

JOURNAL NO. 94

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Saturday, September 27, 1986

Aquino, F. S. Colayco, J. C.

Azcuna, A. S Concepcion, R. R.

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

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

Bennagen, P. L Monsod, C. S.

Bernas, J. G Nollado, J. N.

Rosario Braid, F Padilla. A. B.

Calderon, J. D. Rama, N. G

De Castro, C. M Regalado, F. D

De los Reyes, R. F Sumulong, L. M

Rigos, C. A. Tadeo, J. S. L

Rodrigo, F. A Tan, C.

Romulo, R. J. Treñas, E. B

Suarez, J. E. Uka, L. L

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

The following Members appeared after the Roll Call:

Abubakar Y. R.

Natividad, T. C

Alonto, A. D.

Ople, B. F.

Garcia, E. G.

Samiento, R. V

Lerum, E. R.

The following Members were on official mission:

Davide, H. G. Nieva, M. T. F

Foz, V. B. Quesada, M. L. M

Gascon, J. L. M. C Villacorta, W. V.

Maambong, R. E

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

Mrs. Muñoz Palma and Mr. Rosales were sick.

Messrs. Laurel and Tingson were absent.

READING AND APPROVAL OF THE JOURNAL

On motion of Mr. Calderon, there being no objection, the reading of the Journal of the previous session was dispensed with and the said Journal was approved by the Body with the correction, at the instance of Mr. de Castro, on page 1475, line 5 column two of the second to the last paragraph, to change the words "was repealed" to EXPIRED.

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

Upon direction of the Chair, the Secretary-General read the titles of the following Communications which were, in turn, referred by the Chair to the Committees hereunder indicated:

Communication No. 1018 — Constitutional Commission of 1986

Letter from Mr. Celso Calumba and nineteen (19) other seminarians of St. Francis Xavier Seminary, P.O. Box 189, Davao City, advocating a policy of protectionism to ensure Filipino control over domestic industries and lessen the importation of goods

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 1019 — Constitutional Commission of 1986

Letter from Mr. Sisenando C. Satin of 4618 Arellano Avenue, Makati, Metro Manila, suggesting that tenants and landlords be given the freedom to determine what is good for them, that the government should equally subdivide the government idle lands and give them to the landless, among others

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 1020 — Constitutional Commission of 1986

Letter from Judge Norberto Y. Acenas, Municipal Trial Court of Kumalarang, Zamboanga del Sur, suggesting that the Intermediate Appellate Court be divided into three branches — one each for Luzon, Visayas, and Mindanao — to facilitate the disposition of cases appealed to it

TO THE COMMITTEE ON THE JUDICIARY

Communication No. 1021 — Constitutional Commission of 1986

Letter from Mr. Agaton N. Ibarbia I, President of the Small Landowners Association of Buhi, Inc., Buhi Camarines Sur, reiterating his suggestion that small landowners with less than seven hectare landholdings be exempted from the coverage of tenancy leasehold and other laws

TO THE COMMITTEE ON SOCIAL JUSTICE

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 31 ON PROPOSED RESOLUTION NO. 551 ON THE ARTICLE ON GENERAL PROVISIONS

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of Proposed Resolution No. 551 (Committee Report No. 31) submitted by the Committee on General Provisions, entitled:

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

Thereafter, the Chair recognized Mrs. Rosario Braid and the Members of the Committee.

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

PROPOSED AMENDMENT OF MR. MONSOD

Thereupon, Mr. Monsod proposed to reword Section 3 to read as follows:

SECTION 3. UNLESS REQUIRED BY LAW OR BY THE FUNCTIONS OF HIS POSITION, NO APPOINTIVE OFFICIAL SHALL HOLD ANY OTHER OFFICE OR EMPLOYMENT IN THE GOVERNMENT OR ANY SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS OR THEIR SUBSIDIARIES.

Mr. Monsod explained that with the proposed amendment, the general rule would still be against holding more than one office but would now be subject to two exceptions: 1) unless otherwise provided by law; and 2) unless required by the functions of the position.

Mr. de Castro stated that the provisions of the Civil Service Law do not exempt pensions or gratuities from the rule on double compensation. He then queried whether Mr. Monsod would be amenable to reformulating Section 3 to include pensions and gratuities in the exemptions from the rule on double compensation, to which Mr. Monsod replied that during the previous session, the reason given for not specifically mentioning pensions and gratuities was that they are automatically exempted by virtue of vested rights.

Mr. de Castro disagreed that pensions and gratuities are automatically exempted. He cited the fact that after his retirement from the military, when he was called back to the service as Chairman of the National Police Commission, the ' then Government Auditing Office (GAO) refused to pay him his salary on the ground that his pension would constitute double compensation although he cited Supreme Court rulings that pensions and gratuities are already earned and should not be considered as double compensation. He informed that the same thing happened to Mr. Natividad when he was appointed Chairman of the National Police Commission.

Mr. Monsod maintained, however, that during the discussions on the provisions on the Civil Service, the interpretation given was that pensions and gratuities are exempted from the rule on double compensation. He

suggested that to meet any reservation on the possible misinterpretation, it would be better to simply read into the records such interpretation rather than include another section that would amount to a restatement or reconsideration of what had already been approved by the Body.

In reply to Mr. de Castro's query whether the exemptions he is looking for could be inserted in the reformulated version of Section 3, Mr. Monsod stated that the first paragraph of the proposal is already covered by Section 7 of the Article on Civil Service except for the phrase "except pensions and gratuities". He stated that a reiteration of the interpretation that pensions and gratuities do not constitute double compensation would solve the problem without putting another provision that would substantially duplicate said Section 7 of the Article on Civil Service.

Mr. de Castro then urged that, in relation to Section 3 of the Article on General Provisions and Sections 4 and 7 of the Article on Civil Service, the Committee state for the record that pensions and gratuities are not considered as double compensation.

