

R.C.C. NO. 21

VOL. I, July 01, 1986

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/349ae40e5ddc/>

Tuesday, July 1, 1986

OPENING OF SESSION

At 5:13 p.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 Regalado E. Maambong.

Everybody remained standing for the Prayer.

MR. MAAMBONG: First of all, I wish to acknowledge the kind words and prayers of Reverend Father Francisco Silva of Toledo City, Cebu, which provoked my thoughts for today's Prayer.

PRAYER

Dear God, as we are about to continue our deliberations, we pause to reaffirm our faith in Your Divine Providence, humbly praying that You intervene with Your power and wisdom in the affairs of this Constitutional Commission.

We pray that You touch each one of us with Your grace so that, individually and as a body, we may be made to realize our sacred responsibilities to our conscience, our people and our country. For this purpose, divest us for a while of our preconceived beliefs so that we will have a ready ear for the views of others contrary to our own.

We pray that You gift us with the humility and the wisdom to genuinely listen to and discern the basic and authentic yearnings of our people, bearing in mind the constant reminders that we are selected, not elected, so that we may be able to correctly interpret and translate them into living articles of the fundamental law of our land — a law which guarantees basic freedoms, just and fair to the people, allowing all to develop their talents, giving a voice to everyone, and especially caring for the weak.

We pray that You imbue each one of us with enough patriotism and sense of history to realize the sacredness and importance of our present task and mission so that we may cast aside personal and partisan interests and biases in favor of the long-term welfare of our country and people.

We pray that You give us — more especially the old-timers in our midst — the strength and the energy to withstand the rigors and the long hours of committee deliberations, the lonely nights going over proposed resolutions and ever-growing volumes of proposals coming our way from all directions all over the land. We cannot read them all,

Lord, but we are trying very hard.

We pray that You grant us the patience to go through long-winded discussions over seemingly trivial matters with the comforting thought that, after all, it is our duty to listen and learn.

We pray that You bless our fellow workers in this Commission who labor day and night in assisting us maintain a level of efficiency especially those who transcribe for us, guard us and feed us.

We pray that You guide our floor deliberations so that we can accomplish more by talking less, if this is at all possible. Guide us, likewise, to find the correct room for our committee assignments so that we will not spend much time and effort walking instead of doing.

We pray that You keep us safe from harm in our weekly sorties all over this land so that in our earnest search for the true desires of our people, we will directly hear from them.

We pray further that You will prod us to finish our work on the scheduled date with our tempers controlled and our sanity intact; and when our work is over, that we shall have produced a document worthy of ratification by our people, a document we can all be proud of, a document really worth dying for.

And, finally, we pray that You enlighten our minds with Your Divine Light, so that each one of us, in his or her individual way, will have the courage to do what is RIGHT. Amen.

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present Natividad Present [*]

Alonto Present [*] Nieva Present

Aquino Present Nollado Absent

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 Absent Rodrigo Present

Castro de Present Romulo Present

Colayco Present Rosales Absent

Concepcion Present Sarmiento Present

Davide Absent Suarez Present

Foz Present Sumulong Absent

Garcia Present Tadeo Present

Gascon Absent 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 43 Members responded to the call.

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

MR. RAMA: Madam President.

THE PRESIDENT. The Floor Leader is recognized.

APPROVAL OF JOURNAL

MR. RAMA: I move that we dispense with the reading of the Journal of yesterday's session and that we approve the same.

THE PRESIDENT: Is there any objection? (Silence) Proposed Resolution No. 328, entitled:

The Chair hears none; the motion is approved.

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

THE PRESIDENT: Is there any objection? (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 Proposed Resolutions on First Reading and Communications, the President making the corresponding references:

PROPOSED RESOLUTIONS ON FIRST READING

Proposed Resolution No. 323, entitled:

RESOLUTION PROVIDING IN THE BILL OF RIGHTS OF THE NEW CONSTITUTION ADDITIONAL
CONSTITUTIONAL RIGHTS OF AN INDIVIDUAL

Introduced by Hon. Garcia.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 325, entitled:

RESOLUTION PROVIDING THAT NATURALIZED CITIZENS BE REQUIRED TO ASSIMILATE THEMSELVES IN THE NATIONAL CULTURAL MAINSTREAM.

Introduced by Hon. Villacorta and Sarmiento.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 326, entitled:

RESOLUTION TO INCLUDE A PROVISION IN THE NEW CONSTITUTION TO THE EFFECT THAT THE ARMED FORCES OF THE PHILIPPINES SHOULD NEVER BE USED AS AN INSTRUMENT OF OPPRESSION AND REPRESSION.

Introduced by Hon. Suarez, Sarmiento, Jamir and Tadeo.

To the Committee on General Provisions.

Proposed Resolution No. 327, entitled:

RESOLUTION PROPOSING TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION MAKING IT A POLICY OF THE STATE TO PROVIDE FREE AND COMPULSORY ELEMENTARY, SECONDARY AND TERTIARY EDUCATION TO ALL CITIZENS OF THE PHILIPPINES.

Introduced by Hon. Suarez, Tadeo, Jamir and Quesada.

To the Committee on Human Resources.

Proposed Resolution No. 328, entitled:

RESOLUTION PROPOSING TO INCORPORATE IN THE NEW CONSTITUTION PROVISIONS INSURING THE MUTUAL AUTONOMY OF CHURCH AND STATE.

Introduced by Hon. Bacani.

To the Committee on General Provisions.

Proposed Resolution No. 329, entitled:

RESOLUTION GRANTING AUTHORITY TO THE BARANGAYS TO RETAIN A PORTION OF TAXES AND OTHER REVENUES FOR INFRASTRUCTURE PURPOSES.

Introduced by Hon. Tingson.

To the Committee on Local Governments.

Proposed Resolution No. 330, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION FOR A COMMITTEE ON APPOINTMENTS WHICH SHALL SUBSTITUTE FOR THE COMMISSION ON APPOINTMENTS IN THE 1935 CONSTITUTION.

Introduced by Hon. de Castro.

To the Committee on Constitutional Commissions and Agencies.

Proposed Resolution No. 331, entitled:

RESOLUTION TO INCORPORATE IN THE DECLARATION OF PRINCIPLES PROVISIONS ON THE
RECOGNITION OF WORKERS' RIGHTS.

Introduced by Hon. Aquino, Quesada, Villacorta and Bennagen.

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

Proposed Resolution No. 332, entitled:

RESOLUTION TO INCLUDE IN THE BILL OF RIGHTS OF THE CONSTITUTION A PROVISION
EXPLICITLY RECOGNIZING THE FREEDOM OF CONSCIENCE, BELIEF AND ASSOCIATION OF
FILIPINO CITIZENS.

Introduced by Hon. Villacorta and Aquino.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 333, entitled:

RESOLUTION TO INCLUDE IN THE BILL OF RIGHTS OF THE PHILIPPINE CONSTITUTION A
PROVISION ON THE CITIZENS' RIGHT TO INFORMATION TO MATTERS OF PUBLIC CONCERN
WHICH IS IN THE POSSESSION OF OR IS WITHIN THE REACH OF GOVERNMENT.

Introduced by Hon. Aquino.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 334, entitled:

RESOLUTION PROPOSING A SYSTEM OF MULTIPARTY AND MULTISECTORAL
REPRESENTATION IN THE NATIONAL ASSEMBLY.

Introduced by Hon. Monsod, Foz and Romulo.

To the Committee on the Legislative.

Proposed Resolution No. 335, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION RESTRICTING THE
USE OF NONRENEWABLE CULTURAL RESOURCES AND LIMITING THEIR OWNERSHIP TO
FILIPINO CITIZENS.

Introduced by Hon. Villacorta, Aquino and Uka.

To the Committee on Human Resources.

Proposed Resolution No. 336, entitled:

RESOLUTION TO INCLUDE IN THE PROPOSED CONSTITUTION SECTION ELEVEN, ARTICLE VIII,
OF THE 1973 CONSTITUTION, WITH MODIFICATION, PROHIBITING MEMBERS OF THE
LEGISLATIVE BODY FROM HAVING FINANCIAL INTERESTS IN CONFLICT WITH THOSE OF THE
GOVERNMENT.

Introduced by Hon. Treñas.

To the Committee on the Legislative.

Proposed Resolution No. 337, entitled:

RESOLUTION TO INCLUDE IN THE PROPOSED CONSTITUTION SECTION FOURTEEN, ARTICLE VIII, OF THE 1973 CONSTITUTION, WITH MODIFICATION, IN ORDER TO ADD THERETO THE TERM "INTERNATIONAL AGREEMENT."

Introduced by Hon. Treñas.

To the Committee on the Legislative.

Proposed Resolution No. 338, entitled:

RESOLUTION TO INCORPORATE IN THE 1986 CONSTITUTION A PROVISION REQUIRING THE STATE TO INSURE THAT PEOPLE'S ORGANIZATIONS AND THEIR MEMBERS SHALL ENJOY FULL AUTONOMY, FREEDOM FROM ALL POLICE AND MILITARY SURVEILLANCE AND HARASSMENT, FULL ACCESS TO INFORMATION ABOUT SECTORAL AND PUBLIC AFFAIRS.

Introduced by Hon. Tan, Bennagen and Brocka.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 339, entitled:

RESOLUTION TO INCORPORATE IN THE 1986 CONSTITUTION A PROVISION REQUIRING THE STATE TO RECOGNIZE THE RIGHTS AND ROLE OF PEOPLE'S ORGANIZATIONS AS A POTENT SOCIAL FORCE, INSURING FURTHER THAT PEOPLE'S ORGANIZATIONS ARE ABLE TO PARTICIPATE GENUINELY IN POLICY-MAKING/FORMULATION AND ENCOURAGING THEIR PARTICIPATION IN THE IMPLEMENTATION, MONITORING AND EVALUATION OF LAWS, POLICIES, AND GOVERNMENT PROGRAMS.

