committee.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query whether further amendments on the ratio could be proposed, Mr. Davide stated that the choice would be limited to 60:40 or 70:30, precluding any increase or reduction of alien equity later.

RULING OF THE CHAIR

Thereupon, the Chair ruled that since the Committee had accepted Mr. Davide's proposed amendment, the same should first be voted upon.

MOTION FOR RECONSIDERATION OF MR. PADILLA

Mr. Padilla moved for a reconsideration of the Chair's ruling, stating that the basic rule is that an amendment to an amendment should first be voted upon. He stated that no ratio should be expressed in the Constitution, leaving the same to Congress to determine. He manifested that he may propose the complete elimination of Mr. Davide's proposed amendment as modified by Mr. Rodrigo, for which reason he suggested that Mr. Rodrigo's modification should first be voted upon.

RESULT OF THE VOTING

The Chair, however, submitted the amendments to a vote and with 18 Members voting in favor and 18 against, the Chair declared a tie.

With the Chair casting its vote in favor of 70:30 equity for advertising, Mr. Davide's amendment was approved by the Body.

RESTATEMENT OF THE SECOND SENTENCE

Upon direction of the Chair, Mr. Davide restated his proposed amendment on the second sentence, to wit:

ONLY FILIPINO CITIZENS, OR CORPORATIONS OR ASSOCIATIONS AT LEAST SEVENTY PERCENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY.

Mr. Maambong observed that the previous formulations in the Article on National Economy and Patrimony consistently used "voting stock and controlling interest".

On the use of capital stock, Mr. Nollado volunteered the information that the Committee accepted his recommendation to substitute "voting stock" to CAPITAL STOCK.

OBSERVATION OF MR. MAAMBONG

Mr. Maambong observed that "controlling interest" was not mentioned in the proposed provision.

He, likewise, invited attention to the style stating that the initial mention of "only Filipino citizens or corporations or associations" in the sentence ending with "owned by such citizens" sounds a bit awkward because "citizens" could not refer to corporations.

Reacting thereto, Mr. Davide explained that the capital is owned by Filipino citizens because the sentence starts with "Only Filipino citizens".

REMARKS OF MR. MONSOD

Mr. Monsod stated that there is a provision in the Article on National Economy and Patrimony regarding public utilities where proportionate representation on the Board was provided and that the management including its officers should be Filipinos. He suggested that the same be adopted.

Responding thereto, Mr. Davide stated that Mr. Monsod's concern would be taken care of by the second sentence he shall be proposing. He stated that originally, they were included in one sentence but that on motion of Mr. Guingona, the concepts have been segregated into two sentences to be voted upon separately.

APPROVAL OF THE SECOND SENTENCE

Submitted to a vote, and with 23 Members voting in favor and 5 against, the Body approved the second sentence as proposed by Mr. Davide.

SUGGESTION OF MR. BENGZON

On the third sentence, Mr. Bengzon suggested that clarification be made on whether there would be a need for the Body to decide that the governing and management body of advertising companies be in the hands of Filipino citizens considering that the same concept had been adopted in the Article on National Economy and Patrimony, in reply to which, Mr. Davide stated that it would be necessary to do so since foreign equity was allowed to have thirty percent control.

Mr. Maambong suggested the Committee formulation which reads as follows:

THE GOVERNING AND MANAGEMENT BODY OF EVERY ENTITY ENGAGED IN ADVERTISING SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES,

to which Mr. Davide acceded to maintain the language of the Committee.

Mr. Bengzon stated that the granting of thirty percent to aliens would allow them to vote through their representatives in the board, because of the word "controlled".

On whether the term would also mean that a majority of the board would be in the hands of Filipino citizens, Mrs. Rosario Braid stated that he could not accept the Committee amendment because the management of the advertising entity would also be 70:30 while his intention is to vest total control to Filipino citizens.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 4:29 p.m.

RESUMPTION OF SESSION

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

Upon resumption of session, Mr. Rama advised that the last sentence of subsection 2 of Section 11 had been reformulated by the Committee.

Mrs. Rosario Braid clarified that the Committee proposes to use the subsection in the Article on National Economy in subsection 2 of Section 11, to wit:

THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES.