PROPOSED AMENDMENT OF MR. BENGZON

At this juncture, Mr. Bengzon moved that the first paragraph of Section 3 be deleted.

Mr. Guingona noted, however, that should the first paragraph of Section 3 be deleted, any reference to the exemption of gratuities and pensions from the rule on double compensation would have no basis. He suggested that the Body look into the records to determine whether or not it had decided to exempt pensions and gratuities when it discussed the Article on Civil Service.

At this juncture, Mrs. Rosario Braid read Mr. Maambong's written manifestation to transpose Section 3, if approved, to the Article on Civil Service on the ground that it is more encompassing than the section already approved in said Article.

Mrs. Rosario Braid stated that as long as the spirit and intent of the proposal is deemed integrated and included in the earlier provision, the Committee would accept Mr. Bengzon's motion to delete.

Thereupon, Mr. Bengzon explained that he proposed to delete Section 3 because on the basis of the discussion between Messrs. Monsod and de Castro, it appears clear in the records that Section 7 of the Article on Civil Service should be interpreted to mean that pensions and gratuities are exempted and are not considered as double compensation.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 10:02 a.m.

RESUMPTION OF SESSION

At 10:09 a.m., the session was resumed.

Upon resumption of session, Mr. Bengzon stated that he would insist on his motion to delete the first paragraph of Section 3 and, if approved, he would propose a new sentence that would definitely state that pensions and gratuities would not be considered double, compensation.

Mr. Guingona, however, stated that Mr. Bengzon would be introducing a new section which could be in conflict with the provision on the Civil Service considering Mr. Monsod's uncertainty which perhaps should be checked with the record. He pointed out that should the new section be approved, the Sponsorship Committee could

simply transpose it to the Article on Civil Service.

POINT OF ORDER OF MR. BENGZON

At this juncture, Mr. Bengzon raised a point of order on the ground that there has yet been no motion to insert a new provision. He suggested that Mr. Guingona's comment await the presentation of such motion. He maintained that meanwhile the Body should act on the motion to delete, to which Mr. Guingona acceded.

Mrs. Rosario Braid confirmed the Body's readiness to vote on the motion which, Mr. Bengzon reiterated, would delete the first paragraph of Section

APPROVAL OF MR. BENGZON'S AMENDMENT

Thereupon, submitted to a vote and with 20 Members voting in favor, 3 against and 2 abstentions, the Body approved the deletion of the paragraph indicated.

AMENDMENT OF MR. BENGZON

Thereafter, Mr. Bengzon proposed the following as the first sentence of Section 3:

PENSIONS OR GRATUITIES SHALL NOT BE CONSIDERED AS ADDITIONAL, DOUBLE OR INDIRECT COMPENSATION.

Thereupon, Mr. Guingona reiterated his observation and suggested that the Records be looked into on the ground that should the proposed amendment be approved and found in conflict with the sense of Section 7 of the Article on Civil Service, it would in effect be a motion for reconsideration, and should they be the same, the proposed amendment would be unnecessary.

Mr. Monsod observed that there is room for Mr. Bengzon's proposed amendment and that the discussions would serve as a secondary source of interpretation. He stated that should the proposed amendment be approved and transposed to Section 7, the same would show the intent without going to the Journal for the interpretation.

Mr. Guingona, however, argued that he could not see how the Sponsorship Committee could effect the transposition if the proposed amendment conflicts with the sense of Section 7 of the Article on Civil Service, in reply to which Mr. Monsod stated that the earlier discussion sought to establish that it is the intent of said Section 7 to exempt pensions and gratuities. He maintained that there is no contradiction between the two.

Mr. Guingona stated that his assumption was based on Mr. Monsod's expression of uncertainty, clarifying, however, that if Mr. Monsod is sure of his position, he would accept the same.

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

APPROVAL OF THE AMENDMENT

Thereupon, submitted to a vote, and with 22 Members voting in favor and 1 against, the Body approved Mr. Bengzon's amendment and its transposition to Section 7 of the Article on Civil Service.

PROPOSED AMENDMENT OF MR. MONSOD

On the second sentence of Section 3, page 1, Mr. Monsod proposed to amend line 19 to read: UNLESS REQUIRED BY LAW, OR BY THE FUNCTIONS OF HIS POSITION. NEITHER SHOULD ANY APPOINTIVE OFFICIAL HOLD ANY . . .

In reply to Mr. Ople's query whether he would be comfortable with bracketing functions with the requirement of law, Mr. Monsod stated that there are instances where the law specifically requires the ex officio membership of certain officials in some offices or corporations and there are also instances when by reason of the functions of the office, the law need not require such membership.

Mr. Ople suggested, however, that the word "functions" be given a restrictive construction; considering that the function of an office may, in certain cases, be construed as a blanket exemption especially if the determining authority is lodged in the same agency of the government. In reply, Mr. Monsod stated that he would be willing to accept an amendment to qualify "functions".

Mr. Ople stated that there is no problem with respect to the chairmanship or board membership of some Cabinet Ministers because the same is provided by law such as the charter of the Land Bank of the Philippines which designates the Ministers of Agrarian Reform, Labor and Finance as ex officio members. He pointed out that the problem would be on the construction of "functions" which might provide loopholes that can be taken advantage of by some officials.

Adverting to page 1498 of the Journal of the previous session, Mr. de los Reyes noted that Mr. Monsod substituted "required" with "allowed" and that "required" was again used by him.

In reply, Mr. Monsod clarified that he has reverted to the original formulation of the Committee.

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

RESTATEMENT OF MR. MONSOD'S PROPOSED AMENDMENT

Mr. Monsod restated his proposed amendment as follows:

UNLESS REQUIRED BY LAW OR BY THE FUNCTIONS OF HIS POSITION, NO APPOINTIVE OFFICIALS SHALL HOLD ANY OTHER OFFICE OR EMPLOYMENT IN THE GOVERNMENT OR ANY SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS OR THEIR SUBSIDIARIES.