Introduced by Hon. Tan, Bennagen and Brocka.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 340, entitled:

RESOLUTION PROPOSING TO INCORPORATE A SEPARATE SECTION ON AGRARIAN REFORM IN THE ARTICLES ON TRANSITORY PROVISIONS.

Introduced by Hon. Tadeo and Suarez.

To the Committee on Social Justice.

Proposed-Resolution No. 341, entitled:

RESOLUTION TO INCLUDE IN THE NEW CONSTITUTION A PROVISION PROVIDING THAT WHOLLY OWNED AND CONTROLLED FILIPINO CORPORATIONS SHALL BE GIVEN PRIORITY TO THE ACCESS OF DOMESTIC CREDIT FACILITIES.

Introduced by Hon. Suarez and Tadeo.

To the Committee on General Provisions.

Proposed Resolution No. 342, entitled:

RESOLUTION PROPOSING THE AFFIRMATION OF AGRARIAN REFORM AS A FUNDAMENTAL ELEMENT IN ACHIEVING SOCIAL EQUITY AND JUSTICE AND THEREFORE MUST BE ENSHRINED IN THE DECLARATION OF PRINCIPLES OF THE NEW CONSTITUTION.

Introduced by Hon. Tadeo and Quesada.

To the Committee on Social Justice.

Proposed Resolution No. 343, entitled:

RESOLUTION TO PROVIDE FOR A SEPARATE ARTICLE ON AGRARIAN REFORM AS A FUNDAMENTAL ELEMENT IN THE ESTABLISHMENT OF A JUST, HUMANE AND PROGRESSIVE SOCIETY.

Introduced by Hon. Tadeo, Aquino, Brocka, Villacorta, Ople, de los Reyes, Quesada, Maambong, Bennagen, Sarmiento, Garcia, Suarez and Gascon.

To the Committee on Social Justice.

Proposed Resolution No. 344, entitled:

RESOLUTION MAKING GOVERNMENT SERVICE A CAREER FOR THE BENEFIT OF THE PEOPLE.

Introduced by Hon. Tadeo.

To the Committee on Accountability of Public Officers.

Proposed Resolution No. 345, entitled:

RESOLUTION TO INCORPORATE IN THE CONSTITUTION A PROVISION ON THE COOPERATION OF CHURCH AND STATE.

Introduced by Hon. Colayco, Treñas and Villegas.

To the Committee on General Provisions.

Proposed Resolution No. 346, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION TO RECOGNIZE, RESPECT, PRESERVE, PROTECT AND PROMOTE THE INDIGENOUS INSTITUTIONS OF CULTURAL COMMUNITIES IN THE PHILIPPINE SOCIETY.

Introduced by Hon. Bennagen, Villacorta and Quesada.

To the Committee on Human Resources.

Proposed Resolution No. 347, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION ON ANCESTRAL LANDS FOR THE CULTURAL COMMUNITIES.

Introduced by Hon. Bennagen and Villacorta.

To the Committee on General Provisions.

Proposed Resolution No. 348, entitled:

RESOLUTION TO INCORPORATE IN THE ARTICLE ON TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION REPUDIATING FOREIGN LOANS CONTRACTED OR GUARANTEED BY THE PAST REGIME WHICH DID NOT BENEFIT PUBLIC INTEREST OR THE GENERAL WELFARE.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 349, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION CERTAIN GUARANTEES TO BONA FIDE CANDIDATES FOR ANY PUBLIC OFFICE.

Introduced by Hon. Davide, Jr.

To the Committee on Constitutional Commissions and Agencies.

Proposed Resolution No. 350, entitled:

RESOLUTION TO INCORPORATE IN THE CONSTITUTION A PROVISION THAT ONLY POLITICAL PARTIES, AGGROUPEMENT, ORGANIZATION OR MOVEMENT WHICH HAS OBTAINED AT LEAST FIFTEEN PERCENT OF THE TOTAL NUMBER OF VOTES CAST IN THE IMMEDIATELY PRECEDING ELECTION IN THE CONSTITUENCY TO WHICH IT SEEKS ACCREDITATION SHALL BE ACCREDITED BY THE COMMISSION ON ELECTIONS.

Introduced by Hon. Davide, Jr.

To the Committee on Constitutional Commissions and Agencies.

Proposed Resolution No. 351, entitled:

RESOLUTION EXEMPTING FIFTY PERCENT OF THE SALARIES AND OTHER EMOLUMENTS OF GOVERNMENT OFFICIALS AND EMPLOYEES FROM THE PAYMENT OF INCOME TAX.

Introduced by Hon. Davide, Jr.

To the Committee on General Provisions.

Proposed Resolution No. 352, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE TERM OF OFFICE OF THE PRESIDENT AND VICE-PRESIDENT.

Introduced by Hon. Guingona.

To the Committee on the Executive.

Proposed Resolution No. 353, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE TO CREATE THE TANOD-BAYAN COMMISSION.

Introduced by Hon. Guingona.

To the Committee on Accountability of Public Officers.

Proposed Resolution No. 354, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE WHICH WOULD MAKE IMPEACHMENT PROCEEDINGS REALISTIC AND IMPLEMENTABLE.

Introduced by Hon. Guingona.

To the Committee on Accountability of Public Officers.

Proposed Resolution No. 355, entitled:

RESOLUTION PROVIDING FOR THE EQUALITY OF WOMEN AND THE PROTECTION OF THE RIGHTS OF WOMEN, CHILDREN AND THE FAMILY.

Introduced by Hon. Villacorta, Aquino, Nieva, Uka, Quesada, Tan, Monsod, Sarmiento, Rosario Braid and Gascon.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 356, entitled:

RESOLUTION PROVIDING FOR HIGHER SALARIES FOR THE CHAIRMEN AND MEMBERS OF CONSTITUTIONAL COMMISSIONS AND PROHIBITING THE DECREASE OR INCREASE THEREOF.

Introduced by Hon. Foz.

To the Committee on Constitutional Commissions and Agencies.

Proposed Resolution No. 357, entitled:

RESOLUTION FIXING THE TEMPORARY OR ACTING AND PERMANENT APPOINTMENTS OF A CHAIRMAN OR MEMBER OF A CONSTITUTIONAL COMMISSION TO AN AGGREGATE OF NOT MORE THAN SEVEN YEARS.

Introduced by Hon. Foz.

To the Committee on Constitutional Commissions and Agencies.

COMMUNICATIONS

Letter from Mr. Domingo M. Guevarra, Sr., former Constitutional Convention delegate, suggesting measures on the dignity of labor and vocational schools, among others.

(Communication No. 85 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from Messrs. Ramon C.F. Cuervo III and Ramon F. Cuervo, Jr., submitting a position paper on foreign investments and property ownership.

(Communication No. 86 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from the Government Association of Certified Public Accountants, Albay Chapter, signed by Ms. Catalina P. Orendain, submitting a position paper proposing provisions pertaining to the Commission on Audit.

(Communication No. 87 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Resolution No. 86-2 of the Government Association of Certified Public Accountants, Albay Chapter, proposing deletion of accounting powers, functions and responsibilities from the Commission on Audit and transferring same to a separate agency under the Chief Executive.

(Communication No. 88 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Letter from the Immaculate Conception Prayer Group signed by Ms. Emilia G. Yu submitting proposals for

maximizing the quality of the decision-making proceedings.

(Communication No. 89 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from the Society of Philippine Sculptors signed by Mr. Ramon G. Orlina and eight other members requesting a constitutional provision for the creation of a national art institution to guarantee a more humane, free and nationalistic art, among others.

(Communication No. 90 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from the Honorable Commissioner Hilario G. Davide, Jr., transmitting copies of resolutions submitted to the committee of the Constitutional Commission which conducted a public hearing, jointly with the U.P. group in Cagayan de Oro City on June 21, 1986, by the Bayan-sponsored People's Consultative Conference on the Constitution (Northern Mindanao).

(Communication No. 91 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Salvador V. Abular of Daet, Camarines Norte, proposing that city/municipal councils be composed of elected barangay captains instead of councilors elected at large.

(Communication No. 92 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from Mr. Salvador O. Oco of Moonwalk Subdivision, Parañaque, Metro Manila, proposing that Sabah and the Kalayaan Group be included in the definition of the national territory, among others.

(Communication No. 93 — Constitutional Commission of 1986)

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

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 5:35 p.m.

RESUMPTION OF SESSION

At 5:42 p.m., the session was resumed with the Honorable Ricardo J. Romulo presiding.

THE PRESIDING OFFICER (Mr. Romulo): The session is resumed.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Romulo): The Floor Leader is recognized.

CONSIDERATION OF PROPOSED

RESOLUTION NO. 263

(Article on National Territory)

Continuation

PERIOD OF SPONSORSHIP AND DEBATE

MR. RAMA: I move that we take up the Unfinished Business, the continuation of the consideration of Proposed Resolution No. 263 on the national territory. We are in the period of sponsorship and debate.

I ask that the sponsor, Commissioner Nollado, be recognized.

THE PRESIDING OFFICER (Mr. Romulo): Is there any objection? (Silence) The Chair hears none; the motion is approved.

Commissioner Nollado is recognized.

MR. RAMA: Mr. Presiding Officer, I would like to interpellate the sponsor.

