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Thursday, July 31, 1986

OPENING OF SESSION

At 9:47 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

THE PRESIDENT: Everybody will please rise to sing the National Anthem.

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Lugum L. Uka.

Everybody remained standing for the Prayer.

PRAYER

MR. UKA: My friends, let us bow our heads and pray:

Bismillah Ir Rahman Ir Rahim

Most merciful and compassionate Almighty God, Who guides the destinies of men and nations, we, the forty-eight (48) Members of this Constitutional Commission of 1986, humbly ask You to guide us on the right path. Grant us the wisdom to enable us to draft a Constitution that will bring about real democracy, unity, love, brotherhood, peace and prosperity among our people, Christians, Muslims and tribal communities alike.

Instill in us the noble belief expressed in all Your Holy Books that all mankind, regardless of race, color or creed, are but one single nation, one-big family, founded by Adam and Eve whom You have created as mankind's common ancestors.

Fill our hearts, Almighty God, with the message of brotherhood, love and unity which You commanded Your holy messengers or prophets to preach unto every creature and which Moses, Jesus and Mohammad did.

Make us more tolerant, kind, forgiving and peaceful so that peace, love and prosperity for all mankind shall prevail throughout the world.

Hasten, O Lord, the dawn of that new day when all nations will sing together in perfect unison, "Peace on earth, goodwill to all men." Amen.

THE PRESIDENT: The Secretary-General will please call the roll.

ROLL CALL

THE SECRETARY-GENERAL: reading:

Abubakar Present [*] Natividad Present [*]

Alonto Present [*] Nieva Present [*]

Aquino Present Nollado Present

Azcuna Present Ople Present [*]

Bacani Present Padilla Present

Bengzon Present [*] Quesada Present

Bennagen Present Rama Present

Bernas Present Regalado Present

Rosario Braid Present Reyes de los Present [*]

Brocka Present [*] Rigos Present

Calderon Present Rodrigo Present

Castro de Present Romulo Present

Colayco Present Rosales Absent

Concepcion Present Sarmiento Present

Davide Present Suarez Present [*]

Foz Present [*] Sumulong Present

Garcia Present [*] Tadeo Present

Gascon Present [*] Tan Present

Guingona Present Tingson Present

Jamir Present Treñas Present

Laurel Present [*] Uka Present

Lerum Present Villacorta Present

Maambong Present [*] Villegas Present

Monsod Present

The President is present.

The roll call shows 35 Members responded to the call.

THE PRESIDENT: The Chair declares the presence of a quorum.

The Assistant Floor Leader is recognized.

MR. CALDERON: Madam President, I move that we dispense with the reading of the Journal of the previous session.

THE PRESIDENT: Is there any objection that we dispense with the reading of the Journal of the previous session? (Silence) The Chair hears none; the motion is approved.

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I move that we approve the Journal of yesterday's session.

THE PRESIDENT: Is there any objection that we approve the Journal of yesterday's session? (Silence) The Chair hears none; the motion is approved.

MR. CALDERON: Madam President, I move that we proceed to the Reference of Business.

THE PRESIDENT: Is there any objection that we proceed to the Reference of Business? (Silence) The Chair hears none; the motion is approved.

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

The Secretary-General read the following Communications, the President making the corresponding references:

COMMUNICATIONS

Letter from Mr. Q. Rebuena Hodreal for the Kapisanan ng mga Brodkaster sa Pilipinas, submitting its position favoring the Filipinization and structuring of broadcast media to discourage monopolies, and crossmedia owner-ship provided that radio and television be treated as one single medium separate from either print or cinema.

(Communication No. 385 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Communication from Mr. Sergio Z. Esmilla, Jr. of the University of the Philippines College of Music and one thousand seven hundred fifty others, seeking the inclusion of a provision obliging the State to protect the life of the unborn from the moment of conception.

(Communication No. 386 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory and Declaration of Principles.

Letter signed by Dr. Miraflor G. Parpan and six others from the Kalinga-Isneg Self-Rule and Self-Determination Movement (KISSM), Province of Kalinga-Apayao, opposing the creation of an Autonomous Cordillera as proposed by the Cordillera Peoples Alliance (CPA)/Cordillera Bodong Association (CBA) because both spring from the CPP/NPA which seek to control the Cordillera Region into a consolidated secured base of the NPA communist ideology operation in the Luzon area.

(Communication No. 387 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from Mr. Lorenzo M. Tañada, former Senator of the Philippines, saying that the foreign bases in our country must go and our foreign policy makers must be so mandated by the Constitution.

(Communication No. 388 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Mr. Alexis V. Pardo for the GSIS Lawyers' Guild, proposing the transfer of the compensation

planning function of the Ministry of the Budget to the Civil Service Commission, representation of government employees in the CSC, strengthening of the security of tenure clause, and the government employees' right to self-organization for the purpose of collective bargaining

(Communication No. 389 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Letter from Mr. Clem Manalo Leano of the GSIS, requesting the inclusion of a provision that government properties classified as immovable and real estate properties sold and conveyed to private and juridical entities shall be subject to escheat proceedings.

(Communication No. 390 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Mr. Ramon A. Tagle, Jr. of the Family Planning Organization of the Philippines, submitting a resolution passed by its National Office, proposing the inclusion of provisions providing for the strengthening of the family as a basic social institution, recognizing the sacredness and inviolability of human life, and condemning abortion in all forms.

(Communication No. 391 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory and Declaration of Principles.

Letter from Mr. Manuel A. Sanico of 4107 Corregidor-Pitogo, Makati, Metro Manila, proposing a provision for the award of home lots to the poor.

(Communication No. 392 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from Mr. Teofilo C. Ramos, Sr. of the Iglesia ni Kristo, stating that the Iglesia ni Kristo is unequivocally for the retention of the phrase "the separation of church and state" in Section 15. Article XV of the 1973 Constitution and attaching a copy of the editorial of July-August 1986 issue of the PASUGO.

(Communication No. 393 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Mr. Ben Rafols and one hundred seventy-four others of United Students for a Better Central, Central Philippine University, Iloilo City, proposing that the State should not only recognize but affirm the vital role of the youth in nation building and that the State should also promote respect for human rights.

(Communication No. 394 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory and Declaration of Principles.

Communication from Mr. Herman R. Juatas for Philippine Unemployed Labor Association, proposing a transitory provision constituting the Constitutional Commission of 1986 as an interim legislature for the purpose of enacting measures designed to counter problems of unemployment and poverty.

(Communication No. 395 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Resolution No. 44, series of 1986, of the Sangguniang Bayan of Biliran, Subprovince of Biliran, Leyte, suggesting a provision making the Subprovince of Biliran a regular province.

(Communication No. 396 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from the Honorable Commissioner Ambrosio B. Padilla, transmitting a letter of Mr. Bienvenido A. Castillo of 50 McKinley, Pulilan, Bulacan, opposing the creation of autonomous governments for Cordillera and Mindanao.

(Communication No. 397 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from Sr. Mary Clemencia Flora, RGS, for the Rural Missionaries of the Philippines, supporting the Program for Genuine Land Reform proposed by the Kilusang Magbubukid sa Pilipinas (KMP).

(Communication No. 398 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from Lunaz El Mismo, 264 N. Burlington Avenue, Los Angeles, California, proposing a six-year term for the President and Vice-President, English as a national language, dual citizenship for Filipino Americans, and the retention of U.S. military bases, among others.

(Communication No. 399 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Rene S. Santiago, proposing a provision that would set a time limit on the life of government agencies and corporations.

(Communication No. 400 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Mr. Pablo U. Ibe of Philippine National Bank, Macabebe Branch, Pampanga, proposing a six-year term for the President and Vice-President with one reelection but with a total tenure of 10 years.

(Communication No. 401 — Constitutional Commission of 1986)

To the Committee on the Executive.

Letter from Mr. Ed Samson and eleven others of the Christian Education Committee, Negros District Conference of the United Church of Christ in the Philippines, opposing the move to make religious instruction in public schools compulsory.

(Communication No. 402 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication from Ms. Laureana Guanzon, Tinio Alindada of Pamanang Salinlahi Foundation, Inc., 59 Connecticut St., Northeast Greenhills, San Juan, Metro Manila, submitting proposed inclusions and exclusions in the new Constitution, mainly on education.

(Communication No. 403 — Constitutional Commission of 1986)

To the Committee on Human Resources.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF
PROPOSED RESOLUTION NO. 517
(Article on the Executive) [*]
Continuation

PERIOD OF AMENDMENTS

MR. RAMA: I move that we continue the consideration of Resolution No. 517, the Article on the Executive.

We are now in the period of amendments and the subject for amendment is Article 15. Commissioner Rigos had an anterior amendment which was forgotten or bypassed yesterday So, I ask that Commissioner Rigos be recognized to present his anterior amendment.

THE PRESIDENT: Is there any objection that we continue the consideration of Proposed Resolution No. 517 on the Article on the Executive? (Silence) The Chair hears none; the motion is approved.

The honorable Chairman of the Committee on the Executive and the members of said committee will please occupy the front table so as to receive the proposed amendments.

MR. SUMULONG: The members of the Committee are requested to come forward.

THE PRESIDENT: The Committee Chairman, Commissioner Sumulong, Vice-Chairman Regalado, and Committee members: Commissioner Rama, Calderon, Alonto, Concepcion, Foz, Maambong, Jamir, Davide, Natividad, Sarmiento, Aquino, Bernas and Lerum will please come forward.

REV. RIGOS: Madam President.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: Madam President, a number of Commissioners, particularly this Member and Commissioners Nollado, de los Reyes and Maambong believe that Section 9 should be harmonized with Section 5 which we approved yesterday. Section 9, page 4, reads:

In case of permanent disability, death, removal from office or resignation of the President, the Vice-President shall become the President to serve the unexpired term.

We believe this sentence should be retained, and the rest of the sentences up to line 18 should be deleted and in their place, we propose that the following be inserted: IN CASE OF PERMANENT DISABILITY, DEATH, REMOVAL FROM OFFICE OR RESIGNATION OF BOTH THE PRESIDENT AND VICE-PRESIDENT, THE SENATE PRESIDENT OR, IN CASE OF HIS INABILITY, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, SHALL THEN ACT AS PRESIDENT UNTIL THE PRESIDENT AND VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED. Madam President, the members of the Committee have copies of this proposal.

MR. AZCUNA: Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: Will the honorable proponent allow an amendment to his amendment?

REV. RIGOS: Yes, may we hear that proposal?

MR. AZCUNA: The last portion of the amendment reads: "UNTIL THE PRESIDENT AND VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED." Would the Commissioner allow it to be amended to read: "UNTIL THE PRESIDENT OR VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED"? Instead of "AND," we use OR because either the President or the Vice-President would fill the gap.

REV. RIGOS: I think we can accept that but we will see how the Committee reacts to the proposed amendment to the amendment.

MR. AZCUNA: Yes, Madam President.

Thank you.

THE PRESIDENT: Is the Committee ready to react to this proposed amendment of Commissioner Rigos?

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Our copies here speak of "in the absence of the Senate President." Did the Gentleman in his amendment, make a change in the phraseology?

REV. RIGOS: That is the same wording in Section 5.

MR. REGALADO: So, it will read: "IN CASE OF PERMANENT DISABILITY, DEATH, REMOVAL FROM OFFICE OR RESIGNATION OF BOTH THE PRESIDENT AND VICE-PRESIDENT, THE SENATE PRESIDENT OR, IN CASE OF HIS INABILITY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL THEN ACT AS PRESIDENT UNTIL THE PRESIDENT OR VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED."

The Chairman told me to announce that the Committee accepts the amendment.

REV. RIGOS: Thank you, Madam President.

THE PRESIDENT: Are there any comments on this? Is the proposed amendment clear to the Commissioners?

Commissioner Bacani is recognized.

BISHOP BACANI: I would like to ask Commissioner Azcuna what the point of his amendment is. If both are not able to continue the discharge of their duties, will a Vice-President alone be elected or be chosen by the people without any reference to the election of a President?

THE PRESIDENT: The Chair believes the Committee can answer the question.

FR. BERNAS: The explanation is that there may be obstacles to the election or qualification of the President. So, while waiting for the President to be elected or for the President to qualify, if the Vice-President has already qualified, then he acts as President until the President qualifies. The amendment, I understand, is only up to line 10. Is that correct?

REV. RIGOS: It seems that lines 11 to 18 will become unnecessary already.

BISHOP BACANI: May I address the members of the Committee again, Madam President. I think the eventuality referred to is permanent disability of both the President and the Vice-President.

FR. BERNAS: Yes, so that even if elections for the President and Vice-President are held, there is a possibility

that there may be a delay in the announcement of the results of the election of the President. But if in the meantime the Vice-President has been announced, has been proclaimed and qualified, then he takes over.

BISHOP BACANI: Thank you.

MR. REGALADO: I would like to seek a further clarification from Commissioner Rigos because the amendment intends to delete also lines 11 to 18. As formulated, this is the order of succession: either the Senate President will be Acting President or in case of his inability, the Speaker of the House of Representatives shall then act as President. My question is: What happens when that Acting President, either the President of the Senate or the Speaker of the House of Representatives, becomes incapacitated, or dies or becomes permanently disabled or resigns from office as contemplated on lines 11 to 18?

REV. RIGOS: Then I will limit my proposed amendment up to line 10.

MR. REGALADO: And lines 11 to 18 which refer to the Acting President under circumstances therein stated will remain.

REV. RIGOS: Yes.

Thank you, Madam President.

THE PRESIDENT: Is there any other clarification?

Are we ready to vote on this proposed amendment of Commissioner Rigos on Section 9, which has been accepted by the Committee?

MR. RODRIGO: Madam President, because of the amendment of the sentence in the first paragraph of Section 9, the second paragraph should also be amended accordingly.

THE PRESIDENT: Is Commissioner Rodrigo seeking some clarification?

MR. RODRIGO: I am not ready to propose amendments. I just want to reserve my right to make the corresponding corrections or amendments on the second paragraph of Section 9, lines 11 to 18, which I will submit later on, so that it will conform to the first paragraph of Section 9, as amended.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: This is only for clarification. The section sought to be amended would refer to a vacancy occurring during the term.

Yesterday, we discussed a situation where the vacancy occurred at the commencement of the term and we provided for the Senate President and the Speaker to assume. It may happen that at the commencement of the term, it would be the Speaker or the Senate President who will be the Acting President, but that occupancy of the position as Acting President may go within the term of the President.

If we still insist on the Senate President or the Speaker, precisely, the Acting President at the time may himself be the Speaker or the Senate President. So, the proposal would become meaningless if that particular eventuality occurs. Remember that this is a succession to the Acting President who himself may be the Senate President or the Speaker of the House. So, what would be the effect of the proposal? We will be providing a succession by somebody who is himself to be replaced because of his death, removal or incapacity.

So I believe the present wording is adequate because it would now refer to other persons than those who may be

acting because of the vacancy in the offices of the President and the Vice-President at the inception of the term. I wonder if the Committee will have to reassess the acceptance of the proposed amendment.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for a few minutes to allow the Committee to confer with Commissioners Davide and Rigos.

It was 10:14 a.m.

RESUMPTION OF SESSION

At 10:16 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: The observations made by Commissioner Davide were based on the assumption that lines 11 to 18 were also deleted. But they have not been deleted, so I think Commissioner Davide is withdrawing his observations.

MR. DAVIDE: I withdraw my observations if the last paragraph has really been retained.

MR. SUAREZ: Madam President, may we be recognized for a few questions?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: There is mention about the Acting President occupying the position without a specific duration or limitation of period. I assume that since both the President and the Vice-President would have been removed from office or would have died or would have been permanently disabled, a new election would be called. Does the Committee have any provision regarding the period within which that presidential or vice-presidential election would be called?

MR. REGALADO: Commissioner Suarez may refer to Section 10 for that contingency. However, with the amendment yesterday on page 5, line 4, which is the continuation of Section 10, the first word "seventy" was amended to read "180 days" as proposed by Commissioner Guingona, and which the Committee accepted.

MR. SUAREZ: In other words? the presidential election or vice-presidential election, as the case may be, interpreted in the light of the provisions of Section 10, would be held as provided therein, except subject to that other amendment that it should not be called within the period of 18 months before the expiration of the term of the President or the Vice-President, as the case may be. Is my understanding correct, Madam President?

MR. REGALADO: Within the period of six months; we stated 180 days.

MR. SUAREZ: Meaning within that period, the election should be called?

MR. REGALADO: No, Madam President, it should not be called because it is too close anyway to the next presidential election.

MR. SUAREZ: So, during that period of six months, the Acting President shall continue in office?

MR. REGALADO: Yes, Madam President.

MR. SUAREZ: Will that possibility preclude an Acting President from running for the position of either President

or Vice-President in the scheduled elections?

MR. REGALADO: It will not. The Committee believes it will not preclude the possibility because he is only an Acting President. He may actually be the Speaker or he may be the Senate President.

MR. SUAREZ: In other words, he would be qualified to run for the position of either President or Vice-President?

MR. REGALADO: There being no disqualifications; there is an election . . .

MR. SUAREZ: That is understood, of course.

Thank you for the clarification.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I ask some questions for clarification. In the case of the temporary disability of the President and Vice-President, I asked yesterday whether or not the Senate President, who acts as President, would lose his position as Senate President and also as Senator, and the answer was "No, he does not lose it." So, after he is through as Acting President, he goes back as Senate President and as Senator. And the same is true of the Speaker.

Section 9 deals with permanent disability. So, if both the President and Vice-President die, become permanently disabled or are removed from office, the Senate President becomes permanent President.

MR. REGALADO: No, he is only in an acting capacity.

MR. RODRIGO: He is only Acting President until the end of the term or until a President is elected?

MR. REGALADO: Until a President shall have been elected under the circumstances envisioned in Section 10.

MR. RODRIGO: So, the Senate President and the Speaker, in the same way, do not lose their positions as Senate President and Speaker and as Member of the Senate and of the House, respectively?

MR. REGALADO: Yes, Madam President, that is correct.

MR. RODRIGO: Thank you.

VOTING

THE PRESIDENT: We are ready to vote now.

As many as are in favor of the proposed amendment of Commissioner Rigos on Section 9, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 32 votes in favor and none against; the proposed amendment is approved.

MR. ROMULO: Madam President, I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I want to ask the Committee a clarifying question on line 4 of page 7 as to whether the meaning here is that the majority of all the Members of each House vote separately. Is that the intent of this phrase?

MR. REGALADO: That was intended to be proposed today as a committee amendment, but since the Gentleman has taken up the matter, the Committee would accept the insertion on line 6, after the word "session" of the words VOTING SEPARATELY and a comma (,)

MR. MONSOD: May I also suggest to the Committee that perhaps the same clarification be made on page 2, lines 21 and 22.

FR. BERNAS: Madam President, I quite realize that perhaps the Committee has accepted that phrase.

MR. REGALADO: Not yet.

FR. BERNAS: We would like a little discussion on that because yesterday we already removed the necessity for concurrence of Congress for the initial imposition of martial law. If we require the Senate and the House of Representatives to vote separately for purposes of revoking the imposition of martial law, that will make it very difficult for Congress to revoke the imposition of martial law and the suspension of the privilege of the writ of habeas corpus. That is just thinking aloud. To balance the fact that the President acts unilaterally, then the Congress voting as one body and not separately can revoke the declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

MR. MONSOD: In other words, voting jointly.

FR. BERNAS: Jointly, yes.

MR. MONSOD: May we be advised by the Committee of this, perhaps after we have discussed it thoroughly because we do need a clarification of this sentence.

FR. BERNAS: No, it is not just a question of the Committee discussing it but perhaps the whole body should discuss this. I personally would favor their voting jointly, not separately.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I comment on the statement made by Commissioner Bernas? I was a Member of the Senate for 12 years. Whenever a bicameral Congress votes, it is always separately.

For example, bills coming from the Lower House are voted upon by the Members of the House. Then they go up to the Senate and voted upon separately. Even on constitutional amendments, where Congress meets in joint session, the two Houses vote separately.

Otherwise, the Senate will be useless; it will be sort of absorbed by the House considering that the Members of the Senate are completely outnumbered by the Members of the House. So, I believe that whenever Congress acts, it must be the two Houses voting separately.

If the two Houses vote "jointly," it would mean mixing the 24 Senators with 250 Congressmen. This would result in the Senate being absorbed and controlled by the House. This violates the purpose of having a Senate.

FR. BERNAS: I quite realize that that is the practice and, precisely, in proposing this, I am consciously proposing this as an exception to this practice because of the tremendous effect on the nation when the privilege of the writ of habeas corpus is suspended and then martial law is imposed. Since we have allowed the President to impose martial law and suspend the privilege of the writ of habeas corpus unilaterally, we should make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people.

MR. RODRIGO: Maybe the way it can be done is to vest this function in just one of the Chambers — to the House

alone or to the Senate alone. But to say, "by Congress," both House and Senate "voting" jointly is practically a vote by the House.

FR. BERNAS: I would be willing to say just the vote of the House.

MR. RODRIGO: That is less insulting to the Senate. However, there are other safeguards. For example, if, after 60 days the Congress does not act, the effectiveness of the declaration of martial law or the suspension of the privilege of the writ ceases. Furthermore, there is recourse to the Supreme Court.

FR. BERNAS: I quite realize that there is this recourse to the Supreme Court and there is a time limit, but at the same time because of the extraordinary character of this event when martial law is imposed, I would like to make it easier for the representatives of the people to review this very significant action taken by the President.

MR. RODRIGO: Between the Senate being absorbed and controlled by the House numerically and the House voting alone, the lesser of two evils is the latter.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: I would like to ask for clarification from the Committee, and I would like to address this to Commissioner Bernas.

Suppose there is a variance of decision between the Supreme Court and Congress, whose decision will prevail?

FR. BERNAS: The Supreme Court's decision prevails.

MR. BENGZON: If Congress decides to recall before the Supreme Court issues its decision, does the case become moot?

FR. BERNAS: Yes, Madam President.

MR. BENGZON: And if the Supreme Court promulgates its decision ahead of Congress, Congress is foreclosed because the Supreme Court has 30 days within which to look into the factual basis. If the Supreme Court comes out with the decision one way or the other without Congress having acted on the matter, is Congress foreclosed?

FR. BERNAS: The decision of the Supreme Court will be based on its assessment of the factual situation. Necessarily, therefore, the judgment of the Supreme Court on that is a transitory judgment because the factual situation can change. So, while the decision of the Supreme Court may be valid at that certain point of time, the situation may change so that Congress should be authorized to do something about it.

MR. BENGZON: Does the Gentleman mean the decision of the Supreme Court then would just be something transitory?

FR. BERNAS: Precisely.

MR. BENGZON: It does not mean that if the Supreme Court revokes or decides against the declaration of martial law, the Congress can no longer say, "no, we want martial law to continue" because the circumstances can change.

FR. BERNAS: The Congress can still come in because the factual situation can change.

MR. BENGZON: Thank you, Madam President.

MR. ROMULO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. ROMULO: Commissioners Aquino and Bennagen would like to comment on this section as requested by the Committee.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Madam President, I would like to introduce an amendment pertaining to Section 15, page 7, line 7. Between the words "suspension" and "or," insert the phrase WHICH REVOCATION SHALL NOT BE SET ASIDE BY THE PRESIDENT. After we have deleted the requirement of previous concurrence by the Congress, the recent imperative for us is to put a cap on the presidential prerogatives in the exercise of martial law powers.

FR. BERNAS: Madam President, I would be in favor of that, but I wonder if we could settle the matter we were discussing earlier.

MS. AQUINO: I was called upon so I thought I was in order already.

FR. BERNAS: May I request the Floor Leader; whether he could settle the matter of voting separately first before we go to the amendment of Commissioner Aquino. I would also like to comment on that.

MR. ROMULO: In that case, Commissioner Bennagen, who has general remarks, would like to be recognized.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: Thank you, Madam President.

Last night, after we voted on the provision to remove the concurrence of Congress with the power of the President to declare martial law, I had a nightmare and I could not sleep. So this morning, I got here very early and wrote down some random thoughts. Let me read from what I wrote:

Random Thoughts of a Dreamy-eyed Commissioner

I got into the Con-Com with a great deal of cynicism. It is a cynicism borne out of my social science training which tells me that a Constitution is just a piece of paper and in spite of its lofty objectives, it cannot remake the society out of which it emerged. It can only maintain that society.

As early as June 3, I wrote in my own journal:

A constitution can be any of two possibilities:

- A pro-people document suggestive of executive, legislative and judicial structures and processes that truly respond to the needs and aspirations of our people; namely, the peasants, workers, urban poor, national minorities and other oppressed sectors;
- An ideological document that promises a lot to the poor but which in reality only strengthens the structures of domination.

But as I talked with many of the Commissioners and as I listened and observed — research techniques I learned as a social scientist — I began to entertain the possibility of a constitution worthy of our people. Such a change of attitude was reinforced when I listened to the daily prayers — so full of hope, so full of compassion, so full of courage, and more so when the preamble was approved. I voted against it on procedural grounds but nonetheless accepted the decision of the majority since it, too, was full of hope, of compassion and of love.

Even so, I maintained a healthy skepticism. Could we, as the cliché now goes, all be born-again democrats? Could we change our habits that easily? Have we learned enough from the trauma of martial rule? Or shall we soon forget the very context of the need for a new Constitution: the tyrannical past, the euphoric present and the

optimistic future?