In reply to the query of Mr. Monsod, Mrs. Rosario Braid stated that the word ADVERTISING should be inserted between "any" and "enterprise".

Thereafter, Mr. Maambong restated Mr. Padilla's amendment, to wit:

THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE.

Mrs. Rosario Braid stated the formulation of the modified amendment, to wit:

THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ENTITIES IN SUCH INDUSTRY SHALL BE LIMITED TO — THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF, AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES.

Thereupon, with such proposal, Mr. Davide withdrew his original amendment.

INQUIRY OF MRS. QUESADA

In reply to Mrs. Quesada's query on how would the new formulation differ from that which the Committee had already presented, Mrs. Rosario Braid stated that the present reformulation is better because it states that foreigners could participate in the governing board in proportion to their interest.

SUGGESTION OF MR. BENGZON

Mr. Bengzon suggested that the governing board be not included in the provision because this is controlled by the Corporation Law where Filipinos are limited to 70% and the foreigners to 30%, meaning that the management and the officers of the corporation shall be in the hands of the Filipinos, in view of which, the provision would retain the phrase "All the executive and managing officers of such corporations or associations must be citizens of the Philippines" and would in effect delete the first part.

Mrs. Rosario Braid accepted the amendment on behalf of the Committee.

OBJECTION OF MESSRS. DE LOS REYES AND DAVIDE

At this juncture, Mr. de los Reyes objected to the suggestion to delete the first portion on the ground that with the deletion, the whole membership of the board of directors could be 100% foreigners because under the Corporation Law, all that is needed to be a member of the board is to have at least one share of stock, while in the provision, the membership in the board of directors of foreign interest could not exceed 30%.

Mr. Davide, likewise, registered his objection to the proposal of Mr. Bengzon.

WITHDRAWAL OF MR. BENGZON'S PROPOSAL

Thereupon, Mr. Bengzon withdrew his proposal after having been informed that the concept in the Article on National Economy and Patrimony is in consonance with the provision.

APPROVAL OF THE LAST SENTENCE OF SUBSECTION 2 OF SECTION 11

Thereafter, Mrs. Rosario Braid read the last sentence of subsection 2 of Section 11, to wit:

THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ENTITIES IN SUCH INDUSTRY SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF, AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH ENTITIES MUST BE CITIZENS OF THE PHILIPPINES.

Submitted to a vote, and with 27 Members voting in favor, none against and one abstention, the same was approved by the Body.

APPROVAL OF SUBSECTION 2 OF SECTION 11

Mrs. Rosario Braid read the entire subsection 2 of Section 11, to wit:

THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE. ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS, AT LEAST SEVENTY PERCENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS, SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY. THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ENTITIES IN SUCH INDUSTRY SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF, AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH ENTITIES MUST BE CITIZENS OF THE PHILIPPINES.

Submitted to a vote, and with 31 Members voting in favor, none against and 1 abstention, the same was approved by the Body.

Mr. Davide manifested that Mrs. Quesada was a coauthor of his amendment.

PROPOSED AMENDMENT OF MR. MONSOD ON SECTION 12

Mr. Monsod proposed the deletion of the entire Section 12 on the ground that there is no need to constitutionalize a provision that would give an excuse for the regulatory agency to censor or impair the operations of the entities in broadcasting and telecommunications, considering that the grant of franchises lies with the State which provides the conditions thereto.

Mrs. Rosario Braid did not accept the amendment considering that under the present system, the National Telecommunications Commission, which handles the regulation and allocation of franchises, does not have the criteria which would prevent the yearly grant and allocation of franchises. She further stated that since the NTC was organized in 1979, due to lack of criteria, many franchises were granted on the basis of access to the NTC and franchise holders in turn sell them to other individuals. She underscored that the proposal prohibits the transfer, lease or mortgage of a franchise or frequency to any other entity and provides that such frequency or franchise to operate should be returned to the State.

Mr. Monsod pointed out, however, that the section does not really serve its purpose because the terms of the franchises are specified by Congress, to which Mrs. Rosario Braid replied that such practice was done before martial law and, since then, it has always been granted by the NTC in the case of broadcast and telecommunications.