THE PRESIDING OFFICER (Mr. Romulo): The Commissioner will please proceed.

MR. RAMA: Mr. Presiding Officer, it seems that there is an unclear understanding of the legal grounds of the validity of the claim of the Philippines over Sabah, further complicated by the unclear position of the Committee regarding Sabah. I refer to the phrase "by historic right or legal title" which is included in the national territory proposal. Is the sponsor aware of the legal grounds on the validity of our claim over Sabah, Mr. Presiding Officer?

MR. NOLLEDO: I stated the legal general grounds for the claim during the first session when I sponsored the committee report. Perhaps the Commissioner may give additional grounds.

MR. RAMA: Is the sponsor aware of the chronology of events on the legal grounds presented by the Philippine government? Please permit me to relate: The origin of Sabah belonging to the Philippines arose in 1850 when the Sultan of Brunei had some problem in Brunei. There was a rebellion in that country so he called on his cousin, the Sultan of Sulu, to aid him. So, the Sultan of Sulu sent a flotilla of Suluanos to defend and save the Sultan of Brunei. In gratitude, the Sultan of Brunei ceded North Borneo to the Sultan of Sulu. This was confirmed by the fact that the original carpetbaggers in this area, Mr. Gustavus Baron de Overbeck and Mr. Alfred Dent, an Austrian and a British, went to the Sultan of Brunei to try to lease North Borneo but the Sultan told them that North Borneo, now Sabah, no longer belonged to him because he had ceded it to the Sultan of Sulu. Messrs. Overbeck and Dent tried to negotiate with the Sultan of Sulu for the lease of North Borneo. The lease contract was drawn up and in it, it was very clear that the word used was not "ceded" but "leased," in Arabic "padjak." There was a lot of controversy whether Sabah was ceded or leased because for a long time the original document could not be found. The Sultan of Sulu contended that in one of his trips to Mecca, his copy was stolen in Singapore.

Fortunately, one of our colleagues in the Constitutional Convention of 1971 who was then with the Foreign Affairs Department made a research on the lease contract between the Sultan of Sulu and the North Borneo Company which was composed of the successors of Messrs. Overbeck and Dent. He found a copy in the library or in the files of the State Department. And true enough that copy which was furnished by the British government to the State Department of the United States confirmed the fact that it was a lease contract and the word "padjak" has been confirmed as leased.

During the period that it was under lease by these two carpetbaggers, Overbeck and Dent, they turned over the lease contract and all the rights of the lease contract to the North Borneo Company.

The legal implications here as pointed out by Senator Salonga who was the head of a panel on the talks on Sabah in representation of the Philippines are: Overbeck and Dent were private persons. Therefore, they could not have acquired sovereign powers from the Sultan of Sulu.

Overbeck and Dent turned over the rights to the North Borneo Company which was also a private corporation as confirmed by the British. It was a private corporation; it never achieved a public mantle. So there could not have

been any sovereign rights transferred between the Sultan of Sulu to Overbeck and Dent nor to the British North Borneo Company. In other words, there was no transfer of Sovereign rights.

Among the grounds pointed out is that in law and in logic, a person who pays rental on a property cannot claim ownership to that property which is very obvious.

The fact that has been stressed is that North Borneo, Sabah and the British government in Sabah had been paying rentals to the Sultan of Sulu and his heirs up to 1950 thereabouts. As a matter of fact, there was a stop page of the payment but not because the British government disputed the authority or the title of the Sultan of Sulu, but because there was a dispute as to who were the heirs of the Sultan of Sulu. That was the only dispute. In other words, there was a continuous payment of rentals and that is one of the reasons why we presented our claim to North Borneo.

Another thing to be pointed out here is that during the talks in London, Jovito Salonga, who is an excellent international lawyer, was able to insert in their communique — which was subsequently approved — "Sultanate of Sulu." He used as an argument that, indeed, the British government recognized the sovereign powers of the Sultan as far as Sabah was concerned because they have signed that communique which refers to the Sultanate of Sulu. That is why there was an agreement that after the talks in London, there would be further talks in Manila. But the British government, realizing the blunder made by the chief legal officer, avoided any further talks in Manila.

With respect to the so-called referendum under the auspices of the United Nations, that referendum had been questioned and disputed by the Philippine government because it was rigged. As a matter of fact, many of those people who voted were illiterates who never knew what the issue was all about. Is the Gentleman aware of these facts?

MR. NOLLEDO: Yes, I am aware. I think the Gentleman faithfully reproduced the facts that led to the Sabah claim.

MR. RAMA: Does the Gentleman agree with me that this legal claim and historic title, the legal title that he mentioned in the proposal, have some solid bases as far as Sabah is concerned?

MR. NOLLEDO: That was the intention of the Committee on National Territory of the 1971 Constitutional Convention.

MR. RAMA: Therefore, that phrase would include claims of territories including Sabah?

MR. NOLLEDO: We can claim under those words the Gentleman mentioned.

MR. RAMA: Thank you.

Mr. Presiding Officer, I would like to call on Commissioner Guingona who has registered to interpellate. Those who would like to speak, please register with me.

With the indulgence of Commissioner Guingona, here is an important information from the Chairman of the Steering Committee.

MR. BENGZON: This is just to comply with the technicality, Mr. Presiding Officer. There is a communication sent by the Committee on the Executive to the Committee on Amendments and Transitory Provisions through the Steering Committee. To comply with the technicality, I move that this communication be formally transferred by the Steering Committee to the Committee on Amendments and Transitory Provisions. It has something to do with the deletion from the new Constitution of the provision granting presidential immunity.

Thank you.

THE PRESIDING OFFICER (Mr. Romulo): Is there any objection? (Silence) The Chair hears none; the motion is approved.

Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Mr. Presiding Officer.

I have been given ten minutes so I will try to go as fast as possible.

I offer no objection to the inclusion of a provision on national territory in the proposed Constitution, although I would underscore the need for us, in drafting this provision, to be as flexible as possible so that we would not close the door to any claim which our government may wish to make in the future, either claims that are foreseen now as well as claims that are unforeseen. The danger with an attempt to describe or define a territory is that oftentimes, the description or definition tends to limit the subject matter which is sought to be defined or described. I subscribe to the view expressed by Commissioners Sarmiento and Maambong in the last session that this provision actually is a municipal law and would have no binding effect as far as other states are concerned. Commissioner Maambong, citing Sinco, mentioned that there were Members of the 1935 Constitutional Convention who were against the inclusion of a provision on national territory because, according to them, being a municipal law and since it would have no binding effect on other states, the inclusion would have no practical value. May I also add that even those who favored the inclusion did not dispute this assertion. They wanted the inclusion because they wanted to have some kind of an agreement between the government of the Philippines and the United States, excluding other states, because' the President of the United States, on behalf of the U.S. Congress, was supposed to approve the Constitution after ratification. Those who favored the inclusion thought that the approval would constitute some sort of a covenant between the U.S. and the Philippines as far as the territory of the Philippines is concerned. This demand for inclusion was caused by the efforts of some Members of the U.S. Congress to keep Mindanao and Sulu under the dominion of the United States. And I have a question on this which I will ask just before my 10 minutes is due.

The second item I would like to touch upon is the matter of "legal title." I would assume that the phrase "legal title" refers to territories which belong to the Philippines at the time of the adoption of this Constitution, and also the territories that would belong to us in the future. But there are those who say that because we use "belonging to" and not the words "shall belong," this might be subject to different and conflicting interpretations or constructions. They suggest that we add at the end of the first sentence the words "and such territories which the Philippines may hereafter acquire."

The last point, Mr. Presiding Officer, is in connection with Sabah. I would not favor the inclusion of Sabah in the provision on national territory or in any provision in the Constitution because I believe that our claim to Sabah is quite doubtful. If we include the word "Sabah" this would have the effect of taking the law into our own hands. However, I would want to make it of record that I believe the Sabah claim should not be abandoned; and, therefore, this Commission should make it clear that our claim to Sabah may still be included under the expression "and all other territories belonging to the Philippines by historic right or legal title."

There are many issues still to be resolved, Mr. Presiding Officer, and many questions that have to be answered. Even the word "sovereignty" is very hard to define. As Kaplan and Katzenbach says:

There is no more confusing concept in international law than sovereignty. It has been viewed indiscriminately in a number of different meanings by decision makers and scholars alike.

There is the matter of the sovereignty of the Sultan of Sulu by virtue of the alleged cession by the Sultan of Brunei in 1704. And in this connection, we have the question as to the nature and the period of existence of the

sovereignty of the Sultan of Sulu. May I, however, quote a statement which shows that the sovereignty of the Sultan of Sulu is recognized. This is found in Philippine Claims to North Borneo, Volume 1, page 23. In answer to the Spanish and the Dutch protests to the awarding of the royal charter in 1888, Lord Granville the then British Foreign Minister, disclaimed any intention on the part of the British Crown to assume either dominion or sovereignty over North Borneo and categorically stated that sovereignty remains vested in the Sultan.

There is also the matter of the alleged sovereignty of the British North Borneo Company based on an agreement which some claim to be cession and others claim to be lease (padjak). This was brought about by the agreement entered into between the Sultan of Sulu and Lord Overbeck, then the Consul General in Hongkong. Overbeck, by the way, was not a British national; he was an Austrian but he later transferred his rights to a British merchant named Alfred Dent who subsequently formed a private company, as pointed out by our Floor Leader, called the British North Borneo Company. The question that our Floor Leader raised is: "Can a private company acquire sovereignty over a territory under international law?" This is a question that has to be studied and answered with regard to the matter of sovereignty.