There are no easy answers. But in a talk I gave at the UP last week, I gave the observation that at the very least, we will have an anti-dictatorship constitution. I said that we were so revulsed by the Marcos dictatorship that provisions will be made to obviate its repetition.

After yesterday, after the Commissioners voted to grant the President the power to declare martial law without the concurrence of the Congress, it appears that I spoke too soon.

I voted against the amendment because I thought that no one, all by himself, should be able to declare martial law. It should have at least the concurrence of the people's representatives to serve as a check against the machinations of a potential dictator.

For strange are the ways of power, and it does not lend itself readily to prediction. It is addictive. Who can forget that adage: power corrupts and absolute power corrupts absolutely? In my view, once martial law is declared, it would generate its own dynamics, create its own rules until it runs its own course, a democratic constitution, notwithstanding.

The provision could suggest to any power-hungry ruler or clique tremendous possibilities for a power grab. That possibility can be prepared for as indeed it happened in the case of Marcos. "Invasion" and "rebellion" can be invented and set up to justify imposition of martial law and once martial law is declared and the apparatus of terror is set up, what is a Constitution for?

It can be mutilated, it can be reworded, it can take on various forms to legitimize martial rule.

In a study of tyranny, we are told: The longer and tougher the struggle for power, the greater the prospect of stability and durability of the resulting dictatorship. The Marcos dictatorship is proof to this.

Perhaps I am overreacting. But I cannot understand why a constitution coming in the wake of a dictatorship should include a provision that could pave the way for its resurgence. I find the idea incomprehensible. And as I ransacked my mental cabinet for explanation, I can only think of one thing. It appears that our consciousness has been so subjugated that we can no longer understand what it means to be free. We have turned against ourselves, forging our own chains, constructing our own cage. We have mistaken captivity for freedom.

But perhaps it is not too late. Let us break free from that subjugated consciousness and try to know ourselves better by examining the structures and processes that have prevented us from making this dash to freedom. This is an act of courage which we all must do, if not for ourselves, then for the future generations.

Thank you, Madam President.

MR. ROMULO: I ask that Commissioner Guingona be recognized.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Madam President.

In connection with the inquiry of Commissioner Monsod, and considering the statements made by Commissioner Rodrigo, I would like to say, in reply to Commissioner Bernas, that perhaps because of necessity, we might really have to break tradition. Perhaps it would be better to give this function of revoking the proclamation of martial law or the suspension of the writ or extending the same to the House of Representatives, instead of to the Congress. I feel that even the Senators would welcome this because they would feel frustrated by the imbalance in the number between the Senators and the Members of the House of Representatives.

Anyway, Madam President, we have precedents or similar cases. For example, under Section 24 of the committee report on the Legislative, appropriation, revenue or tariff bills, and bills authorizing increase of public debt are supposed to originate exclusively in the House of Representatives. Besides, we have always been saying that it is the Members of the House of Representatives who are mostly in touch with the people since they represent the various districts of our country.

THE PRESIDENT: Is Commissioner Guingona proposing an amendment or just commenting?

MR. GUINGONA: I will propose an amendment. I would like to get the reaction of the Committee first, Madam President.

FR. BERNAS: The Committee has not had the opportunity to discuss this, and we would like the body to discuss this. My own personal reaction is against the Senate and the House voting separately. I would tend to accept the amendment the Gentleman is proposing and the reasons he has brought up.

MR. GUINGONA: Was Commissioner Monsod making an amendment?

THE PRESIDENT: May the Chair first clarify this from Commissioner Monsod? Is Commissioner Monsod proposing any amendment to this particular sentence, lines 4 to 6, about the voting?

MR. MONSOD: I would prefer to have the vote of both Houses because this is a very serious question that must be fully discussed. By limiting it alone to the House of Representatives, then we lose the benefit of the advice and opinion of the Members of the Senate. I would prefer that they would be in joint session, but I would agree with Father Bernas that they should not be voting separately as part of the option. I think they should be voting jointly, so that, in effect, the Senators will have only one vote. But at least we have the benefit of their advice.

THE PRESIDENT: In other words, as reported in the committee report, the Congress would by a vote of at least a majority of all its Members . . .

MR. MONSOD: That is right, but maybe we need a clarificatory phrase like "voting jointly."

THE PRESIDENT: Are there any other comments on this?

MR. ROMULO: Madam President, Commissioner Sarmiento would like to comment on this subject.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Just briefly. This Commission is known for breaking traditions; we have adopted new systems like the system of recall in the local governments. referendum and initiative. May I suggest that the Committee reexamine its position on the matter of voting separately? Let us break traditions, as Father Bernas said, to safeguard our peoples rights and protect their liberties. Since we have deleted a very important provision, "the concurrence of at least the majority of all the Members of the Congress," may we plead to all the Members that instead of adopting the proposal of voting separately, we adopt the proposal of the honorable Commissioner Monsod?

MR. MONSOD: My proposal is VOTING JOINTLY.

MR. SARMIENTO: I thank Commissioner Monsod. May I join Commissioner Monsod and Commissioner Guingona that the Congress, voting jointly, should have the power to revoke the proclamation of martial law or suspension of the writ of habeas corpus. In this way, we make it easy for the people's representatives to cut short a power which is very potent that could be the subject of abuse, and in the words of Commissioner Bennagen, could open the way for the resurgence of tyranny and dictatorship. I support then the proposal of Commissioners Bernas, Monsod and Guingona.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: I was the one who proposed that the two Houses vote separately because if they vote jointly, the Senators are absolutely outnumbered. It is insulting to the intelligence of the Senators to join a session where they know they are absolutely out-numbered. Remember that the Senators are elected at large by the whole country. The Senate is a separate Chamber. The Senators have a longer term than the Members of the House; they have a six-year term. They are a continuing Senate. Out of 24, twelve are elected every year. So, if they will participate at all, the Senate must vote separately. That is the practice everywhere where there are two chambers. But as I said, between having a joint session of the Senate and the House voting jointly where it is practically the House that will decide alone, the lesser of two evils is just to let the House decide alone instead of insulting the Senators by making them participate in a charade.

MR. REGALADO: May the Committee seek this clarification from Commissioner Rodrigo? This voting is supposed to revoke the proclamation of martial law. If the two Houses vote separately and a majority is obtained in the House of Representatives for the revocation of the proclamation of martial law but that same majority cannot be obtained in the Senate voting separately, what would be the situation?

MR. RODRIGO: Then the proclamation of martial law or the suspension continues for almost two months. After two months, it stops. Besides, there is recourse to the Supreme Court.

MR. REGALADO: Therefore, that arrangement would be very difficult for the legislative since they are voting separately and, for lack of majority in one of the Houses they are precluded from revoking that proclamation. They will just, therefore, have to wait until the lapse of 60 days.

MR. RODRIGO: It might be difficult, yes. But remember, we speak of the Members of Congress who are elected by the people. Let us not forget that the President is also elected by the people. Are we forgetting that the President is elected by the people? We seem to distrust all future Presidents just because one President destroyed our faith by his declaration of martial law. I think we are overreacting. Let us not judge all Presidents who would henceforth be elected by the Filipino people on the basis of the abuses made by that one President. Of course, we must be on guard; but let us not overreact.

Let me make my position clear. I am against the proposal to make the House and the Senate vote jointly. That is an insult to the Senate.

THE PRESIDENT: So, will Commissioner Rodrigo please formalize an amendment to this particular section so that we will know what we are discussing?

MR. RODRIGO: The sentence will then read: "The Congress, by a vote of at least the majority of all its members VOTING SEPARATELY in a regular or special session. . ."

THE PRESIDENT: So, that is what we are now discussing.

MR. RODRIGO: I thought somebody already made that amendment.

FR. BERNAS: Madam President, I think there is a prior motion, the motion of Commissioner Monsod.

MR. ROMULO: That is correct, Madam President.

THE PRESIDENT: That is not a motion; he was only seeking clarification.

MR. GUINGONA: Madam President, I am not insisting on my proposal.

THE PRESIDENT: Thank you.

MR. GUINGONA: As a matter of fact, I am willing to join Commissioner Monsod and Commissioner Sarmiento. I want to further add that the reason why I had thought of the House of Representatives is that it is in the House that we have sectoral representation.

Thank you.

MR. ROMULO: Madam President, if the Committee is ready, I suggest that Commissioner Monsod be allowed to present his amendment now.

THE PRESIDENT: That is why we are trying to clarify from Commissioner Monsod whether he was seeking an amendment or just a clarification from the Committee.

MR. MONSOD: No, Madam President, when I stood up the second time, I said that I was making a proposal. My amendment is the insertion of VOTING JOINTLY so that the sentence will read: "The Congress, by a vote of at least a majority of all its members VOTING JOINTLY. . ."

Madam President, I was one of those who proposed the elimination of lines 1 and 2 yesterday, but I also think that there should be a good system of check and balance, and voting jointly would be one safeguard left to the people to revoke or amend the suspension.

That is my amendment, Madam President.

MR. RODRIGO: Will the Gentleman yield to a question?

MR. MONSOD: Yes, Madam President.

MR. RODRIGO: So, in effect, if there is a joint session composed of 250 Members of the House plus 24 Members of the Senate, the total would be 274. The majority would be one-half plus one.

MR. MONSOD: So, 148 votes.

MR. RODRIGO: And the poor Senators would be absolutely absorbed and outnumbered by the 250 Members of the House. Is that it?

MR. MONSOD: Yes, that is one of the implications of the suggestion and the amendment is being made nonetheless because there is a higher objective or value which is to prevent a deadlock that would enable the President to continue the full 60 days in case one House revokes and the other House does not.

The proposal also allows the Senators to participate fully in the discussions and whether we like it or not, the Senators have very large persuasive powers because of their prestige and their national vote.

MR. RODRIGO: So, the Senators will have the "quality votes" but Members of the House will have the "quantity votes." Is that it?

MR. MONSOD: The Gentleman is making an assumption that they will vote against each other. I believe that they will discuss, probably in joint session and vote on it; then the consensus will be clear.

MR. RODRIGO: So, we will vote on that amendment now.

THE PRESIDENT: Yes.

MR. RODRIGO: I propose an amendment to the amendment.

THE PRESIDENT: A proposed amendment to the amendment of Commissioner Monsod?

MR. RODRIGO: Yes. This is not first choice. But just to save the Senators from this insulting, humiliating situation, my amendment is to insert THE HOUSE OF REPRESENTATIVES instead of "Congress."

THE PRESIDENT: Is that acceptable?

MR. RODRIGO: The line will read: "The HOUSE OF REPRESENTATIVES, by a vote of at least a majority of all its members . . ."

MR. MONSOD: I regret, Madam President, that I cannot accept that because I believe that the advice and discussion of the Senators would be very useful in that forum.

MR. DE CASTRO: Madam President, one question please.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: We were working on this amendment yesterday and Commissioner Monsod proposed that instead of Congress, it should be the Senate. He convinced me that I agree with him that only the Senate will be the one to revoke or extend martial law or the suspension of the writ. What happened last night?

MR. MONSOD: I was discussing with the Gentleman the possibilities and what we wanted to avoid was a deadlock. That is why the options were either the Senate alone, the House alone, or the joint Congress. Yesterday, I was inclined towards the Senate alone but after hearing our colleagues, I am convinced that perhaps we do need to have an effective system of check and balance. So, if the Gentleman will forgive me, I am proposing now that it should be joint and I am convincing the Gentleman to join me.

MR. DE CASTRO: Last night, I was convincing the Gentleman to include the House of Representatives. Now, he is for the House of Representatives. I am for the proposition of Commissioner Rodrigo on the ground that this is only proclaimed by the President when the President is "eyeball to eyeball" with the enemy, when there is actual invasion and actual rebellion and it is limited only to 60 days.

Thank you, Madam President.

THE PRESIDENT: We will vote on that.

MR. ROMULO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. ROMULO: Commissioner Padilla has an amendment to propose.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Thank you, Madam President.

Will the distinguished sponsor, Commissioner Monsod, agree to an amendment to his amendment that instead of the word "JOINTLY" it be "SEPARATELY" and let the body vote? Because if the proposal on a joint assembly is passed or approved, then it would be too late to ask for a separate voting.

Madam President, I am in favor of the views expressed by Senator Rodrigo not because I have been a Senator but because there should be separate voting. The fear is that if the House votes to revoke but the Senate votes not to revoke the proclamation, there would be a deadlock. Assuming that is the situation, then the declaration of martial law or the suspension of the writ of habeas corpus would last for 60 days. Definitely, we should not stop or interrupt or make less effective the declaration by the President when there is no majority of both Chambers of the Congress. In other words, unless there be a clear situation where the President has made a mistake in his

declaration of martial law, then that martial law situation or the suspension of the writ of habeas corpus should remain until 60 days or unless the Supreme Court decides otherwise in an appropriate proceeding.

MR. MONSOD: I regret I cannot accept it because those are mutually exclusive alternatives. In any case, if the body decides to vote down my amendment, then the body can consider other options.

THE PRESIDENT: Will the Chair please be informed by Commissioner Rodrigo that his formal amendment is for the House of Representatives?

MR. RODRIGO: Madam President, my amendment to the amendment was not accepted.

THE PRESIDENT: Yes, but the Gentleman is proposing an amendment. I am just clarifying that.

MR. RODRIGO: Yes. My proposed amendment to the amendment which was not accepted is that of the House of Representatives alone.

THE PRESIDENT: Because the Chair believes that we should vote first on the Gentleman's amendment if that is a formal amendment which has not been accepted.

MR. RODRIGO: But it was an amendment to the amendment.

THE PRESIDENT: Which has not been accepted.

REV. RIGOS: Madam President.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: Just a question on this proposed amendment of Commissioner Monsod.

If the proposed amendment of Commissioner Monsod is not approved, does it mean that the interpretation of the recommendation of the Committee is that the Congress will have to vote separately in case the proposed amendment of Commissioner Monsod is not approved?

THE PRESIDENT: Not necessarily, because there is an amendment to include "VOTING JOINTLY." As it is, the phrase "VOTING JOINTLY" is not there although the interpretation is that it is supposed to be a joint session.

FR. BERNAS: Madam President, if the proposed amendment of Commissioner Monsod is not approved and is voted down, there is still the possibility of giving the power to revoke to either the Senate or the House of Representatives alone.

REV. RIGOS: Yes, or separately.

FR. BERNAS: Or separately.

MR. DE CASTRO: Madam President, I have one question to the Committee.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Section 15, page 7, beginning on line 4, states:

The Congress, by a vote of at least a majority of all its members in regular or special session, may revoke such proclamation or suspension, or extend . . .

When the members of the Committee proposed such sentence what did they have in mind, voting separately or voting jointly?

FR. BERNAS: This was originally formulated on the understanding that we will have one body, one House.

MR. DE CASTRO: A unicameral body.

FR. BERNAS: At that time, it was only a unicameral body; but now that we have a bicameral body the Committee would like the Commission to decide the matter.

MR. DE CASTRO: The paper I am holding is a substitute resolution adjusted to the bicameral legislature.

FR. BERNAS: That is correct.

MR. DE CASTRO: But the Gentleman was unable to correct that portion?

FR. BERNAS: Yes.

MR. DE CASTRO: Thank you.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: The parliamentary situation is, I presented an amendment to the amendment which was not accepted, so we should vote on my amendment to the amendment. However, I would like to state that I am not really happy about this amendment. To me it is just choosing between the lesser of two evils. So, I withdraw my amendment to the amendment to give way to the amendment by Commissioner Padilla.

MR. BROCKA: Madam President, may I be recognized?

THE PRESIDENT: Commissioner Brocka is recognized.

MR. BROCKA: Before we vote on this amendment, I want to express my observation. I listened to Commissioner Rodrigo and I could not believe my ears when he spoke of his reasons for objecting to the proposed amendment of Commissioner Monsod—the humiliation and insult to the Senate. We are talking about a possible situation, a declaration of martial law, wherein the very basic and fundamental rights of the citizens are involved, and yet he talks about the humiliation of 24 people! I just cannot believe it! We do not talk about humiliation. Whether martial law is declared for one day or 60 days, the fact is, when martial law is declared the very basic and fundamental human rights of the citizenry are taken away from them. It does not matter whether it is one day, one hour, or 60 days. So, I would like to express my agreement to Commissioner Monsod's amendment because yesterday we already took away the condition of prior concurrence of Congress; and now, Commissioner Monsod agrees that we have to provide a better safeguard by inserting this particular amendment of a joint decision of Congress.

Thank you.

MR. RODRIGO: Madam President, I was alluded to so may I be recognized?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I say a few words. When I said that it is a humiliation. I was not referring to just 24 individuals. These are 24 individuals elected by the whole nation, each and every one of them. So, any humiliation of any of those individuals is a humiliation of their constituents. We seem to forget that these people are elected by the whole country.

Madam President, we are departing from a practice, a practice which is accepted worldwide; a practice which is very logical, very reasonable that when we have two Houses, two Chambers — one composed of 250 Members and the other composed of 24 Members — they must be coequal. And the only way they can be coequal is if they vote

separately, because once we make them vote jointly, then the smaller group is absorbed. It becomes like a drop in the bucket to the bigger group. This is most awkward. To me, this is ridiculous. It is against the practice in every republican form of government to have two legislative Chambers and make them vote jointly instead of separately. And I repeat, this is a constitution we are drafting here. Its provisions will be scrutinized by the whole world. And to have a provision such as this is to have a provision which would be ridiculed. That is the reason I feel very strongly against approving such a provision.

Thank you.

THE PRESIDENT: Commissioner Rodrigo has withdrawn his proposed amendment to give way to the amendment of Commissioner Padilla. May we have that amendment first, Commissioner Padilla?

MR. OPLE: May I speak for one minute against the amendment, Madam President?

THE PRESIDENT: Please proceed.

MR. OPLE: Earlier, this Commission voted for a bicameral system and there are consequences following that decision. When we voted for a bicameral system, we accepted the consequence that each Chamber should be able to act separately and, as Commissioner Rodrigo has said, this is the key to the equality of both Chambers. Neither Chamber should be disparaged by its own creator — in this case, the Constitutional Commission, where there is a possibility to establish equality. Commissioner Monsod is worried about a deadlock, but that is the consequence of choosing a bicameral system. There are possibilities of deadlocks. However, that leaves precisely a zone for the political skills of the President. He must exercise leadership too. Why are we in advance getting so solicitous about sparing the President the exercise of his leadership skills so that he can overcome potential deadlocks? A bicameral system is always fraught with the potential for a deadlock but the tradeoff, precisely, is checks and balances.

Thank you, Madam President.

MR. NOLLEDO: Will the Gentleman yield to two or three questions?

MR. OPLE: Very gladly, Madam President, although I only hope to speak for a minute, but I welcome it.

MR. NOLLEDO: Before I ask the questions, I would like to state that the stature of the Senators is, to my mind, immaterial in this case; that there is no humiliation if they join the Members of the Lower House in joint session assembled to determine whether or not to revoke the declaration of martial law.

THE PRESIDENT: May we know what is the question?

MR. NOLLEDO: The first question is: Is it not true that there is a crying need to limit the presidential power to declare martial law?

MR. OPLE: I believe Commissioner Nollado knows best what this Commission has done to insure that these powers will be checked for appropriate checks and balances.

MR. NOLLEDO: And that, therefore, the paramount consideration in the Monsod amendment is to limit the presidential power to declare martial law.

MR. OPLE: I do not see how the Senate voting separately and the House voting separately, although meeting in joint session assembled, can detract from the checks and balances that we have built into the proclamation of martial law.

MR. NOLLEDO: Madam President, the purpose of the amendment is really to set forth a limitation because we

have to avoid a stalemate. For example, the Lower House decides that the declaration of martial law should be revoked, and that later on, the Senate sitting separately decides that it should not be revoked. It becomes inevitable that martial law shall continue even if there should be no factual basis for it.

MR. OPLE: Madam President, if this amendment is adopted, we will be held responsible for a glaring inconsistency in the Constitution to a degree that it distorts the bicameral system that we have agreed to adopt. I reiterate: If there are deadlocks, it is the responsibility Of presidential leadership, together with the leaders of both Houses, to overcome them.

THE PRESIDENT: The Chair believes that this has been sufficiently discussed by the two Gentlemen.

MR. OPLE: Thank you, Madam President.

THE PRESIDENT: The Chair believes that the Committee submitting this report is of the opinion that the proposed amendment of Commissioner Monsod should be first voted upon. Is that correct?

MR. RAMA: Yes, Madam President.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: We have proposed an amendment to the amendment, and that is, VOTING SEPARATELY instead of "VOTING JOINTLY." Since the proponent, Commissioner Monsod, has not accepted our amendment to the amendment, I ask that the vote be on our amendment to the amendment. That means the Congress meeting separately. but need not be successively. It can be at the same time, but separately.

FR. BERNAS: But, Madam President, that is not an amendment to the amendment, but rather a vote against the amendment. It is the complete opposite of the amendment proposed by Commissioner Monsod. So, let us vote on the amendment of Commissioner Monsod.

MR. GUINGONA: Madam President, would the Committee consider an amendment to make the action to be taken by the House of Representatives an amendment to the amendment, and not a vote against the amendment?

VOTING

THE PRESIDENT: The Chair suggests that we take that up later. Let us find out first what the consensus of the body is regarding this particular action of the Congress voting jointly or voting separately. We will now submit in accordance with the recommendation of the Committee on the Monsod amendment to clarify line 5 of page 7.

Those who are in favor of Congress "VOTING JOINTLY" in revoking the action of the President regarding the proclamation or suspension of the privilege of the writ of habeas corpus or proclamation of martial law, please raise their hand. (Several Members raised their hand.)

Those in favor of "VOTING SEPARATELY," please raise their hand. (Few Members raised their hand.)

The results show 24 votes in favor of "VOTING JOINTLY" and 13 in favor of "VOTING SEPARATELY" the Monsod amendment is approved.

MR. RODRIGO: Madam President, may I propose an amendment?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: On Section 15, page 7, line 4, I propose to change the word "Congress" to HOUSE OF REPRESENTATIVES so that the sentence will read: "The HOUSE OF REPRESENTATIVES, by a vote of at

least a majority of all its Members in regular or special session, may revoke such proclamation or suspension or extend the same if the invasion or rebellion shall persist and public safety requires it."

FR. BERNAS: Madam President, the proposed amendment is really a motion for reconsideration. We have already decided that both Houses will vote jointly. Therefore, the proposed amendment, in effect, asks for a reconsideration of that vote in order to give it to the House of Representatives.

MR. RODRIGO: Madam President the opposite of voting jointly is voting separately. If my amendment were to vote separately, then, yes, it is a motion for reconsideration. But this is another formula.

MR. DE CASTRO: May I ask the proponent a question, Madam President?

MR. RODRIGO: Gladly.

MR. DE CASTRO: What is the rationale of the amendment?

MR. RODRIGO: It is intended to avoid that very extraordinary and awkward provision which would make the 24 Senators meet jointly with 250 Members of the House and make them vote jointly. What I mean is, the 24 Senators, like a drop in the bucket, are absorbed numerically by the 250 Members of the House.

MR. DE CASTRO: Thank you.

MR. SARMIENTO: Madam President, may I speak briefly against the proposed amendment?

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, we need the wisdom of the Senators. What is at stake is the future of our country — human rights and civil liberties. If we separate the Senators, then we deprive the Congressmen of the knowledge and experience of these 24 men. I think we should forget the classification of "Senators or Congressmen." We should all work together to restore democracy in our country So we need the wisdom of 24 Senators.

MR. RODRIGO: Madam President, may I just answer This advice of the 24 Senators can be sought because they are in the same building. Anyway, the provision, with the amendment of Commissioner Monsod. does not call for a joint session. It only says: "The Congress by a vote of at least a majority of all its Members in regular or special session" — it does not say "joint session." So, I believe that if the Members of the House need the counsel of the Senators, they can always call on them; they can invite them.

SR. TAN: Madam President.

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: Have we not spent enough time on the 24 Senators? May we now vote on the amendment?

VOTING

THE PRESIDENT: Those in favor of the proposed amendment of Commissioner Rodrigo. please raise their hand. (Few Members raised their hand.)

Those against, please raise their hand. (Several Members raised their hand.)

The results show 5 votes in favor and 25 votes against; the proposed amendment is lost.

The Chair hopes that this particular issue can now be laid to rest. The body has voted that "Congress, by a vote of at least a majority of all its Members. voting jointly in regular or special session. may revoke such proclamation or suspension."

MR. OPLE: May I have an anterior amendment, Madam President.

THE PRESIDENT: Is this on another section?

MR. OPLE: It is an insertion of a sentence on line 5, Madam President.

MR. ROMULO: Madam President, Commissioner Rama has an anterior amendment to Commissioner Ople's amendment.

THE PRESIDENT: Commissioner Rama is recognized.

MR. OPLE: Thank you.

MR. RAMA: Madam President, this is an amendment to line 4. After the words "The Congress," I propose to insert the clause WHICH SHALL BE AUTOMATICALLY CONVENED IF NOT IN SESSION, and then continue with the phrase "by a vote of at least a majority . . ." The reason for this, Madam President, is that there is a period in a year during which Congress is not in session. We talk about Congress revoking a proclamation; we talk about some kind of checks on the President, but during this 30-day period of the year, there is no Congress to make such revocation. A scheming President could very well time his declaration of martial law during that period when Congress is not in session. This is a 30-day period and if his declaration of martial law is based upon fabricated facts or rigged events, or is not in accordance with the provisions in the Constitution, such President could get away with murder for 30 days without the process of revocation. So, it is necessary that Congress shall be able to convene automatically if not in session.