Reacting thereto, Mr. Monsod pointed out that abuses during the Marcos administration would not mean that the

Commission has to put in the new Constitution something that would only be a redundancy. He further stated that the provisions could also be used as an excuse to control broadcast and telecommunications.

REMARKS OF MR. NATIVIDAD

On franchises that were approved by Congress, Mr. Natividad stated that after said franchises were given, they merely serviced the town plazas and neglected the barrios. In view thereof, he stated that there should be some reforms in this regard because it is a stumbling block to progress in telecommunications.

APPROVAL OF MR. MONSOD'S AMENDMENT

Mr. Monsod insisted on his amendment which has been rejected by the Committee

Submitted to a vote, and with 17 Members voting in favor and 13 against, the amendment was approved by the Body.

COMMITTEE AMENDMENT

At this juncture, Mrs. Rosario Braid stated that the Committee has an anterior amendment with Messrs. Regalado, Azcuna, Foz and Davide as coauthors, to wit:

THE STATE SHALL ENCOURAGE THE CONTINUING STUDY OF THE NATURE AND IMPACT OF COMMUNICATION TECHNOLOGY IN SOCIETY AND SHALL PROVIDE APPROPRIATE AND SPECIAL MEASURES FOR ITS ROLE IN NATIONAL DEVELOPMENT.

Mrs. Rosario Braid explained that the proposal would operationalize Section 9 and it would also provide for the study of telecommunications and other forms of technology, particularly in relation to the concerns expressed in voting for a 60:40 ratio which, it was felt, should be an exception to other public utilities. She then expressed the hope that with the provision, Congress would encourage studies on the role of technology and plan for ways in which it could be utilized for development. She stated that, if approved, the proposal would take the place of Section 10 which had been deleted.

REMARKS OF MR. MONSOD

Mr. Monsod stated that in the discussion last September 27, it was made clear that there were some reservations about giving the State or Congress certain rights that could be used to control the industry, like measures and steps leading in the opposite direction to freedom of speech and of the press. He pointed out that the proposal would reopen the possibility of State intervention under the excuse that these are measures to facilitate or enhance the role of communications in national development. He then stated that the section that was approved last September 27 sets the tone, direction and overall policy of the State with respect to the vital role of communications in nation-building and national development, in view of which, he interposed an objection to the insertion of the new section.

Reacting thereto, Mrs. Rosario Braid explained that the proposal would improve media education that would teach children discrimination in TV viewing and newspaper reading, with other forms of media being integrated in some courses. The provision, she stated, would also enable Congress to study whether telecommunications should be part of public utilities, to implement the satellite programs, or to introduce software and hardware technology.

In reply thereto, Mr. Monsod maintained that the section approved last September 27 is broader because it

includes the thoughts in other sections with respect to the full development of Filipino capability, the communication structures suitable to the needs and aspirations of the nation and the balanced flow of information across the country, such that the section being proposed could not add anymore to the broadness and clarity of said election.

REMARKS OF MR. RODRIGO

At this juncture, Mr. Rodrigo invited attention to Section 11 under Science and Technology which, he opined, would cover the issue under discussion.

REMARKS OF MR. SARMIENTO

Mr. Sarmiento, likewise, invited attention to the Journal of September 27, 1986, page 23 thereof, which defines "communication structures".

Mr. Sarmiento maintained that the amendment is already covered by the flagship Section in the light of the discussion reflected in the Journal of September 27, 1986, page 24, a portion of which reads:

"At this juncture, Mr. Sarmiento volunteered the information that the UNESCO approved the creation of the New International Information and Communication Order of which the Philippines is a participant and which proposed the formulation of a national communication policy to be participated in by all sectors concerned through democratic consultation and to make communications more responsive to the needs of the people.

"Thereafter, in reply to his query, Mr. Monsod affirmed that the proposed amendment is compatible with the UNESCO proposal."

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid stated that the Committee would be willing to withdraw the amendment with the understanding that this is already covered by the omnibus provision referred to. She stated for the record that this is a priority in the development of communication structures, the reason being that communication technology is part of public utilities.