The third alleged sovereignty is the sovereignty of Great Britain, and the question that may be asked is: Does it arise or does it come about because of the alleged cession of the so-called State of North Borneo which was unilaterally formed in 1888 under British protection, after which cession was effected, North Borneo fell into Japanese hands and, therefore, control over North Borneo was lost by the British North Borneo Company? Or does it refer to the annexation effected by Great Britain on July 10, 1946?

There are some questions, there are many questions; as a matter of fact, that may be asked, but I will just ask three of them.

Did the Sultan lose his sovereignty de facto and/or de jure over Sabah after the January 1878 Agreement? What is the legal nature of the agreement between the Sultan of Sulu and Overbeck? And what is the extent of autonomy of Sabah within the Federation of Malaysia?

The last point, Mr. Presiding Officer, is the matter of self-determination. I had the opportunity to write on this when I was a member of the Inter-University Committee to study our claim on Sabah, and I said that the general practice of the principle of self-determination is a course of action which has been repeatedly followed by states in the conduct of their foreign relations. Self-determination is not a special rule peculiar only in Asia, Africa, America or Europe; it is a principle which is universally accepted and followed. In fact, it has been followed in bilateral and multilateral treaties and conventions, including the Potomac Charter, the Atlantic Charter, the Pacific Charter, the Bandung Declaration, the Universal Declaration of Human Rights, and even the United Nations Charter.

There is no quarrel, Mr. Presiding Officer, about the matter of self-determination. Woodrow Wilson said that self-determination is not a mere phrase; it is an imperative principle of action which statesmen will henceforth ignore at their peril. But may I invite the honorable Members of this Commission to the United Nations General Assembly's Declaration on principles of international law concerning friendly relations and cooperation among states in accordance with its Charter on the right of peoples to determine their own political, economic, social and cultural development. This is found in the very first article of this declaration, and I shall read, with your permission:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine their development.

There is, therefore, need for free and consensual determination. There have been allegations — and I do not say

that these allegations are valid or correct; I do not know — about the fact that there had been no free and consensual determination and these allegations must be looked into. You have, for example, the fact that the Philippines did not have an observer during the so-called self-determination held in Sabah. There was also the fact that this exercise of self-determination, which is similar to our electoral process, was shortened unilaterally from six weeks to ten days. There is the statement contained in the Malaysia Official Yearbook of 1969, and I quote:

Regular police and riot squads were in evidence everywhere during the U.N.-Malaysia Mission Survey. Buses, trucks, and other vehicles were mobilized to bring hundreds of villagers from remote areas into the North Borneo capital.

Finally, and most important of all, at the time of the so-called self-determination, North Borneo or Sabah was a colony of Great Britain. As we know, Great Britain was a strong objector to the Philippine claim to Sabah and had openly engineered the inclusion of Sabah into the Federation of Malaysia. If these allegations were proven to be true — and I would like to emphasize that I do not say they are true — then perhaps we cannot blame those who have made the allegation that they suspect, to say the least, that the so-called self-determination process was, if I may borrow the words alleged to have been used by Marcos, nothing more than a moro-moro. What I am asking is that there should be a thorough, unbiased and searching evaluation of all the issues and all the questions regarding this claim. This was not done by the Marcos administration; neither has it been done by this administration for obvious reasons because this administration has only taken over the reins of government for a few months. I say let us give this administration and perhaps other administrations time to study and evaluate, to make a thorough, unbiased and searching evaluation; and if the government finds that our claim is not valid, then so be it. But if our government is able to find evidence to support our claim, then the territory of Sabah belongs to the Philippines. And I say that neither the government nor this Commission has the right to give up any territory which belongs to the people of this country.

Finally, in answer to the statement that Sabah is not linked as closely to the Philippines as Malaysia, I would like to quote from the Manila Accord, Article XIII. The Manila Accord was entered into by the Federation of Malaya, the Republic of Indonesia, and the Republic of the Philippines, and in Article XIII, they took cognizance of, and I quote:

. . . the close historical ties between the people of the Philippines and North Borneo as well as their geographical propinquity . . .

And now may I be allowed to ask the question that I wanted to ask the honorable proponent. Speaking of Mindanao, what is the reaction of the Gentleman — and I am not making this as a proposal but as an exploratory question — if the first part of the proposed provision on the national territory be made to read as follows: "The national territory comprises the Philippine Archipelago with all the islands and waters embraced therein including the three main geographical divisions thereof: Mindanao, Visayas and Luzon"?

MR. NOLLEDO: But before I answer that question, Mr. Presiding Officer, I would like to reiterate my stand against the contention that the definition of the national territory as recommended by the Committee on Preamble, National Territory, and Declaration of Principles is a mere municipal legislation and has no practical value. I vigorously disagree with such a statement.

In the last session, in answer to the observations of Commissioner Maambong, I stated that the definition of the national territory, as recommended by the Committee should be read and understood in the light of the international treaty limits set forth in the Treaty of Paris and other limits contemplated in the Treaties of 1900 and 1930. These treaties have the force of law even from the point of view of public international law. I think that is very important because these treaties have existed for a considerable length of time — for a long period of time —

that they are binding upon other states.

So, I will answer the Gentleman's question. I have no objection if Luzon, Visayas and Mindanao be stated in the definition of the national territory. The Gentleman can present that as an amendment later on and I will submit that to the Commission for appropriate action.

MR. GUINGONA: Thank you.

MR. RAMA: Mr. Presiding Officer.

MR. GUINGONA: Just a reaction, Mr. Presiding Officer, about the nonbinding effect of the provision.

The treaty cited by the Gentleman precisely shows that our legal title is dependent on the treaties. Take away the treaties, the territories that will be described or included in the provision would be meaningless. And it is precisely the treaties, not the provision of the Constitution, that give us the title to these territories.

Thank you.

MR. NOLLEDO: I thank the Gentleman for his observations.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Romulo): The Floor Leader is recognized.

MR. RAMA: I now ask that Commissioner Ople be recognized to interpellate.

THE PRESIDING OFFICER (Mr. Romulo): Mr. Floor Leader, may I ask a question?

Mr. Floor Leader, I note that the Gentleman has been agreeing to a time limit for each speaker, is that correct?

MR. RAMA: Yes, that is correct, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Romulo): The Chair would be very happy to act as the timekeeper, if the body wishes, to gently remind the speaker when his time is up. I may override the microphones below if need be.

So, is the Floor Leader in agreement that I shall gently remind him when the 10 minutes is up?

MR. RAMA: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Ople is recognized.

MR. OPLE: Thank you, Mr. Presiding Officer. I am sure it is a coincidence that this warning from the Chair was delivered at the precise time when I was going to claim my time. And I absolve the Chair from any suspicion that this was a deliberate choice of time.

THE PRESIDING OFFICER (Mr. Romulo): Thank you. I assure the Commissioner that it is purely coincidental.

MR. OPLE: Thank you, Mr. Presiding Officer.

I have just a few questions requiring an answer of yes or no.

Will the distinguished sponsor yield to some questions?

MR. NOLLEDO: With pleasure.

MR. OPLE: I gather that the Committee has chosen to retain the language of the territorial provision of the 1973 Constitution except for an amendment by addition.

Referring now to the clause "historic right and legal title," may I know if this the Committee refers specifically to Sabah?

MR. NOLLEDO: Because of the word "specifically" in the Commissioner's question, the answer is no.

MR. OPLE: Thank you.

The second question is: Is there anything in this provision that is incompatible with the decision announced by the Philippine government in 1977 on the occasion of the Summit Meeting of the heads of government of the Association of Southeast Asian Nations in Kuala Lumpur renouncing the Sabah claim?

MR. NOLLEDO: None.

MR. OPLE: Thank you.

The third question is: Although the issue of whether this is a municipal law or something more than a municipal law binding on the international community, there is no question in my mind that the definition of our national territory is not lightly or frivolously done. A territorial provision will have to be backed up by the nation that adopts this Constitution now and at certain times in the future. The possibility of backing up the claim with armed force, which is a kind of sacred commitment of the nation to the defense of its own territory and the pursuit of what it believes to be a just claim, can mean committing the lives of Filipinos, whether of this generation or of coming generations to an enterprise which is being sanctioned right now by implication and by principle in this territorial provision of the 1986 Constitution. Does the sponsor subscribe to that?

MR. NOLLEDO: Yes, I fully subscribe.

MR. OPLE: According to the intent of the Committee, may I therefore know whether or not there are any aggressive intentions against other countries that are built into this territorial provision? May I also remind the sponsor about the scandal of the Jabidah massacre. Thank God, that was aborted. It could have brought this country into a state of war with another country on claims that were revealed to be less solid, less substantial, and less sacred than they were originally purported to be after the most intensive and careful deliberation by competent authorities in our government. If that were not aborted, that would have been an utterly irresponsible act of adventurism that would have menaced the lives of many Filipinos for a cause, the clarity and the sanctity of which had never been fully established.

That is the reason I put that question. I am sure the sponsor will deny and disclaim any implication that we have any aggressive intentions towards any neighbor of the Philippines under this clause "historic right and legal title." Is that correct?

MR. NOLLEDO: Yes, but I think our country is committed to the peaceful settlement of disputes as contemplated by the UN Charter.

MR. OPLE: Yes. We are a signatory to any number of international covenants which proscribe the use of force. But we also know that the history of the world very greatly departs from the assurances of such covenants. A lot depends on the accident of leadership in a given country.

We can have a person with a Napoleonic complex in Malacañang — I am saying that this can happen in the future, not necessarily now — who can plunge us into war on the basis of innocent statements on the provision on national territory which, of course, the sponsor now disclaims and I am glad that he does so.