Mr. Ople proposed to modify Mr. Monsod's proposed amendment to insert PRIMARY before "functions" which Mr. Monsod accepted and which Mrs. Rosario Braid accepted on behalf of the Committee.

In reply to Mr. Bacani's query on the meaning of "primary functions", Mr. Ople stated that if the office has a charter, it would refer to the charter functions of the official concerned and if he is a political appointee as when he is the Minister of National Defense, he will be barred from invoking the provision in order to occupy the position as Chairman or member of the board of directors of companies which are wholly unrelated to his functions as defense minister.

Thereupon, there being no objection, Mr. Monsod's amendment, as modified by Mr. Ople, was approved by the Body.

PROPOSED AMENDMENT OF MESSRS. JAMIR, COLAYCO, MONSOD, OPLE AND RAMA

Mr. Jamir, with Messrs. Colayco, Monsod, Ople and Rama as coauthors, proposed to substitute Section 4 with the following:

IT SHALL BE THE DUTY OF THE STATE TO PROVIDE IMMEDIATE AND ADEQUATE CARE BENEFITS AND OTHER FORMS OF ASSISTANCE TO WAR AND INSURGENCY VETERANS, THEIR

WIDOWS AND ORPHANS, WHICH SHALL IMPROVE THEIR CONDITIONS IN LIFE. THEY SHALL BE GIVEN PREFERENCE IN THE DISPOSITION OF PUBLIC AGRICULTURAL LANDS AND THE DEVELOPMENT OF NATURAL RESOURCES.

MR. OPLE'S PROPOSED AMENDMENT TO THE AMENDMENT

On Mr. Ople's query whether the word "immediate" is of such importance as to warrant its inclusion in the provision, Mr. Jamir explained that many deserving veterans are in dire need of assistance from the government.

On whether it would not be sufficient for the record to express the urgency of "adequate care and benefits and other forms of assistance", Mr. de Castro stated that the Committee would like to accept the amendment with the word "immediate" because the assistance might come too late.

Thereupon, Mr. Ople desisted from pursuing his suggestion.

Thereafter, Mr. Ople proposed to delete "and insurgency" between "war" and "veterans", stating that it would be sufficient for the records to show that "war veterans" would include those who participated in the anti-insurgency campaign of the government. Mr. Jamir, however, explained that "insurgency" was inserted in line with Mr. de Castro's interpellation of Mr. Monsod.

MR. BERNAS' AMENDMENT TO THE AMENDMENT

On the query whether the use of the word "war" would include those who fought in peace-keeping campaigns, Mr. Jamir answered in the affirmative.

Mr. Bernas then suggested MILITARY CAMPAIGN VETERANS in lieu of "war and insurgency veterans", which Mr. Jamir accepted.

MR. SARMIENTO'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Sarmiento expressed reservation on the word "insurgency" and proposed its deletion for the following reasons: 1) that the insurgents or rebels are also Filipinos who fled to the countryside because of the iron hand of the past regime; 2) that it might preempt the ceasefire efforts of the government; and 3) that reports show that many of the insurgent veterans or soldiers are guilty of human rights violations.

REMARKS OF MR. OPLE

Mr. Ople stated that Mr. Sarmiento was partly right in pointing out that the framing of the Constitution coincides with the dynamic effort on the part of the government to negotiate with the insurgents and to heal wounds of the nation. He opined that it would be prudent to delete the word "insurgency" and to substitute, as proposed by Mr. Bernas, the words VETERANS OF MILITARY CAMPAIGNS, insisting that these veterans should be included in the scope of care, benefits and other forms of assistance. He stated that he would not foreclose the possibility that what happened about a decade ago would be repeated where the HUKBALAHAPS were finally recognized as legitimate and bona fide veterans entitled to the same benefits as those who fought them in an earlier campaign because the time had become propitious for reconciliation and solidarity.

Thereupon, Mr. Ople reiterated his proposal to delete the word "insurgency" with the understanding that his and the Committee's intent would include veterans of military campaigns within the purview of all these care, benefits and other forms of assistance extended to war veterans.

SUSPENSION OF SESSION

At this juncture, upon request of Mr. Jamir, the Chair suspended the session.

It was 10:44 a.m.

RESUMPTION OF SESSION

At 10:50 a.m., the session was resumed with the Honorable Christine Tan presiding.

REFORMULATION OF SECTION 4

Mr. Jamir read the new formulation of Section 4, to wit:

IT SHALL BE THE DUTY OF THE STATE TO PROVIDE IMMEDIATE AND ADEQUATE CARE, BENEFITS AND OTHER FORMS OF ASSISTANCE TO WAR VETERANS AND VETERANS OF MILITARY CAMPAIGNS, THEIR WIDOWS AND ORPHANS, AND TO PROVIDE FUNDS THEREFOR. THEY SHALL BE GIVEN PREFERENCE IN THE DISPOSITION OF PUBLIC AGRICULTURAL LANDS AND THE DEVELOPMENT OF NATURAL RESOURCES.

INQUIRIES OF MR. SARMIENTO

Mr. Sarmiento recalled that a few years ago, the Integrated Bar of the Philippines headed by Justice J.B.L. Reyes assisted by Solicitor-General Ordoñez, and head of the Presidential Committee on Human Rights, former Senator Jose W. Diokno, conducted a study on hamletting, food blockades and saturation drives conducted by the military in Mindanao and in that study, it was reported that hamletting, food blockades and saturation drives were part of military campaigns against insurgents. He then inquired whether the soldiers who took active part in these military campaigns could be beneficiaries of this proposed amendment.

In reply, Mr. Ople stressed that the presumption in law is that of regularity and good faith, and whoever alleges otherwise, has the burden of proof. He stated that should Section 4 be approved, the burden would rest on those who want to challenge the entitlement of soldiers allegedly engaged in hamletting and other forms of human rights violations.