PROPOSED AMENDMENT OF MESSRS. UKA AND TREÑAS

Mr. Uka, jointly with Mr. Treñas, proposed the deletion of Section 13 based on the following grounds:

1. there is a wealth of statistical evidence that proves that population growth has been a major stimulus for economic development in industrialized countries;
2. the major determinants of a country's economic development are economic policies and the political system, example of which are the very densely populated countries like Japan, Taiwan, South Korea, Hongkong and Singapore which reached heights of economic progress much before any organized population programs; and
3. it is very dangerous to give the State a constitutional mandate to determine what is an optimum population because this could lead to gross violation of human rights as in the case of some Asian countries that implemented the forced sterilization program.

Adverting to the recent pronouncement of the Minister of Social Services and Development, Mr. Uka pointed out that there are funds for population control that are better utilized in providing social services to the population. He stressed that population policies should be exclusively for population welfare considering that economic

development and social justice would automatically lead to the slowing down of population growth as increased urbanization and industrialization are achieved.

Mr. Uka stated that the 1935 Constitution did not include any provision on population and the reason for the inclusion of a population policy in the 1973 Constitution was the strong lobby supported by the USAID which at that time was aggressively committed to population control. He pointed out that since then, President Reagan embarked on a new policy which focuses on such positive solution as food productivity and the development of small and medium-scale industries. He stated that this new policy which states that the most effective solution to the population problem is economic development and social justice was first announced in the 1984 Population Meet in Mexico.

Mr. Uka opined that given appropriate policies in economic development and social justice, the Philippines could comfortably accommodate as many as 100 million people.

REPLY OF MR. BACANI

Mr. Bacani informed that the Committee is divided on the matter although personally, he would not object to the deletion of the first sentence. He, however, asked that the second sentence be transferred to the Article on Family Rights.

INQUIRIES OF MR. DE LOS REYES

On whether the deletion of Section 13 would mean that the government is duty-bound to stop all family planning activities, Mr. Uka stated that anything that has reference to contraceptives or abortion should be stopped.

Additionally, Mr. Bacani stated that the constitutional mandate for such programs would disappear but the government would have to make its own decisions whether to continue with such family planning programs. He affirmed that the government may adopt a policy on population which it believes conducive to the national welfare even without a constitutional mandate.

In view of the Committee's reply, Mr. de los Reyes objected to the proposed deletion of Section 13, stating that since the provision which appeared in the 1973 Constitution is not harmful, then there is no need to remove it.

REMARKS OF MS. AQUINO

Commenting on the position taken by Mr. de los Reyes, Ms. Aquino pointed out that the Philippine Constitution is the only constitution in the world that carries an aggressive policy on population planning with the exception of Ecuador and Peru which provide only for state support for child spacing. She stated that the issue of population planning given a mandate in the Constitution is specific and general, in the sense that it carries with it serious political implications. She opined that the population policy is not only deceptive but also most unfair.

Ms. Aquino recalled that as early as the first United Nations Conference on Population, it has been agreed that the true culprit is not population explosion but rather the discontinuation of inequitable economic structures that are aggravated by relationships of dependence and exploitation such that any attempt at effective solution is really through a process of social transformation and that it would seem that the population policy is not really directed at arresting poverty but at arresting population growth.

Mr. Aquino stated that statistics reveal that industrialized nations would account only for about 16% of the world's population, consuming about 57% of the world's energy resources while the population of countries in the Third World would account for 62% who are left to grapple only with 14% of the world's energy resources. She

further cited the history of the United States when President Johnson once said that it is even wiser to spend \$5 to avert a child than to spend \$100 to solve the problem of economic development. She pointed out the fact that in the 1960's, the budgetary allocation for non-military aid of the U.S. Congress gave the highest priority to population control.

Given this revealing information, Ms. Aquino opined that population control is a dictate of foreign policies, the fact that former Prime Minister Virata once admitted that the condition for the release of the developmental and assistance fund was dependent on the government adopting an aggressive population control policy.

Finally, Ms. Aquino stated that population control raises a serious philosophical, ethical and moral question. She expressed the view that the question of childbearing and child spacing is inextricably linked to religious and spiritual beliefs and it is also vitally linked to bodily integrity which is inherent in dignity and self-determination.