The next question: Is there anything in this provision that reviews, rescinds, revokes or amends the action of the Philippine government in the Kuala Lumpur Summit of 1977?

MR. NOLLEDO: None.

MR. OPLE: Thank you.

That ends my interpellations with respect to the Sabah question but I have one last question for the sponsor, if he does not mind.

When the proper time comes, will the Committee consider an amendment enumerating not only the three regions recommended by Commissioner Guingona but all the major political subdivisions, provinces and cities, making up the territory of the Republic of the Philippines, so that if one is from Puerto Princesa, Palawan and the proposed Constitution is presented to him for ratification, then he cannot help but identify himself with this Constitution because the name of his province is already enumerated there. The farther a person is from the seat of government — let us say Tawi-Tawi, Basilan, Sulu and the Batanes Islands — the more closely he will identify with this Constitution because the name of his province is enumerated here.

MR. NOLLEDO: Without binding the Committee, I think the Committee will welcome the Commissioner's unique suggestion, and the people of Palawan will be thrilled to see Palawan included in the enumerated provinces.

MR. OPLE: Palawan which includes the Kalayaan Islands, of course.

MR. NOLLEDO: Yes.

MR. OPLE: Thank you very much, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer, may I ask that Commissioner Abubakar be recognized to interpellate.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Abubakar is recognized.

The Chair commends the distinguished Commissioner Ople for keeping well within his time.

MR. ABUBAKAR: Mr. Presiding Officer, I have listened to Commissioner Ople's peroration on the issue before us.

I was the Ambassador to Malaysia when the claim of the Philippines over Sabah was presented and the reply of the Malaysian government to this claim was transmitted. It almost erupted into a break of diplomatic relations between the Philippines and Malaysia. In my inspection trip to Sabah, I found out that a big group of Sitangkai people had acquired all the rights pertaining to permanent residence, had established their professions and livelihood there with the encouragement of the Sabah government.

The Sultan of Sulu with a signed treaty leased this property to the North Borneo Company which, in turn, acquired and, upon independence of the Philippines in 1946, transmitted its right to the British government. The British government, in turn, acquired jurisdiction over what is called British North Borneo Company.

The referendum to determine whether or not the people of Sabah wanted to be independent of Malaysia was supervised by the United Nations. There, the people of Sabah spoke with affirmative determination that they would prefer to become part of Malaysia.

The late General Romulo, others and I in the foreign office thoroughly reviewed our claim that was predicated on the right of the Sultan of Sulu over Sabah. At that time, the Sultan of Sulu considered Sabah as part of his territory because it was awarded to him by the Sultan of Brunei who was restored back to power with his assistance. Sabah was, in turn, leased to the North Borneo Company which, in the usual British maneuver, injected into the mind of the Sultan of Sulu that he could not defend Sabah in case of an expedition of Spain against Sulu and that Spain

can easily acquire Sabah and wrest it from his control. That is the main consideration why the Sultan leased the property. Rather than lose it, he retained his sovereignty and got a monthly or annual payment for the lease of this property.

Casting the historical background which Mr. Guingona very well presented to this Commission is the question now of whether or not the Sultan of Sulu still retains sovereignty over Sabah. The unfortunate thing is that when the Americans came and the sovereignty of Spain over the Philippines was passed on to them, the Americans stripped the Sultan of Sulu of any right of sovereignty, powers and prerogatives. Under the Bates Treaty the Sultan became a mere citizen of the Philippines, but with certain remuneration.

This is part of our history. Due to the position that the Sultan of Sulu was still respected and recognized as the Sultan of North Borneo and by virtue of his right over this territory, he wanted that it be claimed as part of our country. The Treaty of Paris, the subsequent treaties and even our Constitution adopted by the Commonwealth government never included Sabah in the definition of our territory. It was not part of the aerial delineation of the Philippines. It was only when Mr. Lopez, through his influence over former President Macapagal, aspired to make a name in history that the claim over Sabah was filed; they filed the claim. But it was never entertained by the other party. At that time, Malaysia or even North Borneo never recognized that we had sovereignty over the territory. The original treaty on which it is based, copies of which are in the books and other publications concerning Sabah, was with the Sultan of Sulu but he lost it in Singapore. The other copy is now with the British government but despite many requests from our government, the British government never showed us its copy.

In the old days, every time we signed a treaty, it is one parchment. When we open it, both sides contained the same provision, and when we put them together, both copies fit well. This shows the authenticity of the original document.

All this aside, we were never able to persuade the powers and even other countries belonging to the ASEAN that our claim to Sabah still subsists because they feel that, if there is anyone to decide the fate of Sabah — considering the concept of democracy and freedom — it is not the Sultan of Sulu or the Philippines but the people of the territory itself.

I was the Philippine Ambassador to Malaysia at that time. Our committee then reviewed the whole development and researched about our Sabah claim in various libraries including those in England and in the United States.

Later, as we gathered more evidence, treaties, and documents, we found out that our claim was not only weak but it did not have the support of the people of Sabah, which is a criterion in any democracy. The voice of the people is the voice of God.

THE PRESIDING OFFICER (Mr. Romulo): The Commissioner has one minute left.

MR. ABUBAKAR: Still, we pursued this and later on, we stopped. We are now convinced that the pursuit of our claim over Sabah would produce no result. If we are brave enough, the only alternative is to conquer Sabah. Are we ready for it? The people of Sulu and Mindanao will have no part in such an adventure, and, therefore, I feel that as far as the Sabah claim is concerned, we should not incorporate this into the Constitution, because we are not ready to invade. This is an act of war. Malaysia will resist it; Sabah will resist it. We might as well reconcile our interests for the sake of unity, regional trade and understanding among the ASEAN nations.

Thank you.

THE PRESIDING OFFICER (Mr. Romulo): Thank you.

MR. NOLLEDO: Mr. Presiding Officer, I would like to make a statement about the phrase "sovereignty of the

Sultan of Sulu." I think the Sultan of Sulu had proprietary rights over North Borneo or Sabah as claimed by him, including the heirs, but not sovereignty. Perhaps when we talk of sovereignty there, we do not talk in its technical sense. We may be referring to sovereignty in its ordinary acceptance with respect to the jurisdiction of the Sultan of Sulu. Sovereignty, as far as the national government is concerned, is indivisible.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Romulo): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Suarez be recognized.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

Will my good friend from Palawan answer a few clarificatory questions?

MR. NOLLEDO: With pleasure.

MR. SUAREZ: Thank you.

I consider myself twice blessed because twice in my lifetime I have had the honor of listening to the sponsor's brilliant presentation of what constitutes the national territory of our country.

I thank the Commissioner for it.

MR. NOLLEDO: Thank you for the word "brilliant," but I think I do not deserve the praise. (Laughter)

MR. SUAREZ: The Commissioner is very modest.

At any rate, quite a number of us got a little confused about what really constitutes our national territory. So, with the sponsor's permission, may I go over with him the various laws, treaties, et cetera, which would ultimately assist us in determining the national territory constituting our Republic.

MR. NOLLEDO: The Commissioner may do so.

MR. SUAREZ: As I understand it, the sponsor wants to include in the definition of national territory those territories ceded to the United States by virtue of the Treaty of Paris concluded between the United States and Spain on December 10, 1898. Is my understanding correct?

MR. NOLLEDO: Yes. If the Commissioner does not mind, I have to mention a very important matter: That the boundaries referred to in the Treaty of Paris were taken from a map prepared by a Spaniard named Pedro Murillo Velarde in 1734. At that time, this map was widely used and recognized in admiralty court proceedings of European countries as the official map of the Philippine archipelago.

MR. SUAREZ: Thank you.

The limits of which were set forth in Article III of the Treaty of Paris.

MR. NOLLEDO: I agree.

MR. SUAREZ: The next treaty was concluded in Washington, D.C. between the United States and Spain on November 7, 1900. This treaty expressly included the Islands of Cagayan, Sulu and Sibuto.

MR. NOLLEDO: These were omitted in the Treaty of Paris.

MR. SUAREZ: Yes, these were omitted in Article III of the Treaty of Paris of 1898. The next incident had

something to do with the Commissioner's statement a while ago that he insisted that the islands embraced in the Treaty concluded in January 2, 1930 between the United States and Great Britain — which includes the Turtle and the Mangsee Islands situated between Borneo and Sulu — be included because these Islands were recognized by Great Britain as part of the Philippine Archipelago. Is my understanding correct?

MR. NOLLEDO: Yes, that is correct.

MR. SUAREZ: Then, we move on to the Island of Batanes which was provided under the 1935 Constitution.

MR. NOLLEDO: Under a general statement.

MR. SUAREZ: Yes. Then we come to certain statements appearing in the 1973 Constitution which are now controversial because of the utilization of the phrase "historic right or legal title."

MR. NOLLEDO: That is also correct.

MR. SUAREZ: Previously, the term "national territory" was defined by some legislations. An example is R.A. 3046 which was enacted on June 17, 1961 which defined the territorial sea. Is that correct?

MR. NOLLEDO: Yes, that is correct.

MR. SUAREZ: However, on September 8, 1968, R.A. 5446 was enacted and this is rather important insofar as Section 2 thereof is concerned. Section 2 contains the definition of the base lines and I quote: The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah situated in North Borneo over which the Republic of the Philippines has acquired dominion and sovereignty.

During the martial law regime, on June 11, 1978, P.D. No. 1596 was promulgated which defined the territories belonging to the Philippines by historic right or legal title. Is the Commissioner also aware of that?