Another reason is that it is only the President who can call a special session. So, a President who is hellbent on declaring martial law in order to militarize the people could very well not call for the session and that is going to be a legal issue. So, to avoid this confusion, it is necessary for clarity that we place this amendment, to wit: "Congress. WHICH SHALL BE AUTOMATICALLY CONVENED IF NOT IN SESSION. by a vote of at least a majority of all its Members . . ."

MR. SUAREZ: Madam President, may I be recognized?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we ask the distinguished Floor Leader a few questions?

MR. RAMA: Gladly Madam President.

MR. SUAREZ: As I recall, in the Article on the Legislative, the Congress is supposed to be in session the whole year except during that period of 30 days before the next regular session.

MR. RAMA: That is correct.

MR. SUAREZ: So that would preclude the matter of automatic convening in the case of a regular session. Let us take the case of the special session, because I share the proponent's sentiment about this. Therefore the special session could be called only within that interregnum period of 30 days.

MR. RAMA: That is correct.

MR. SUAREZ: That is prior to the next regular session. So the proponent is speaking about that situation, Madam President.

MR. RAMA: This particular 30-day period when the Congress is not in session.

MR. SUAREZ: That is what the Gentleman has in mind.

MR. RAMA: That is what I have in mind.

MR. SUAREZ: That is not in connection with the regular session.

MR. RAMA: Not in connection with the regular session.

MR. SUAREZ: Will the proponent accept the suggestion to put that clause after the words "special session"?

THE PRESIDENT: Will Commissioner Suarez read the provision?

MR. SUAREZ: ". . . in regular or special session WHICH SHALL BE, AUTOMATICALLY CONVENED."

THE PRESIDENT: Is the amendment acceptable to Commissioner Rama?

MR. RAMA: It might be a little awkward.

MR. SUAREZ: But that is the sense of what we had in mind.

MR. RAMA: That would be the sense, but for clarity and elegance, we should place this after the word "Congress."

MR. SUAREZ: Can we leave that to Commissioner Rodrigo?

MR. RAMA: Yes, we can leave this to Commissioner Rodrigo, because it is Congress which shall be convened.

MR. SUAREZ: Thank you.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I just comment on the discussion about the special session. Is it not that the special session can be called only within the 30 days preceding the commencement of a regular session? Under the proposal on the legislative power, the law itself may also determine the length of the session, in between the commencement on the fourth Monday of July and the beginning of the 30 days preceding the next regular session. So, special sessions can be convened at any time between these two periods, not just the remaining 30 days.

I would propose that there should be a separate sentence to be inserted probably between lines 8 and 9 to read as follows: THE CONGRESS, IF NOT IN SESSION, SHALL WITHIN TWENTY-FOUR HOURS FOLLOWING SUCH PROCLAMATION OR SUSPENSION, CONVENE IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF A CALL. This would be consistent with what had earlier been approved in the matter of a vacancy in the office of the President and the Vice-president. Instead of "automatic," it should be WITHOUT NEED OF A CALL.

THE PRESIDENT: Is that accepted?

MR. RAMA: We accept the amendment, Madam President.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: I would just like to know what happens if a special session cannot be convened, or if a regular session is called off because majority of the Members of both Houses have been arrested, or that the Congress has been padlocked upon declaration of martial rule.

MR. RAMA: That is precisely one of the risks and hazards that we have to take. That is why I wanted to reduce

that hazard because, if u e allow the President 30 days of martial rule, which is the exercise of martial law powers, which in itself is a replacement of all the civil powers and which militarize the country there is a bigger risk that these Congressmen would not be able to hold the session or would get arrested. That is ,the rationale of the amendment-that as soon as the President declares martial law, there must be an automatic convening of Congress in session in order for it to exercise the right to revoke or not or to scrutinize the circumstances of martial law and its validity.

MS. QUESADA: But there is a possibility then that the Congress cannot be convened because many of its Members have already been arrested.

MR. RAMA: There is always that possibility; that is why I am narrowing that chance.

MS. QUESADA: Yesterday, the understanding of many was that there would be safeguards that Congress will be able to revoke such proclamation.

MR. RAMA: Yes.

MS. QUESADA: But now, if they cannot meet because they have been arrested or that the Congress has been padlocked, then who is going to declare that such a proclamation was not warranted?

MR. RAMA: That is why this amendment would strengthen the safeguard, because under the present provision the President can call or can proclaim martial law during the time that Congress is not in session.

MS. QUESADA: One of the assurances was that there were enough safeguards that the President would not just be able to use that power without some other conditions. So, are there any parts of the Constitution that would so protect the civilians or the citizens of the land?

MR. RAMA: Yes, there are safeguards.

MR. REGALADO: May I also inform Commissioner Quesada that the judiciary is not exactly just standing by. A petition for a writ of habeas corpus, if the Members are detained, can immediately be applied for, and the Supreme Court shall also review the factual basis. This is not exactly beyond solution. With regard to the worry that the Congress will be padlocked, we can never padlock Congress. We can padlock the building, but not Congress because the Members can always convene in Barasoain Church or under a squad tent or in the middle of the coconut groves. That would still be Congress.

MS. QUESADA: They said it happened in 1972; I was out of the country then. According to the people who were here then, the building was indeed padlocked. These are some of my misgivings over the decision we made yesterday. I would like to see now how it fits into our deliberations on the calling of a session, when the session could not or might not have been called, because many people would have been arrested. I am just projecting some of the possibilities in the future, maybe not in the immediate future, but in the many years to come and which we may not be able to project at this point in time.

THE PRESIDENT: Is Commissioner Quesada satisfied or not?

MR. BENGZON: May I just comment on what Commissioner Quesada said.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: If and when the fears or apprehensions of Commissioner Quesada would happen, then what we will have is a military takeover. At that point, it will already be a complete military takeover. Legally and technically, Congress will not be padlocked because the Congressmen and the Senators can meet even in the middle of the streets, but in actuality if and when that happens, then it becomes a military takeover.

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: I was one of those padlocked out of circulation in the old Congress. That cannot happen now because of line 15, page 7 of Section 15 which states:

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the Writ.

The old Congress was unable to meet because we had no power to have a rump session, but here there is a constitutional authority which says that the declaration of martial law does not supplant the functioning of the legislative assembly or Congress. So, whether we padlock the building or not, the Members will meet elsewhere and that would still be Congress, to confirm what Commissioner Regalado said.

Thank you, Madam President.

THE PRESIDENT: May we have again the proposed amendment of Commissioner Davide to the amendment of Commissioner Rama?

MR. DAVIDE: Yes, Madam President.

It will be a new paragraph to be inserted between lines 8 and 9 on page 7, which will read as follows: THE CONGRESS, IF NOT IN SESSION, SHALL WITHIN TWENTY FOUR HOURS FOLLOWING SUCH PROCLAMATION OR SUSPENSION, CONVENE IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF A CALL.

THE PRESIDENT: Has this been accepted by Commissioner Rama?

MR. RAMA: Yes, Madam President.

THE PRESIDENT: So, this is a joint amendment of Commissioners Rama and Davide. What does the Committee say?

MR. REGALADO: The Committee accepts the amendment.

THE PRESIDENT: Is there any objection to the proposed amendment of Commissioners Rama and Davide which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. OPLE: Madam President.

MR. ROMULO: Madam President, I ask that Commissioner Ople be recognized for an amendment on the same section.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Thank you very much, Madam President.

This proposed amendment is a sentence to be added on line 4, following the phrase "martial law." We do not quite substitute for the concurrence of Congress that was deleted, but it will provide Congress with the basis for revoking or not a presidential proclamation of martial law or the suspension of the writ of habeas corpus And so, this amendment reads as follows: WITHIN FORTY-EIGHT HOURS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE WRIT OF HABEAS CORPUS THE PRESIDENT SHALL

SUBMIT A REPORT, IN PERSON OR IN WRITING, TO THE CONGRESS.

With this amendment, we build a reporting requirement so that the President can be held responsible for that report. Later on, when the Congress wants to revoke the proclamation, the basis will be his report as checked against other facts and the perceptions of the situation by the Members of Congress.

THE PRESIDENT: Will the proponent kindly read again the new sentence.

MR. OPLE: Yes, Madam President. On Section 15, page 7, line 4, after "law," I propose to add a new sentence which reads as follows: WITHIN FORTY-EIGHT HOURS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE WRIT OF HABEAS CORPUS THE PRESIDENT SHALL SUBMIT A REPORT, IN PERSON OR IN WRITING, TO THE CONGRESS.

THE PRESIDENT: Is the amendment accepted by the Committee?

MR. REGALADO: It is accepted by the Committee, it being understood that the report or the statement therein is not conclusive on Congress.

MR. OPLE: Yes, but the President will be held accountable for his report. And on that basis, his proclamation can be revoked later.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: I feel that the intention of the amendment is good. But considering that the suspension of the writ of habeas corpus or the declaration of martial law is now only dependent on actual rebellion and actual invasion, what the country needs is action rather than a mere report. When we require the President to make a report within forty-eight hours, some valuable hours may be spent on a mere paper report when the circumstances demand action. I would favor that proposal, Madam President, if we were not yet in actual invasion or actual rebellion.

MR. OPLE: Madam President, I appreciate the concern of Commissioner Padilla about the difficulties of a President caught in an actual invasion or rebellion, but would he begrudge the representatives of the people under this amendment to report to them what he has done which will be of momentous importance for all Filipinos? The proposal does not quite substitute for concurrence, but I think the dignity of the nation through the representatives of the people in Congress requires that at least the President should tell them what he did and why he did so, so that the basis for an evaluation and appreciation of his proclamation of martial law is laid down and can be checked if necessary.

I thank the Committee for accepting my amendment, Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, just to be consistent, I propose that instead of "suspension of the writ of habeas corpus," we say SUSPENSION OF THE PRIVILEGE OF THE WRIT. Will that be acceptable?

MR. OPLE: I accept the amendment, although the Committee now has jurisdiction.

THE PRESIDENT: Is the amendment clear enough to the Commissioners?

MR. ROMULO: Madam President, Commissioner Sarmiento wishes to be recognized.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, may I briefly speak against the amendment. I think it is very impractical

and unnecessary for the President to give his report to Congress. During an actual invasion or rebellion, it is very possible that before the President can give his report, Congress has already been bombed or destroyed. I think it is practically unwise, unnecessary and impractical for the President to give his report. I object, Madam President.

MR. OPLE: Madam President, I do not think that in any circumstances, the President of the Philippines should be excused from tendering his report to the representatives of the people. He must find the time to do that in satisfaction of the dignity and the right of the people to knob through their representatives.

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Madam President, I also object to the Proposal. That report can be done through television and the mass media very effectively, if it is still possible to do it at all. I think the proposal is not necessary.

VOTING

THE PRESIDENT: The body is now ready to vote on the proposed amendment of Commissioner Ople.

Those in favor of the proposed amendment please raise their hand. (Several Members raised their hand.)

Those against, please raise their hand. (Few Members raised their hand.)

The results show 23 votes in favor, and 11 votes against; the proposed amendment is approved.

MR. ROMULO: Madam President, I ask that Commissioner Aquino be recognized for an amendment on line 7.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Madam President, I will try to resurrect my proposed amendment which must have been lost in the heap of words. My proposed amendment pertains to Section 15, page 7, line 7. Between the words "suspension" and "or," I propose to insert the clause WHICH REVOCATION SHALL NOT BE SET ASIDE BY THE PRESIDENT. My concern is that if this proviso is not included, it may be deemed as if the power of Congress to revoke will have to go through the veto powers of the President. It is my humble submission that martial law prerogatives of the President should be effectively capped after we have eliminated the requirement of the previous concurrence of Congress.

THE PRESIDENT: Is the proposed amendment acceptable to the Committee?

MR. REGALADO: Madam President, the Committee accepts this amendment.

MR. SUAREZ: Madam President, may I be recognized for one question only?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Will the proponent limit the insertion to the right of revocation and not to the right of extension?

MS. AQUINO: I have conferred with Commissioner Azcuna who would qualify the right of extension later on.

MR. SUAREZ: Why do we not do it as a package deal and just state that there will be no presidential veto exercise insofar as a revocation or extension is concerned?

MS. AQUINO: I am not in full agreement with that.

MR. SUAREZ: This is my humble suggestion.

MS. AQUINO: My qualification would pertain only to the powers of Congress to revoke, but not to extend. Anyway, the Committee has jurisdiction already over my proposed amendment.

MR. SUAREZ: Thank you.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: In answer to Commissioner Suarez, the President does not have to override the extension. All that martial law does is to give the President extraordinary powers. So, if he does not like the extension, then all he has to do is not to exercise the extraordinary powers.

MR. SUAREZ: No, but the extension this time is being given by Congress. Madam President, and not by the President. In other words, martial law extension is not a presidential act any further. It becomes a congressional act.

FR. BERNAS: Precisely, Madam President. Martial law powers precisely consist in an assumption of extra-ordinary powers, so that even if Congress says, "We are giving you extraordinary powers," if the President does not want to exercise them, so what is the point?

MR. SUAREZ: So, what is the point of extending it on the part of Congress if the President feels it should not be extended any further if you are going to deprive the right of the President to exercise the power of the veto?

FR. BERNAS: The extension may be relevant with respect to the suspension of the privilege of the writ of habeas corpus, but as far as martial law powers are concerned, it really does not mean much.

MR. SUAREZ: Let us say a situation develops where Congress, without seeking the prior consent and approval of the President, would extend the suspension of the writ of habeas corpus. In such a situation, we would consider the President free to stop or prevent the further suspension of the writ of habeas corpus. Is my thinking correct, Madam President?

FR. BERNAS: Let us ask Commissioner Concepcion.

MR. CONCEPCION: I did not get the question clearly. Will the Gentleman kindly repeat it.

MR. SUAREZ: For example, the Congress, without first seeking the advice, approval, and consent of the President, would extend for an indefinite period the suspension of the writ of habeas corpus, do I take it from the statement and observations of Commissioner Bernas that in such a situation, the President is not under obligation to heed the act of Congress?

MR. CONCEPCION: In my personal opinion, the power to suspend the privilege of the writ or to declare martial law is an executive power. The power is essentially an executive power, although it may be subjected by the Constitution, insofar as its exercise is concerned, to an action of Congress. But Congress cannot exercise it.

MR. SUAREZ: Under the proposal, Madam President, Congress cannot exercise it, but can it extend the exercise in spite of the fact that it does not even count with the consent, appraisal, and knowledge of the President?

MR. CONCEPCION: No, but what has been exercised by the President has already expired.

MR. SUAREZ: Yes.

MR. CONCEPCION: So, an extension, without the consent of the President or the concurrence of the President, is the exercise of an executive power by Congress.

MR. SUAREZ: Under this proposal, it appears that the President cannot even veto this. For example, the Congress will extend it for six months; must the President comply with that and extend an executive respect for that thinking or act of Congress? He cannot terminate the suspension of the writ of habeas corpus because the period had already been extended by Congress.

FR. BERNAS: Madam President, may we settle first the question of revocation before we go to the extension?

MR. SUAREZ: Thank you; I yield.

THE PRESIDENT: At this juncture, we would like to inform the body that we have several groups of students here with us. They come from the UP Sociology class, St. Bridget's School, the Ateneo pre-law class, and the Philippine Women's University High School. We welcome them. (Applause)

We have before us the Aquino amendment. Does Commissioner Colayco want to comment on this?

MR. COLAYCO: I would like to know from Commissioner Aquino if her proposal covers the right of the President, in effect, to counter the action of Congress revoking the proclamation of martial law.

MS. AQUINO: Madam President, the proposal in effect forecloses the possibility of the President revoking the powers of Congress to revoke, such that the amendment would read: WHICH REVOCATION SHALL NOT BE SET ASIDE BY THE PRESIDENT.

MR. COLAYCO: I see; thank you.

THE PRESIDENT: In other words, the final action is that of Congress.

MR. SARMIENTO: Madam President, may I propose an amendment to the amendment?

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Is Commissioner Aquino willing to adopt the word VETO instead of the words "SHALL NOT BE SET ASIDE," so that the clause would read: "WHICH REVOCATION SHALL NOT BE VETOED BY THE PRESIDENT"?

MS. AQUINO: The substance is the same, but the Committee already has jurisdiction over my amendment. It may be just a matter of style.

MR. REGALADO: The Committee wishes to inform Commissioner Sarmiento that what was envisaged here is a proclamation. A veto is exercised over a bill or a law. A proclamation is not subject to veto, that is why we instead used the term "SET ASIDE."

MR. SARMIENTO: Thank you for that information.

I withdraw my amendment, Madam President.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Aquino which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: Madam President, I ask that Commissioner Azcuna be recognized.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: Thank you, Madam President.

I would like to offer an amendment to Section 15, line 7 of page 7. After the word "or," insert a comma (,) and add the phrase: AT THE INSTANCE OF THE PRESIDENT, so that the amended portion will read: "may revoke

such proclamation or suspension which revocation shall not be set aside by the President, or AT THE INSTANCE OF THE PRESIDENT extend the same if the invasion or rebellion shall persist and public safety requires it.

May we know the reaction of the Committee? The reason for this, Madam President, is that the extension should not merely be an act of Congress but should be requested by the President. Any extension of martial law or the suspension of the privilege of the writ of habeas corpus should have the concurrence of both the President and Congress. Does the Committee accept my amendment?

MR. REGALADO: The Committee accepts that amendment because it will, at the same time, solve the concern of Commissioner Suarez, aside from the fact that this will now be a joint executive and legislative act.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

I concur with the proposal of Commissioner Azcuna but may I suggest that we fix a period for the duration of the extension, because it could very well happen that the initial period may be shorter than the extended period and it could extend indefinitely. So if Commissioner Azcuna could put a certain limit to the extended period, I would certainly appreciate that, Madam President.

THE PRESIDENT: What does Commissioner Azcuna say?

MR. AZCUNA: Madam President, I believe that that is a different concept and should be voted on separately so as not to confuse the issue on the limitation of the period with the extension. My amendment would merely require that any extension should have the concurrence of both the President and the Congress. Commissioner Suarez may propose an amendment to limit the period of the extension.

MR. SUAREZ: Thank you.

THE PRESIDENT: Is the amendment of Commissioner Azcuna a separate sentence?

MR. AZCUNA: No, Madam President. It is just a comma (,) after "or" and the addition of the words "AT THE INSTANCE OF THE PRESIDENT."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I would like to propose that instead of "AT THE INSTANCE OF," we use UPON THE PETITION OF. It will be upon the petition of the President to confirm the fact that any extension is just a matter of his request, not his prerogative.

THE PRESIDENT: Not on his own initiative?

MR. DAVIDE: No, not on his own initiative, Madam President.

MR. AZCUNA: I believe the word "petition" is more proper for the courts, Madam President. Maybe with the intention put on the record that this is not mandatory upon Congress to grant an extension simply because the President is requesting it, I am willing to change it to INITIATIVE instead of "INSTANCE" but not "PETITION" because "petition" has more relevance to courts. So it will be "UPON THE INITIATIVE of the President."

THE PRESIDENT: Is that acceptable to the Committee?

MR. REGALADO: It is acceptable, Madam President.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Azcuna which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

May we suggest that on line 7, between the words "same" and "if," we insert the phrase FOR A PERIOD OF NOT MORE THAN SIXTY DAYS, which would equal the initial period for the first declaration just so it will keep on going.

THE PRESIDENT: What does the Committee say?

MR. REGALADO: May we request a clarification from Commissioner Suarez on this proposed amendment? This extension is already a joint act upon the initiative of the President and with the concurrence of Congress. It is assumed that they have already agreed not only on the fact of extension but on the period of extension. If we put it at 60 days only, then thereafter, they have to meet again to agree jointly on a further extension.

MR. SUAREZ: That is precisely intended to safe guard the interests and protect the lives of citizens.

MR. REGALADO: In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, and with the prior concurrence of Congress. So, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President acted alone without prior concurrence. The reason for the limitation in the first does not apply to the extension.

MR. SUAREZ: We are afraid of a situation that may develop where. the extended period would be even longer than the initial period, Madam President. It is only reasonable to suggest that we have to put a restriction an the matter of the exercise of this right within a reasonable period.

MR. REGALADO: Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, if the invasion is still going on. But there is already the cutoff of 60-day period. Do they have to meet all over again and agree to extend the same?

MR. SUAREZ: That is correct. I think the two of them must have to agree on the period; but it is theoretically possible that when the President writes a note to the Congress, because it would be at the instance of the President that the extension would have to be granted by Congress, it is possible that the period for the extension may be there. It is also possible that it may not be there. That is the reason why we want to make it clear that there must be a reasonable period for the extension. So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it, Madam President.

FR. BERNAS: Madam President, may I just propose something because I see the problem. Suppose we were to say: "or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS" — that gives Congress a little flexibility on just how long the extension should be.

MR. REGALADO: Is the Gentleman placing his amendment after "same" and before "if"?

FR. BERNAS: Yes.

MR. SUAREZ: Maybe that can be added after the final word "it" so that the clause would read: "if the invasion or rebellion shall persist and public safety requires it, FOR A PERIOD AS MAY BE DETERMINED BY CONGRESS."

FR. BERNAS: It is a question of style, Madam President. It seems to be very far from the verb.

THE PRESIDENT: Is that accepted by Commissioner Suarez?

MR. SUAREZ: Yes, Madam President.

MR. OPLE: May I just pose a question to the Committee in connection with the Suarez amendment? Earlier, Commissioner Regalado said that that point was going to be a collective judgment between the President and the Congress. Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?

FR. BERNAS: Not really, Madam President, because Congress would be doing this in consultation with the President, and the President would be outvoted by about 300 Members.

MR. OPLE: Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS: Yes, the participation of the President is there but by giving the final decision to Congress, we are also preserving the idea that the President may not revoke what Congress has decided upon.

MR. OPLE: The reason for my concern, Madam President, is that when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion and rebellion, given an intractable Congress that may be dominated by opposition parties, we may be actually impelling the President to use the sword of Alexander to cut the Gordian knot by just declaring a revolutionary government that sets him free to deal with the invasion or the insurrection. That is the reason I am in favor of the present formulation. However, if Commissioner Suarez insists on his amendment, I do not think I will stand in the way.

Thank you, Madam President.

MR. SUAREZ: We will accept the committee suggestion, subject to style later on.

THE PRESIDENT: May we ask the proponent to read his amendment so that the Members can clarify.

FR. BERNAS: On line 7: "extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS if the invasion or rebellion shall persist and public safety requires it."

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Before we vote, may I ask a question just for the record? Suppose all the 24 senators unanimously say, "No, we do not want any extension," may they act separately as a Senate to vote against the extension?

FR. BERNAS: Our answer would be "no." For clarity we might even say: "TO BE DETERMINED BY CONGRESS VOTING JOINTLY."

MR. RODRIGO: I want that on record because I want to emphasize my stand that while he have reinstituted a bicameral legislature, we are violating the very essence of bicameralism in this provision.

MR. MAAMBONG: Madam President

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Just one inquiry. I do not want to engage in nitpicking, but when we say "FOR A PERIOD TO BE DETERMINED BY CONGRESS," can Congress do it by law or by resolution, because there are certain acts to be done by Congress which may be done by resolution and some done by law?

FR. BERNAS: By resolution, Madam President.

MR. MAAMBONG: Thank you very much.

FR. BERNAS: If it is done by law, it would need a cumbersome process of three Readings plus the approval of the President.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is essentially an executive act. If that be so, and especially under the following clause: "if the invasion or rebellion shall persist and public safety requires it," I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.

FR. BERNAS: I would believe what the former Chief Justice said about the initiation being essentially an executive act, but what follows after the initiation is something that is participated in by Congress.

MR. CONCEPCION: If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. He is the one who is supposed to know how long it will take him to fight. Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. ROMULO: I think we are ready to vote, Madam President

SUSPENSION OF SESSION

THE PRESIDENT: The Chair resolves to call this particular matter to a vote after lunch because of important repercussions on other matters that may be related to it.

The session is suspended until two o'clock this afternoon.

It was 12:12 p.m.

RESUMPTION OF SESSION

At 3:08 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

May we request our guests to please observe silence during our deliberations.

We wish to welcome this afternoon our visitors who include students from the Philippine Science High School, the Philippine Women's University, the Polytechnic University of the Philippines, the delegation from the Cordillera Region and Muslims from Mindanao.

May we call the Chairman of the Committee on the Executive and the members to please occupy the front table so that we can continue deliberating on the proposed amendments to the Article on the Executive.

MR. ROMULO: Madam President, I ask that Commissioner Padilla be recognized for an amendment to Section 15.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, I propose to delete lines 21, 22, and 23 of Section 15 and in lieu thereof insert the following: DURING THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF habeas corpus, ANY PERSON WHO HAS BEEN ARRESTED OR DETAINED SHALL BE JUDICIOUSLY CHARGED WITHIN FIVE WORKING DAYS, OTHERWISE HE SHALL BE RELEASED. If I may explain a little, Madam President.

THE PRESIDENT: Commissioner Padilla has five minutes to explain his amendment.

MR. PADILLA: The purpose of the amendment is to prevent a situation similar to the past regime when innocent persons were arrested, detained and confined in prison sometimes for one month, one year, or even more, without any criminal charge filed against them who oftentimes did not even understand why they had been arrested or detained.