On whether soldiers who participated in the pacification drive which involved strafing and bombings in the countryside would be covered by the proposed amendment, Mr. Ople reiterated his earlier reply, adding that under the stress of combat conditions, both combatant forces tend to exceed the bounds of their authority. He opined that if there are human rights violations committed by troops, anyone could raise this question in order to challenge the entitlement of a veteran, his widow or orphans under this provision.

On whether those who are charged with human rights violations before appropriate bodies and those convicted could not be beneficiaries of this proposed amendment, Mr. Ople pointed out that soldiers follow orders and they may not have reasonable time to ponder the lawful character of such orders. He stated that unless there is an overwhelming proof to show that a soldier had violated human rights, he should not be denied the protection of Section 4.

Mr. Sarmiento stated that while he fully supports this proposal insofar as war veterans are concerned, he has some reservations with respect to the participants in pacification drives during the past and present regimes.

Mr. Ople thanked Mr. Sarmiento for expanding on the intent of the proposal and he explained that his reason for proposing the deletion of the word "insurgency" is that he would not want to foreclose the possibility that in the

future, those who fought against the troops of the Armed Forces of the Philippines would also, by law, acquire entitlement to benefits of this nature.

PROPOSED AMENDMENT OF MR. PADILLA

Mr. Padilla opined that the clause IT SHALL BE THE DUTY OF THE STATE which imposes a clear duty to the State is stronger than the clause "It shall be the responsibility of the State". He suggested that the sentence start with CONGRESS SHALL TAKE STEPS TO PROVIDE ADEQUATE CARE . . .

Mr. Jamir stated that in the discussion in the previous session with Messrs. de Castro and Colayco, it was agreed that the word "duty" is better than "responsibility", to which Mr. Padilla replied that he preferred not to make it a mandate on Congress.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 11:00 a.m.

RESUMPTION OF SESSION

At 11:05 a.m., the session was resumed.

RESTATEMENT OF SECTION 4, AS AMENDED

Mr. Jamir restated Section 4, as amended, to wit:

THE STATE SHALL PROVIDE IMMEDIATE AND ADEQUATE CARE, BENEFITS AND OTHER FORMS OF ASSISTANCE TO WAR VETERANS AND VETERANS OF MILITARY CAMPAIGNS, THEIR WIDOWS AND ORPHANS. FUNDS SHALL BE PROVIDED THEREFOR AND PREFERENTIAL CONSIDERATION SHALL BE GIVEN THEM IN THE DISPOSITION OF PUBLIC AGRICULTURAL LANDS AND, IN APPROPRIATE CASES, THE DEVELOPMENT OF NATURAL RESOURCES.

PROPOSED AMENDMENT OF MR. BERNAS

Mr. Bernas proposed the deletion of the word "preferential", explaining that land and natural resources are limited and permanent in size and availability. He stated that this is an unaugmentable resources and to set a limit on the State on how these are to be disposed could be prejudicial to public interest. He suggested that this matter of preference be left to the State to consider based on need and not on status or profession, because there may be others who, in fact, need more.

Mr. de Castro stressed the need of giving preferential consideration in the disposition of public lands to war veterans who sacrificed to defend the country.

Mr. Jamir offered a compromise to change the word "preferential" to DUE.

Mr. Bernas accepted the amendment but he stressed that the distribution of land should be based on need and not on status.

Mr. de Castro, likewise, accepted Mr. Bernas' amendment, as amended with the understanding that "due" means preferential treatment for war veterans in the disposition of public lands and the development of natural resources. He clarified that veterans refer to those who saw action in the Revolution of 1896, World Wars I and II, Korean

War, Vietnam War, as well as military campaigns against the HUKBALAHAPS from 1945 to 1960, the Hukbong Magpapalaya ng Bayan and the New People's Army (NPA).

APPROVAL OF SECTION 4, AS AMENDED

Thereupon, Mr. Jamir read the whole section as follows:

THE STATE SHALL PROVIDE IMMEDIATE AND ADEQUATE CARE, BENEFITS AND OTHER FORMS OF ASSISTANCE TO WAR VETERANS AND VETERANS OF MILITARY CAMPAIGNS, THEIR WIDOWS AND ORPHANS. FUNDS SHALL BE PROVIDED THEREFOR AND DUE CONSIDERATION SHALL BE GIVEN THEM IN THE DISPOSITION OF PUBLIC AGRICULTURAL LANDS AND, IN APPROPRIATE CASES, IN THE DEVELOPMENT OF NATURAL RESOURCES.

Submitted to a vote, and with 26 Members voting in favor, none against and 3 abstentions, the same was approved by the Body.

Mr. Sarmiento manifested his abstention because, although he favored the idea of giving support, care and attention to war veterans, widows and orphans, he had reservations to granting the same treatment to soldiers who took part in counter-insurgency drives but committed human rights violations.

AMENDMENT OF MR. MONSOD

Thereupon, Mr. Monsod moved for the deletion of Section 5 because it is unnecessary.

Mr. Ople supported the motion to delete.

Mr. Nollado did not accept the proposal because the Section, as embodied in the 1973 Constitution, is precisely formulated as a safeguard to prevent Congress from enacting a law which would grant income tax exemptions to some government officials. He stressed that the Committee would like all government employees to share the burden of taxation and do away with the Supreme Court doctrine laid down in the case of *Perfecto vs. Meer* which states that taxing the salaries of the Justices of the Supreme Court would be equivalent to diminishing their salaries during their tenure of office and would be considered unconstitutional. He pointed out that if the provision is deleted, then Congress may pass another law granting income tax exemptions to certain government officials.

Mr. Ople, however, informed that the Body voted down a proposal to grant tax exemption to members of the Supreme Court on the same ground stated by Mr. Nollado. He opined that Congress would know that any attempt to pass a law granting tax exemption to the members of the Judiciary in the light of the *Perfecto vs. Meer* doctrine would meet strong public resistance especially if they know that the Commission deleted the provision because of its belief that there should be no islands of privilege in the Philippine Government. He added that the records of the Commission are also sufficient to guide the future Congresses on the issue of income tax exemption for members of the Supreme Court.