MR. NOLLEDO: I am aware of that presidential decree but not necessarily all its contents.

MR. SUAREZ: The final decree that was issued was P.D. No. 1599 which was enacted on June 11, 1978 and it was captioned: Two-hundred Mile Exclusive Economic Zone. Is the sponsor also aware of that?

MR. NOLLEDO: I am fully aware of that decree.

MR. SUAREZ: So my main question is: Are all of these interpretative decrees I have enumerated included in formulating the definition of what constitutes the national territory of the Republic of the Philippines?

MR. NOLLEDO: The Commissioner is right.

MR. SUAREZ: I thank the Commissioner if that assurance is perfect.

MR. NOLLEDO: In connection with that, if the Commission will give me a little time since that is very important, I would like to read one of the understandings of former Senator Tolentino when he signed the Law of the Sea of 1982. He said:

The convention shall not be construed as amending in any manner any pertinent laws and Presidential Decrees or Proclamations of the Republic of the Philippines; the government of the Republic of the Philippines maintains and preserves its right and authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippine Constitution.

Thank you, Mr. Presiding Officer.

MR. SUAREZ: Just a final question. The sponsor cited former Senator Tolentino as an authority and he has a definition of what constitutes the exclusive economic zone which means beyond and adjacent to the territorial sea but may not extend more than 200 nautical miles from the archipelagic base lines. I suppose the Commissioner acknowledges the validity of that definition?

MR. NOLLEDO: Yes.

MR. SUAREZ: Is the Commissioner also aware of the former Senator's definition of the "continental shelf" of an archipelagic state as the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the base lines if the edge of the continental margin does not extend to that distance?

MR. NOLLEDO: Yes, I am aware.

MR. SUAREZ: Thank you.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Villacorta be recognized.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Villacorta is recognized.

MR. VILLACORTA: Just to bring rhyme or reason to all these arguments, I would like to ask some fundamental questions.

In the hierarchy of grounds for claiming sovereignty, which has priority: historic right, legal title, or right of national self-determination?

MR. NOLLEDO: That is a very good question. I will give my opinion without binding the Committee. I think the first should be legal right. But in our case this is closely associated with the historic title. I remember when then President Macapagal claimed Sabah, he said that he wanted to know the sentiments of the people of Sabah. He also mentioned that we had valid title over Sabah and that the government of the Republic of the Philippines under his stewardship would be willing to submit the question to a plebiscite among the people of Sabah after the title thereto is resolved. And should the people of Sabah freely determine that they do not like to join Malaysia or any other country including the Philippines, then the Philippine government will apply the principle of self-determination guaranteed by the United Nations Charter. And so, I think in this particular case, legal title will prevail over self-determination. Once legal title is fixed, then self-determination may come in.

MR. VILLACORTA: Is the Commissioner saying that legal title has precedence over people's rights?

MR. NOLLEDO: That legal title has precedence?

MR. VILLACORTA: I would like to be clear on the Commissioner's stand.

MR. NOLLEDO: Yes.

MR. VILLACORTA: Is the Commissioner saying that legal title is superior to people's rights?

MR. NOLLEDO: In my own opinion, because there are contending states in a dispute, one has to determine the condition precedent of which state has a right over the other state even when there may be two or more states involved in a dispute. The question of legal title would seem to appear as the condition precedent, and once that is fixed, I think it is the duty of the winning state or winning party to also apply the principle of self-determination. They cannot dictate to a newly acquired territory if the people do not like to join that state. That precisely was resorted to with respect to Sabah by the United Nations in a referendum which the Honorable Napoleon Rama

referred to as a rigged referendum.

MR. VILLACORTA: I see, thank you very much.

MR. NOLLEDO: Thank you.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Azcuna be recognized as the last interpellator.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Azcuna is recognized.

MR. AZCUNA: Thank you, Mr. Presiding Officer.

I was fortunate to have interacted with a group of fishermen in Bicol two Saturdays ago, and I was impressed by the deep concern they have over their fishing rights in the Bay of Albay. More interesting to them than forms of government and structures of the legislature was the protection of their rights to fish in the coastal waters around Albay. It is in this light, therefore, that I would like to ask clarification on the fishing rights of Filipino citizens over these waters that are included in the definition of our territory.

With respect to internal waters; that is, all waters landward from the archipelagic base lines, does the sponsor agree with me that Filipino citizens have exclusive fishing rights over these internal waters?

MR. NOLLEDO: I should agree with the Commissioner.

MR. AZCUNA: How about with respect to the exclusive economic zone which extends 200 miles from the base lines seaward? What is the right of our fishermen in these waters? Do they have rights, and if so, are they exclusive?

MR. NOLLEDO: I am not aware of existing presidential decrees, specifically the fishery laws, which were abundantly amended by decrees, but I would say that Filipino citizens should have the exclusive right.

MR. AZCUNA: I notice that the Committee will retain the wordings of Article I on the Philippine territory as described in the 1973 Constitution, but would add only a single sentence. Is that correct? And the sentence that the Committee would add states: SOVEREIGNTY OR JURISDICTION OF THE PHILIPPINES SHALL ALSO EXTEND TO STRAITS CONNECTING THESE WATERS WITH THE ECONOMIC ZONE PROVIDED FOR IN THE CONVENTION ON THE LAW OF THE SEA.

The first question with respect to that is: Why not state the right name for that zone, exclusive economic zone, to stress that it is a zone over which the coastal state has exclusive rights with respect to fisheries and other economic exploitation? Would the Committee be agreeable to an amendment later on to that effect?

MR. NOLLEDO: Yes, I think we will be agreeable.

MR. AZCUNA: The other point is: The sponsor will agree with me that territory is not necessarily coextensive with jurisdiction, but there is an instance where a state has jurisdiction beyond its territory.

MR. NOLLEDO: Yes.

MR. AZCUNA: When the Committee added the phrase "SOVEREIGNTY OR JURISDICTION OF THE PHILIPPINES SHALL ALSO EXTEND TO STRAITS CONNECTING THESE WATERS WITH THE ECONOMIC ZONE . . . ," what was its stand? Are these straits part of the Philippine territory or are they part of the high seas over which, however, we can have some jurisdiction?

MR. NOLLEDO: Before I specifically answer the question, the exclusive economic zone, which is beyond and adjacent to the territorial sea, may not extend to more than 200 nautical miles from the archipelagic baselines. The

archipelagic state has sovereign rights in the exclusive economic zone to explore, manage and exploit all the natural resources, living and nonliving, in the waters, the seabed and subsoil. Because of the use of the words "which is beyond and adjacent to the territorial sea," they are seemingly beyond the regular jurisdiction or internal waters of the state concerned.

MR. AZCUNA: I take it that the territorial sea ends at 20 or 24 nautical miles from the base lines seawards. That is the outer limit of our territorial sea.

MR. NOLLEDO: Would the Commissioner not say 12 nautical miles?

MR. AZCUNA: I think under the Convention on the Law of the Sea, it has been extended to 24 miles.

MR. NOLLEDO: We assume that.

MR. AZCUNA: At any rate, at the outer limit of our territorial sea starts the exclusive economic zone. Is that correct, Mr. Presiding Officer?

MR. NOLLEDO: Will the Commissioner kindly repeat the question?

MR. AZCUNA: Immediately beyond the outer limit of the territorial sea will start the exclusive economic zone.

MR. AZCUNA: In the last sentence, the sponsor mentioned straits that he would like to add to our territory that would connect our archipelagic waters or our territorial waters with the economic zone. And all that the sponsor is saying really is that Philippine sovereignty or jurisdiction extends over these straits.

MR. NOLLEDO: That is a very good observation because that is based on the Davide resolution and it says "shall also extend to straits connecting these waters with the economic zone." So the straits do not necessarily mean the economic zone itself, based on the Gentleman's observation.

MR. AZCUNA: Yes, but they have to be either in the territorial waters or in the economic zone, because there is no in between space.

MR. NOLLEDO: Yes.

MR. AZCUNA: I noticed that one of the reservations of Assemblyman Tolentino is that the concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines and removes straits connecting these waters with the economic zone or high seas from the rights of foreign vessels to innocent passage for international navigation. In other words, as far as we are concerned, these straits are part of our territory, part of our internal waters, and not subject to the right of innocent passage.

MR. NOLLEDO: I think the Gentleman is right.

MR. AZCUNA: And my last question, Mr. Presiding Officer . . .

MR. NOLLEDO: Mr. Presiding Officer, I think the Commission would like to know that Commissioner Azcuna is a recognized authority of public international law, a professor on the subject at the Ateneo de Manila.

MR. AZCUNA: I am a humble student of that subject, Mr. Presiding Officer.

One final question is: Instead of just referring to the economic zone by way of identifying the straits, would the Committee consider adding a provision to the effect that the Philippines as an archipelagic state has sovereign rights and jurisdiction over an exclusive economic zone extending 200 miles from the base line?

MR. NOLLEDO: I will strongly recommend to the Committee.

MR. AZCUNA: Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer, I ask that the very last interpellator, Commissioner Rodrigo, be recognized.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Rodrigo is recognized.

MR. RODRIGO: I will be very brief. I just want a little clarification because I am a bit confused on what is the real stand of the sponsor and the Committee in pursuing the claim on Sabah. In the beginning, I got the impression that the purpose of the Committee in retaining the phrase "by historic right or legal title" is not to foreclose the right of the Philippine government to pursue its claim on Sabah. On the other hand, I heard the answer of the sponsor to a question by Commissioner Ople. On the repetition of the phrase "by historic right or legal title," does this mean that we are turning our back on the commitment made by President Marcos in 1977 at Kuala Lumpur, abandoning our claim to Sabah? And the sponsor said "no."