REMARKS OF MR. COLAYCO

Speaking in support of the proposed deletion of Section 13, Mr. Colayco stated that in the light of the Committee's admission that from 1983 to 1986, the government has spent P864 million, it would be safe to say that P1.5 billion has already been spent for family planning programs which started in 1973. He opined that this enormous amount of money could be better spent for education and the improvement of the conditions of poor people.

Commenting on Mr. de los Reyes' position that there is no harm in placing the provision in the Constitution, Mr. Colayco believed that the retention of the first sentence would remain as a continuing encouragement to the government which is bent on spending more funds for the purpose of controlling population. On Mr. Uka's claim that there is no relation between fast population growth and high economic growth, Mr. Colayco agreed as proven in countries like Thailand, Malaysia, Ecuador, Jordan, Brazil, Mexico, Syria, Panama, Taiwan, South Korea, Singapore and Hongkong.

Finally, Mr. Colayco believed that there is justification to delete the first sentence of Section 13 and that he would personally support Mr. Bacani's proposal to retain the second sentence with an amendment to delete the words "however" and "duty".

REMARKS OF MR. OPLE

Mr. Ople prefaced his remarks with a query on whether the Committee has decided to repudiate its own report with respect to Section 13, to which Mrs. Rosario Braid affirmed. Mr. Bacani added that he was proposing the retention of the second sentence and that he was amenable to the deletion of the first sentence.

Speaking in support of retaining the first sentence of Section 13, Mr. Ople warned that the deletion might be a reckless reversal of a long standing policy of the Philippine government in the sense that this could mean a constitutional signal to the State to abandon whatever it is doing in the field of population policy. He pointed out that there are thousands, from the barangay to the ministry level, who are actively engaged in the implementation of this policy aside from the fact that the five-year economic development program contains a very specific commitment to this kind of population policy. He stated that if a mandate is given to the State to regulate advertising for the general welfare, there is no reason why on this momentous issue of permitting the people to voluntarily control the size of their own families, the Body should begrudge the State of this kind of power and responsibility.

Finally, Mr. Ople opined that it might be reckless to support a proposal to delete the sentence and overturn the policy of long standing which, according to visible evidence, has succeeded in bringing down the population growth rate in twelve years, from a high of 3% to 2.4% at this time. He stated that the period was marked by rapid

economic decline and if the population had matched the declining economy, some credit must be given to the population policy of the government.

REMARKS OF MR. BACANI

Commenting on Mr. Ople's fear that the deletion of the first sentence would mean the abandonment of all population policies, Mr. Bacani stated that the government could still pursue its population policies if it is necessary for national interest and welfare.

REMARKS OF MRS. QUESADA

Mrs. Quesada maintained that the deletion of the first sentence would not prevent the State and its instrumentalities from including in its comprehensive health program a population policy. She pointed out that in the health sector, family planning is included as part of the comprehensive and effective maternal and child care programs.

REMARKS OF MS. AQUINO

Commenting on Mr. Ople's remarks, Ms. Aquino stated that this obsession with population control which points an accusing finger to the people as the cause of poverty is very diversionary. She pointed out that there are statistics to show that in highly urbanized cities, there is a progressive decline in population. She stressed that what matters is the consciousness and the understanding of responsible parenthood through educational approaches which could be addressed by an amendment of Mr. Romulo.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid stated that population policy as envisioned by the Committee means that there are other ways of addressing this problem of population such as urbanization and economic measures. She stated that "population policy" means that at some future time, the government or other entities would be better informed and qualified to understand the problems of urbanization and could come up with better economic measures, giving leeway to other alternative means.

REMARKS OF MR. COLAYCO

Reacting thereto, Mr. Colayco stated that there is no need for such statement in the Constitution because the government can continue with whatever program it believes to be the most conducive to the welfare of the country and that indirectly, it might encourage emphasis on the use of contraceptives, for which reason, he maintained that the first sentence should be deleted.

At this juncture, Mr. Rama manifested that the Body is ready to vote.