The last paragraph of Section 15 reads:

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or for offenses inherent in or directly connected with invasion.

If a person has been judicially charged, that means there has been a warrant of arrest issued by the courts. This paragraph will not protect innocent persons who have been arrested and detained by the military under orders of the past regime, such as the ASSO, PCO or PDA. What we are trying to protect is the right of the persons arrested and detained by requiring that at least within five working days a criminal charge be filed against them, otherwise, if there is no crime committed or no evidence in support of the culpability of such detained person, he should be immediately released after five working days.

MR. ROMULO: Madam President, Commissioner Sarmiento has registered for an amendment to the amendment.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. REGALADO: Madam President, when we adjourned this morning, there was a pending amendment of Commissioner Suarez which we should dispose of now. It was on the last sentence of the first paragraph of Section 15, which reads: "The Congress, by a vote of at least a majority of all its members voting jointly in regular or special session, may invoke such proclamation or suspension, which revocation shall not be set aside by the President, or, upon the initiative of the President, extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS if the invasion or rebellion shall persist and public safety requires it." That was the pending amendment this morning, Madam President — the insertion of the phrase "FOR A PERIOD TO BE DETERMINED BY CONGRESS." I think we can dispose of this so we can consider the last paragraph of Section 15, subject of the proposed amendment of Commissioner Padilla.

MR. PADILLA: Madam President, I stated this noon that I object to the proposal that the period be determined by the Congress, because admittedly, this right is a prerogative of the Executive and it should not be determined by the legislative.

THE PRESIDENT: We will take note of the objection of Commissioner Padilla. How about Commissioner

Suarez?

MR. SUAREZ: I am leaving it up to the Committee whether or not to accept the amendment, Madam President.

THE PRESIDENT: What does the Committee say?

MR. REGALADO: Madam President, the Committee would prefer to submit the proposed amendment to the floor.

THE PRESIDENT: Are we ready now to vote on this particular amendment which we had on the floor before we called a suspension of the session for lunch?

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Before we vote, just one clarification. When we say "FOR A PERIOD TO BE DETERMINED BY CONGRESS," we mean Congress voting jointly or by both Houses voting jointly.

MR. SUAREZ: To be consistent, I will agree with the suggestion of Commissioner Bernas, Madam President. So it would be FOR A PERIOD TO BE DETERMINED BY CONGRESS VOTING JOINTLY.

VOTING

THE PRESIDENT: Is the amendment clear to the Commissioners?

Those in favor of this particular amendment of Commissioner Suarez which has been accepted by the Committee, please raise their hand. (Several Members raised their hand.)

Those against, please raise their hand. (Few Members raised their hand.)

Those who abstain, please raise their hand. (One Member raised his hand.)

MR. RODRIGO: Madam President, I would like to record my vote of abstention because of a basic objection and that is, that Congress would be voting jointly, instead of the Senate and the House voting separately.

THE PRESIDENT: The results show 25 votes in favor, 4 votes against, and I abstention; the proposed amendment is approved.

The Acting Floor Leader is recognized.

MR. ROMULO: Madam President, Commissioner Padilla's amendment is now on the floor.

MR. SUMULONG: Commissioner Concepcion will respond to the proposed amendment.

MR. ROMULO: Commissioners Sarmiento and Davide also have amendments to the amendment of Commissioner Padilla. I believe that Commissioner de Castro wants to say something before we begin.

THE PRESIDENT: May we hear Commissioner Concepcion first?

MR. CONCEPCION: Before I express my views on the remarks by Commissioner Padilla, I wish to make it clear that the purpose of this paragraph is to require all those detained to be immediately turned over to the judicial authorities. Therefore, the suspension of the privilege will not apply to them until they are placed in the custody of a judicial officer, the reason being that the first important thing to consider is to preserve the life of the detained person.

Even if the privilege were suspended, if the person has not been turned over to the court, the government cannot

claim that the privilege of the writ has been suspended. I have no objection insofar as the period proposed by Commissioner Padilla. As a matter of fact, I would prefer that the detainee be turned over to the court as soon as possible. The first important thing is to preserve his right and his life, the second is to avoid torture or other forms of oppression; and, of course, to place the detainee under the authority of the court so that we may never again have a situation where a court would issue the order of release, but some other party may refuse to release the detained person. So the effectivity of the suspension of the privilege of the writ with respect to persons covered by the provision will take effect only after the person has been turned over to the court. Of course, it may take some time to file the charges, but the period of five days to start with, I suppose, is sufficient.

MR. PADILLA: Madam President, I agree with the statement of Commissioner Concepcion. As a matter of fact, those are the same sentiments that have induced me to submit this amendment by substitution because in my opinion, it will make clearer the intendment of the provision.

THE PRESIDENT: Does Commissioner Padilla insist on his proposed amendment?

MR. PADILLA: Yes, Madam President, because in my opinion the proposed amendment is clearer and more emphatic because when it says that the suspension shall apply only to persons judicially charged, it does not embody the sentiment that any person arrested during the suspension of the writ should be charged judicially within a few working hours, or as suggested by many, within five working days. Precisely, the intendment is that any person arrested should be judicially charged, and a person who has been judicially charged is arrested upon the issuance by the court of a warrant of arrest. So I submit, Madam President.

THE PRESIDENT: Will Commissioner Padilla restate his amendment?

MR. PADILLA: In lieu of lines 21 to 23, the last paragraph of Section 15, I propose the following: DURING THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS, ANY PERSON WHO HAS BEEN ARRESTED OR DETAINED SHALL BE JUDICIALLY CHARGED WITHIN FIVE WORKING DAYS, OTHERWISE, HE SHALL BE RELEASED.

MR. DE CASTRO: Madam President, may I speak in favor of the proposed amendment?

THE PRESIDENT: The Chair is sorry, but we have an arrangement with the Floor Leader that the Chair will recognize first those who have duly registered. So, Commissioner Sarmiento is recognized.

MR. ROMULO: Madam President. Commissioner Sarmiento is willing to yield part of his time to Commissioner de Castro.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Madam President, yesterday I informed the Floor Leader about my proposed amendment on the last paragraph of Section 15. My first impression was to delete the whole lines 21, 22 and 23, but after talking with the honorable Chief Justice, both of us expressed our concern on judicially charging those arrested under the writ. so I gave way to the amendment of Commissioner Padilla. My reason in doing so is that there are only two instances by which the writ may be issued, and that is during actual rebellion and actual invasion. We shall not talk of actual invasion because I really doubt the practicality of issuing a writ when there is actual invasion of our country. Instead, we will talk of actual rebellion in a certain area where the writ will have to be issued. I even doubt whether the detainee could be released within five working days considering that there is a fighting going on in that area, or a theater of war, as described by the Honorable Bernas. In the actual theater of war, I really doubt whether the authorities will have sufficient time to get the necessary affidavits, prepare the necessary complaint and submit the necessary charge before the court. I even doubt whether there will be a court existing in

the actual theater of war or in the place where there is actual rebellion. Nevertheless, let me say that I finally would like to agree or to convince myself to agree that the five-day period in the actual operation, actual shooting, actual theater of war, when the authorities may be able to prepare the necessary charge, the necessary affidavits, the necessary evidence so that the court may accept the complaint, will be sufficient.

Thank you, Madam President.

MR. REGALADO: Madam President.

MR. ROMULO: I ask that Commissioner Sarmiento be recognized.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: I wish to propose an amendment to the amendment of the honorable Vice-President. He is for the charging of the accused within five days. My submission, Madam President, is that five days is too long. Our experience during martial law was that torture and other human rights violations happened immediately after the arrest, on the way to the safe houses or to Camp Aguinaldo, Fort Bonifacio or Camp Crame. I repeat, five days is too long, Madam President. As a matter of fact, under the Revised Penal Code, and, of course, the honorable Vice-President is an expert on criminal law, we have the 6-9-18 formula — 6 hours, 9 hours, 18 hours within which to charge and bring the accused to judicial authorities. Of course, during martial law, the 6-9-18 formula was increased under P.D. No. 1404. So I wish to suggest that we reduce the period of five days to THREE days as a compromise. That would be 72 hours, Madam President. Actually, it is still quite long.

Will the honorable Vice-President yield to my amendment?

THE PRESIDENT: What does Commissioner Padilla say?

MR. PADILLA: Madam President, I have no particular conviction on the number of days or number of hours. That was suggested by a few Commissioners in conference yesterday. It is true that under Article 125 of the Revised Penal Code which penalizes the delaying of the transmittal or delivery of the person arrested to the judicial authorities, the period is based on the gravity of the offense and this is punishable by the same penalties as those for arbitrary detention in Article 124 of the Code and the delay in the release under Article 126. But this provision is made to apply when there is a suspension by the President of the privilege of the writ of habeas corpus. So it covers a different situation from that contemplated in the Revised Penal Code. The Rules of Court, Rule 1 13, Section 6 thereof, also allows arrest without warrant under three situations. However, that is also subject to the period for delivery of the arrested person to the judicial authorities, which means to the courts through the fiscal.

With regard to the proposed amendment to our amendment which is to reduce the period of five working days to "THREE" working days, I have no particular objection, Madam President.

FR. BERNAS: Madam President, after conferring with Commissioner Concepcion, we have no objection to the amendment if it is an amendment by addition but not by substitution, because if it is an amendment by substitution, it weakens the intent of the provision as it exists. The intention of the provision is precisely to apply the suspension of the privilege of the writ of habeas corpus only to those who have been judicially charged.

So if the amendment is by addition, that is, we require that the accused be charged within a certain period or number of days, we will accept it provided that what stands here is not deleted. The suspension of the privilege of the writ will apply only to those who have been judicially charged. Until they are charged, the suspension does not apply to them.

MR. PADILLA: Madam President, this period that shall apply only to persons judicially charged is not really very

clear to me, because if they are judicially charged, then it becomes irrelevant because then there would have been a warrant of arrest issued.

FR. BERNAS: It is not a question of whether or not a warrant of arrest can be issued. The question is whether in spite of the warrant, they can still be released. What we are saying here is that to prevent release under a suspension of the privilege of the writ of habeas corpus, the person who is under detention must be judicially charged. Until he is judicially charged, he is not covered by any suspension.

MR. PADILLA: If other persons are not covered by the suspension except those who are judicially charged, what would be the effect of that to others not subject to the suspension?

FR. BERNAS: Precisely, the purpose of the suspension of the privilege of the writ of habeas corpus is to enable the government to deal with a situation of an invasion or a rebellion and the government must charge judicially those who are involved in invasion or rebellion. Those who are not charged are not involved nor considered to be involved in the rebellion or invasion and, therefore, there is no reason for extending the suspension of the privilege of the writ to them.

MR. PADILLA: But if they are not involved in rebellion or invasion, which is a ground for the suspension of the privilege of the writ or for the declaration of martial law, then they are innocent. I cannot understand why the suspension of the writ should apply only to persons judicially charged when the very idea is that any person who has been arrested, even under the suspension of the writ, must be or should be judicially charged.

MR. CONCEPCION: The fact is that many had been detained for years without having any participation in rebellion or insurrection.

MR. PADILLA: That is correct.

MR. CONCEPCION: Precisely, to avoid that, the suspension of the privilege of the writ will apply only to those who are turned over to the judicial authority.

MR. PADILLA: What about the persons who might have been arrested but have not been turned over judicially?

MR. CONCEPCION: They can apply for a release.

THE PRESIDENT: The Chair supposes that is where the proposed amendment can come in, as suggested by Commissioner Bernas, as a separate sentence, without deleting the last paragraph on lines 21 to 23. Would Commissioner Padilla agree?

MR. PADILLA: I cannot really reconcile the three lines as presently worded. The last paragraph mentions "inherent in or directly connected with invasion." If it is a crime inherent in, that should be absorbed in the offense. And while the grounds are actual rebellion and actual invasion, the last line talks of "connected with invasion." To me it is a little obscure. Whereas, my proposal would seem to be very clear that whoever is arrested or detained must be judicially charged within five or three working days, otherwise he is entitled to be released even if it is during the period of the suspension of the privilege of the writ of habeas corpus.

FR. BERNAS: Madam President, may I perhaps read a combination of the Commissioner's amendment and the existing last paragraph for purposes of clarity. We could put it this way, starting with lines 21, 22 and 23: "The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion. DURING THE SUSPENSION OF THE PRIVILEGE OF THE WRIT ANY PERSON WHO HAS THUS BEEN ARRESTED OR DETAINED SHALL BE JUDICIALLY CHARGED WITHIN FIVE DAYS OTHERWISE HE SHALL BE RELEASED."

THE PRESIDENT: Or "THREE days," as recommended by Commissioner Sarmiento.

MR. SARMIENTO: "Within THREE days," Madam President.

FR. BERNAS: For "THREE days."

THE PRESIDENT: Is that satisfactory to Commissioner Padilla?

MR. PADILLA: I yield to the better judgment of the Committee, Madam President. I have already stated my observations and I do not want to repeat them anymore.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Does the amendment of Commissioner Padilla contemplate that such a person is not entitled to preliminary investigation, so that he can be immediately charged within the 72-hour period or five-day period as the case may be?

MR. PADILLA: There is no intention to waive any right of a person who has been arrested or accused. As a matter of fact, even during the suspension of the privilege of the writ of habeas corpus, there should be no arrest unless there be some probable cause that would justify his arrest or detention. So the amendment does not contemplate any waiver or abandonment of any right of a person arrested.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Point of clarification only from the distinguished Vice-President. Is it my understanding that during the three-day period, and Consistent with the firm stand and interpretation of the honorable Chief Justice Concepcion, that particular respondent would not be deprived of the right to sue for a writ of habeas corpus?

MR. PADILLA: There is no waiver of any right of the person arrested.

MR. SUAREZ: I thank the Commissioner for the clarification.

THE PRESIDENT: Are we now ready to vote on the proposed amendment of Commissioner Padilla, which has been accepted by the Committee, as reworded?

MR. REGALADO: Madam President, I think we should settle first the primordial question of whether it should be within five days or within three days as proposed by Commissioner Sarmiento.

THE PRESIDENT: That has been accepted by Commissioner Padilla; he has no objection to that. So the amendment is by addition after line 23.

Is there any objection to this particular proposed amendment? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: I ask that Commissioner Foz be recognized.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, my proposed amendment is on page 7, Section 16, line 26 which is to delete the words "and bureaus," and on line 28 of the same page, to change the phrase "colonel or naval captain" to MAJOR GENERAL OR REAR ADMIRAL.

This last amendment which is coauthored by Commissioner de Castro is to put a period (.) after the word ADMIRAL, and on line 29 of the same page, start a new sentence with: HE SHALL ALSO APPOINT, et cetera.

MR. REGALADO: May we have the amendments one by one.

The first proposed amendment is to delete the words "and bureaus" on line 26.

MR. FOZ: That is correct.

MR. REGALADO: For the benefit of the other Commissioners, what would be the justification of the proponent for such a deletion?

MR. FOZ: The position of bureau director is actually quite low in the executive department, and to require further confirmation of presidential appointment of heads of bureaus would subject them to political influence.

MR. REGALADO: The Commissioner's proposed amendment by deletion also includes regional directors as distinguished from merely staff directors, because the regional directors have quite a plenitude of powers within the regions as distinguished from staff directors who only stay in the office.

MR. FOZ: Yes, but the regional directors are under the supervision of the staff bureau directors.

MR. REGALADO: With respect to other officers of the military, may we know the proposal of Commissioner Foz?

MR. FOZ: On line 28, I propose to delete the phrase "colonel or naval captain" and substitute it with MAJOR GENERAL OR REAR ADMIRAL and put a period (.) after it.

MR. REGALADO: Again, for the benefit of the Commissioners, what would be the Commissioner's justification for increasing the level of rank which will require confirmation?

MR. DE CASTRO: Madam President.

MR. FOZ: I think Commissioner de Castro has something to say on that.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you.

I thank Commissioner Foz for introducing the amendment of changing "colonel or naval captain" to MAJOR GENERAL OR REAR ADMIRAL on my behalf. That saves me some words to say.

As I said before, the phrase "colonel or naval captain" was taken from the 1935 Constitution. In 1935, we had only one general and a few colonels in the military and they were in the higher echelon, mostly occupying the supervisory positions. In fact, the only general during that time was General Jalandoni who was the Chief of Staff then.

Madam President, we have increased the strength of our armed forces so now we have the ranks of up to full general. The officer corps constitutes 1.2 percent of the entire strength of the armed forces.

I introduce the change of "colonel or naval captain" to MAJOR GENERAL OR REAR ADMIRAL because the brigadier generals constitute the front line units; they are the front line generals directly fighting the insurgents while the major generals are the supervisory officers. I would say that when a brigadier general is sent to the front, he is selected by the Chief of Staff, concurred in by the Minister of National Defense and concurred in by the President, so he must be a real good general for the front lines. So I do not believe that he should be concerned about his rank for confirmation of the Commission on Appointments.

On the other hand, major generals are usually the service commanders, the supervising generals on top of the fighting units. They are the ones whose appointments by the President may be looked into by the Commission on Appointments because there are those who may be good brigadier generals but are not as good for a service command. This, the Commission on Appointments may look into before confirmation, and this goes also with the rear admiral. Madam President, this is the reason we have increased the rank to be submitted to the Commission on Appointments for confirmation.

MR. REGALADO: Madam President, may I address some clarificatory questions to Commissioner de Castro?

MR. DE CASTRO: Gladly.

THE PRESIDENT: Commissioner Regalado will please proceed.

MR. REGALADO: Under the 1935 Constitution, we took into account not only the number of colonels or generals then in the Philippine army, but also the number of troops under the command of a particular person. Generally, under the Table of Organization and Equipment and even up to now, a colonel is a regimental commander.

MR. DE CASTRO: Not necessarily. In the 1935 Constitution, a division commander is a colonel, now a division commander is a major general.

MR. REGALADO: So what would be the area of command now of a colonel as distinguished from that of a brigadier general under the Table of Organization and Equipment as it now stands?

MR. DE CASTRO: Under the Table of Allowance, a full colonel can now command a battalion or a unit a little higher than the battalion, maybe a reinforced battalion. In fact, we hear of colonels commanding infantry battalions with only a strength of about 700 men for each battalion. When I talk of reinforced battalion it has a strength of about 1,900 men. Formerly, a colonel like colonel Capinpin was commanding a division almost the whole division that the military had at that time.

MR. REGALADO: In other words, the increased rank involved in the proposed amendment, which will require confirmation, is based, among others, on the number of colonels and general rank officers that we now have in the Philippine Army and the Armed Forces.

MR. DE CASTRO: Yes, because the ratio of ranks is determined by the National Defense Act, and when we talk of general officers, they constitute only 1.2 percent of the total strength of the officer corps.

MR. REGALADO: That includes brigadier generals up to full general.

MR. DE CASTRO: That includes brigadier generals up to full general, the rank of General Ramos now.

MR. REGALADO: And what would be the ratio now with respect to full colonels in relation to the total strength that we have of about 250,000?

MR. DE CASTRO: I do not have the correct ratio but I can consult the National Defense Act: it is all there. I do not believe that the Armed Forces now is overstrong in the rank. Perhaps, this may go to about 2.5 percent. I am not very sure but I will consult the National Defense Act.

MR. REGALADO: I sought this clarification because of the observations yesterday of Commissioner Rama, who happens not to be here, where he was for maintaining the 1935 provisions for reasons that he explained.

MR. DE CASTRO: For the reason that normally a coup d'etat is started by officers with the rank of colonel. We have not had a coup d'etat yet ever since the Armed Forces was organized in 1935. And I think the colonels are

better tamed than the major generals and the captains when it comes to coup d' etat.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: May I ask Commissioner de Castro a point of clarification. When he suggested the change of the word "colonel" to "MAJOR GENERAL," what he is actually saying is that those who have lower ranks than major general are still appointed by the President but not with the consent of the Commission on Appointments?

MR. DE CASTRO: Yes, Madam President.

MR. MAAMBONG: In other words, the Commissioner does not take away the power of the President to appoint officers. It is only the matter of confirmation by the Commission on Appointments.

MR. DE CASTRO: Yes, Madam President. As I stated yesterday, the appointment of a cadet in the Philippine Military Academy is by the President.

MR. MAAMBONG: Precisely, because I recall that my appointment as a reserve of the Armed Forces was signed by the President.

MR. DE CASTRO: Yes.

MR. MAAMBONG: May I direct a question to Commissioner Foz? The Commissioner proposed an amendment to delete "and bureaus" on Section 16. Who will then appoint the bureau directors if it is not the President?

MR. FOZ: It is still the President who will appoint them but their appointments shall no longer be subject to confirmation by the Commission on Appointments.

MR. MAAMBONG: In other words, it is in line with the same answer of Commissioner de Castro?

MR. FOZ: Yes.

MR. MAAMBONG: Thank you.

THE PRESIDENT: Is this clear now? What is the reaction of the Committee?

MR. REGALADO: Before we accept the amendment, Madam President, may I get a clarification from Commissioner de Castro?

THE PRESIDENT: The Commissioner will please proceed.

MR. REGALADO: Why does the Commissioner have to make a distinction between a brigadier general and a major general? Would it not be all right if all officers of general rank should be confirmed by the Commission on Appointments?

MR. DE CASTRO: There is a very big distinction. A brigadier general has one star and a major general has two, which is a lot of difference. A brigadier general is a front line general now commanding reinforced battalions or a region, while a major general is the supervisor of that brigadier general. He is a service commander, such as the commanding general of the army, the commanding general of the air force, the commanding general of the Philippine Constabulary and the rear admiral of the navy.

MR. REGALADO: Does Commissioner de Castro not think, therefore, that since a brigadier general is a front line commander, his personal capabilities in the exercise of his command functions should be taken into account, so

much so that in the 1973 Constitution, all officers of general rank had to be specifically appointed by the President?

MR. DE CASTRO: Not in the 1973 Constitution. We have no Commission on Appointments in the 1973 Constitution.

MR. REGALADO: No, I mean, in the 1935 Constitution, a division commander was a colonel. Regarding this matter of the brigadier general being the front line commander of troops, does the Commissioner not think that the Commission on Appointments now should be given an opportunity to go over his qualifications, especially since he is leading so many troops out in the field and subjecting them to exposure to enemy fire?

MR. DE CASTRO: As I said earlier, before a brigadier general is given the front line troops to command during insurgency, he must first be chosen by the Chief of Staff, then concurred in by the Minister of National Defense and finally by the President. As such, it will be very, very difficult to see a brigadier general begging the confirmation of his appointment by the Commission on Appointments when he is there in the battleground fighting for us and who was already chosen by the Chief of Staff and concurred in by the Minister of National Defense and by the President. So we are just submitting the supervisory generals, like the major generals of the army, the PC, the navy and the air force, to the Commission on Appointments.

MR. REGALADO: Madam President, the Committee feels that this matter should be submitted to the body for a vote.

MR. DE CASTRO: Thank you.

MR. REGALADO: We will take the amendments one by one. We will first vote on the deletion of the phrase "and bureaus" on line 26, such that appointments of bureau directors no longer need confirmation by the Commission on Appointments. Section 16, therefore, would read: "The President shall nominate, and with the consent of a Commission on Appointments, shall appoint the heads of the executive departments, ambassadors . . ."

THE PRESIDENT: Is there any objection to delete the phrase "and bureaus" on page 7, line 26? (Silence) The Chair hears none; the amendment is approved.

May the Chair have the next amendment on line 28.

MR. UKA: Madam President, I was a little late, but then may I inform this Constitutional Commission of the presence of our brothers and sisters from the Cordillera Region and from the southern part of the Philippines. We will notice that this is the biggest crowd since we started over a month ago.

THE PRESIDENT: Yes, we have acknowledged their presence already. (Applause)

MR. UKA: I did not ask for that applause; it so happened that I noticed their presence in this hall which only shows their interest in our drafting of the Constitution. Some of them whispered to me that they are very much interested in regional autonomy, which we have not yet discussed. (Applause)

THE PRESIDENT: For the information of Commissioner Uka, we have acknowledged their presence already in the course of our session this afternoon.

MR. ROMULO: May I ask that Commissioner Jamir be recognized for an amendment.

THE PRESIDENT: We will vote first on the amendment on line 28. May we know what the amendment is?

MR. REGALADO: Madam President, on line 28, substitute the phrase "colonel or naval captain" with "MAJOR

GENERAL OR REAR ADMIRAL."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I wonder if the proponent would agree to an amendment to his amendment on line 28. We seek to achieve a happy compromise, so instead of "MAJOR GENERAL" it be BRIGADIER GENERAL and COMMODORE instead of "REAR ADMIRAL."

MR. DE CASTRO: Madam President, the Commissioner is seeking a happy compromise by introducing an amendment to my proposal.

THE PRESIDENT: Yes, is that acceptable to Commissioner de Castro?

MR. DE CASTRO: Madam President, I would like to give a little background information on this matter. I have talked with General Ramos and Deputy Minister of Defense Ileto regarding the inclusion of the brigadier general and the commodore, and they were quite insistent in convincing me to start from the rank of major general and rear admiral. If my proposal to include the major general and the rear admiral will lose on the floor, which I doubt, I will be willing to go to the happy medium.

I thank Commissioner Davide, Madam President.

MR. DAVIDE: May I request then for a vote on my proposed amendment, but before doing so, may I be allowed to explain?

THE PRESIDENT: The Commissioner will please proceed.