In reply to Mr. Nollado's query whether the Supreme Court would also be precluded from deciding that taxing the salaries of constitutional officers including the members of the Court itself would be tantamount to a diminution of their salaries if the provision would be deleted, Mr. Ople stated that payment of income taxes would not be a diminution of their salaries.

At this juncture, Mr. Bernas opined that the issue is not whether Congress may or may not pass a law exempting members of the Supreme Court from the payment of income tax but whether the latter would be precluded from adopting its earlier decision in *Perfecto vs. Meer*. He pointed out that if the section would be deleted, it may be interpreted to mean as a signal to the Supreme Court to readopt the doctrine. He then suggested that in order to

make it clear that all government workers and officials are not exempted from the payment of income tax, the phrase "including those of the Constitutional Commission" should be deleted.

In reply to Mr. Ople's query whether the Body's records pertinent to Section 4 are sufficient deterrent for the Supreme Court not to readopt the Perfecto vs. Meer doctrine, Mr. Bernas stated that it would not, because an intent, which is not expressed in the text, is not superior to a stare decisis.

At this juncture, Mr. Padilla pointed out that the Perfecto vs. Meer doctrine applied only to the members of the Supreme Court and not to other government officials, to which Mr. Nollado replied that it must necessarily refer also to government officials who are similarly situated.

Mr. Nollado agreed with Mr. Padilla's observation that the Perfecto vs. Meer doctrine would apply to other government officials who are similarly situated if there is a specific provision which states that their salaries as fixed by law could not be diminished or increased.

On Mr. Padilla's contention that the Perfecto vs. Meer doctrine is not relevant or pertinent to the section being considered by the Body, Mr. Nollado disagreed, stating that the doctrine is relevant as pointed out by Mr. Bernas.

Thereupon, Mr. Monsod's motion to delete Section 5 was submitted to a vote and with 15 Members voting in favor and 11 against, the same was approved by the Body.

AMENDMENT OF MR. SARMIENTO

Thereupon, Mr. Sarmiento proposed to amend Section 6, to read as follows:

SECTION 6. CONGRESS SHALL CREATE AN OFFICE TO ADVISE THE PRESIDENT ON POLICY PROBLEMS AFFECTING INDIGENOUS CULTURAL COMMUNITIES.

He manifested that the proposal is jointly authored by Messrs. Bennagen and Ople. He explained that the provision would affect approximately 4.8 million indigenous persons, namely: 1) the Lumads of Mindanao; 2) the Caraballo tribes of Eastern Central Luzon; 3) the Negrito and Dumagat tribes of Sierra Madre and the coastal areas; 4) the Mangyans of Mindoro; and 5) the hill tribes of Palawan.

Additionally, Mr. Sarmiento stated that the reasons for the proposal are as follows: 1) these indigenous communities have been subjected to all forms of oppressive laws, have suffered a long history of government neglect and they are presently victims of grave and massive injustices and violations of human rights; 2) they are the living tributes of the Filipinos' ancestors who had integrity and love for freedom; 3) they have fiercely resisted foreign domination; and 4) they are proud of their distinct cultures and traditions and continue to assert their commitment to maintain and develop their indigenous culture, social, economic and political systems.

Mrs. Rosario Braid accepted the proposal.

At this juncture, Mr. Padilla pointed out that there are already many existing offices dealing with cultural minorities whose purpose is to integrate the members thereof to the national mainstream. However, he opined that instead of achieving the goal of national integration, these offices

sometimes stressed the peculiarities of the members of cultural minorities. He added that the original Committee Report used the word "may" while Mr. Sarmiento substituted it with the word SHALL, making it mandatory for Congress to create another office which may only duplicate the functions of existing offices, thereby increasing the bureaucracy which should be minimized to simplify government functions to make them more understandable to the common man.

Thereupon, Mr. Monsod proposed to amend the amendment to read as follows:

SECTION 6. CONGRESS MAY CREATE A CONSULTATIVE BODY TO ADVISE THE PRESIDENT ON POLICIES AFFECTING INDIGENOUS CULTURAL MINORITIES.

In reply to Mr. Bennagen's query whether "consultative body" would include representatives from the communities themselves, Mr. Monsod replied in the affirmative.

Mr. Bennagen then proposed to insert MAJORITY OF WHOSE MEMBERS SHALL COME FROM THE INDIGENOUS COMMUNITIES between "body " and "to".

Mr. Monsod accepted the amendment.

Mr. Ople, by way of a reaction to Mr. Padilla, observed that there is no need to create another office or body as there has already been a Commission on National Integration over cultural minorities, and even a ministry in the past regime. He stated that during the consideration of the Article on Local Governments, it was pointed out that there are still more than 4 million Filipinos belonging to different tribes other than Muslim Mindanao and the Cordilleras who are left out of constitutional reckoning. He stressed that as an act of equity and justice for non-Muslim and the non-Cordillera tribes, the proposed section was submitted so that they too would have the same mantle of protection, although of a lesser rank.

In reply to Mr. Bacani's query whether "indigenous communities" or "cultural communities" should be used for consistency, Mr. Bennagen stated that he prefers the latter phrase.

Thereupon, Mr. Monsod restated his proposal as follows:

SECTION 6. CONGRESS MAY CREATE A CONSULTATIVE BODY TO ADVISE THE PRESIDENT ON POLICIES AFFECTING INDIGENOUS CULTURAL COMMUNITIES, THE MAJORITY OF WHICH SHALL COME FROM SUCH COMMUNITIES.

At this juncture, Mr. Abubakar expressed his support for the proposal because it would help these brother Filipinos develop and advance their status and at the same time integrate into the mainstream of Philippine society.