In reply to Mr. Bacani's query whether the deletion of Section 13 would be voted upon, the Chair confirmed the same.

Mr. Colayco then stated that if Mr. Uka would be agreeable, he would be willing to amend only the first sentence, in reply to which, Mr. Uka stated that he wanted the deletion of Section 13 to be submitted to a vote.

Mr. Bacani manifested that he would like to present an amendment to limit the deletion to the first sentence, to which Mr. Colayco agreed.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 6:13 p.m.

RESUMPTION OF SESSION

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

REMARKS OF MR. BACANI ON BEHALF OF MR. RIGOS

Mr. Bacani stated that Mr. Rigos requested him to convey the latter's message that he would be amenable to an amendment on the mandate to promote responsible parenthood through education.

Reacting thereto, Mrs. Rosario Braid replied that the present formulation is broader in scope.

POINT OF ORDER OF MR. BENGZON

Raising a point of order, Mr. Bengzon stated that the Body was ready to vote on Mr. Uka's proposal to delete the entire Section 13, in reply to which, the Chair stated that the interruption was allowed to accommodate Mr. Rigos' message due to his absence, which prompted a reply from Mrs. Rosario Braid.

REMARKS OF MRS. NIEVA

Mrs. Nieva stated that the second sentence would be unnecessary because it is already included in the Article on Family Rights.

The Chair stated that the Body should vote on Mr. Uka's proposal to delete the entire Section 13.

APPROVAL OF MR. UKA'S AMENDMENT

Thereupon, submitted to a vote, and with 27 Members voting in favor and 4 against, the Body approved the deletion of Section 13.

CONSIDERATION OF SECTION 14

On motion of Mrs. Rosario Braid and there being no objection, the Body approved the deletion of Section 14 on the ground that its intent is already embodied in the Article on National Economy and Patrimony.

MANIFESTATION OF MR. ROMULO

Mr. Romulo, on behalf of Mr. Rigos and other Members, manifested that he intended to propose a substitute amendment to Section 13 but in view of the manifestation of Mrs. Nieva, he would no longer do so.

PROPOSED AMENDMENT OF MR. MONSOD

On Mr. Monsod's query whether "malpractices" would mean that consumers would be protected from trade practices, Mrs. Rosario Braid replied in the affirmative.

Mr. Monsod proposed to transpose "trade" before "malpractices", to delete "of manufacturers and producers", and to put a period (.) after "products".

Mr. Azcuna objected thereto stating that the provision will prevent manufacturers and producers from dumping defective products into the market and by virtue of the doctrine of "strict product liability" manufacturers of said products will be held liable for the harm done to the consumers. He stressed that the provision would not be limited to traders only, but it would also include manufacturers and producers.

Mr. Monsod explained that placing a period (.) after "products" would give enough flexibility and leeway to the State to go after traders, retailers and manufacturers and to maintain "manufacturers and producers" would be exempting the retailers and traders, for which reason, Mr. Azcuna withdrew his objection.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed to insert Or HAZARDOUS between "substandard" and "products".

INQUIRY OF MR. MONSOD

In reply to Mr. Monsod's query whether every hazardous product would necessarily be substandard, Mr. Davide stated that it would not necessarily mean so because "substandard" may refer only to the quality.

Mr. Monsod stated, however, that there are certain products that are naturally hazardous and inquired whether the State should prohibit its sale to the consumers.

Responding thereto, Mr. Davide answered in the negative, stating that the State may regulate its sale, such as the prevention of the dumping of radioactive milk and the sale of certain drugs which are hazardous to health. He stressed that it would not be a total prohibition against certain kinds of hazardous products.

INQUIRY OF MS. AQUINO

In reply to Ms. Aquino's query whether the section guarantees certain rights to the consumer such as the right to safety, information, redress and consumer education, Mr. Bacani answered in the affirmative.

He also confirmed that said rights are enforceable.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query on the meaning of "substandard products", Mrs. Rosario Braid stated that it means "poor quality".

Mr. Ople stated that it is the sovereign right of consumers to accept or reject a product.

On whether "substandard products" would mean that they fall short of the specifications of the Bureau of Standards of the Ministry of Trade and Industry, Mrs. Rosario Braid answered in the affirmative.