MR. DAVIDE: It was stated by Commissioner de Castro that the brigadier generals and the rear admirals are the field commanders. Necessarily then, the security of the State is in issue. We should, therefore, allow the Commission on Appointments to review any proposal for appointment to these highly sensitive positions, otherwise, these field commanders will believe that they are immune from the review of the legislative. So sensitive a position then would necessitate, necessarily, a confirmation of any appointment of these officials.

MR. DE CASTRO: As I said before, and allow me to repeat it just once more, this brigadier general who goes to the front has passed three screenings-the screening of the Chief of Staff, the screening of the Minister of National Defense and the screening of the President. We have had very bad experiences regarding confirmation of the appointments of these officials by the Commission on Appointments. We do not like our fighting generals who are in the front to be begging the confirmation of their appointments by the Commission on Appointments. Our experience with the Commission on Appointments was very bad that we even refuse to think about what it had done to us. As I said, we do not like our fighting generals in the front to beg the Commission on Appointments, who might not only disagree with their appointments but even hide their papers inside the drawer of the table.

That is our sad experience with the Commission on Appointments which we cannot forget.

MR. DAVIDE: May I just reply, Madam President. If they already underwent three screenings, with more reason then that the representatives of the people represented by the Commission on Appointments should be allowed to make the final screening for people in sensitive positions which might involve violations of human rights and the security and stability of the State.

MR. DE CASTRO: Madam President, the President of the Philippines is a representative of the people who screens the front line generals.

MR. ABUBAKAR: Madam President, may I take the floor just for the clarification of the Commissioners. I want to raise a vital and informative question.

MR. ROMULO: Commissioner Abubakar wants to be recognized, Madam President.

THE PRESIDENT: Commissioner Abubakar is recognized.

MR. ABUBAKAR: Madam President, we have been debating for so long on the inclusion of rear admiral, major general and colonel. I would like to point out that in the naval echelon of the Philippine Navy, there is only one rear admiral. Why do we not simplify this because this problem will not arise as frequently as we give the impression in our debate? Since the Commissioner is more acquainted with the organization of the army, may we know how many major generals we have?

MR. DE CASTRO: As of now, we have six major generals and one rear admiral. who are as follows: Major General Magno, commander of the Southern Command; Major General Mison, Vice-Chief of Staff; Major General Cañeso of the army; Major General Farolan of the air force; the major general in the Philippine Constabulary; Major General Ermita; and the rear admiral of the navy who is the flag officer in command.

MR. ABUBAKAR: So we have six major generals and one rear admiral. They, as well as the higher echelon of the navy, the army and the air force, should not pose a big problem to the appointing power. As I understand it, their succession is even automatic. As soon as a major general in command of a particular branch of the Armed Forces has retired, the next senior officer succeeds him. So the matter of submitting their appointments for confirmation would not be difficult. We can solve this by adhering as simply as we had done in the previous Constitution and legislation that their appointments be confirmed only by the Commission. On that note, therefore, instead of exhausting our resources because we are not warlike people but peace-loving people, we should direct to and concentrate ourselves on, the development of a prosperous and happy Philippines, not a militaristic Philippines. I am sure this problem regarding the rank of military officials will not arise as frequently as we are fearful that it might. On those bases then, we can dispose of this matter by the simple provision as it now appears in the proposed draft of the Constitution. Since Commissioner de Castro is a general, I respect his ability and his experience. We will listen to his counsel and we would like him to tell us how this matter could be resolved. On that note, I give him my approval in advance.

MR. DE CASTRO: I thank the Commissioner. I hope the Committee will also follow the Commissioner's advice.

MR. GARCIA: Madam President, may I argue briefly against the amendment proposed by Commissioner de Castro?

MR. DE CASTRO: We submit it to a vote, Madam President.

THE PRESIDENT: Commissioner Garcia is recognized.

MR. GARCIA: Thank you very much, Madam President.

I would like to argue briefly against the amendment proposed by Commissioner de Castro.

I believe the Commission on Appointments, in the matter of confirming the appointments of military officers with the rank of colonel and naval captain, is important for two reasons: First, I think it is a reaffirmation of the importance of the principle of civilian supremacy; and second, because of the fact that military officers must also manifest public accountability. I think our very sad experience during martial law proves this in that very often the appointing power can exact personal loyalty. And I think the composition of the Commission on Appointments where we have representatives of the people will make sure that military officers will be elected, nominated and appointed on the basis of these two principles. I think this is very important.

I would like, therefore, to take a firm stand against the amendment of Commissioner de Castro.

MR. ROMULO: Madam President, I think we are now ready to vote since we have discussed this enough.

THE PRESIDENT: May we know how line 28 will now read?

MR. DE CASTRO: Line 28 would now read: "from the rank of MAJOR GENERAL OR REAR ADMIRAL."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: There was a proposed amendment to the amendment of Commissioner de Castro but it was rejected by the proponent. I would like to submit it to a vote.

THE PRESIDENT: The proposed amendment to the amendment was to include "BRIGADIER GENERAL."

MR. DAVIDE: My amendment is to change "MAJOR GENERAL" to BRIGADIER GENERAL and "REAR ADMIRAL" to COMMODORE.

MR. DE CASTRO: May I request the patience and indulgence of the Honorable Davide because if I lose my amendments I am going to return to his. So please, I request the indulgence of the Commissioner.

MR. DAVIDE: I do not want Commissioner de Castro see a defeat on the floor. I would rather request him to agree to the proposal so that both of us will be victorious.

MR. DE CASTRO: I will go on with my proposal as of now.

Madam President, may I ask for a suspension of the session.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 4:11 p.m.

RESUMPTION OF SESSION

At 4:18 p.m. the session was resumed.

THE PRESIDENT: The session is resumed.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Since Commissioner de Castro wants his proposal acted upon by the Commission, I am with drawing my proposed amendment to his amendment and would stick to the original provision of the Article as proposed by the Committee.

THE PRESIDENT: What is the reaction of the Committee?

MR. REGALADO: The Committee, Madam President, prefers to have the proposed amendment of Commissioner de Castro submitted to the floor for the consideration of all the Commissioners. However, the sentiment of the Committee is that it will stick to the original provision on line 28 regarding the inclusion of the colonel and the naval captain.

THE PRESIDENT: So the Committee does not accept the proposed amendment of Commissioner de Castro so that line 28 of the committee report remains as is.

MR. DE CASTRO: Madam President, with due respect to the amendment of Commissioner Davide to my amendment on line 28, I am relenting the change of colonel" to BRIGADIER GENFRAL and "naval captain to COMMODORE. We will submit it to the floor if the Committee will not accept it. Line 28 would now read: "armed forces from the rank of BRIGADIER GENERAL or COMMODORE."

MR. REGALADO: The Committee, Madam President, does not accept the amendment. It is its sentiment that it will stick to the original provision of the proposed Article and, therefore, we request that the proposed amendment be submitted to the floor.

MR. DE CASTRO: Thank you.

VOTING

THE PRESIDENT: Commissioner de Castro has explained already his reasons and, therefore, we are now ready to vote.

Those in favor of the proposed amendment on page 7, line 28 to change "colonel" to "BRIGADIER GENERAL" and "naval captain" to "COMMODORE," please raise their hand. (Few Members raised their hand.)

Those against, please raise their hand. (Several Members raised their hand.)

The results show 12 votes in favor and 22 against; the proposed amendment of Commissioner de Castro is lost.

MR. ROMULO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. ROMULO: I ask that Commissioner Foz be recognized.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, this is the third proposed amendment on page 7, line 28. I propose to put a period (.) after "captain" and on line 29, delete "and all" and substitute it with HE SHALL ALSO APPOINT ANY.

MR. REGALADO: Madam President, the Committee accepts the proposed amendment because it makes it clear that those other officers mentioned therein do not have to be confirmed by the Commission on Appointments.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I just would like to get a clearer intention. With the acceptance of that proposed amendment, would Congress be prohibited from creating an office and vesting the authority of appointing the officials therein on the President, with the requirement that such appointments should bear the conformity or consent of the Commission on Appointments? Under the proposal, it would seem that all other such officials may be appointed without the consent of the Commission on Appointments, prohibiting, therefore, the legislature to so create an office for which the requirement for consent of the Commission on Appointments for positions therein is stated in the law itself.

FR. BERNAS: Madam President, the constitutional list of officers whose appointments need the confirmation of the Commission on Appointments is not exclusive. If the Congress is so minded, it may require other officers also to be confirmed by the Commission on Appointments.

MR. DAVIDE: So would the proponent accept an amendment to his amendment, so that after "captain" we insert the following words: AND OTHER OFFICERS WHOSE APPOINTMENTS ARE VESTED IN HIM IN THIS

CONSTITUTION?

FR. BERNAS: It is a little vague.

MR. DAVIDE: In other words, there are positions provided for in the Constitution whose appointments are vested in the President, as a matter of fact like those of the different constitutional commissions.

FR. BERNAS: That is correct. This list of officials found in Section 16 is not an exclusive list of those appointments which constitutionally require confirmation of the Commission on Appointments.

MR. DAVIDE: That is the reason I seek the incorporation of the words I proposed.

FR. BERNAS: Will Commissioner Davide restate his proposed amendment?

MR. DAVIDE: After "captain," add the following: AND OTHER OFFICERS WHOSE APPOINTMENTS ARE VESTED IN HIM IN THIS CONSTITUTION.

FR. BERNAS: How about: "AND OTHER OFFICERS WHOSE APPOINTMENTS REQUIRE CONFIRMATION UNDER THIS CONSTITUTION"?

MR. DAVIDE: Yes, Madam President, that is modified by the Committee.

FR. BERNAS: That will clarify things.

THE PRESIDENT: Does the Committee accept?

MR. REGALADO: Just for the record, of course, that excludes those officers which the Constitution does not require confirmation by the Commission on Appointments, like the members of the judiciary and the Ombudsman.

MR. DAVIDE: That is correct. That is very clear from the modification made by Commissioner Bernas.

THE PRESIDENT: So we have now this proposed amendment of Commissioners Foz and Davide.

MR. RODRIGO: Madam President, before we vote, may I be clarified. As worded now, other officers, aside from those enumerated here, may also be appointed by the President with the confirmation of the Commission on Appointments, if it is so provided in this Constitution. I remember Commissioner Bernas say that officers may also need the confirmation of the Commission on Appointments if so provided by law, so that the approval of that amendment which says "UNDER THIS CONSTITUTION" does not exclude the power of the legislature to enact a law providing that these officials shall need the confirmation of the Commission on Appointments.

FR. BERNAS: It does not.

MR. RODRIGO: Thank you.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioners Foz and Davide as accepted by the Committee? (Silence) The Chair hears none; the amendment, as amended, is approved.

MR. ROMULO: Madam President, I ask that Commissioner Aquino be recognized.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Madam President, I think the Committee members have failed to provide for recess appointments.

FR. BERNAS: That is correct.

MS. AQUINO: Are we allowing the President to make appointments while the Congress is in recess? If so, I

would suggest that we take up Article VII Section 10 of the 1935 Constitution, which directly pertains to this situation.

FR. BERNAS: Madam President, we quite recognize that, but we have to think this out a little bit more because Article VII, Section 10 (4) of the 1935 Constitution provides:

The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

This provision, however, was written under the circumstances of the 1935 Constitution when the session days were only 100 days. Today, we only have a 30-day compulsory recess which, however, does not exclude a longer voluntary recess. So the question is: Can the President make appointments while Congress is in recess, either involuntary or compulsory?

MR. DE CASTRO: Madam President.

THE PRESIDENT: May we let Commissioner Bernas, finish first with his comments.

FR. BERNAS: I am just thinking aloud, Madam President, whether a provision similar to that of the 1935 Constitution is necessary, or if we must adjust the provision of the 1935 Constitution to the circumstances of the present Constitution which has a very brief recess.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: I believe the provision in the 1935 Constitution refers to ad interim appointments.

FR. BERNAS: Yes.

MR. DE CASTRO: So that when appointments of the officials by the President which need the confirmation of the Commission on Appointments are made when the Congress is in recess — these are ad interim appointments — the President may then submit such appointments to Congress when it begins to be in session. This is just for the information of the body, Madam President.

FR. BERNAS: Yes, we quite understand that, but as we say, our compulsory recess now is only 30 days. So under such circumstances, is it necessary to provide for ad interim appointments? Perhaps there should be a little discussion on that.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: My concern is that unless this problem is addressed, this might present problems in terms of anticipating interruption of government business, considering that we are not certain of the length of involuntary recess or adjournment of the Congress. We are certain, however, of the involuntary adjournment of the Congress which is 30 days, but we cannot leave to conjecture the matter of involuntary recess.

FR. BERNAS: That is correct, but we are trying to look for a formula. I wonder if the Commissioner has a formula which we will discuss later but not at the moment. Perhaps we can move on to something else.

MR. ROMULO: Would the Committee like to defer that question?

FR. BERNAS: Yes.

THE PRESIDENT: We will defer this particular question.

Is there any other Commissioner who desires to propose an amendment?

MR. DAVIDE: On Section 16, Madam President.

MR. DE LOS REYES: Madam President, may I propose an amendment on line 16.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, on page 8, line 3, insert a comma (,) after "departments" and add the following.

. .

MR. DE LOS REYES: Madam President, anterior amendment.

THE PRESIDENT: There is an anterior amendment by Commissioner de los Reyes.

MR. DE LOS REYES: On page 8, line 2, change "courts" to MEMBERS OF THE JUDICIARY, because the line mentions "President," who is a person and "heads of departments," who are also persons. Therefore, it should be MEMBERS OF THE JUDICIARY.

THE PRESIDENT: It should be "in the JUDICIARY," as a body.

MR. ROMULO: Yes, "in the JUDICIARY," not "in the MEMBERS."

MR. DE LOS REYES: Lines 1 to 3 read: "law vests the appointment of inferior officers in the President alone, in the courts, or in the heads of departments," so to have symmetry, it should be "in the MEMBERS OF THE JUDICIARY."

THE PRESIDENT: So does the Commissioner mean that every judge will be entitled to appoint his personnel? Am I correct?

MR. DE LOS REYES: Yes, because the line states "courts." It does not say which court.

THE PRESIDENT: Shall we seek the advice of Commissioner Concepcion?

MR. ROMULO: He is not in at the moment.

THE PRESIDENT: What does the Committee say in changing "courts" to "MEMBERS OF THE JUDICIARY"?

MR. BENNAGEN: Madam President.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: Anterior amendment on page 8, line 1, Madam President, which I indicated during the period of interpellations regarding the use of the word "inferior." I understand from the Commissioners that we can delete "inferior" without sacrificing its meaning.

MR. REGALADO: So line I would now read: "of OTHER officers LOWER IN RANK."

MR. BENNAGEN: Thank you, Madam President.

MR. REGALADO: The Committee accepts the amendment.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection to change "inferior" to "OTHER officers LOWER IN RANK"? (Silence) The Chair hears none; the amendment is approved.

Let us go back to the amendment of Commissioner de los Reyes.

MR. DE LOS REYES: Does the Committee accept my proposed amendment?

MR. REGALADO: The amendment of Commissioner de los Reyes is to change "courts" to "MEMBERS OF THE JUDICIARY."

FR. BERNAS: It is a little vague if we just say "in the MEMBERS OF THE JUDICIARY" because we have collegiate and noncollegiate bodies. So for instance, if we take the case of the Supreme Court when we say "MEMBERS; OF THE JUDICIARY," which of the members of the Supreme Court would have the appointing authority?

MR. DE LOS REYES: But the point is that the first sentence refers to the President alone; it does not say "executive." And the last portion refers to "the heads of departments" because these are persons who appoint, but the middle portion refers to "courts" which do not appoint. How can the courts appoint?

FR. BERNAS: How about "in the HEADS OF courts"?

THE PRESIDENT: Commissioner Concepcion is here now, may we seek his opinion on this matter? May we ask Commissioner Regalado to kindly inform Commissioner Concepcion of the issue.

Commissioner Concepcion is recognized.

MR. CONCEPCION: I suppose that insofar as collegiate courts are concerned, certain rules will be adopted by the Supreme Court. Under the present setup, court employees are actually appointed by the Chief Justice of the Supreme Court. I suppose in this case, when we speak of courts, it refers to the judges presiding in courts. After all, the presiding judge acts in behalf of the court. These are court employees, and whoever presides performs the administrative functions corresponding to his particular station. Insofar as clerks of courts are concerned, generally, they are appointed by the Supreme Court in agreement with collegiate courts through the passage of a resolution that is deemed to be an appointment by the court concerned. So I think we can retain the word "courts" since it has been used for so long in the past, and it has an established connotation.

MR. DE LOS REYES: I submit if that is the explanation, although I find the wordings inconsistent. It refers to the President and heads of departments as officers, but it does not say "or in the Executive Department." The middle portion refers to courts, and I do not think the courts can appoint. But if the Committee wants to retain this in this particular Article, I submit.

Thank you, Madam President.

THE PRESIDENT: Thank you.

Is Commissioner de los Reyes insisting on his amendment?

MR. DE LOS REYES: I am not insisting, Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: On page 8, line 3, change the period (.) after "departments" to a comma (,) and add AGENCIES, COMMISSIONS, OR BOARDS. This is just to complete the enumeration in the 1935 Constitution from which this additional clause was taken.

THE PRESIDENT: Does the Committee accept?

MR. SARMIENTO: Just a point of clarification, Madam President. I think this was taken from the 1973

Constitution. The 1935 Constitution speaks only of "heads of departments."

MR. DAVIDE: Yes, it is the 1973 Constitution rather.

THE PRESIDENT: Does the Committee need time to consider?

MR. SUMULONG: We accept the amendment.

MR. ROMULO: The Committee has accepted the amendment, Madam President.

THE PRESIDENT: Is there any objection to the addition of the words "AGENCIES, COMMISSIONS, OR BOARDS" on line 3, page 8? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: Madam President, I ask that Commissioner Bengzon be recognized for an amendment on Section 16 with regard to ad interim appointments.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, apropos of the matter raised by Commissioner Aquino and after conferring with the Committee, Commissioner Aquino and I propose the following amendment as the last paragraph of Section 16, the wordings of which are in the 1935 Constitution: THE PRESIDENT SHALL HAVE THE POWER TO MAKE APPOINTMENTS DURING THE RECESS OF CONGRESS WHETHER IT BE VOLUNTARY OR COMPULSORY BUT SUCH APPOINTMENTS SHALL BE EFFECTIVE ONLY UNTIL DISAPPROVAL BY THE COMMISSION ON APPOINTMENTS OR UNTIL THE NEXT ADJOURNMENT OF THE CONGRESS.

This is otherwise called the ad interim appointments.

THE PRESIDENT: Does the Committee accept?

MR. SUMULONG: We accept the amendment.

MR. RODRIGO: Before we vote, Madam President, may I propound just one or two questions?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: The amendment refers to appointments which require confirmation by the Commission on Appointments.

MR. BENGZON: Yes, Madam President.

MR. RODRIGO: It does not refer to appointments which do not need-such confirmation by the Commission on Appointments because it is understood that the President can appoint anytime.

MR. BENGZON: That is correct.

MR. RODRIGO: Thank you.

THE PRESIDENT: Is there any objection to the proposed amendment of Commissioners Aquino and Bengzon, adding a paragraph to the last paragraph of Section 16? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: I believe there are no more amendments on Section 16. We are now on Section 17. I ask that Commissioner Jamir be recognized.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: Madam President, on Section 17, page 8, line 7, after the word "conviction," delete the period (.)

and add BY FINAL JUDGMENT, so that line 7 will now read: "fines and forfeitures, after conviction BY FINAL JUDGMENT."

MR. SUMULONG: The Committee accepts.

MR. JAMIR: Thank you very much.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Jamir which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: I ask that Commissioner Tan be recognized to introduce an amendment on the same section.

THE PRESIDENT: Commissioner Tan is recognized

SR. TAN: Madam President, lines 7 to 9 state:

However, the power to grant executive clemency for violations of corrupt practices laws may be limited by legislation.

I suggest that this be deleted on the grounds that, first, violations of corrupt practices may include a very little offense like stealing P10; second, which I think is more important, I get the impression, rightly or wrongly, that subconsciously we are drafting a constitution on the premise that all our future Presidents will be bad and dishonest and, consequently, their acts will be lacking in wisdom. Therefore, this Article seems to contribute towards the creation of an anti-President Constitution or a President with vast responsibilities but no corresponding power except to declare martial law. Therefore, I request that these lines be deleted.

MR. REGALADO: Madam President, may the Committee react to that?

THE PRESIDENT: Yes, please.

MR. REGALADO: This was inserted here on the resolution of Commissioner Davide because of the fact that similar to the provisions on the Commission on Elections, the recommendation of that Commission is required before executive clemency is granted because violations of the election laws go into the very political life of the country.

With respect to violations of our Corrupt Practices Law, we felt that it is also necessary to have that subjected to the same condition because violation of our Corrupt Practices Law may be of such magnitude as to affect the very economic system of the country. Nevertheless, as a compromise, we provided here that it will be the Congress that will provide for the classification as to which convictions will still require prior recommendation; after all, 'the Congress could take into account whether or not the violation of the Corrupt Practices Law is of such magnitude as to affect the economic life of the country, if it is in the millions or billions of dollars. But I assume the Congress in its collective wisdom will exclude those petty crimes of corruption as not to require any further stricture on the exercise of executive clemency because, of course, there is a whale of a difference if we consider a lowly clerk committing malversation of government property or funds involving one hundred pesos. But then, we also anticipate the possibility that the corrupt practice of a public officer is of such magnitude as to have virtually drained a substantial portion of the treasury, and then he goes through all the judicial processes and later on, a President who may have close connections with him or out of improvident compassion may grant clemency under such conditions. That is why we left it to Congress to provide and make a classification based on substantial distinctions between a minor act of corruption or an act of substantial proportions.

SR. TAN: So, why do we not just insert the word GROSS or GRAVE before the word "violations"?

MR. REGALADO: We feel that Congress can make a better distinction because "GRAVE" or "GROSS" can be

misconstrued by putting it purely as a policy.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I speak in favor of the proposed amendment?

THE PRESIDENT: Please proceed.

MR. RODRIGO: The power to grant executive clemency is essentially an executive power, and that is precisely why it is called executive clemency. In this sentence, which the amendment seeks to delete, an exception is being made. Congress, which is the legislative arm, is allowed to intrude into this prerogative of the executive. Then it limits the power of Congress to subtract from this prerogative of the President to grant executive clemency by limiting the power of Congress to only corrupt practices laws. There are many other crimes more serious than these. Under this amendment, Congress cannot limit the power of executive clemency in cases of drug addiction and drug pushing which are very, very serious crimes that can endanger the State; also, rape with murder, kidnapping and treason. Aside from the fact that it is a derogation of the power of the President to grant executive clemency, it is also defective in that it singles out just one kind of crime. There are far more serious crimes which are not included.

MR. REGALADO: I will just make one observation on that. We admit that the pardoning power is an executive power. But even in the provisions on the COMELEC, one will notice that constitutionally, it is required that there be a favorable recommendation by the Commission on Elections for any violation of election laws.

At any rate, Commissioner Davide, as the principal proponent of that and as a member of the Committee, has explained in the committee meetings we had why he sought the inclusion of this particular provision. May we call on Commissioner Davide to state his position.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I am constrained to rise to object to the proposal. We have just approved the Article on Accountability of Public Officers. Under it, it is mandated that a public office is a public trust, and all government officers are under obligation to observe the utmost of responsibility, integrity, loyalty and efficiency, to lead modest lives and to act with patriotism and justice.

In all cases, therefore, which would go into the very core of the concept that a public office is a public trust, the violation is itself a violation not only of the economy but the moral fabric of public officials. And that is the reason we now want that if there is any conviction for the violation of the Anti-Graft and Corrupt Practices Act, which, in effect, is a violation of the public trust character of the public office, no pardon shall be extended to the offender, unless some limitations are imposed.

Originally, my limitation was, it should be with the concurrence of the convicting court, but the Committee left it entirely to the legislature to formulate the mechanics at trying, probably, to distinguish between grave and less grave or serious cases of violation of the Anti-Graft and Corrupt Practices Act. Perhaps this is now the best time, since we have strengthened the Article on Accountability of Public Officers, to accompany it with a mandate that the President's right to grant executive clemency for offenders or violators of laws relating to the concept of a public office may be limited by Congress itself.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I briefly speak in favor of the amendment by deletion.

Madam President, over and over again, we have been saying and arguing before this Constitutional Commission that we are emasculating the powers of the presidency, and this provision to me is another clear example of that. So, I speak against this provision. Even the 1935 and the 1973 Constitutions do not provide for this kind of provision.

I am supporting the amendment by deletion of Commissioner Tan.

MR. ROMULO: Commissioner Tingson would like to be recognized.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, I am also in favor of the amendment by deletion because I am in sympathy with the stand of Commissioner Francisco "Soc" Rodrigo. I do believe and we should remember that above all the elected or appointed officers of our Republic, the leader is the President. I believe that the country will be as the President is, and if we systematically emasculate the power of this presidency, the time may come when he will be so handcuffed that he will no longer be able to act like he should be acting.

So, Madam President, I am in favor of the deletion of this particular line.

MR. ROMULO: Commissioner Colayco would like to be recognized.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you very much, Madam President.

I seldom rise here to object to or to commend or to recommend the approval of proposals, but now I find that the proposal of Commissioner Tan is worthy of approval of this body.