MR. NOLLEDO: I would like to remind the Gentleman that the words that he reproduced were not the words of Commissioner Ople. He said, "Is there any inconsistency between the declaration of former President Marcos relinquishing the Philippine claim over Sabah and the definition of the national territory as we recommended?" I said that there is no inconsistency, because there is the question of whether the former President had the power to relinquish. This is a question that was never decided upon. So, it seems to me that that question can be debated separately from the provision on the national territory that we are recommending.

MR. RODRIGO: I think we should make things very, very clear.

MR. NOLLEDO: We are not abandoning the Sabah issue as far as I am concerned.

MR. RODRIGO: May I proceed, step by step?

President Marcos, I think, said that as President of the Philippines, he abandoned the claim to Sabah in 1977 at Kuala Lumpur. Did he do that? Now, does the Commissioner recognize the validity of that move by President Marcos?

MR. NOLLEDO: The Committee did not discuss that question.

MR. RODRIGO: But does it recognize or does it not recognize?

MR. NOLLEDO: I cannot speak for the Committee, but as far as I am concerned, I do not recognize it.

MR. RODRIGO: The sponsor does not recognize it.

MR. NOLLEDO: That is a personal statement without binding the Committee. We did not discuss that question.

MR. RODRIGO: That is why I wanted to clarify that because I was really confused when the sponsor said that there is no inconsistency between what President Marcos did in 1977 when he abandoned the claim, and reiterating the phrase "historic right and legal title," which means we want to pursue the claim. So, let us now be very, very specific. Is it then the intention of the sponsor or the Committee to keep the way open to the Philippine government to pursue the claim, notwithstanding the action of President Marcos in 1977 of abandoning the claim?

MR. NOLLEDO: The Commissioner will remember that I answered a similar question propounded by Commissioner Hilario Davide, when he asked if under the words "historic right or legal title" we can still pursue our claim over Sabah. And my answer was in the affirmative.

MR. RODRIGO: But, is it not inconsistent with the act of President Marcos in 1977 when, as President of the Philippines, he abandoned the claim? Is there no inconsistency?

MR. NOLLEDO: As far as I am concerned, that can be a debatable issue because the President conducts foreign relations.

MR. RODRIGO: Yes. That is what confuses me. So, can he answer yes or no?

MR. NOLLEDO: The Gentleman must know that that is a legal question. We are both lawyers. That can always be subject to debate in the future.

MR. RODRIGO: Thank you very much.

MR. NOLLEDO: I gave the Commissioner my opinion that Marcos had no sole authority.

MR. RODRIGO: Thank you very much, but I am still confused.

MR. RAMA: Mr. Presiding Officer, there are two names that are registered here to speak during the debate and Commissioner Bernas is to speak en contra. Since nobody else is going to speak in favor — they have already expressed their favorable views during the interpellation — may I ask that Commissioner Bernas be recognized to speak en contra?

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Bernas is recognized.

FR. BERNAS: Mr. Presiding Officer, before I say what I have to say, may I be allowed to ask a number of questions, because if they are answered clearly, it may not be necessary for me to say anything. The questions are along the same line as those of Commissioner Rodrigo.

It is very clear that the provision now reproduces word for word the provision of the 1973 Constitution using the phrase "by historic right or legal title" and so forth. In the sponsorship speech of Delegate Custodio Villalba, when he was sponsoring this in 1972, he said that it was put in there precisely to include the claim to Sabah. Is that correct?

MR. NOLLEDO: Yes.

FR. BERNAS: And when Delegate Quintero spoke on this matter as chairman of the Committee on National Territory, he also said that this provision was precisely added to include the claim, among other things, on Sabah. Is that correct?

MR. NOLLEDO: Yes.

FR. BERNAS: And Committee Report No. 1 of the Constitutional Convention of 1971 also said that this provision was intended to cover, among other parts of the world, Sabah. Is that correct?

MR. NOLLEDO: Yes.

FR. BERNAS: So that it is the intention of the Committee, by reproducing this Article, to include Sabah?

MR. NOLLEDO: That we can pursue our claim over Sabah under these words.

SPEECH EN CONTRA OF COMMISSIONER BERNAS

FR. BERNAS: I was about to say that in yesterday's comic strip "Beetle Bailey", the soldiers were complaining that cannons now are not the same as cannons before. And they explained that whereas cannons before said "boom," cannons now just say "boomlet." And yesterday, I was quoted by Commissioners Sarmiento and Maambong to a certain extent that I think they already stole my "boomlet." But since Father Bernas was quoted yesterday, I thought it might be fair if he be allowed himself to speak for, even if he may not say it as eloquently

as the others who quoted him.

First of all, let me clarify that I am not going to speak against the Article in toto. I just want to remove from the Article any portion which, while not serving the interest of the nation, can do harm to the nation. But in order for me to be able to explain fully what I have to say, it seems necessary to say that there are certain valid reasons for saying that there should be no Article on the National Territory in a constitution a general principle. I would say, however, that since we have done it before, if we can do it in a harmless way, by all means, we will do it. But let us not do it in a way that will do any harm to our nation.

I say that it is really not for a constitution to have an Article on National Territory because, as has been often said in this body, a constitution is a municipal law. As a municipal law, it is only binding on the country which promulgates it'. So, we can assert our claim over any territory until we are blue in the face. But if our claim is not supported by any other document extraneous to the Constitution, then our claim is useless.

As a matter of fact, in the debates of the Constitutional Convention in 1971 when the Constitutional Convention started to fumigate the 1935 Article of all colonial traces, they eliminated any mention of the Treaty of Paris; they eliminated any mention of the Treaty of Washington, of Great Britain and so forth, and they were asked: Why eliminate those? The answer was because we do not want to be reminded of our colonial past. But then, they put in "archipelago" in the Article. Where is the archipelago? The archipelago is the territory delineated by the Treaty of Paris as modified by the Treaty of Washington and of Great Britain, etc.

In other words, we did a paint job. We wanted to have our cake and eat it too. We did not want to admit; we did not want to hear the words "Treaty of Paris," but we have to rely on the Treaty of Paris in itself.

In other words, if the Constitution has any force at all in binding other nations, it is not because it is a constitution but because it is supported by other international documents or principles which can support it.

As already said here, this was put here for a very valid historical reason. There was at that time a Bacon Bill in the Congress of the United States which intended to dis-member the territory of the Philippines, and since the Tydings-McDuffie Law said that, if the Constitution of the Philippines had to be accepted by the United States government, then the delegates to the 1935 Constitutional Convention said that we should bind the hands of the United States by making them agree to this. And so, the United States government agreed. As far as the Philippines and the United States government were concerned, the 1935 Constitution was not just an ordinary Constitution, but it was an international agreement between the two of them, and that is why it is there.

When we started formulating the Constitution in 1972, we were no longer dependent on the United States; but just the same, for reasons which were not totally convincing, we put the Article on the National Territory in there. As I said, there was no harm there, provided that we did not include anything which could harm ourselves.

My only objection is the possible harm that can be done by the phrase "all other territories belonging to the Philippines by historic right or legal title." It is very clear historically from the debates of the 1972 Constitutional Convention and from the debates now that it is intended to cover Sabah But it is also very clear that since the Constitution is a municipal law, even if we assert our claim to Sabah, very clearly, it is a claim which will not in any way bind Kuala Lumpur. So, legally, in terms of public international law, it does not help us in anyway.

Yesterday, it was said that President Macapagal was embarrassed when he was asked: "Where in your Constitution does it say that you have a claim? " He should not have been embarrassed. The one who asked him the question should have been embarrassed because he was legally wrong. The Constitution is not the right place to look for territorial claim.

Aside from this, it seems to me there is also a question on due process. Now, we are, in effect, being asked to have a valid claim over Sabah. Equivalently, we are asked to make a judgment on the Philippine claim over Sabah, a judgment which I suppose should be done with due process — a process which hears and examines evidence before it decides. We are being asked to make a decision on a legal claim for which evidence has not been sufficiently presented to us. We are in no position to make the judgment. We are in no position to make the judgment because we do not know what the evidence is. There may be evidence but we have not seen it; it has not been shown to us, and we have not heard the other side. For that reason, if we must put an Article on National Territory, let us excise from it anything which may look unfair or ridiculous, and which will not help us in any way.

There is another point. We have included in the national territory the Archipelagic Principle. When this was included in the 1973 Constitution, it made no waves because nobody complained about it. But this business of "historic right or legal title" has harmed our relationship with our neighbor Malaysia. While it has created harm, it does not help us at all legally. So, why put it there? It will not weaken our claim, in any way, over any territory in the Philippines if we scrap the entire Article on National Territory. It will not weaken whatever claim we may have over Sabah, if we take this out because whatever claim we have will have to be supported, not by our assertions, but by evidence extraneous to the Constitution.

Thank you.

MR. NOLLEDO: Will the Gentleman yield to interpellations?

FR. BERNAS: Yes.

MR. NOLLEDO: When this provision was discussed in the 1971 Constitutional Convention Committee on National Territory, Delegate Quintero said that the words "historic right or legal title" did not cover Sabah alone, but they had reference also to the Treaty of Paris, the Treaty of Washington and the treaty between the United States and Great Britain. That is why, we have to read the provision this way carefully: "The national territory comprises the Philippine Archipelago, with all the islands and waters embraced therein," and one has to connect these words with the following words: "and all the other territories belonging to the Philippines by historic right or legal title, . . ." In other words, the expression "historic right or legal title" may also refer to "archipelago" in order to give emphasis to the importance of such a vital document as the Treaty of Paris and other related treaties.