On whether it could be presumed that fraud was intended by the manufacturer to deceive the consumers, Mrs. Rosario Braid answered in the affirmative, stating that with or without fraudulent intent, the consumers have the right to seek redress.

She also affirmed that the State may require the manufacturer to recall and withdraw all its products should it be discovered that they are sub-standard.

On whether it could be used as a potential cause for harassment by competitors to ruin the business of a manufacturer, Mr. Bengzon stated that there are already rules and regulations promulgated by the Bureau of Standards and the Food and Drug Administration of the Ministry of Health to check and clear imported as well as locally produced goods.

Mr. Ople commented, however, that food and drugs are subject to rigorous state control and supervision. Adverting to the car industry, he stated that it is the customary practice of car manufacturers to recall certain issues of cars covered by serial numbers for certain defects, leaving them no choice, except to do what is right for their customers. He stated that there is no law that compels these manufacturers to do so.

In reply to his query whether no margin of initiative and discretion would be left to the manufacturers, Mr. Bengzon stated that Section 16 embraces such concerns and that the government has the right to issue rules and regulations on a case-to-case basis depending on the evidence.

Mr. Ople then moved that the paragraph be deleted, which the Committee did not accept.

Mr. Bacani stated that the fact that a provision could be abused is not a reason for its deletion from the Constitution.

REMARKS OF MR. GUINGONA

Reacting to Mr. Bengzon's remark that in effect the Body would be legislating, Mr. Guingona stated that even in the absence of legislation, malpractices could be regulated through the exercise of police power.

INQUIRY OF THE CHAIR

In reply to the Chair's query whether the motion to delete still stands, Mr. Ople manifested that he is withdrawing his motion.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query whether Section 6 also protects the consumers from malpractices of distributors, wholesales, retailers and middlemen, Mr. Bengzon stated that Mr. Monsod's amendment has made the provision all encompassing.

At this juncture, Mr. Monsod restated his proposed amendment to wit: THE STATE SHALL PROTECT CONSUMERS FROM TRADE MALPRACTICES AND SUBSTANDARD OR HAZARDOUS PRODUCTS.

Mrs. Rosario Braid proposed to add AND SERVICES after "products", in reply to which, Mr. Monsod stated that "malpractices and products" already embrace "services".

In reply to Mr. Ople's query whether the provision would not repeal the general law on caveat emptor or "buyer beware", Mr. Monsod answered in the negative.

Mr. Rama manifested that the Body is ready to vote on Mr. Monsod's proposed amendment.

APPROVAL OF SECTION 15

On motion of Mr. Rama, there being no objection, the Body approved Section 15.

APPROVAL OF SECTION 16, AS AMENDED

Thereupon, submitted to a vote, and with 29 Members voting in favor and none against, the Body approved Section 16, as amended.

CONSIDERATION OF SECTIONS 17 to 21

Mr. Monsod moved that the Body consider Sections 17 to 21 and referred the matter to Mr. de Castro.

Thereupon, Mr. de Castro stated that many Members recommended that the Sections on the Armed Forces be consolidated into 2 sections, to be denominated as Sections 17 and 18 without convening his Committee for the Members to effect some amendments thereto.

INQUIRY OF THE CHAIR

In reply to the Chair's query whether Sections 19, 20 and 21 are to be deleted, Mr. de Castro stated that he consolidated the sections into two sections to be denominated as Sections 17 and 18.

Mrs. Rosario Braid, however, requested for adjournment of the session to give ample time to the Committee to study the proposals.

MANIFESTATION OF MR. ROMULO

At this juncture, Mr. Romulo manifested that he misunderstood Mrs. Nieva to have included "education" in her explanation on the Article on Family Rights.

He registered his reservation to amend Section 13 after conferring with Mr. Rigos.

ADJOURNMENT OF SESSION

On motion of Mr. Rama, there being no objection, the Chair declared the session adjourned until nine-thirty in the morning of the following day.

It was 6:42 p.m.

I hereby certify to the correctness of the fore going.

(SGD.) FLERIDA RUTH P. ROMERO
Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA
President

Approved on September 30, 1986

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