Why are we singling out this particular offense? There are other crimes which cast a bigger blot on the moral character of the public officials.

Finally, this body should not be the first one to limit the almost absolute power of our Chief Executive in deciding whether to pardon, to reprieve or to commute the sentence rendered by the court.

I thank you.

THE PRESIDENT: Are we ready to vote now?

MR. ROMULO: Commissioner Padilla would like to be recognized, and after him will be Commissioner Natividad.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Only one sentence, Madam President. The Sandiganbayan has been called the Anti-Graft Court, so if this is allowed to stay, it would mean that the President's power to grant pardon or reprieve will be limited to the cases decided by the Anti-Graft Court, when as already stated, there are many provisions in the Revised Penal Code that penalize more serious offenses.

Moreover, when there is a judgment of conviction and the case merits the consideration of the exercise of executive clemency, usually under Article V of the Revised Penal Code the judge will recommend such exercise of clemency. And so, I am in favor of the amendment proposed by Commissioner Tan for the deletion of this last

sentence in Section 17.

THE PRESIDENT: Are we ready to vote now, Mr. Floor Leader?

MR. NATIVIDAD: Just one more.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: I am also against this provision which will again chip more powers from the President. In case of other criminals convicted in our society, we extend probation to them while in this case, they have already been convicted and we offer mercy. The only way we can offer mercy to them is through this executive clemency extended to them by the President. If we still close this avenue to them, they would be prejudiced even worse than the murderers and the more viscious killers in our society. I do not think they deserve this opprobrium and punishment under the new Constitution.

I am in favor of the proposed amendment of Commissioner Tan.

MR. ROMULO: We are ready to vote, Madam President.

THE PRESIDENT: Is this accepted by the Committee?

MR. REGALADO: The Committee, Madam President, prefers to submit this to the floor and also because of the objection of the main proponent, Commissioner Davide. So we feel that the Commissioners should vote on this question.

VOTING

THE PRESIDENT: As many as are in favor of the proposed amendment of Commissioner Tan to delete the last sentence of Section 17 appearing on lines 7, 8 and 9, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand (Few Members raised their hand.)

The results show 34 votes in favor and 4 votes against; the amendment is approved.

MR. ROMULO: Madam President, there are no more amendments on Section 17. There are two registered speakers for Section 18, Commissioners de Castro and Quesada.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Madam President.

On line 15 of Section 18, instead of the words "Monetary Board," insert CONGRESS so it will read: "The President may contract or guarantee foreign and domestic loans on behalf of the Republic of the Philippines with the prior concurrence of CONGRESS."

THE PRESIDENT: Is this accepted by the Committee?

MR. REGALADO: Madam President, the Committee does not accept the amendment.

MR. DE CASTRO: May I be allowed to explain my amendment?

THE PRESIDENT: Commissioner de Castro may explain his amendment.

MR. DE CASTRO: Thank you, Madam President.

The external debt of the Philippines is \$26 billion and this is the cause of our economic crisis at this time. All these debts were contracted by the Chief Executive without any check from the Batasan. We like a system of

check and balance in our system of government; that is, between the executive, the legislative and the judiciary. We do not like to put in the hands of the Chief Executive alone the matter of contracting loans and increasing our external debt. The proposition of the Committee is through the Monetary Board. The members of the Monetary Board as we know, are still appointees of the President. In short, it is still the Chief Executive alone who will contract foreign debt for us and put us into the morass of economic crisis. It is, therefore, under the system of check and balance that Congress should have a hand in contracting foreign debts or loans.

Thank you, Madam President.

MR. ROMULO: I ask that Commissioner Villegas be recognized.

THE PRESIDENT: Commissioner Villegas is recognized.

MR. VILLEGAS: I would like to suggest an amendment to the amendment of Commissioner de Castro. First, let me give the background.

The function of borrowing is an executive prerogative that is subject to the vagaries of national and international economic conditions. There are many reasons for the government, meaning the Executive, to borrow: collapse of prices of our export products that lead to very reduced government revenues; a sudden significant increase in the prices of goods that we import, especially after the two oil shocks; a calamity that may affect the lives of thousands of Filipinos; a drop in government revenues because of an economic slump, limiting the government's ability to provide social services to the poor and to pay employees like teachers, health workers and others, and I can go on and on. Borrowing is not inherently evil and, again, I would like to say that there is this tendency to emasculate the power of the Executive even in this necessary economic function.

As we have informed the body earlier, in the Article on National Economy and Patrimony, we are going to propose that the Monetary Board be independent of the Executive through a composition which would make the majority of the members of the Monetary Board come from the private sector. And as we have said, the private sector is not synonymous with business. The private sector can include representatives from labor and other groups. The amendment to the amendment that I would like to suggest is: THE MONETARY BOARD SHALL FIX A LIMIT TO FOREIGN BORROWING.

To give the background, there is a limit set by the Monetary Board to foreign borrowings, which is 20 percent, called the debt service ratio; that is, the ratio of the annual servicing of principal and interest to our total export earnings both in goods and services. That can be set by the Monetary Board because it has the expertise to determine what is a prudent limit. For Congress to concur. I would suggest that the Monetary Board shall fix a limit to foreign borrowings which can be exceeded only with the concurrence of the majority of Congress. I think that is where we should definitely have some kind of a check, if and when the Executive finds it necessary to exceed the limit set by the Monetary Board. And I maintain that there are extraordinary situations where the government should be able to go over the limit because of an emergency. Then, that is the time that we should get the Congress to concur. That is the amendment I would like to introduce.

MR. DE CASTRO: Madam President, may I say a few words on the proposal of the Honorable Villegas. He speaks of a calamity which will prompt the Executive to contract foreign borrowings. The existence of a calamity is normally provided in our budget which is not part of the foreign borrowings. The existence of a calamity is normally provided in our budget which is not part of the foreign borrowings. He speaks of a proposal on the work of a new Monetary Board. Until we see that Monetary Board will we be able to gauge the independence of that body from the shackles of the Executive. We are fully aware that our economic morass at this time is due to the extravagance and the use of power by the Executive without any check even from the Batasang Pambansa.

Madam President, before we go into foreign borrowings, our economists, good as they are, should have a good planning, a three-year plan, a five-year plan and a ten-year plan, for the economic recovery of our country, so that they will know from the very beginning how much they will borrow from a certain year to a certain year, and Congress should be part of this plan. Therefore, concurrence of Congress is necessary.

I, therefore, present that foreign borrowings must have the concurrence of Congress voting jointly.

MR. VILLEGAS: May I reply.

First of all, definitely, there are contingencies that are always included in the budget of the government, but there are precisely certain types of calamities that cannot be included in these contingencies, and this is just, as I said, one of the many, many situations that may confront the Executive which would require foreign borrowings.

I agree with the Commissioner that the five-year plan that is going to be submitted by a central planning agency — whether we call it NEDA or something else — will be determined by the legislature and should include the amount of borrowings that can be foreseen within a five-year horizon, for example. But we know very well that a plan is only a plan. For example, no one could have foreseen the tremendous increase in oil prices in the 1970s, and that was exactly why we have to give a lot of elbow room to the executive to meet the contingencies from year to year. And I think, as long as we include the provision that would make the Monetary Board independent by making sure that the majority of the members will not be Cabinet ministers, it would be sufficient to have the Monetary Board concur in ordinary borrowings. And as I said, the exact amendment that I would like to suggest is on line 16 of page 8. After the word "Board," the next sentence will read: THE MONETARY BOARD SHALL FIX A LIMIT TO FOREIGN BORROWING WHICH CAN BE EXCEEDED ONLY UPON CONCURRENCE OF THE MAJORITY OF CONGRESS. Then continue: "The Monetary Board shall, within thirty (30) days . . ."

FR. BERNAS: Madam President, one question. How often will the Monetary Board fix the ceiling?

MR. VILLEGAS: This 20 percent that has been set by the Monetary Board has been there for 10 years. So, it is something that should be left to the Monetary Board to decide.

MR. MAAMBONG: May we know the exact wordings again, please.

MR. VILLEGAS: The amendment will read: THE MONETARY BOARD SHALL FIX A LIMIT TO FOREIGN BORROWING WHICH CAN BE EXCEEDED ONLY UPON CONCURRENCE OF THE MAJORITY OF CONGRESS. Then we can say JOINTLY or SEPARATELY.

MR. DE CASTRO: Does the proponent prefer "SEPARATELY" now?

MR. VILLEGAS: I will leave it to the Committee.

MR. DE CASTRO: Because the proponent said that the Monetary Board shall fix a limit, how much is that limit.

MR. VILLEGAS: How much is the limit?

MR. DE CASTRO: Yes.

MR. VILLEGAS: I would leave it up to the Monetary Board. Right now, as I said, the figure is 20 percent debt service ratio.

MR. DE CASTRO: This is the problem, Madam President. The Monetary Board under the past regime had been cooperating with the Executive to put us where we are today. This is the very reason why we like a check by Congress.

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: May I ask Commissioner Villegas to yield to a few questions just to clarify certain matters?

MR. VILLEGAS: Gladly, Madam President.

MR. NATIVIDAD: I would like to ask this question from the perspective of Congress. Before the Congressmen were elected for four years. In our draft, we are recommending that they be elected for three years. The proponent's perception here is that the Monetary Board is given this duty and responsibility because it takes expertise and consistency to perform these duties. Am I correct?

MR. VILLEGAS: Exactly, Madam President.

MR. NATIVIDAD: Which may be absent in the case of Members of Congress?

MR. VILLEGAS: That is right.

MR. NATIVIDAD: Because they are being elected every three years, and if they are not elected, there will be no consistencies. I am asking this question from the perception of a Congressman because I served in the Congress and I know the difficulties of a Congressman, even if he is an economist.

As an economist, what are the qualities that the proponent would expect from a Monetary Board member in order to perform this particular responsibility?

MR. VILLEGAS: He should understand, for example, the workings of the international financial community: what happens to interest rates and exchange rates year in and year out, and what the demands of the domestic economy are as far as money supply and credit are concerned. There are just so many that these should be left to experts in monetary management.

MR. NATIVIDAD: And these are just the basic qualifications?

MR. VILLEGAS: Exactly.

MR. NATIVIDAD: And even if one is an expert, his expertise must be updated. Is that not correct?

MR. VILLEGAS: Yes, Madam President.

MR. NATIVIDAD: Then, it goes to say that even in the Monetary Board, we have to choose not only from among the most qualified but the most experienced as well to perform these duties. Does the Gentleman perceive a situation where he will find this particular, specific and necessary qualification in Members of Congress?

MR. VILLEGAS: Probably a few; yes, definitely.

MR. NATIVIDAD: Can he?

MR. VILLEGAS: There can be some. I am not prejudging the qualities of Congressmen.

MR. NATIVIDAD: But they can be removed every three years, and when we speak of expertise, we cannot speak in terms of three years. If a Congressman will no longer be there after three years, the consistency in updating the information will be interrupted and the necessary contacts will be terminated. I am for Congress to have the power to concur but I prefer that people should be qualified. Regardless of what happened before, because that was yesterday, I am worried about today and tomorrow. It is not just because the Monetary Board connived or conspired before; I have no evidence to that effect. But granting, without admitting, that the Monetary Board failed in their duty to stop the debauchery of public funds or loans, it would not justify the putting up of a mechanism that is completely incapable of servicing this type of responsibility and advising our President on the

viability of foreign loans. Am I correct, Madam President?

MR. VILLEGAS: Yes, Madam President.

MR. NATIVIDAD: I am putting aside what happened before. I just want to learn from what happened before so it will not be repeated today or tomorrow. And the lesson I learned was to put the necessary people who are qualified in this type of work. Maybe if Congress is fit for this type of work, well and good. But replacing the Monetary Board with Congress, I would object to. How about the Gentleman?

MR. VILLEGAS: I would also object.

MR. NATIVIDAD: Thank you, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. ROMULO: Commissioner Monsod would like to interpellate Commissioner de Castro.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MAAMBONG: Madam President, before that, I would suggest that we clarify the parliamentary situation. It appears to me that there was a primary amendment suggested by Commissioner de Castro, which was supposed to have been amended by a proposal of Commissioner Villegas. But the way I see it, the amendment of Commissioner Villegas is not really an amendment to the amendment. The proposed amendment of Commissioner de Castro can stand on its own without the proposed amendment to the amendment by Commissioner Villegas. So, I suggest very strongly, Madam President, that we take up at the proper time; according to the priorities of the Acting Floor Leader, the primary amendment of Commissioner de Castro, then probably we can take up the amendment of Commissioner Villegas.

MR. ROMULO: Madam President, the Acting Floor Leader agrees.

THE PRESIDENT: Before that, let us hear first Commissioner Monsod, if he has anything to say on the proposed amendment of Commissioner de Castro.

MR. DE CASTRO: Madam President, may I have a word on Commissioner Natividad's comment?

THE PRESIDENT: Just a minute. So that the Commissioners can just reply to both, Commissioner Monsod would like to ask some questions.

MR. DE CASTRO: Thank you.

MR. MONSOD: Madam President, I just want to ask Commissioner de Castro one question. In his proposal, is he saying that Congress voting jointly must concur with each and every loan that is going to be incurred by the government?

MR. DE CASTRO: Yes, because this thing is not an everyday loan. It is not thought of just in one night and then gotten the following day. As I said, there must be a five-year, ten-year economic plan. Based on that plan, we can now determine the amount to borrow at a particular year, and Congress can then approve it. Also, the Congress will have to look into the capability of the country to pay before they will approve this.

MR. MONSOD: Madam President, may I just have one follow-up question on that. If Congress voting jointly must concur with each and every loan, can I also assume that Congress then will look into the merits of the companies and the projects for each and every loan in order to arrive at that conclusion?

MR. DE CASTRO: Certainly.

MR. MONSOD: Thank you.

MR. ROMULO: Madam President, I think we have discussed this enough. Can we have the reaction of the Committee and submit the amendment to a vote?

MR. REGALADO: The Committee has already reacted by not accepting the amendment offered by Commissioner de Castro and has suggested that it be put to a vote.

MR. DE CASTRO: Before we vote, may I answer Commissioner Natividad's observations? He said that very few Congressmen are economists. They normally do not do what economists do. But Congressmen and Senators are supposed to be responsible men, so that before they decide or look into a certain matter, they invite experts, just as we do in the Commission; we are not all experts on a particular matter. For example, we invite experts from the Commission on Elections and get their opinions on matters of elections. The Congressmen alone will not decide, if they are responsible enough, without consulting experts.

I submit the matter to a vote.

THE PRESIDENT: I think the issue is clear enough.

MR. RODRIGO: Madam President, before we vote, there is something that is not clear. The amendment, as I heard it originally, would delete the words "the Monetary Board" on lines 15 and 16 and change them with the word "CONGRESS."

THE PRESIDENT: Yes.

MR. RODRIGO: But then later on, Commissioner de Castro said "CONGRESS VOTING JOINTLY." Which is which? Bit by bit, we seem to be changing our bicameral system to a unicameral system.

THE PRESIDENT: Will Commissioner de Castro please answer that?

MR. DE CASTRO: It should be CONGRESS VOTING SEPARATELY. I put JOINTLY because it looks like the body is keen on this word. This time, it is CONGRESS VOTING SEPARATELY.

VOTING

THE PRESIDENT: As many as are in favor of the amendment of Commissioner de Castro, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 5 votes in favor and 24 votes against; the proposed amendment is lost.

May we now have the amendment of Commissioner Villegas?

MR. VILLEGAS: On line 16, after the word "Board" and the period (.), insert THE MONETARY BOARD SHALL FIX A LIMIT TO FOREIGN BORROWING WHICH LIMIT CAN BE EXCEEDED ONLY UPON CONCURRENCE OF THE MAJORITY OF CONGRESS, then delete "SEPARATELY."

THE PRESIDENT. "VOTING SEPARATELY."

MR. VILLEGAS: Yes.

THE PRESIDENT: Is this accepted by the Committee

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Would the distinguished proponent yield to some clarificatory questions?

MR. VILLEGAS: Gladly, Madam President.

THE PRESIDENT: Please proceed.

MR. DAVIDE: At present, we have the Foreign Borrowings Act which was originally a law enacted by the Congress of the Philippines and then amended by several decrees thereafter. Would an approval of this amendment mount to a repeal of the Foreign Borrowings Act?

MR. VILLEGAS: Yes, it would.

MR. DAVIDE: The repeal will immediately take effect upon the ratification of the Constitution.

MR. VILLEGAS: Yes.

MR. DAVIDE: So, before any further foreign borrowing may be made, it is necessary that the Monetary Board must first fix the limits.

MR. VILLEGAS: Yes.

MR. DAVIDE: Does not the proponent believe that the matter of fixing limits to foreign borrowings is a prerogative of the legislature? And that was exactly why the old Congress enacted the Foreign Borrowings Act.

MR. VILLEGAS: No. As I see it, it is a prerogative of the Executive with the necessary check and balance from the legislative.

MR. DAVIDE: Under the old Congress, the law itself defined the limits within which the President may pursue the matter of borrowing. In short, it is just the implementation which is vested upon the Executive.

MR. VILLEGAS: Yes, that is true. But precisely, in the old regime, the Monetary Board was not independent of the President and that is why we need the legislature to give the necessary check. But in this Constitution, we would like to have an independent Monetary Board and it would be sufficient for that Monetary Board to be the one to set the limit.

MR. DAVIDE: And within the limit fixed by the Monetary Board, it would even deprive Congress of repealing or modifying the same. In short, we will have a Congress which is totally without any power to review, to modify or to repeal the limits fixed by the Monetary Board. So, we will be enshrining a Monetary Board which is even superior to those elected by the people.

MR. VILLEGAS: Yes, because foreign borrowing, as I said earlier, is a prerogative of the Executive. And as long as there is that check coming from the legislative, I think that would be sufficient.

MR. DAVIDE: But under the proposal, the legislature would be deprived of that particular check. As a matter of fact, it may be exceeded only with the concurrence of the majority of Congress. In short, the authority of Congress to concur in cases where the borrowings may be in excess of the limit is limited.

MR. VILLEGAS: That is right.

MR. DAVIDE: But basically, Congress cannot even touch what has been approved as the limit by the Monetary Board. So, this would insulate the acts of the Monetary Board from the representatives of the people.

MR. VILLEGAS: The way by which Congress can influence the Monetary Board would be to include in this Constitution the proposed Article on the National Economy and Patrimony wherein Congress will determine how the Monetary Board is going to be organized and its composition. I think this is where the legislature can exercise its influence; in fact, it is a very powerful influence on the Monetary Board.

MR. DAVIDE: The influence would only be in the composition and creation.

MR. VILLEGAS: That is right.

MR. DAVIDE: But not in the exercise of the authority. What is important is the control or the check of the legislature on the exercise of that authority.

Thank you very much.

MR. VILLEGAS: Yes.

THE PRESIDENT: Are we now ready to vote?

MR. DE LOS REYES: Will Commissioner Villegas accept an amendment to his amendment?

MR. VILLEGAS: Yes.

MR. DE LOS REYES: After hearing all these arguments, I propose that lines 13 to 15 will read as follows: "The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board AND SUBJECT TO SUCH LIMITATIONS AS MAY BE PROVIDED BY LAW." Would that be all right considering that this phrase is found in the 1973 Constitution that covers everything including the very brilliant interpellation of Commissioner Davide?

MR. VILLEGAS: I accept the amendment.

THE PRESIDENT: That will be in lieu of the entire sentence. Is that our understanding?

MR. VILLEGAS: Yes, Madam President.

MR. ROMULO: Commissioner Quesada has an amendment to the amendment.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Madam President, I would like to introduce an amendment to the proposed amendment of Commissioner Villegas.

MR. DE LOS REYES: Just a minute; I think my amendment has been accepted by Commissioner Villegas.

THE PRESIDENT: Yes. It is different now.

MR. DE LOS REYES: So what happens?

THE PRESIDENT: Will Commissioner de los Reyes please read it for the benefit of Commissioner Quesada?

MR. DE LOS REYES: It will read: ". . . with the prior concurrence of the Monetary Board AND SUBJECT TO SUCH LIMITATIONS AS MAY BE PROVIDED BY LAW."

MS. QUESADA: But still, I would like to introduce an amendment that will be in keeping with the idea that contracting big loans, as a matter of fact, puts the entire citizenry under an economic burden. It should not just be the responsibility of the government or the Monetary Board but the entire Filipino people, to be aware that these loans will be a burden for the rest of their lives and those of their grandchildren. And, therefore, my suggestion is

that the President should allow public hearings before the concurrence of the Monetary Board. I think this is what we are talking about earlier; there must be the representation of the people. This is an important decision that the President will make and we should be aware that our children's children are going to be indebted for the rest of their lives.

I think we can draw a lot of lessons from the history of Nigeria where the matter of borrowing from the IMF was submitted by the President to the people and it took them about three months to decide on this. But then, the people were educated; they were informed; and they knew what they were rejecting or what they were going into. So, I believe that this particular dimension is a manifestation of our belief that the people should be consulted and it should not just be left to the seven members of the Monetary Board. I think the mechanisms for such a public hearing can easily be provided by Congress.

MR. GASCON: Madam President.

THE PRESIDENT: Commissioner Gascon is recognized.

MR. GASCON: Before Commissioner Quesada presents her amendment, I would like to make a clarification. Has Commissioner Villegas withdrawn his proposed amendment?

MR. VILLEGAS: No, it is in addition to the proposed amendment.

MR. GASCON: Because the Gentleman's amendment is on line 16, but Commissioner de los Reyes' proposal is prior to this additional sentence.

MR. VILLEGAS: That is right.

THE PRESIDENT: The Chair asks Commissioner Villegas if he is withdrawing this other amendment.

MR. VILLEGAS: Yes, now I understand. The amendment would no longer be needed since it would be included in that general expression.

MR. GASCON: So, Commissioner Villegas has withdrawn his amendment, and now I think it is up to the Committee to accept or not the amendment of Commissioner de los Reyes before we go to Commissioner Quesada's amendment.

MR. MAAMBONG: Madam President, precisely, in order not to violate the rule on third degree amendment, I think the amendment, as amended by Commissioner de los Reyes, should now be presented to the Committee, and after that, Commissioner Quesada may present another amendment in the nature of a primary amendment.

THE PRESIDENT: So, this will be a joint amendment now of Commissioners Villegas and de los Reyes?

MR. ROMULO: Yes, Madam President. May we ask Commissioner de los Reyes to read it again.

MR. DE LOS REYES: The first sentence of Section 18 will read: "The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, AND SUBJECT TO SUCH LIMITATION AS MAY BE PROVIDED BY LAW."

MR. ROMULO: Let us vote on that amendment, Madam President.

MR. DE LOS REYES: No. What does the Committee say?

MR. SUMULONG: The Committee accepts the amendment.

MR. DE LOS REYES: Thank you.

MR. REGALADO: It being understood that the subsequent sentence proposed by Commissioner Villegas, is withdrawn.

THE PRESIDENT: So, then let us vote first on this amendment.

MS. QUESADA: Madam President, before we vote on this amendment of Commissioner de los Reyes, may I just be clarified? When we say "SUBJECT TO SUCH LIMITATIONS AS MAY BE PROVIDED BY LAW," would this process include the legislature?

MR. DE LOS REYES: Yes.

MS. QUESADA: Would this entail public hearings?

MR. DE LOS REYES: Yes, before the legislature enacts a law, it has to conduct public hearings in order to be informed of what to do.

MS. QUESADA: At the committee level?

MR. DE LOS REYES: At the committee level and the plenary sessions.

MS. QUESADA: So, with that understanding, Madam President, I suppose the primary concern that I presented earlier would then be addressed. Is that correct?

MR. DE LOS REYES: Yes.

MS. QUESADA: So, Madam President, I withdraw my amendment.

THE PRESIDENT: In view of that explanation of Commissioner de los Reyes?

MS. QUESADA: Yes, because of the understanding that when they go through this legislative process, there would be public hearings because that is to our interest; the people should know the loans that our country is contracting.

MR. GASCON: Madam President.

THE PRESIDENT: Commissioner Gascon is recognized.

MR. GASCON: Before we vote on the proposed amendment of Commissioner de los Reyes, although Commissioner Quesada feels that the issue of public consultation may be included, I do not think her proposal will be prejudiced if she still wishes to consider and present that amendment after, because we are speaking of setting limitations and I think she is speaking of the process involved in setting such a limitation. I only want to clarify that.

THE PRESIDENT: Yes, Commissioner Quesada said that because of the explanation that when the matter is presented to the Congress, as a rule Congress conducts hearings with the committees before a particular law is enacted, she has agreed to withdraw her amendment.

MS. QUESADA: Yes. Would Commissioner de los Reyes then accept me as a cosponsor with that understanding?

MR. DE LOS REYES: Gladly, and I am honored.

MS. QUESADA: Thank you, Madam President.

MR. BENNAGEN: Madam President, for further clarification of the idea of public hearings, would this also mean extensive and systematic public hearings which are out of town? I mention this because, I think, the question of

economy is much too serious to be left to economists. For instance, as social science researchers, it is our experience that in considering the economic programs, loans specifically, and the other sociocultural components of society, the environment is often forgotten. In the case of the Chico Dam and the other dams down in the south, the question of loans is often seen merely in terms of energy equations but not in terms of the cultural values of the people. And our experience tells us that had we held extensive out-of-town public hearings, many of these problems would have been obviated. So, I am suggesting that public hearings should not be held only in the halls of Congress or wherever, but systematic and extensive public hearings should be held out of town where the people are.