FR. BERNAS: I am not saying that this phrase covers Sabah alone. As a matter of fact, if we study the debates in the 1971 Constitutional Convention, the phrase was used precisely as a coverall to any claim we may have over other territories — Spratley Island, Marianas, Sabah, and so forth. I am not saying that it refers to Sabah alone. All I am saying is that it refers to Sabah, among other places.

MR. NOLLEDO: Do I understand it right that Commissioner Bernas would like to delete the words "historic right or legal title" from the definition of our national territory?

FR. BERNAS: I would like to propose something but I do not have it ready now. The problem is, historically, this phrase was given meaning by the 1971 Constitutional Convention. I want to use something where it is clear that we are not making any unfounded claim, but at the same time does not include the possibility for the Philippine government to make the claim later on.

MR. NOLLEDO: Would Commissioner Bernas not be satisfied with my answer — deplored by Senator Rodrigo — to the question of Commissioner Ople on whether by retaining these words "historic right or legal title," we specifically referred to Sabah? My answer was "no" and would that answer suffice?

FR. BERNAS: It would not suffice because it leaves the whole thing hanging. As I said, because of the debates of the 1971 Constitutional Convention, the phrase has acquired a specific meaning.

MR. NOLLEDO: Thank you.

MR. RAMA: Mr. Presiding Officer, there is one last speaker en contra, Commissioner Alonto.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Davide is recognized.

MR. DAVIDE: With the permission of the Floor Leader, I seek to ask some questions of Commissioner Bernas.

If we will be silent on a definition of national territory, would it foreclose our people's claim or the government's claim over Sabah?

FR. BERNAS: No, it would not.

MR. DAVIDE: If it will not, therefore, there is no harm in also stating categorically a definition of national territory, including the phrase "historic right or legal title."

FR. BERNAS: As I said, I am not saying that it should totally exclude the declaration of a national territory. All I am saying is that we should not include there any phrase which could already be interpreted as a claim over Sabah. While it would neither have a legal binding effect on anybody nor help in establishing our claim, it could harm our diplomatic relations.

MR. DAVIDE: The interpretation of the Commissioner was to the effect that, if we will be silent on a definition of national territory, our claim over Sabah will not be foreclosed.

We will be sending, anyway, a message to Sabah or to Malaysia that we can still claim Sabah.

FR. BERNAS: We have no control over that because it is established that anybody can claim any other territory over which it has evidence for a claim. What I am trying to avoid is any explicit suggestion that this is particularly directed to that.

MR. DAVIDE: But, whether explicit or implicit or just being silent, the fact of the matter remains that we can still claim Sabah.

FR. BERNAS: We can, but we are not doing it.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

MR. ABUBAKAR: Mr. Presiding Officer, does the Gentleman not think it would be appropriate to drop the phrase "by historic right or title"?

FR. BERNAS: I do not think we should drop it without putting in something else. Let me explain why: This phrase was put in the 1973 Constitution as a substitute for the phrase "all territory over which the present Government of the Philippine Islands exercises jurisdiction," the final phrase in the 1935 Constitution and that had a very specific reason for being there.

If the Gentleman looks at the latitudinal and longitudinal lines specified in the Treaty of Paris, together with the corrections made by the Treaty of Washington and the Treaty of Great Britain, Batanes is out. That particular phrase was precisely put in there to include Batanes to Batan Islands, so if he drops "by historic right or legal title" without putting anything else, then he leaves out Batanes again.

MR. ABUBAKAR: Then why not make the definition clear enough so as to preclude any doubt or misunderstanding even by Malaysia or Indonesia to which we belong as a group? We are all of the Malayan race and that can promote cohesion. What other suggestion could he insert in place of the phrase "by historic right or title"?

FR. BERNAS: I was about to propose the restoration of the phrase in the 1935 Constitution: "all territory over which the present Government exercises jurisdiction." The reason I did not propose it was because of the remarks of Commissioner Azcuna. I had to think it over a little more carefully because as Commissioner Azcuna said, he can have jurisdiction over areas which are not included in his territory. And that is the reason why I hesitate to put back the 1935 version. We will have to think about it a little more.

MR. ABUBAKAR: Yes, but in this particular case, if he looks at the map of the Philippines, the sea between a series of islands from Siasi to Tawi-Tawi and Sipangkot would not even be wide enough by a few kilometers or miles. As a matter of fact, when one is in Sitangkai on a clear day, he can even see the port of Borneo.

FR. BERNAS: I think as far as the South is concerned, the Gentleman really has no problem, but our problem is in the North, with respect to Batanes which seems not to have been included in any of the treaties — Treaty of Paris, Treaty of Washington and so forth — and that precisely is the reason why the phrase was inserted.

MR. ABUBAKAR: To avoid any misunderstanding on the part of our neighbors, as well as the other Malaysian groups — those include Indonesia and Malaysia — it would be best to remove any doubt on our intention to claim Sabah.

Thank you, Commissioner Bernas.

MR. RAMA: Mr. Presiding Officer, there is just one more speaker to speak en contra, after which we shall close the debate and move over to the period of amendments tomorrow to give time for the Commissioners to draw up their amendments.

I ask that Commissioner Alonto, the last speaker, be recognized.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Alonto is recognized.

SPEECH EN CONTRA OF COMMISSIONER ALONTO

MR. ALONTO: Thank you, Mr. Presiding Officer.

I registered my turn to speak against the proposal not because I am against it fundamentally, but because, in line with what Commissioner Bernas has stated, it is going to create some harm to this new nation. Unless we are ready and prepared now to join the imperialist countries in the world, let us give more thought to what Commissioner Bernas had suggested: let us not put in this Constitution things that will bring us harm, and not good. As Commissioner Ople stated, it was providential that the project which resulted in the Jabitah massacre was aborted, otherwise we would have been involved in a conflict that might have resulted not only in the destruction of what we are now trying to build as the Filipino nation, but also in putting us in the light of international image — especially after the proclamation of martial law — as a nation that has not sought to join the concert of free nations.

That is my only purpose, and because most of what I am supposed to say here have already been stated by Commissioners Bernas and Abubakar, I would like to close with the hope that this Commission will use its good sense to eliminate from the Constitution, which we are going to frame, whatever phrase that will cause harm to this nation.

Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer, I move for the adjournment of session until tomorrow at five o'clock in the afternoon.

MR. MAAMBONG: Mr. Presiding Officer, before the motion is taken up, I was made to understand that I will rise on a parliamentary inquiry.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Maambong is recognized.

MR. MAAMBONG: A few session days ago, I presented a motion on the floor seeking a grant of franking privilege to the Members of this Commission. However, two of our distinguished colleagues opposed the motion and the body, in an amazing display of patriotism and in the spirit of self-denial and self-flagellation — to borrow the description of the charming lady over there — voted against the motion and it was lost. It was to my mind, Mr. Presiding Officer, a beautiful display of heroism and I am very proud to associate myself with the heroes of this Chamber.

However, I now hasten to note the following news report from the newspaper The Tribune, a Manila publication, Volume 1, No. 74 issue of Saturday, June 28, 1986, the pertinent portion of which I quote:

In Executive Order No. 23 released by Malacañang yesterday, President Aquino granted the public franking privileges on all communications being sent to the Con-Com to give the masses a voice in the proceedings.

Mrs. Aquino likewise entitled the Con-Com Members to franking of privileges in the discharge of their duties.

The public's franking privilege on Con-Com communications begins immediately and will be effective up to August 15, 1986.

Similarly, in the Sun Star daily of Cebu City, June 28, 1986, quoting PNA, the same news report was carried with this additional information which I likewise quote:

In Executive Order No. 23, the President also granted the same privileges to officers and members of the Con-Com. She directed Postmaster General Joselito Banayo to issue the guideline in implementing the order. Mrs. Aquino said, 'There is a need for an easy and inexpensive way by which communication from the public can reach the Con-Com as embodied in Commission Resolution No. 3 proposing for such franking privileges for both the public and the Con-Com Members.'

The parliamentary inquiry, therefore, is whether or not officers and Members of the Constitutional Commission now enjoy franking privileges on par with the rest of the Filipino community who desire to send us letters in relation to Executive Order No. 23 released by President Aquino.

Thank you.

MR. TINGSON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Romulo): Commissioner Tingson is recognized.

MR. TINGSON: This humble Representation authored that resolution and, along with Commissioner Tan who is my cosponsor, I am very happy to hear that the privilege granted to us is more than what we had asked for in our original resolution. If it is indeed true, as already announced to us by Commissioner Maambong, this Representation would be the first one to rejoice. As the Bible says, "Exceeding abundantly above all we ask or think."

THE PRESIDING OFFICER (Mr. Romulo): It seems that great minds work together and President Aquino seems

to have heard the voice of Commissioner Maambong. But in any case, I will ask the Secretariat to please reply, if they have had any official notice of what Commissioner Maambong has just read to us.

The Secretary-General has an announcement to make.

THE SECRETARY-GENERAL: Mr. Presiding Officer, we distributed copies of Executive Order No. 23 to all of you. It is in our records and Commissioner Maambong is right when he said that the franking privilege has been extended to all the Members in their communications to all the citizens of the Philippines.

ADJOURNMENT OF SESSION

THE PRESIDING OFFICER (Mr. Romulo): And so, before anyone else can say anything, I declare the session adjourned until tomorrow at five o'clock in the afternoon.

It was 7:26 p.m.

[*] Appeared after the roll call.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.