In reply to Mr. Rodrigo's query whether the President could create the office before Congress convenes, Mr. Monsod replied in the affirmative.

Mr. Bennagen stated that the creation of the "consultative body" would not preclude the creation of another government agency to look into the problems of indigenous cultural communities.

Thereupon, Mr. Bennagen read his proposed amendment as follows:

CONGRESS MAY CREATE A CONSULTATIVE BODY TO ADVISE THE PRESIDENT ON POLICIES AFFECTING INDIGENOUS CULTURAL COMMUNITIES, THE MAJORITY OF WHOM SHALL COME FROM SUCH COMMUNITIES.

Submitted to a vote, and with 25 Members voting in favor, 1 against and 1 abstention, the amendment was approved by the Body.

AMENDMENTS OF MR. MONSOD

Mr. Monsod proposed to delete Section 7.

Mr. Ople, however, proposed an anterior amendment on Section 5.

He stated that in connection with Section 4, he would like to propose jointly with Messrs. Nollado, de Castro and Natividad, a section for the welfare of government and private retirees.

Mr. Monsod stated, however, that Mr. Ople's concern has nothing to do with Section 7 which the Body could consider without prejudice to his amendment on Section 5. Thereupon, Mr. Ople agreed to defer consideration of his proposal.

Speaking against the proposed deletion of Section 7, Mr. Nollado stated that the section supports the provision on graft and corruption, the Article on the Ombudsman and the Article on Accountability of Public Officers. He stated that there is no basis for Mr. Monsod's apprehension that Congress might abolish some offices in the Executive Department because all that Congress is called upon to do is to pass a law that would provide the guidelines under which the performance and management of government offices may be reviewed. Adverting to his answer to Mr. Guingona's interpellation, he stated that the reviewing body to be created by Congress would come from the Executive. He likewise stated that special bodies are set up to reorganize the government only in case of extraordinary occurrences in the country, which requires a law for its abolition should the circumstances justifying their existence cease. He stressed that between the national interest and the self-centered interest of civil servants, the national interest should prevail.

Reacting thereto, Mr. Monsod stated that, firstly, Congress has the exclusive power to enact laws; and secondly, the task of reviewing and making recommendations on the performances of government offices is amply covered by the functions of the Commission on Audit.

Mrs. Rosario Braid stated that the provision would encourage creativity and productivity in the civil service; it would prevent large bureaucracies from becoming deadwood over time; and that the functions of the Commission on Audit will not adequately cover the intention to positively encourage organizational effectiveness.

Additionally, Mr. Nollado stated that the functions of the Commission on Audit have nothing to do with government reorganization.

In reply to Mr. Bennagen's query whether the provision would include state colleges and universities, Mr. Nollado answered in the affirmative.

Adverting to the provisions on the Commission on Audit, Mr. Monsod stated that the Commission is authorized not only to audit but also to recommend measures to improve the efficiency and effectiveness of government offices and that, logically, the same function operates during the period of reorganization.

Mr. Ople stated that there ought to be a policy for periodic review of government institutions to justify their continued existence. He stated, however, that he would be constrained to vote for its deletion in the meantime because of his apprehension over the sweeping character of the provision which could give a feeling of uncertainty to government employees should Congress threaten them with the abolition of their offices.

Mr. Nollado maintained that government employees need not be apprehensive because they would be duly compensated should Congress abolish their offices. He stressed that Congress is the repository of all government authority and, therefore, it has the discretion whether or not to abolish an office; besides, the recommendation to abolish would have to come from the Executive.

Submitted to a vote, and with 16 Members voting in favor and 10 against, the Body approved Mr. Monsod's amendment to delete Section 7.

FURTHER AMENDMENT OF MR. MONSOD ON SECTION 8

Thereafter, acting on Mr. Tadeo's suggestion, Mr. Monsod proposed to delete Section 8 for the following reasons: 1) that tourism should not be constitutionalized but should be left to the exigencies of the times; and 2) that the concern of Section 8 would be amply covered by the provision in the Article on the Declaration of Principles relative to the mandate of the State to maintain a balanced ecology.

Mr. Nollado accepted Mr. Monsod's amendment, stating that the development of tourism by regional governments is already covered in the Article on Local Government.

Thereupon, there being no objection, the Body approved the deletion of Section 8.

PROPOSED AMENDMENT OF MR. MONSOD ON SECTION 9

Mr. Monsod proposed to substitute Section 9 with the following:

THE STATE RECOGNIZES THE VITAL ROLE OF COMMUNICATION AND INFORMATION IN NATION-BUILDING. TO THIS END, THE STATE SHALL CREATE THE ENVIRONMENT FOR THE FULL DEVELOPMENT OF FILIPINO CAPABILITY AND THE EMERGENCE OF COMMUNICATION STRUCTURES SUITABLE TO THE NEEDS AND ASPIRATIONS OF THE NATION AND A BALANCED FLOW OF INFORMATION WITHIN AND ACROSS THE COUNTRY, IN ACCORDANCE WITH THE POLICY THAT RESPECTS THE FREEDOM OF SPEECH AND OF THE PRESS.

In reply to Mr. Bennagen's query as to what would "environment" refer to, Mr. Monsod stated that it refers to a policy of environment.

On whether "communication structures" would mean "organizational or physical structures", Mr. Azcuna explained that the phrase would not only include physical structures but also the softwares or the know how. He also affirmed that it includes organizational structures for the development of a communication system suitable to the needs and aspirations of the nation. He then manifested that the provision was formulated with Messrs. de los Reyes, Bernas, Monsod, Mrs. Rosario Braid and the Committee.

Mr. Bennagen proposed to substitute "create the environment for" with PROMOTE, in reply to which Mr. Monsod explained that the proposal does not envision the State as the prime mover in the field of communication and information but to encourage private initiative.