THE PRESIDENT: So, these proposals can be included in a proposed bill that will be presented to Congress.

MR. BENNAGEN: Thank you, Madam President.

THE PRESIDENT: This is a joint amendment of Commissioners Villegas, de los Reyes and Quesada. After the word "Board" on line 16 of page 8, the words "SUBJECT TO SUCH LIMITATIONS AS MAY BE PROVIDED BY LAW" are inserted. Did I put it correctly?

MR. REGALADO: Yes, Madam President.

THE PRESIDENT: May I be informed if this is accepted by the Committee?

MR. REGALADO: It is accepted.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: Madam President, I think that is the end of Section 18. Commissioner Foz has an amendment on Section 19.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: This amendment of mine has prior clearance of the Committee.

THE PRESIDENT: On what line?

MR. FOZ: This is on line 25. The amendment seeks to delete in the enumeration of the officials, the words "chiefs of bureaus or offices." I have informed the Committee that not only chief of bureaus or offices and their assistants but also all government officials and employees falling under the career service of the civil service are already prohibited under the existing civil service rules from engaging in any business or in the practice of any profession without the permission of their department head. And the same rules also provide that the department head has the duty to see to it that if he grants such permission, there shall be no conflict of interest in the discharge of their official functions and in the pursuit of their private endeavors.

MR. REGALADO: For the benefit of all the Commissioners, may we ask Commissioner Foz to please read the sentence starting with "The President," minus the words that he seeks to delete?

MR. FOZ: So, Section 19, as amended, would now read: "The President, Vice-President, members of the Cabinet, and their assistants shall not," et cetera. So, delete the words "chiefs of bureaus or offices."

THE PRESIDENT: How about "their assistants"?

MR. REGALADO: Who are referred to as the assistants of the members of the Cabinet?

MR. FOZ: The words "their assistants" would now refer to members of the Cabinet.

THE PRESIDENT: Is this accepted by the Committee?

MR. REGALADO: Clarification, Madam President. Who are referred to here as the assistants of the members of the Cabinet?

MR. FOZ: In my interpellation of the Committee Chairman during the sponsorship period, I asked the same question: Who are the assistants referred to here? And the answer given by the Committee was that they refer to the deputy ministers or the assistants of the chiefs of bureaus or offices. So then, we have to retain the words "and their assistants" in referring to the deputies of the Cabinet members.

MR. REGALADO: So, shall we specify "The President, Vice-President, AND members of the Cabinet, AND THEIR DEPUTIES"?

MR. FOZ: Yes, I accept the suggestion that instead of the words "their assistants," it should be "their DEPUTIES." Maybe we should also add "OR assistants."

SUSPENSION OF SESSION

THE PRESIDENT: I see many vacant seats. The session is suspended for a few minutes.

It was 5:46 p.m.

RESUMPTION OF SESSION

At 6:10 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

Commissioner Foz is recognized.

MR. FOZ: Madam President, before we suspended the session, there was a suggestion to put the words DEPUTIES OR to be followed by the existing word "assistants." So, line 26 will now read "DEPUTIES OR assistants shall not . . ."

Is the Committee accepting the amendment?

THE PRESIDENT: What does the Committee say?

MR. SUMULONG: We accept the amendment.

THE PRESIDENT: For clarification, will Commissioner Foz please repeat the proposed amendment?

MR. FOZ: The amendment consists of the following: on line 26, add the words DEPUTIES OR before the word "assistants."

THE PRESIDENT: How about "chiefs of bureaus or offices"? Have we approved that?

MR. REGALADO: It has been accepted, Madam President, so that it will read: "The President, Vice-President, members of the Cabinet, and their DEPUTIES OR assistants . . ."

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: I would like to be clear about this because I am the Chairman of the Committee on Style. I would like to know the meaning of "members of the Cabinet and their DEPUTIES OR assistants," because since we went back to the presidential system, I remember that the members of the Cabinet were called secretaries and undersecretaries. Is that what is meant here?

MR. REGALADO: Yes, Madam President.

MR. RODRIGO: So that I can change this in the Committee on Style later?

MR. REGALADO: Yes, Madam President.

MR. RODRIGO: Thank you.

THE PRESIDENT: Is there any objection to this particular amendment of Commissioner Foz which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

Is there any other amendment?

MR. FOZ: Madam President, this is the last amendment. On page 9, line 5, after the word . . .

REV. RIGOS: I have an anterior amendment to that, Madam President, on page 8.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: On Section 19, line 26, delete the word "term" and in lieu thereof insert the word TENURE. Commissioner Nollado is a coauthor of this amendment.

THE PRESIDENT: Is this accepted by the Committee?

MR. SUMULONG: We accept.

MR. FOZ: May I proceed with my other amendment, Madam President?

THE PRESIDENT: There is a proposed amendment of Commissioner Rigos which has been accepted by the Committee. So, let us vote on that first.

Is there any objection to the proposed amendment of Commissioner Rigos which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. FOZ: May I proceed with my other amendment, Madam President?

THE PRESIDENT: Please proceed.

MR. FOZ: This is on page 9, line 5. Between the words "or" and "head," I would like to insert the words CHAIRMEN OR. The intention is to specify just the persons being referred to when we speak of bureaus and offices. Or the additional amendments I will have later on have to do with government-owned or controlled corporations and their subsidiaries. On line 6, after the word "office," insert the following words: INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND THEIR SUBSIDIARIES. Those are the proposed changes.

MR. REGALADO: How will the entire paragraph now read with the suggested amendments?

MR. FOZ: I will read the paragraph: "The spouse and relatives by consanguinity or affinity within the third civil degree of the President shall not be appointed as ministers, deputy ministers, CHAIRMEN OR heads of bureaus or offices, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND THEIR SUBSIDIARIES."

May we hear the response of the Committee? I was informed that ministers and deputy ministers will be changed to secretaries or undersecretaries. That is part of the style, I suppose.

MR. REGALADO: The Committee on Style will take care of all those changes in terminology.

THE PRESIDENT: Is the proposed amendment accepted by the Committee?

MR. SUMULONG: Accepted.

MR. FOZ: Thank you, Madam President.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Foz which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: Madam President, Commissioner Nollado wants to propose a posterior amendment, with the indulgence of the other Commissioners.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

Mr. Chairman and members of the Committee, my amendment consists of an additional section. This should be considered as Section 24, because I understand Commissioner Ople presented an amendment consisting of one section and it was accepted by the Committee.

So, the last section in the committee report is Section 22, plus the amendment of Commissioner Ople, which will be Section 23. This will be Section 24. It reads as follows: SEC. 24. ALL POWERS AND FUNCTIONS NOT INCONSISTENT WITH THIS CONSTITUTION VESTED IN THE PRESIDENT OF THE PHILIPPINES UNDER EXISTING LAWS AS WELL AS THOSE POWERS AND FUNCTIONS NOT VESTED IN ANY PARTICULAR OFFICIAL SHALL BE EXERCISED BY THE PRESIDENT UNLESS THE CONGRESS SHALL PROVIDE OTHERWISE.

That is my amendment. Before the Committee decides whether to accept or reject the amendment, I would like to explain briefly, Madam President.

THE PRESIDENT: Please proceed.

MR. NOLLEDO: I think all of us are aware that we have laws consisting of acts of the old Philippine legislature, acts of the old Philippine Commission, decrees and proclamations that are still valid and existing. And there are provisions giving certain powers and functions to the President or the Chief Executive. In view of the legal maxim of *inclusio unius est exclusio alterius*, I think a safety valve in the form of this proposal should be contained in the Constitution. May we ask the reaction of the Committee?

FR. BERNAS: The Committee would not violently react against this. But just for the record, we would like to be clarified about certain provisions which might be inconsistent with this Constitution. Specifically, for instance, is the power to sequester inconsistent with this Constitution, particularly the Bill of Rights?

MR. NOLLEDO: This provision is fully consistent with the Bill of Rights, but I may say that this may be qualified by provisions in the Transitory Provisions of the Constitution.

FR. BERNAS: No, I realize that the intention is that the proponent is only adopting those which are consistent with the Bill of Rights. But specifically, in his judgment and in the spirit of this amendment, is it his intention to include the power to sequester as one of the powers that will be continuing until Congress provides otherwise?

MR. NOLLEDO: Not necessarily, but without prejudice to the provisions in the Transitory Provisions.

FR. BERNAS: Perhaps, I should ask it more directly. Does the proponent consider the power to sequester as inconsistent with Section 3 of our Bill of Rights now?

MR. NOLLEDO: I would say so, and that is why there is a need for a qualifying provision in the event the Commission so decides in the Transitory Provisions.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Could I request the proponent to take this up in the Transitory Provisions? I strongly feel that the proper area for this or the proper situs is the Transitory Provisions. I understand that in the Transitory Provisions, there will be provisions to the effect that all laws, executive orders, etc., shall remain valid until otherwise repealed by the Congress of the Philippines.

MR. MAAMBONG: Madam President.

MR. NOLLEDO: The Gentleman will note that in the 1973 Constitution, there appeared as the last provision of the Article on the President a similar provision. I think its proper place is under the executive department.

MR. MAAMBONG: Madam President, just for the information of the Commission, I am a member of the Committee on Amendments and Transitory Provisions, and as a matter of fact, I was the one who proposed a resolution similar to the one being proposed now by Commissioner Nollado. And my Chairman, Commissioner Suarez, is here to attest that the proposed resolution has already been approved.

MR. NOLLEDO: Thank you; I will make the Gentleman a coauthor.

MR. MAAMBONG: Gladly, Madam President.

MR. NOLLEDO: I strongly recommend to the Committee that this should appear in the Article on the Executive.

MR. REGALADO: We notice that Commissioner Maambong is just waiting for it to be thrown to his direction.

MR. NOLLEDO: I am not inclined to do that. What does the Committee say, please?

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: That proposed amendment of Commissioner Nollado is fraught with a lot of danger. I would likewise endorse the position of Commissioner Davide on this matter, that it be taken up in the Committee that is perpetually in transition, the Committee of Commissioner Suarez.

MR. MAAMBONG: Madam President, I will repeat what I have said. The resolution which we filed practically on the same term had already been taken up by the Committee on Amendments and Transitory Provisions and had, in fact, been approved already. Chairman, Commissioner Suarez, is here.

MR. SUAREZ: Madam President, for a parliamentary information. On July 22, 1986, the proposal submitted by the Honorable Maambong was approved by our Committee, and I will read this particular provision, if it will satisfy the fears expressed by the Honorable Nollado:

All existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not consistent with this Constitution shall remain operative until amended, modified or repealed by Congress.

If the Gentleman would like to be a coauthor of that resolution, he is most welcome.

THE PRESIDENT: Commissioner Suarez, this refer to laws or decrees. I believe the proposed amendment of Commissioner Nollado refers to powers of the Executive or the President.

MR. NOLLEDO: Yes, powers pertinent to the President and not vested upon any particular official So, I think

there is a fundamental difference which the Madam President so correctly pointed out.

MR. SUAREZ: Except that we will assume that those powers are granted by virtue of laws, decrees executive orders, proclamations, etc.

MR. NOLLEDO: Madam President, in order to abbreviate the proceedings, I hereby withdraw my amendment.

Thank you.

MR. SUAREZ: Thank you.

MR. ROMULO: Madam President, I ask that Commissioner Villacorta be recognized.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Madam President, this is also with respect to Section 19, page 9, lines 3 to 6.

Before I propose my amendment, I would like to know the intent of the Committee. Is it the sense of this provision that if a Vice-President becomes Acting President to serve the unexpired term of the disabled or recently departed President, relatives of that Vice-President, now Acting President, who may be serving as ministers in the Cabinet will have to resign? In other words, would this particular prohibitory provision have retroactive effect on minister-relatives of a Vice President who becomes Acting President?

FR. BERNAS: Line 9 says "shall not be appointed," so that prohibition is on appointment, not on continuing the hold on the office. So, in a situation like that, if the Vice-President becomes President and a relative of his is already holding office, then that is not covered by this because he did not have to exercise any appointment.

MR. VILLACORTA: In other words, the focus is on the appointing process.

FR. BERNAS: Yes. The restriction is on the appointing authority.

MR. VILLACORTA: So that the Cabinet members, as well as bureau heads, should not be related by blood to the appointing power?

FR. BERNAS: No, they should not. The appointing authority should not appoint relatives.

MR. VILLACORTA: The intendment of the provision then is to prevent nepotism.

FR. BERNAS: Yes.

MR. VILLACORTA: But would it not also breed nepotism if a Vice-President, who is now Acting President, had close relatives within his Cabinet?

FR. BERNAS: If the Gentleman would like to propose an amendment to that effect, that is not covered by this.

MR. VILLACORTA: Yes, because I am addressing my amendment to the real intent of this provision; that is, to prevent close relatives from serving a President or an Acting President. So, I wonder if the Committee would consider this amendment: IF THE VICE-PRESIDENT BECOMES ACTING PRESIDENT, HIS RELATIVES WHO ARE INCUMBENT SECRETARIES, UNDERSECRETARIES, OR HEADS OF BUREAUS OR OFFICES, SHALL BE OBLIGED TO RESIGN IMMEDIATELY.

FR. BERNAS: If he becomes Acting President?

MR. VILLACORTA: Yes. In other words, he will be serving the unexpired term of a President who has become permanently disabled or who has died.

FR. BERNAS: In that case, he is not Acting President.

MR. VILLACORTA: So, the correct wording should be: IF THE VICE-PRESIDENT BECOMES PRESIDENT.

With that modification, would the Committee accept that amendment?

FR. BERNAS: I think we should leave that to the body, because the meaning of this is, we want to prevent the appointing authority from using his appointing power to give this favor to relatives. In the particular example, it is not the successor who made the appointment, but rather, his predecessor. So, strictly, there was no nepotism in the appointment.

MR. VILLACORTA: But there might be a case of nepotism in the course of continuing their duties in the case of a Vice-President who is acting as President.

FR. BERNAS: What I am saying is that nepotism, in the technical sense, applies to the act of appointment.

MR. VILLACORTA: But I am using the word "nepotism" in its broadest sense; probably the right word is "favoritism," or the difficulty on the part of the President to be objective in relating to members of his Cabinet because they are close relatives.

FR. BERNAS: If the Commissioner's intention is to cover that situation, we would have to change the words "shall not be appointed as Ministers" to SHALL NOT SERVE AS.

MR. VILLACORTA: Would this phrase, "SHALL NOT SERVE AS," as an alternative amendment, be acceptable?

BISHOP BACANI: Madam President, may I ask Commissioner Villacorta a question?

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Does not Commissioner Villacorta think that that might be unfair to those who may have previously risen to their posts by virtue of sheer merit and will now be prejudiced just because, by an accident of history, their relative has been elevated to the highest office in the land?

MR. VILLACORTA: In the same vein, it would be considered unfair if we apply the original provision as is. The relatives of the President would also say that this provision is unfair because it bars them from any appointment by the appointing authority, just because they are related to the President.

BISHOP BACANI: They are barred from appointment by the President, but if they had been there already before he became President, then they will not be barred from continuing in office.

MR. VILLACORTA: I am trying to go back to the root motive of this provision as I interpret it; that is, that we do not want to subject the President to public criticism. Neither would we want him to be tempted to favor his relatives if they are in his Cabinet. That is my interpretation of this provision. That is why I would like the Committee to clarify whether this is the real motive behind this provision—that we would really want the holder of the highest post in the land to be free from this burden of having to deal day to day with his relatives, who are also members of his official family.

MR. DE LOS REYES: Madam President, will Commissioner Villacorta accept an amendment to his amendment?

MR. VILLACORTA: I would like to hear the Commissioner's amendment.

MR. DE LOS REYES: My amendment is that the Commissioner's proposal may apply to the secretaries and undersecretaries because they are members of the Cabinet. However, we may exclude the heads of the bureaus or

other offices which are career positions oftentimes.

MR. VILLACORTA: Career positions, yes.

MR. DE LOS REYES: For example, the Directors of the NBI, Bureau of Lands, Bureau of Soils and others. To that extent, will the Commissioner accept my amendment?

MR. VILLACORTA: How would the Commissioner word the amendment, if I may ask?

MR. DE LOS REYES: Will the Commissioner please read his amendment?

MR. VILLACORTA: On page 9, after line 6, I propose to add a new section to read: IF THE VICE-PRESIDENT BECOMES PRESIDENT, HIS RELATIVES WHO ARE INCUMBENT SECRETARIES, UNDERSECRETARIES, OR HEADS OF BUREAUS OR OFFICES, SHALL BE OBLIGED TO RESIGN IMMEDIATELY.

MR. DE LOS REYES: I propose to delete the words "OR HEADS OF BUREAUS OR OFFICERS."

MR. VILLACORTA: In that case, I am accepting that amendment to my amendment.

MR. DE LOS REYES: What is the reaction of the Committee?

MR. REGALADO: Let us have the entire amendment, as amended.

MR. VILLACORTA: IF THE VICE-PRESIDENT BECOMES PRESIDENT, HIS RELATIVES WHO ARE INCUMBENT SECRETARIES AND UNDERSECRETARIES SHALL BE OBLIGED TO RESIGN IMMEDIATELY.

THE PRESIDENT: May the Chair be clarified. Are these related within the third civil degree?

MR. VILLACORTA: These relatives would be in third civil degree.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: May we ask the proponent of the amendment a question?

THE PRESIDENT: The Commissioner may proceed.

MR. FOZ: Is the proponent suggesting that we add new paragraph or sentence after line 6?

MR. VILLACORTA: Either a new paragraph or a new sentence.

MR. FOZ: It must be one or the other.

MR. VILLACORTA: If the Commissioner insists, then I propose a new paragraph.

MR. FOZ: Thank you.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May make an observation. If that amendment is approved, we will be more strict with the Vice-President than with the President because while the prohibition on the President is from appointing his relatives, the poor Vice-President who succeeds cannot appoint his relatives and not only that, his relatives who are already in those positions will have to resign. Why should we be more strict with the Vice-President who

becomes President than with the President?

THE PRESIDENT: The Chair would like to be clarified. Does the Commissioner envision a situation where, let us say, the wife of the Vice-President is appointed by the President to a Cabinet position? When the Vice-President becomes President, he as President and his wife will be in the Cabinet. Is the Commissioner foreseeing such a situation?

MR. VILLACORTA: Yes, Madam President, that is exactly one of the situations that I foresee and that I would like to prevent because we have had many sad experiences in the past dispensation whereby many relatives of the President were appointed as officials of his government. At any rate, the heads of bureaus and offices will not be included in the prohibition. We are more worried about the Cabinet.

MR. RODRIGO: But my point still holds. May I read the provision on lines 3 to 5:

The spouse and relatives by consanguinity or affinity within the third civil degree of the President shall not be appointed as minister . . .

So in the case of the President, the prohibition is from appointing his own close relatives, while in the case of the Vice-President, even if his close relatives have already been appointed by somebody else not by him, these relatives would be affected; they would have to resign if by accident the President dies and the poor Vice-President becomes President.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: I am aware of a previous motion which suggested that the promotion to the career service would go as far as the undersecretary or the deputy minister. That is why we have a former undersecretary, Mr. Narciso Albarracin, who rose from the ranks. I wonder if persons such as he would also be included in the amendment proposed by the honorable Commissioner.

MR. VILLACORTA: Is the Commissioner proposing an amendment to delete the "Deputy Minister"?

MR. GUINGONA: I do not know what the practice would be. But if the ongoing practice then would eventually be adopted, perhaps we should exclude also the undersecretaries. I am not making any proposal but I have in mind the undersecretaries who have risen from the ranks like the bureau directors.

I have another question, Madam President. What if an undersecretary has risen from the ranks and a relative is elected President? If the President-elect assumes office, would that particular undersecretary have to resign from his position because of the election of his relative as President?

MR. VILLACORTA: If the Commissioner is talking about an elected President, then that would not be covered here because we are talking about a Vice-President who becomes President.

MR. GUINGONA: Yes, but the Commissioner's concern is not on the matter of appointment but on the day-to-day relationship between the President and the officials that he has mentioned.

MR. VILLACORTA: So, the Commissioner is asking: If the Vice-President, after having served the unexpired term of the previous President is elected legitimately to the presidency, should his relatives who are secretaries and undersecretaries resign?

MR. GUINGONA: No. I am talking of a situation where a person was already an undersecretary before the President had assumed office, but who happened to be related to the President within the third degree of

consanguinity. If the Commissioner's idea is that it is not important whether or not that person is appointed but what is important is their relationship, then perhaps that should also be covered in the prohibition.

MR. VILLACORTA: My interpretation is that the prohibition in the last case that the Commissioner mentioned would be covered by the original provision "shall not be appointed as . . ." Usually, the spouse and relatives of the President shall not be appointed. In other words, a newly elected President now assumes an appointing power and, therefore, would be barred under this provision from reappointing.

MR. GUINGONA: So, the Commissioner is talking not only of appointment but even reappointment. But there is no provision that will require the President to reappoint. He may allow a person to continue as an undersecretary. This undersecretary I am talking about was appointed by his predecessor.

MR. VILLACORTA: I think that question should be thrown to the Committee. May we request clarification from the Committee whether or not this is also part of the intendment; that is, does this prohibit not only appointment but also reappointment?

MR. REGALADO: The Committee, after listening to the proposed amendment and the reasons adduced in its favor and those against it, does not accept the amendment and prefers that it be submitted to the floor.

MR. UKA: Madam President, may I make two observations?

THE PRESIDENT: Commissioner Uka is recognized.

MR. UKA: There is a saying during the days of the Roman Empire which says *dura lex sed lex* which means that the law is hard but that is the law. So, let us not make hard laws. Besides, this thing refers to appointment. If they are already there and they have been promoted or they rose by sheer luck, by merit, or by accident, let us not try to bother them. Let us be merciful; let us temper justice with mercy. Besides, we cannot choose our relatives. I have cousins who are not very good but I cannot say they are not my cousins. We cannot choose; we are products of accidents. Once a child is conceived, that poor child could not have any desire and say, "I want that man to be my father" or "I want that woman to be my mother." It has so happened that so and so met and something happened. So one cannot have any say on the matter. Talking about relations, it is hard to really define all these things. So, let us try not to be very harsh because we cannot choose our relatives.

MR. VILLACORTA: Madam President, I do not think that the last question of Commissioner Guingona was answered adequately by the Committee. We have not yet asked the Committee whether it would accept my amendment or not. The question posed by Commissioner Guingona was whether this provision in this Article would cover reappointments. Would it constitute a prohibition against reappointments?

MR. REGALADO: The original proposed paragraph will cover reappointments.

MR. GUINGONA: Madam President, may I propose an amendment to the amendment of Commissioner Villacorta?

THE PRESIDENT: The Commissioner may proceed.

MR. GUINGONA: My amendment is to delete "UNDERSECRETARIES" or "DEPUTY MINISTERS." Will the Commissioner accept?

MR. VILLACORTA: I accept the amendment.

MR. GUINGONA: Thank you.

THE PRESIDENT: In other words, it is limited only to the Ministers or the Secretaries.

What does the Committee say?

FR. BERNAS: It becomes unnecessary anyway because the practice is that when there is a new President, the Cabinet members usually tender their courtesy resignations.

MR. VILLACORTA: Therefore, the former Vice-President, who is now President, will be constrained not to appoint his relatives. Then, if that is the intent, I desist from proposing my amendment.

THE PRESIDENT: Thank you.

Who is the next proponent? Does Commissioner Villacorta have any other proposed amendment?

MR. VILLACORTA: I have another amendment on Section 20.

MR. ROMULO: Madam President, there are prior amendments to Section 20.

THE PRESIDENT: Then, let us call those with prior amendments.

MR. ROMULO: Commissioner Aquino has an anterior amendment on Section 19.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Madam President, the propose amendment pertains to Section 19, on Page 8, lines 29 and 30. For purposes of symmetry with line 28, on line 29 I propose to insert OR INDIRECTLY between the words "directly" and "in," so it would read: "financially interested directly OR INDIRECTLY in any contract with. . ."

On line 30, delete the word "financial" and substitute it with FRANCHISE.

THE PRESIDENT: What does the Committee say?

MR. REGALADO: The Committee accepts. Actually, the word "financial" here is only a typographical error. We will substitute it with "FRANCHISE."

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MS. AQUINO: On page 9, line 4, after the word "not" add the words DURING HIS TERM such that the line would read: "within the third civil degree of the President shall not DURING HIS TERM be appointed as . . ."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Will the proponent yield to an amendment? Instead of "TERM," I propose TENURE.

MS. AQUINO: That means that if the President resigns halfway during his term, then he cannot appoint.

MR. DAVIDE: That is why we should use the word TENURE instead of "TERM," because the elected President may not be able to finish his term.

MS. AQUINO: Considering that these are executive appointments, I will accept the amendment.

THE PRESIDENT: Is there any objection from the Committee?

MR. REGALADO: The Committee accepts the amendment. It makes the period more specific.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. PADILLA: Madam President

THE PRESIDENT: The Vice-President, Commissioner Padilla, is recognized.

MR. PADILLA: On that same line, line 4, it mentions "third civil degree" of relationship. That would include first degree — father or son; second degree — brother or sister; and third degree — uncle or nephew. But most of our close relatives would include the fourth civil degree — the first cousin. Will the Committee agree to change the word "third" to FOURTH?