Mr. Bennagen commented, however, that "create" seems to be more forceful than "promote", in reply to which Messrs. Azcuna and Monsod suggested PROVIDE, which Mr. Bennagen accepted.

At this juncture, Mr. Sarmiento volunteered the information that the UNESCO approved the creation of a New International Information and Communication Order (NIICO), of which the Philippines is a participant, and which proposed the formulation of a national communication policy to be participated in by all social sectors concerned through democratic consultation, and to make communications more responsive to the needs of the people. Thereafter, in reply to his query, Mr. Monsod affirmed that the proposed amendment is compatible with the UNESCO proposal.

Mr. Ople proposed to insert POLICY before "environment" to clearly express the nature of environment sought to be created by the State, which proposal was accepted by Mr. Monsod.

Adverting to an earlier version of the provision, Mr. Bennagen stated that the phrase "with other countries" was substituted with the words ACROSS THE COUNTRY which he said do not faithfully reflect the intent of the original phrase.

Mr. Bernas proposed INTO, OUT OF AND ACROSS THE COUNTRY.

Mrs. Rosario Braid accepted the modified formulation which, she said, recognizes the efforts of the new information and communication order that have been going on for the past ten years.

MR. PADILLA'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Padilla proposed the adoption of the first sentence which reads: "The State recognizes the vital role of communication and information in nation-building" and suggested the deletion of the next long sentence.

Mr. Monsod did not accept Mr. Padilla's proposal, explaining that the field of communication and information is a new developing field and he stressed the need to mention certain principles involved in this industry.

Mr. Padilla maintained that Congress should decide on all the other criteria or standards of development. He stressed that the role of communication and information is not the first or primary duty of the State. He noted that the second sentence is detailed and vague in the sense that the words therein are not at all clear nor specific. He believed that this is better left to the judgment and discretion of Congress depending upon the circumstances that might be considered improvements on communication in the course of time.

Mrs. Rosario Braid reiterated that the Committee could not accept Mr. Padilla's proposed amendment because this provision explicitly states an orientation and philosophy which the Committee would like to underscore. She stated that the first sentence is not adequate to explain the kinds of structure and philosophy to which communication should be reoriented.

Mr. Padilla's amendment was submitted to a vote, and with 4 Members voting in favor, 19 against and two abstentions, the same was lost.

RESTATEMENT AND APPROVAL OF MR. MONSOD'S AMENDMENT

Mr. Monsod restated his proposed amendment, as amended, to wit:

THE STATE RECOGNIZES THE VITAL ROLE OF COMMUNICATION AND INFORMATION IN NATION-BUILDING. TO THIS END, THE STATE SHALL PROVIDE THE POLICY ENVIRONMENT FOR THE FULL DEVELOPMENT OF FILIPINO CAPABILITY AND THE EMERGENCE OF COMMUNICATION STRUCTURES SUITABLE TO THE NEEDS AND ASPIRATIONS OF THE NATION AND THE BALANCED FLOW OF INFORMATION INTO OUT OF AND ACROSS THE COUNTRY IN ACCORDANCE WITH THE POLICY THAT RESPECTS THE FREEDOM OF SPEECH AND OF THE PRESS.

The Committee accepted the amendment, and there being no objection, the same was approved by the Body.

INQUIRY OF MR. BENNAGEN

Mr. Bennagen inquired on the status of the deferred decision of the Body in connection with the statement on communications to be included in the Article on Declaration of Principles,

Mr. Bernas stated that the first sentence of the Section which was just approved was a sentence that was proposed during the consideration of the Article on Declaration of Principles. He recalled that when this sentence was presented at that time, he moved for the deferment of its consideration until the Body could consider the Article on General Provisions without prejudice to reinstating the first sentence back to the Article on Declaration of Principles if the Body so decides.

Mr. Monsod asked that the Body vote first on the entire Section before deciding whether the first sentence should be transposed to the Article on Declaration of Principles.

MOTION OF MR. GUINGONA

Mr. Guingona moved that the first sentence be transposed to the Article on Declaration of Principles.

Mr. Bennagen seconded the motion, explaining that communications is the basis of human interaction and that there should be a statement in this regard in the Article on Declaration of Principles.

INQUIRY OF MR. MONSOD

On Mr. Monsod's query, Mrs. Rosario Braid affirmed that should the Body approve the transposition of the first sentence to the Article on Declaration of Principles, it is understood that the words "To this end" would be deleted.

APPROVAL OF THE MOTION

There being no objection, the Body approved the transposition of the first sentence to the Article on Declaration of Principles.

AMENDMENT OF MR. BERNAS

Mr. Bernas proposed the deletion of Section 10 because it is already covered by Section 9.

Mrs. Rosario Braid did not accept Mr. Bernas' proposed amendment, stating that Section 10 operationalizes the general principle of Section 9. She underscored the importance of communication technology in education and in the development of self-reliant communities.

Reacting thereto, Mr. Ople supported Mr. Bernas' proposal as long as the intent of Section 10 is recognized as in Section 9.

Additionally, Mr. Bernas stated that Section 10 would have been necessary if the original formulation of Section 9 were preserved, but since Section 9 was reformulated, then Section 10 becomes unnecessary.

INQUIRY OF MR. NATIVIDAD

In reply to Mr. Natividad's query, Mr. Bernas stated that Subsection 2 is included in the proposed deletion because it is offensive to the freedom of expression. He pointed out that as far as freedom of speech and of the press is concerned, everything is protected except libel and obscenity.

APPROVAL OF MR. BERNAS' AMENDMENT

Submitted to a vote, and with 22 Members voting in favor, 6 against and one abstention, the Body approved the deletion of Section 10.

MANIFESTATION/INQUIRY OF MR. GUINGONA

Relative to what transpired earlier when Mr. Guingona was called to order by Mr. Bengzon, the former opined that it was the latter who was out of order because while he was just making a reservation to object, Mr. Bengzon was making another motion.