MR. REGALADO: Originally, the Committee considered the fourth civil degree relationship as it is the a standard prohibition even in statutes, but it was felt by some Committee members that we might be depriving the country of the services of some competent officials who just happen to be the first cousins of the President. So we would submit it to the floor.

MR. PADILLA: Usually we do not appoint those in the first degree like the father or the son; those in the second degree like the brother or the sister; and those in the third degree relationship like the uncle or the nephew. But most of the appointments which may be considered as nepotism, are first cousins, and that would fall under the fourth degree.

MR. REGALADO: My original proposal in the Committee was within the fourth civil degree, but there was not a common concordance on that, so we suggest that the matter now be submitted to the wisdom of the body.

MR. MAAMBONG: Madam President, as a cosponsor of Proposed Resolution No. 128 together with Commissioners de los Reyes, Ople and Natividad, let me add that originally we did place the term "third civil degree," but as pointed out by the Vice-President, there was a move to include the fourth civil degree to which we resisted, and that is why it still remains as "third civil degree." This is just for the record, Madam President.

VOTING

THE PRESIDENT: We can proceed to vote on this.

Those in favor of the proposed amendment of Commissioner Padilla changing the word "third" to "FOURTH," please raise their hand. (Several Members raised their hand.)

Those against, please raise their hand. (Few Members raised their hand.)

The results show 20 votes in favor and 9 against; the amendment is approved.

MR. ROMULO: I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

These are minor amendments. On page 8, line 27, after the word "employment" add the following: EXCEPT WHEN OTHERWISE PROVIDED IN THIS CONSTITUTION.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: May we just ask the proponent of the amendment a question?

THE PRESIDENT: The Commissioner may proceed.

MR. FOZ: In the Commissioner's amendment, is he referring to a public office or employment?

MR. DAVIDE: I am referring to any office in the government. I introduced that particular amendment because we have allowed the Vice-President to be appointed to the Cabinet. Without that particular phrase, the Vice-President may no longer be appointed as a member of the Cabinet.

MR. FOZ: I ask the question because during my interpellations of the Committee yesterday and the day before, I precisely asked just what the Committee had in mind, whether it is a public office or a private office and the answer I got was that it is a private office or private employment.

MR. DAVIDE: I was not aware of that.

MR. FOZ: The Commissioner's proposed amendment would clearly indicate a public office or public employment.

MR. DAVIDE: I cannot remember that the Committee had answered that the phrase "office or employment" referred to here is a private office or employment. I would like to inquire from the Committee if that was really the interpretation.

MR. REGALADO: I explained it during the suspension of the proceedings to Commissioner Foz that it refers to employment in a private office as well as in a public office which may otherwise be incompatible with the functions of his own office or where he is disqualified. It is a prohibition against private office and public office unless otherwise allowed.

MR. FOZ: In other words, it is in both senses that we are using the term "office or employment." But then I just do not know how any provision of the Constitution could provide that the President, the Vice-President or members of the Cabinet could be allowed to occupy any private office.

MR. DAVIDE: We have the provision here which the body took up yesterday on the matter of the Vice-President. The Vice-President may be appointed as a member of the Cabinet. Such appointment requires no confirmation. That is the last paragraph of Section 3. That is precisely the reason I am introducing this particular amendment making it really an exception. So it should be EXCEPT WHEN OTHERWISE PROVIDED IN THIS CONSTITUTION. Otherwise, we will have conflicting provisions.

MR. RODRIGO: Madam President, will the Gentleman yield?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Is there any need for such a provision? Is it not a rule in statutory construction that when there is a general rule and a particular rule, the particular rule is followed?

MR. DAVIDE: That may be true. But there is also the same rule in statutory construction that the later provision shall prevail.

MR. RODRIGO: It might just be a redundancy because it is very clear that while we have a general provision here about the President and Vice-President not being able to hold any other office, there is a specific provision that the Vice-President may be appointed as a member of the Cabinet. I think it is understood that that is an exception to this general rule.

MR. DAVIDE: If the interpretation to be read into the record, for purposes of guiding subsequent application or interpretation of the Constitution, would be that despite Section 19, Section 3 in the matter of the Vice-President should prevail, I will not insist if that is the thinking and the meaning. Is that the thinking of the Committee?

MR. REGALADO: That is the thinking of the Committee and it even was so understood under the previous Constitution.

MR. DAVIDE: Then I withdraw, but I have another amendment on page 9, line 5.

REV. RIGOS: Madam President, if Commissioner Davide will allow me, I have an amendment on page 8, line 27.

Between the words "any" and "profession," insert the word OTHER. The line will now read: ". . . nor may they practice any OTHER profession."

THE PRESIDENT: What does the Committee say?

MR. REGALADO: I think the purpose of Commissioner Rigos is just for symmetry because it is preceded by "hold any other office or employment, nor may they practice any OTHER profession."

It that the purpose of Commissioner Rigos?

REV. RIGOS: Yes.

MR. REGALADO: That will be all right. We accept the amendment.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

Commissioner Davide is recognized.

MR. DAVIDE: On page 9, line 5, after the word "as," insert the following: MEMBERS OF THE CONSTITUTIONAL COMMISSIONS, THE OFFICE OF THE OMBUDSMAN, OR THE JUDICIARY OR so that the amended line will read: "be appointed as MEMBERS OF THE CONSTITUTIONAL COMMISSIONS, THE OFFICE OF THE OMBUDSMAN, OR THE JUDICIARY, OR as ministers, deputy ministers or heads of . . ."

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Would the distinguished proponent accept an amendment to his amendment to limit this prohibition to members of collegiate courts? The judges of the lower courts perhaps would not have the same category or the same standing as the others mentioned here.

MR. DAVIDE: Pursuant to the post amendment, we already included here government-owned or controlled corporations or their subsidiaries which are not even very sensitive positions. So with more reason that the prohibition should apply to appointments in these bodies.

THE PRESIDENT: Does the Committee accept?

FR. BERNAS: What is common among these people — Ministers, Deputy Ministers, heads of bureaus or offices — is that they are under the control of the President.

MR. GUINGONA: That is correct.

FR. BERNAS: Whereas, the other offices the Commissioner mentioned are independent offices.

MR. DAVIDE: The idea of the proposal is that about the end of the term of the President, he may prolong his rule

indirectly by appointing people to these sensitive positions, like the commissions, the Ombudsman, the judiciary, so he could perpetuate himself in power even beyond his term of office; therefore foreclosing the right of his successor to make appointments to these positions. We should realize that the term of the President is six years and under what we had voted on, there is no reelection for him. Yet he can continue to rule the country through appointments made about the end of his term to these sensitive positions.

FR. BERNAS: At any rate, there are other checks as far as the appointment of those officers is concerned.

MR. DAVIDE: Only insofar as the Commission on Appointments is concerned for offices which would require consent, and the Judicial Bar Council insofar as the judiciary is concerned.

FR. BERNAS: We leave the matter to the body for a vote.

MR. TINGSON: Madam President, may I just ask one question of the proponent?

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Even though the members of the President's family are related to him, shall we bar the men of probity, honesty and specialized technical knowledge from being appointed?

MR. DAVIDE: That is precisely the core or the meat and the heart of the prohibition. In effect, it is just extending it to these sensitive positions that I have mentioned.

MR. TINGSON: But in a sense would that not be counterproductive?

MR. DAVIDE: If that is the thinking of the Commissioner, he should rather propose for the deletion of the entire sentence since that is really its effect.

MR. TINGSON: Will the Commissioner join me if I do?

MR. DAVIDE: No. As a matter of fact, I am expanding the prohibition. But if the Commissioner's position is that we might be prohibiting these capable men who are relatives of the President, then the deletion would be proper, which I am not in favor of.

MR. TINGSON: Madam President, we have already limited the presidency to one term, predicated on the fact that he will now become a statesman rather than a partisan politician. Then he will be acting for the good of our country; that is, we base that philosophy with that predicate. So I am just wondering why we should not utilize these men who, according to Commissioner Uka, happen to have committed a crime of being related to the President.

MR. DAVIDE: Is the Commissioner proposing that as an amendment to my amendment?

MR. TINGSON: I would like to.

MR. DAVIDE: In the sense that the Commissioner's amendment is to delete the entire sentence?

MR. TINGSON: Is that the Commissioner's thinking also?

MR. DAVIDE: No, I am entirely for the opposite.

MR. TINGSON: Then, I am not insisting anymore.

MR. DAVIDE: If the Commissioner is introducing it as an amendment, I am sorry, I have to reject his proposal.

THE PRESIDENT: So, let us now proceed to the amendment of Commissioner Davide.

MR. GUINGONA: Madam President, may I just offer one more amendment to the distinguished proponent? After the word "JUDICIARY," we insert: EXCEPT JUDGES OF THE METROPOLITAN TRIAL COURTS.

MR. DAVIDE: To avoid any further complication, I would agree to delete "JUDICIARY."

MR. GUINGONA: Thank you.

MR. DAVIDE: So, on line 5, the only amendment would consist of the following: after the word "as," insert MEMBERS OF THE CONSTITUTIONAL COMMISSIONS OR THE OFFICE OF THE OMBUDSMAN.

THE PRESIDENT: Does the Committee prefer to throw this to the body?

MR. REGALADO: We prefer that we submit it to the body.

VOTING

THE PRESIDENT: Those in favor of this proposed amendment of Commissioner Davide on page 9, line 5, to include these two offices: the constitutional commissions and the office of the Ombudsman, please raise their hand. (Several Members raised their hand.)

Those against the proposed amendment will please raise their hand. (Few Members raised their hand.)

The results show 24 votes in favor and 9 against; the amendment is approved.

MR. ROMULO: Madam President, we are almost at the end of our long journey. I ask for continued patience on the part of everyone. We are now on Section 20. We have consolidated all the amendments for presentation by one person; and that is, Commissioner Sarmiento. Will the Chair recognize him please?

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: I humbly propose an amendment to the proposed resolution of my Committee and this is on page 9, Section 20, line 7, which is to delete the words "or international agreement." May I briefly explain.

First, Article VII of the 1935 Constitution does not mention international agreement. Second, the Vienna Convention on the Law on Treaties states that a treaty is an international agreement. Third, the very source of this provision, the United States Constitution, does not speak of international agreement; it only speaks of treaties. So with that brief explanation, may I ask the Committee to consider our amendment.

Commissioners Guingona, Villacorta and Aquino are supportive of this amendment.

THE PRESIDENT: What does the Committee say?

MR. CONCEPCION: Madam President.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: Thank you, Madam President.

International agreements can become valid and effective upon ratification of a designated number of parties to the agreement. But what we can say here is that it shall not be valid and effective as regards the Philippines. For instance, there are international agreements with 150 parties and there is a provision generally requiring say, 50, to ratify the agreement in order to be valid; then only those who ratified it will be bound. Ratification is always necessary in order that the agreement will be valid and binding.

MR SARMIENTO: Do I take it to mean that international agreements should be retained in this provision?

MR. CONCEPCION: Yes. But when we say "shall not be valid and effective, we say AS REGARDS THE PHILIPPINES.

MR. SARMIENTO: So, the Commissioner is for the inclusion of the words "AS REGARDS THE PHILIPPINES"?

MR. CONCEPCION: Yes No agreement will be valid unless the Philippines ratifies it.

MR. SARMIENTO: So may I know the final position of the Committee with respect to my amendment by deletion?

MR. CONCEPCION: I would say "No treaty or international agreement shall be valid and effective AS REGARDS THE PHILIPPINES unless concurred in by at least two-thirds of all the members of the Senate."

MR. SARMIENTO: If that is the position of the Chief Justice who is an expert on international law . . .

MR. CONCEPCION: I am not an expert.

MR. SARMIENTO: . . . then I will concede. I think Commissioner Aquino has something to say about Section 20.

THE PRESIDENT: This particular amendment is withdrawn.

Commissioner Aquino is recognized.

MS. AQUINO: Madam President, first I would like a clarification from the Committee. We have retained the words "international agreement" which I think is the correct judgment on the matter because an international agreement is different from a treaty. A treaty is a contract between parties which is in the nature of international agreement and also a municipal law in the sense that the people are bound. So there is a conceptual difference. However, I would like to be clarified if the international agreements include executive agreements.

MR. CONCEPCION: That depends upon the parties. All parties to these international negotiations stipulate the conditions which are necessary for the agreement or whatever it may be to become valid or effective as regards the parties.

MS. AQUINO: Would that depend on the parties or would that depend on the nature of the executive agreement? According to common usage, there are two types of executive agreement: one is purely proceeding from an executive act which affects external relations independent of the legislative and the other is an executive act in pursuance of legislative authorization. The first kind might take the form of just conventions or exchanges of notes or protocol while the other, which would be pursuant to the legislative authorization, may be in the nature of commercial agreements.

MR. CONCEPCION: Executive agreements are generally made to implement a treaty already enforced or to determine the details for the implementation of the treaty. We are speaking of executive agreements, not international agreements.

MS. AQUINO: I am in full agreement with that, except that it does not cover the first kind of executive agreement which is just protocol or an exchange of notes and this would be in the nature of reinforcement of claims of a citizen against a country, for example.

MR. CONCEPCION: The Commissioner is free to require ratification for validity insofar as the Philippines is concerned.

MS. AQUINO: It is my humble submission that we should provide, unless the Committee explains to us

otherwise, an explicit proviso which would except executive agreements from the requirement of concurrence of two-thirds of the Members of the Senate. Unless I am enlightened by the Committee I propose that tentatively, the sentence should read. "No treaty or international agreement EXCEPT EXECUTIVE AGREEMENTS shall be valid and effective."

FR. BERNAS: I wonder if a quotation from the Supreme Court decision might help clarify this:

The right of the executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history, we have entered into executive agreements covering such subjects as commercial and consular relations, most favored nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of this has never been seriously questioned by our Courts.

Agreements with respect to the registration of trademarks have been concluded by the executive of various countries under the Act of Congress of March 3, 1881 (21 Stat. 502) . . . International agreements involving political issues or changes of national policy and those involving international agreements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail, carrying out well established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.

MR. ROMULO: Is the Commissioner, therefore, excluding the executive agreements?

FR. BERNAS: What we are referring to, therefore, when we say international agreements which need concurrence by at least two-thirds are those which are permanent in nature.

MS. AQUINO: And it may include commercial agreements which are executive agreements essentially but which are proceeding from the authorization of Congress. If that is our understanding, then I am willing to withdraw that amendment.

FR. BERNAS: If it is with prior authorization of Congress, then it does not need subsequent concurrence by Congress.

MS. AQUINO: In that case, I am withdrawing my amendment.

MR. TINGSON: Madam President.

THE PRESIDENT: Is Commissioner Aquino satisfied?

MS. AQUINO: Yes. There is already an agreement among us on the definition of "executive agreements" and that would make necessary any explicit proviso on the matter.

MR. ROMULO: Madam President, may I be recognized?

THE PRESIDENT: Commissioner Guingona is recognized first because he has been standing there earlier.

MR. GUINGONA: I am not clear as to the meaning of "executive agreements" because I heard that these executive agreements must rely on treaties. In other words, there must first be treaties.

MR. CONCEPCION: No, I was speaking about the common use, as executive agreements being the implementation of treaties, details of which do not affect the sovereignty of the State.

MR. GUINGONA: But what about the matter of permanence, Madam President? Would 99 years be considered permanent? What would be the measure of permanency? I do not conceive of a treaty that is going to be forever, so there must be some kind of a time limit.

MR. CONCEPCION: I suppose the Commissioner's question is whether this type of agreement should be included in a provision of the Constitution requiring the concurrence of Congress.

MR. GUINGONA: It depends on the concept of the executive agreement of which I am not clear. If the executive agreement partakes of the nature of a treaty, then it should also be included.

MR. CONCEPCION: Whether it partakes or not of the nature of a treaty, it is within the power of the Constitutional Commission to require that.

MR. GUINGONA: Yes. That is why I am trying to clarify whether the words "international agreements" would include executive agreements.

MR. CONCEPCION: No, not necessarily; generally no.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: If the Floor Leader would allow me, I have only one short question.

MR. ROMULO: I wish to be recognized first. I have only one question. Do we take it, therefore, that as far as the Committee is concerned, the term "international agreements" does not include the term "executive agreements" as read by the Commissioner in that text?

FR. BERNAS: Yes.

MR. ROMULO: Thank you.

THE PRESIDENT: Commissioner Tingson may now proceed.

MR. TINGSON: Thank you. Madam President, I am just dying to ask the Chief Justice because I need to know this.

Is the Republic of the Philippines-United States Military Bases Treaty under the category of a treaty or an international agreement?

MR. CONCEPCION: I have not read the agreement on bases so I am in no position to answer the Commissioner's question.

MR. TINGSON: I ask this because I understand that that military bases treaty with the United States was fully ratified by the Congress of the Philippines but not by the Senate of the United States. I am just wondering what its category is.

MR. CONCEPCION: That is my impression. So insofar as the United States is concerned, it is an executive agreement, but insofar as we are concerned, it is a treaty.

MR. TINGSON: I see. Thank you.

MR. ROMULO: Madam President.

MR. SUMULONG: May I say a few words on that. The military bases agreement is an agreement entered into by the President of the United States duly authorized by the Congress of the United States and the President of the Philippines. So it has the nature of a treaty. It is not an executive agreement.

When it was signed by President Roxas, although it was no longer necessary he still referred it to the Philippine Senate because he thought that the matter was of such importance that he wanted that not only him- self should be

bound by the agreement but also the Members of the Philippine Senate.

MR. ROMULO: Madam President, we now come to the final amendment to this Article. I ask that Commissioner Azcuna be recognized.

MR. GUINGONA: Madam President, this is in connection with the matter that we have just discussed and particularly with respect to the text that Commissioner Bernas read. May I just ask a question?

THE PRESIDENT: Commissioner Guingona may proceed.

MR. GUINGONA: Is the text that Commissioner Bernas read from an American case?

FR. BERNAS: The citation I read is from page 936, Philippine Reports, 1955.

MR. GUINGONA: Thank you.

FR. BERNAS: On other matters touching also on executive agreements, the case of Gonzales vs. Hechanova, page 230, 9 SCRA, 1963 would also be helpful.

MR. AZCUNA: Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: I would like to propose what I hope is the final amendment to Section 21, page 9, lines 10 to 13, which is to delete the whole Section 21 on the ground that it is already covered by the report of the Committee on the Legislative, Section 26 (1) thereof, containing substantially the same words, which has already been amended by the Commission. I am referring to the submission by the President to the Congress of a budget of receipts and expenditures.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: Will the Commissioner repeat it, please?

MR. AZCUNA: I propose to delete the whole of Section 21 because it is already contained in Section 26, the provision on the legislative power. As amended Section 26 (1) reads:

The President shall submit to the Congress within thirty days from the opening of each regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures. The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law.

MR. SUMULONG: We will note that Section 21 simply refers to the submission by the President of the budget within fifteen days of the opening of the regular session. We precisely limited it to the act of submission of the budget by the President. We did not continue anymore because we knew that in the committee report to be prepared by the Committee on the Legislative, the details about this budget of receipts and expenditures will be discussed.

MR. REGALADO: May I add to that. Commissioner Davide is also a member of the Committee on the Executive. That was precisely the agreement, that this duty of the President — in the first sentence — will be retained in the provision on the executive, then the provision on the legislative will take care of all other details after this.

MR. DAVIDE: Then, we can leave it to the Committee on Style, but with the consent of the Commission, we will

change "fifteen" in Section 21 to THIRTY. We use THIRTY days instead of "fifteen." So it will be harmonized with Section 25. So the amendment would only be the change of the word "fifteen" to THIRTY on line 10 of page 9, and then the Committee on Style will later harmonize the two provisions.

THE PRESIDENT: Does the Chair understand that Commissioner Azcuna is not insisting on the deletion of Section 21?

MR. AZCUNA: Madam President, I am not insisting.

THE PRESIDENT: So, the change will be from "fifteen" to "THIRTY" days?

MR. REGALADO: The Committee accepts.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection?

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May I also add that the language should be harmonized because we specifically made changes in this section of the Article on the Legislative.

MR. DAVIDE: Yes, that would be harmonized, and I so move that it be harmonized with Section 25 of the Article on the Legislative because Section 25, as stated, had already undergone amendments on the floor, especially the amendments of Commissioners Natividad and Monsod.

THE PRESIDENT: So, is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. ROMULO: Madam President, I ask that Commissioner Maambong be recognized.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Thank you, Madam President; I also thank the Acting Floor Leader.

There are just two points I would like to clear up. With the permission of the Chairman of our Committee, I would just like to formally record the reservation of the Committee to rearrange the presentation of the approved sections to achieve proper sequence so that we will not be confused when we will have a clean draft, probably and hopefully, by tomorrow.

Second, Madam President, in view of the intense interest shown by the searching questions of Commissioners Nollado, Foz, de los Reyes and Monsod on Section 4, paragraph 2, regarding the canvass of votes for the President and Vice-President, I found it only fair to them to supplement my answer by inserting in the record the written explanation of the authors of Resolution No. 198; namely, myself, Commissioners Ople and Natividad on this particular section to complete our record of the proceedings.

May I be permitted, Madam President?

THE PRESIDENT: We will just insert them in the Record.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May we reserve the right to read that and also present whatever we feel is necessary to amplify

or clarify certain points?

THE PRESIDENT: Yes. So please have copies of that distributed.

MR. MAAMBONG: I will give Commissioner Monsod a copy of it immediately. But I would just like to inform the Commission that the points in this report which we submitted to the Committee on June 29, 1986 have already been taken up by the Committee.

My only purpose is to inform those who are interested on how this particular Section 4, paragraph 2 was formulated, in order to complete their picture of the whole situation.

I will gladly give Commissioner Monsod a copy for his comment.

Thank you, Madam President.

MR. ROMULO: Madam President.

THE PRESIDENT: Is there any other proponent?

MR. ROMULO: Yes, Commissioner Bengzon would like to be recognized.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, if the body would agree, and subject to the comments and observations made by Commissioner Maambong, I move that we vote on the Article on the Executive on Second Reading.

THE PRESIDENT: Is there any objection?

FR. BERNAS: Madam President, I suggest that it would be better that we vote on the resolution on Second Reading after we are given a consolidated and clean copy tomorrow.

MR. BENGZON: In that case, Madam President, permit me to state that tomorrow, we have several matters before us. We can vote on Third Reading on the Accountability of Public Officers at the first hour if we have enough number. We can continue the committee report on the Legislative, just on the party list system, the multisectoral system and the terms of the office which are the only matters left. After that we can proceed to the sponsorship and debate on the report of the Committee on Social Justice.

If we can have all these and the clean copy of the committee report on the executive distributed to us within the morning, then we can vote on Second Reading before we recess at noon. So, in accordance with that, Madam President, I move for the adjournment until tomorrow.

MR. ROMULO: Madam President, Commissioner Jamir would like to be recognized to make a reservation before we go to Second Reading.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: Madam President, yesterday I proposed an amendment on Section 4. But because of Commissioner Monsod's proposal to reconsider the decision on that "total prohibition on the President from running for reelections Commissioner Regalado suggested that I withdraw my amendment for the time being. Since I have not heard from Commissioner Monsod whether or not he will pursue his amendment, I am ready to ask for a reconsideration of my motion.

MR. MONSOD: Madam President, I was informed that a motion for reconsideration has to be filed within one day. So if the Commissioner will recall, I have asked the Chair's advice on how we could proceed with that but it seems it could only be done if we suspend the Rules. Perhaps that can be taken up at another time rather than

today because it would need a suspension of the Rules.

THE PRESIDENT: The Committee on Rules or the Steering Committee is the only one that can suspend the Rules; is that correct?

MR. MONSOD: Yes, Madam President.

THE PRESIDENT: Will Commissioner Jamir insist on his proposed amendment?

MR. JAMIR: My amendment is to insert a new paragraph between the first and second paragraphs of Section 4 of the Committee's draft. It reads: NO PERSON WHO HAS SERVED MORE THAN THREE YEARS AS PRESIDENT SHALL BE QUALIFIED FOR ELECTION TO THE SAME OFFICE AT ANY TIME.

May I explain my purpose, Madam President. If the President dies, let us say two years after assuming office, and the Vice-President succeeds him, the Vice-President will be serving for more than three years, in which case he will not be eligible for election to the same office. That is to take care of a seeming vacuum with respect to the qualification of the Vice-President to run for election for a second time, if he succeeds in the office of the presidency.

MR. UKA: Madam President.

THE PRESIDENT: Commissioner Uka is recognized.

MR. UKA: If by that amendment, we cannot act on it without suspending the Rules, I move that we suspend the Rules and act on that mañana por la mañana.

MR. JAMIR: I do not think we have to suspend the Rules. May we know from the Floor Leader.

MR. MONSOD: Madam President, just for clarification, I think it is only in the case of my intended request for reconsideration where the Rules has to be suspended but not in the case of the amendment at hand.

MR. ROMULO: Madam President, in fairness to the proponent of the amendment, perhaps everyone will be in a better frame of mind to consider it objectively if we take it up tomorrow.

MR. JAMIR: I have no objection, Madam President.

ADJOURNMENT OF SESSION

MR. ROMULO: I move for the adjournment of the session.

THE PRESIDENT: The session is adjourned until tomorrow at 9:30 a.m.

It was 7:39 p.m.

[*] Appeared after the roll call.

[*] See Appendix.

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