Mr. Guingona stated that he had gone over the record of July 15, 1986 when the Commission decided not to consider Section 7 and found out that there was a decision to include it in the Article on General Provisions.

On the basis of what transpired in the July 15 session, Mr. Guingona inquired whether Section 7 would remain in the Article on the Civil Service or transferred to the Article on General Provisions.

Reacting thereto, Mr. Bengzon explained that Section 7 on the Article on the Civil Service had already been approved on Third Reading and that Section 3 of the General Provisions had also been approved. He maintained that there is no ambiguity and the Body could go back to the discussion.

Mr. Guingona questioned the propriety of the approval of the provision which, he opined, is contrary to the records of the Commission. He maintained that the records showed that the intention of the Commission at that time was to transfer the provision to the Article on General Provisions.

Mr. Monsod stressed that Section 7 had already been incorporated in the Civil Service provisions but the Body approved a paragraph in the General Provisions which should be transposed to complete the sense of Section 7 of the Article on the Civil Service. He opined that there is no need to talk about procedures because there is a lot of flexibility in the Rules for the Body to handle the matter.

SUGGESTION OF MR. OPLE

Mr. Ople suggested that the Body take note of Mr. Guingona's statement so that it could proceed to the consideration of the remaining items, which suggestion was noted by the Chair.

PROPOSED AMENDMENT OF MR. REGALADO ON SECTION 11

On Section 11, Mr. Regalado proposed the deletion of the words "commercial telecommunications" on page 3, lines 21 and 27, explaining that the retention of these words in Section 11, second paragraph would be objectionable both substantively and procedurally. He stated that the second paragraph of Section 11 seeks to provide a 66 2/3 percent Filipino equity in commercial telecommunications establishments which is not consistent with Section 15 of the Article on National Economy and Patrimony wherein the Body voted in favor of a 60-40 equity. He disclosed that based on his researches, as early as 1913 starting with Act 2307, to Act 3108, to the Public Service Act which is Commonwealth Act No. 146 and PD No. 1, the term "public utility" always includes telecommunications establishments. He stated that if this provision is approved, it would contravene Section 15 of the Article on National Economy and Patrimony. He pointed out that it could not be argued that the present inclusion of "telecommunications establishment" in Section 11 paragraph 2 would make an exception of that establishment because the records show that when Section 15 of the Article on National Economy and Patrimony was discussed, the Body approved the 60:40 equity. He further pointed out that the Body likewise turned down the suggestion of Mr. Bernas to exclude telecommunications industry in Section 15.

On his procedural objection, Mr. Regalado stated that the inclusion of telecommunications establishments in the second paragraph of Section 11 of the original Committee Report is in effect a reconsideration of Section 15 of the Article on National Economy and Patrimony.

In view thereof, Mr. Regalado proposed the deletion of the phrase "commercial telecommunications establishments" in the second paragraph of Section 11.

INQUIRY OF MR. BENGZON

On Mr. Bengzon's query, Mr. Regalado clarified that he was seeking the deletion of the phrase "commercial telecommunications establishments" both in lines 21 and 27.

REMARKS OF MR. NOLLEDO

Mr. Nollado agreed with Mr. Regalado that commercial telecommunications is a public utility but he pointed out that the intent of the Committee is to provide an exception to the 60:40 equity considering the nature of telecommunications as one involving the national interest, particularly national security.

He stated that the 1935 and the 1973 Constitutions provided a 60:40 equity and the Committee would like to provide an improvement which is 2/3 to 1/3 equity in favor of Filipino participation.

Mr. Rama asked that the Body vote on Mr. Regalado's proposed amendment to delete "commercial telecommunications" in Section 11, on page 3, lines 21 and 27.

REQUEST OF MRS. ROSARIO BRAID

Mrs. Rosario Braid asked for the deferment of consideration of the second paragraph of Section 11 in view of the request of some Members that this be taken up in the next session.

Mr. Rama suggested that the Body vote on the proposal considering that this had been discussed in many sessions in the past.

Mrs. Rosario Braid maintained that during the discussion on telecommunications, the Body had not even taken up one-tenth of the whole implication of telecommunications technology particularly in the way it had been used during the past regime. She asked leave of the Body to give others the opportunity to present data on how DOMSAT, PHILCOMSAT, PLDT and other transnational corporations engaged in telecommunications have performed over the past 20 years.

REMARKS OF MR. SARMIENTO

Speaking in support of Mrs. Rosario Braid's suggestion, Mr. Sarmiento reminded the Body that in the past, the deferment of certain issues had been granted and for this reason the Body should also grant the request of Mrs. Rosario Braid.

Mr. Rama argued that this is not a new issue and that there had never been any formal reservation to postpone consideration of the provision. He stated that this would set a very bad precedent of postponing just because some Members would like to present some data later. He insisted that the Body vote on Mr. Regalado's proposed amendment.

REMARKS OF MR. GARCIA

Mr. Garcia questioned the procedure adopted by the Body considering that it had not yet discussed the preceding paragraphs, specifically the three paragraphs of Section 11(1).

Mr. Bengzon argued that there was nothing unusual in the procedure considering that Mr. Regalado had a previous reservation to present his proposal on Section 11(2) and that the Body could still entertain other Members who would want to propose amendment to Section 11(1).

SUSPENSION OF SESSION

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

It was 12:40 p.m.

RESUMPTION OF SESSION

At 12:42 p.m., the session was resumed.

DEFERMENT OF CONSIDERATION OF SECTION 11

On motion of Mr. Rama, there being no objection, the Body deferred consideration of Section 11.

ADJOURNMENT OF SESSION

On motion of Mr. Rama, there being no objection, the Chair declared the session adjourned until nine-thirty in the morning of Monday, September 29, 1986.

It was 12:42 p.m.

I hereby certify to the correctness of the foregoing.

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

ATTESTED:

(SGD.) AMBROSIO B. PADILLA
Vice-President

Approved on September 29, 1986

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